



**Colombian Caravana UK Lawyers Group**

promoting access to justice  
and protecting human rights



LAWYERS WITHOUT BORDERS  
**AVOCATS SANS FRONTIERES**  
ABOGADOS SIN FRONTERAS  
Canada

# **Colombia:**

## **The Legal Profession Still Under Attack**

Report of the second international lawyers' delegation to Colombia

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# Foreword

By Sir Henry Brooke

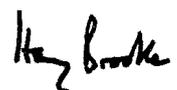
Since I retired as a judge five years ago I have been privileged to meet some phenomenally brave Colombian lawyers. They have spoken at public meetings in London about the threats they face on a more or less daily basis. This is the price they pay for acting fearlessly as lawyers for the victims of human rights violations in that country.

This report fills out their stories and tells them more widely. 57 lawyers from 15 different countries travelled to Colombia for a five-day visit last August. The largest contingent, 17 in all, came from the UK. Instead of remaining in the big cities, they fanned out into 11 different groups for the first two days of their visit, covering different regions of the country. On their final day they described their findings to influential people in Bogotá, including the new Vice-President of the Republic and very senior representatives of the armed forces, the public defenders' service, the prison service and the prosecuting authorities.

In Colombia six judges, 12 prosecutors and 334 lawyers were murdered during the six years between 2003 and 2009. Lawyers' collectives tell stories of break-ins in their offices when the only items that are stolen are personal computers, voice recorders and CD-Roms which contain information about their clients' cases. In one city a lawyer was shot dead in the presence of his wife: 16 months later she had still not been interviewed about the crime she had witnessed. Under the last President's regime, State authorities often denigrated the work of lawyers and human rights defenders, branding them as sympathisers, or even members, of guerrilla groups.

The value of this report is that it sets out dispassionately what this team of lawyers saw and heard. Often the tell-tale signs of a country where the rule of law is in peril is an unwillingness to provide prosecutors and judges with the resources they need. In one city every prosecutor has 700 cases on his or her books at any one time. In another, a town of two million people, there were only 20 investigators working for 180 prosecutors. Defence lawyers tell of a caseload of 500 cases each. Judges see their budgets cut, not increased. Death threats caused one judge to flee the country: the Colombian Government provides no support for him in his exile.

An earlier caravana of foreign lawyers visited Colombia in 2008. All too often the present team reported that little had changed since then, although at the very top the new President and Vice-President of the Republic were now making ringing endorsements of the importance of buttressing the rule of law. Their report contains a number of recommendations to the Colombian Government and Colombian state authorities. But there is plenty that British lawyers – and other foreign lawyers - can do to help the courageous human rights defenders in Colombia through fundraising, skilled professional advice, and general morale-raising. This report is a wake-up call to us all.



London, April 2011

## Executive Summary

The international legal community has established a network of observation and monitoring of the situation of human rights lawyers in Colombia. In 2008, in response to an invitation from the Colombian Association of Defence Lawyers *Eduardo Umaña Mendoza (Asociación colombiana de abogados defensores Eduardo Umaña Mendoza-ACADEUM)*<sup>1</sup>, an international delegation of jurists – the International Caravana of Lawyers (Caravana) – visited several regions of the country to meet lawyers and to receive testimony from human rights defenders at risk. Two years later, in August 2010, with the support of Lawyers Without Borders Canada<sup>2</sup> (who had also supported the 2008 Caravana) and the Colombian Caravana UK Lawyers Group<sup>3</sup>, the Caravana returned, and this time with delegates from 15 countries, across three continents.

In the intervening period there had been three visits from UN Special Rapporteurs, on Human Rights Defenders (Margaret Sekaggya), on Extrajudicial, Summary or Arbitrary Executions (Philip Alston) and on the Independence of Judges and Lawyers (Gabriela Knaul de Albuquerque e Silva). A presidential election took place in the summer of 2010, and when the Caravana arrived in August 2010 President Santos had recently delivered his inaugural speech. This was the context as the international delegates held meetings in 11 regions of the country. Returning to regions which had been visited in 2008, it was possible for the Caravana delegates to assess whether there had been any progress on the areas of major concern which had been raised as a result of the 2008 visit, such as the harassment, threats, attacks on lawyers, their staff and their families, and worse, the assassination of lawyers. No progress had been made in respect of the impunity which exists. This means that the perpetrators of these crimes are not investigated and prosecuted, and victims fail to obtain justice. The delegates met with human rights lawyers and heard accounts of serious violations of human rights in every region visited. They heard accounts of the secret surveillance of lawyers over a period of years by a unit of the state intelligence services.

The delegation welcomed news of plans to create a unit within the prosecution service to investigate human rights abuses against lawyers, but noted that the delegation has yet to hear of any successful prosecutions of perpetrators of these abuses. The new administration's commitment to ensure a "non-stigmatisation" policy, whereby public officials will not speak out against human rights defenders or members of the legal profession and the public commitment of the new administration to respect the independence of the judiciary, will be monitored by the individuals and organisations who participated in the Caravana, both through in-country visits and through direct communication with stake-holders in Colombia.<sup>4</sup>

During the week in Colombia the international delegates constructed a solid bridge of friendship and support with the Colombian lawyers they met. The strong basis for the international network will provide an enduring spotlight on the situation of human rights lawyers in Colombia.

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1 Colombian umbrella organisation for human rights lawyers.

2 <http://www.asfcanada.ca/>

3 <http://www.colombiancaravana.org.uk/>

4 See concerns about recent statements by President Santos in this regard at footnote 20, below.

## **i) Glossary of Terms**

*Defensor(es)*: Human Rights Ombudsman

*Defensoría (del Pueblo)*: Ombudsman's Office

*Falso positivo*: Refers to the practice whereby civilians, generally rural farmers, are presented as guerrillas killed in combat. See note 29, *infra*.

*Fiscal General de la Nación*: Director of Public Prosecutions

*Fiscal(es)*: Prosecutor

*Fiscalía*: Prosecution department.

*Parapolítica*: The “parapolítica” scandal in Colombia refers to links which have been shown to exist between members of the Colombian Congress and paramilitary groups. See note 44, *infra*.

*Personería*: Human Rights Liaison's office

*Postulado/Imputado*: Demobilized paramilitary members who have submitted themselves to the special judicial process in Colombia known as the Justice and Peace process (discussed herein at section 4.4).

*Procuraduría (de la Nación)*: Attorney General's Office

## **ii) Acronyms and Abbreviations**

**ACADEUM**: Colombian Association of Defence Lawyers “*Eduardo Umaña Mendoza*”

**AUC**: United Self-Defence Force of Colombia

**CAJAR**: Jose Alvear Restrepo Lawyers Collective

**CJL**: Legal Freedom Corporation

**FARC**: Revolutionary Armed Forces of Colombia

**DAS**: Department of Security Administration

**JPL**: Justice and Peace Law (special judicial process applicable to demobilized paramilitaries)

**IACHR**: Inter-American Commission on Human Rights

**INPEC**: Colombian National Institute for Penitentiary and Prisons

**LWBC**: Lawyers Without Borders Canada

**OAS**: Organisation of American States

**UNSRIJL**: United Nations Special Rapporteur on the Independence of Judges and Lawyers

**UNSRHRD**: United Nations Special Rapporteur on the situation of Human Rights Defenders

**UN**: United Nations

# 1. Introduction

In the April 15, 2010 report from her country visit to Colombia, the United Nations Special Rapporteur on the Independence of Judges and Lawyers (UNSRIJL), Gabriela Carina Knaul de Albuquerque e Silva, exhorts the international community to “intensify its contribution to the fight against violence and impunity in Colombia, to strengthen the institutions, democratic principles and the rule of law, confirming the role of the judicial branch through the independence and impartiality of magistrates, judges, prosecutors and lawyers.”<sup>5</sup>

A lawyer from the *Luis Carlos Pérez* Lawyers Collective with Caravana lawyers in a settlement of internally displaced people in Cúcuta, Colombia



Among the aims of the Second *International Caravana of Lawyers*' legal observation mission to Colombia, which took place in August 2010, was that of responding to Ms. Albuquerque e Silva's exhortation and to express international support for our professional colleagues in Colombia, who put themselves at risk to fight impunity and improve access to justice in their country.

The objectives of the 2010 legal observation mission were:

- a. To strengthen links between Colombian human rights lawyers and those practising in different branches of law, and from other jurisdictions;
- b. To raise awareness about the role of lawyers and human rights defenders in a democratic system of justice by promoting their right not to be linked to the causes of their clients and not be persecuted for that reason;
- c. To assess levels of access to justice and rates of impunity in cases of human rights violations;
- d. To monitor the implementation of the recommendations made by international country visits to Colombia (including those of the 2008 *International Caravana of Lawyers* legal observation mission to Colombia, and those of intergovernmental mechanisms, such as United Nations Special Rapporteurs);
- e. To consolidate strategies to help protect lawyers and human rights defenders in Colombia.

The international organisations that participated in the Caravana, and individual delegates, will continue to monitor the human rights situation in Colombia, including, in particular, remaining apprised of developments in the regions visited. This monitoring will be undertaken as a result of subsequent in-country visits by those same individuals and organisations, continued monitoring by entities such as the United Nations and the Organisation of American States, and through follow up communications with Colombian organisations and Colombian authorities to measure the extent to which the conclusions and recommendations made by the Delegation, and commitments made by Colombian authorities, have been implemented.

<sup>5</sup> Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Sra. Gabriela Carina Knaul de Albuquerque e Silva. Adición: Misión a Colombia. 15 de abril de 2010 A/HRC/14/26/Add.2 at para 89 (Free translation).

## 1.1. The Findings of the 2008 Caravana

In January 2008, the Colombian Association of Defence Lawyers “*Eduardo Umaña Mendoza*” (Asociación colombiana de abogados defensores “*Eduardo Umaña Mendoza*”, ACADEUM, [www.acadeum.org](http://www.acadeum.org)), an umbrella organisation of Colombian human rights lawyers, with the support of Lawyers Without Borders Canada, invited foreign lawyers to Colombia to report on the killings, threats and harassment to which human rights advocates are routinely subjected. This call to action led to the first *International Caravana of Lawyers* in August 2008. *No Justice Without Lawyers*, the report of the 2008 Delegation, outlines the primary findings, conclusions and recommendations of the legal observation mission, which was comprised of 51 lawyers from Europe, Canada and Latin America.<sup>6</sup> These include indications of the persistent activity of former members of paramilitary groups, and indications of severe challenges faced by victims seeking to access justice. The report states, at page 24, that:

*“(Colombia’s) Government and legal system appear unable or unwilling to curb persistent abuses of human rights (...) despite the supposed constitutional protections, lawyers and other human rights defenders in Colombia are at mortal risk if they:*

- *Represent the relatives of those killed or disappeared by the army or paramilitaries;*
- *Assist peasant farmers and indigenous groups who have been driven from their land;*
- *Defend political opponents of the Government or alleged members of guerrilla organisations;*
- *Act on behalf of workers, particularly those engaged in trade union activities;*
- *Challenge central or local government authorities;*
- *Assist non-governmental organisations working with victims.”<sup>7</sup>*

The report outlines recommendations for action by the participating international delegates, including publicising the lack of human rights protection in Colombia, the impunity tolerated by the State for those who infringe human rights, participating in an international legal network to support those working in the human rights field in Colombia, and responding to emergencies and other critical situations involving human rights advocates.

In addition, the 2008 Caravana report recommended that a second inquiry take place in 2010 which would assess the extent to which the 2008 findings had evolved, bring attention to any persistent challenges to the exercise of the legal profession, and demonstrate the legal community’s continued solidarity to human rights defenders.

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6 This report, published in May, 2009, is available at [http://international.lawsociety.org.uk/files/Caravana\\_Report\\_5\\_05\\_09\\_FINAL.pdf](http://international.lawsociety.org.uk/files/Caravana_Report_5_05_09_FINAL.pdf)

7 Ibid., at 24.

## 1.2. Methodology

From August 23 to August 28, 2010, 57 lawyers from 15 countries<sup>8</sup> travelled to Colombia to participate in the Second *International Caravana of Lawyers*. Participating delegates came from a variety of legal backgrounds and included judges, prosecutors, corporate, criminal defence and human rights lawyers and legal academics. Among the 57 delegates, 9 had participated in the 2008 Delegation to Colombia. All participants had been provided with the report of the 2008 Delegation.

Delegates were divided into 11 groups, which were to travel to various regions of Colombia to meet a wide range of interlocutors (victims, human rights lawyers, etc.), several of these regions having also been visited in 2008.<sup>9</sup> From August 24 to August 26, 2010 the Caravana was present in: Nariño (Pasto and Tumaco); Norte de Santander (Cúcuta); Centro (Bogotá, Tunja); Eje Cafetero (Pereira, Armenia); Huila (Neiva, Reserva Indígena La Reforma); Costa Caribe (Barranquilla, Cartagena); Antioquía (Medellín, San José de Apartadó); and Sur Oeste (Cali, Popayán).

The Delegation was coordinated by three organisations: ACADEUM, LWBC and the Colombian Caravana UK Lawyers Group (supported by the Law Society of England and Wales). Regionally, the Delegation was supported by local Colombian human rights organisations.

The contents of this report are based on interviews carried out during the observation mission and were prepared exclusively by the international participants of the legal observation mission to Colombia. Unless otherwise specified, the information included herein is based on the testimonies of the Colombian human rights lawyers, human rights organisations/defenders, victims and their representatives, members of the judiciary and officials from various branches of the judicial system, as well as the Colombian government including the Department of Defence and the Vice President's office who were interviewed during the Delegation's visit to Colombia. The information received during the legal observation mission has not been independently investigated. Information disclosed in this Report includes only that information for which permission has been granted to disclose it and keeping in mind the safety of those involved.

The Report's findings, conclusions and recommendations are based on internationally recognised standards for human rights and access to justice<sup>10</sup>, such as the *Universal Declaration of Human Rights*<sup>11</sup> and the *International Covenant on Civil and Political Rights*<sup>12</sup>, and on the United Nations *Basic Principles on the Role of Lawyers*<sup>13</sup> and the *Basic Principles on the Independence of the Judiciary*<sup>14</sup>

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8 Argentina, Brazil, Canada, France, Germany, Guatemala, Ireland, Japan, Mexico, the Netherlands, Peru, Spain, Ukraine, the United Kingdom and the United States of America.

9 Specifically, in 2008 the Caravana visited the cities of Bogotá, Cali, Medellín, Turbo, Bucaramanga, Pereira and Barranquilla.

10 For a more complete list and a more detailed discussion on this issue, see the 2007 *Report on the Situation of Lawyers in Colombia* from the Joint mission to Colombia of the American Association of Jurists and Lawyers Without Borders Canada available at <http://www.asfcanada.ca/documents/file/report-lwb-aaj-english-translation.pdf>.

11 <http://www.un.org/en/documents/udhr/index.shtml>

12 <http://www2.ohchr.org/english/law/ccpr.htm>

13 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <http://www.unhcr.org/refworld/docid/3ddb9f034.html> [accessed 24 March 2011]. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

14 <http://www2.ohchr.org/english/law/indjudiciary.htm>

## 2. Conclusions and Recommendations:

### 2.1. Conclusions

The Delegation found that there continues to be a large number of assassinations of and threats against Colombian lawyers, human rights defenders and trade unionists, indications of the continued violent activity of former members of paramilitary groups and challenges to accessing justice by victims. In all regions visited, the delegates found that threats to lawyers and human rights defenders persist and, in many cases, do not seem to receive the attention by authorities that such threats deserve.

This conclusion is consistent with that of the UNSRIJL April 15, 2010 Country Mission Report, which found that over 300 actors in the legal system have been assassinated in the last fifteen years.<sup>15</sup> The National Police statistics, cited in the same report, state that one magistrate, six judges, twelve prosecutors and 334 lawyers were assassinated in Colombia between 2003 and 2009.<sup>16</sup> Regrettably, the Delegation could not note a significant improvement in access to justice and free exercise of the legal profession since it last visited Colombia in 2008.

Beyond these statistics and accounts of physical threats and assassinations, the Delegation's observations also served to demonstrate the personal and psychological toll that such intimidation causes to those working in the legal profession and the defence of human rights. The emotional difficulties of working on cases that are often traumatic are compounded by high levels of fear both for the lawyers' own safety and that of their families and colleagues.

The climate of fear in which lawyers and legal professionals operate was very evident, and many people interviewed asked to contribute only on an anonymous basis to the report for fear of retaliation. Some human rights defenders interviewed did talk about the effects of the threats to themselves and their families.



Caravana lawyers from Canada and the UK presenting their findings in Bogotá

Stigmatisation and the discrediting of lawyers, judges and human rights defenders were also evident throughout the country. Numerous examples were given of State authorities publicly denouncing the work of lawyers and human rights defenders and openly criticizing the decisions of judges. Testimonies in several regions emphasised the fact that lawyers and human rights defenders were often branded as guerrilla members or sympathisers as a result of the work that they carry out. The Delegation was informed that this was seen as a strategy to undermine the work of human rights defenders, and to justify their persecution and attacks against them.

Many of those with whom the Delegation met stated that the most effective protective measure to ensure the safety of judges, lawyers and human rights defenders in Colombia would be for public officials to speak out in their support, acknowledging that their work is legitimate. This issue was raised during a meeting with Vice-President Angelino Garzón, where the Delegation encouraged the administration to make a public pronouncement expressing support for the principle that lawyers have a right to exercise

15 Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Sra. Gabriela Carina Knaul de Albuquerque e Silva, 15 de abril de 2010, (A/HRC/14/26/Add.2) at para 53.

16 Ibid.

their profession and should not be stigmatised as a result of the clients they represent or the work they carry out, in compliance with Decree 1740 of 19 May 2010 and Presidential Directive 09/1999.<sup>17</sup>

Indications of severe challenges to accessing justice were also presented to the Delegation in all regions. This included a large number of cases relating to serious crimes (such as assassinations and forced disappearances) that had not been the subject of a thorough, impartial and timely investigation. Therefore, unsurprisingly, there were few prosecutions of those culpable for these crimes. Communities who had been forcibly displaced stated that they faced major hurdles in accessing services that were supposed to be made available to them. Community leaders and human rights defenders discussed suffering persecution as a result of seeking to have their basic rights respected. Trade unionists continue to face extreme difficulties affecting their ability to organise and ensure that labour rights are protected. Lastly, accounts provided in all regions indicate that there are serious flaws with the special judicial process for the demobilisation of paramilitaries,<sup>18</sup> both in terms of ensuring the participation of victims in this process and that the truth is uncovered, but also by making sure that decisions are rendered which sanction those responsible for crimes and human rights violations and ensure adequate reparation to victims.

The Delegation also noted discordance between the testimonies given by lawyers, human rights defenders and victims, on the one hand, and the testimonies offered by representatives of the authorities, on the other hand. For example, in numerous regions, most evidently in Tumaco, authorities interviewed denied the existence of threats by armed groups in the area and seemed to dismiss complaints thereof without thorough investigation. This is in complete contradiction with credible reports.<sup>19</sup>

It is important to note from the outset that a change of administration occurred just a few short weeks prior to the Delegation's visit to Colombia. The Delegation trusts that the Santos administration will take seriously its obligation to respect and promote human rights, to ensure the protection of all its citizens and ensure the proper functioning of the justice system, including prosecuting those responsible for past crimes, and that they will recognise the continuing State responsibility, unaffected by a change in administration.

The Delegation welcomed information it received regarding undertakings and initiatives that may assist in better protecting the free exercise of the legal profession and access to justice. In particular, the Delegation takes note of:

- The commitment of the current administration to ensure a "non-stigmatisation" policy, whereby public officials will not publicly speak out against human rights defenders and members of the legal profession (as expressed by Vice President Angelino Garzón during our meeting of August 27, 2010);
- The public commitment of the current administration to respect the principles of the independence of the judiciary;

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17 Available at <http://www.dmsjuridica.com/CODIGOS/LEGISLACION/decretos/2010/1740.htm> and [http://www.presidencia.gov.co/prensa\\_new/direc/1999/dri09\\_99.pdf](http://www.presidencia.gov.co/prensa_new/direc/1999/dri09_99.pdf).

18 The special judicial process is the Justice and Peace process, discussed below at section 4.4

19 See for example the February 2010 Human Rights Watch report, *Paramilitaries' Heirs: The New Face of Violence in Colombia* available at <http://www.hrw.org/en/reports/2010/02/03/paramilitaries-heirs>. This report noted, for example, that Tumaco is one of the three cities in Nariño with the highest concentration of successor paramilitary group operations. It also states at page 35 that "Human Rights Watch received repeated, consistent statements from people in Nariño about the operation of the Black Eagles, who controlled territory in several areas, threatened civilians, and were apparently engaged in a bloody turf war against the Rastrojos over control of the port city of Tumaco."

This is echoed in the 2010 Report of Caritas/Pastoral Social of Colombia who note that in Tumaco in 2010, 203 murders had taken place and 73 people had requested the help of the Pastoral Social in fleeing due to threats. The number of armed groups in the area had multiplied and there was an increase in the number of armed forces in Nariño from 6,000 to 14,000 "there is hardly a river or community that does not have an illegal armed "boss" that exerts control and imposes their own law." For more see: <http://www.pastoralsocial.org/lecturas/512-la-poblacion-de-tumaco-y-los-derechos-humanos.html?showall=1>

- The creation of a presidential programme aimed at indigenous peoples and afro-Colombian communities (as expressed by Vice President Angelino Garzón during our meeting of August 27, 2010).

The Delegation is concerned that violence and attacks against members of the judicial system are still far-reaching and that investigations of these attacks continue to move far too slowly and, often, are inadequate to identify those responsible. The Delegation is also concerned by the information that it has received regarding attacks against lawyers and human rights defenders following its visit in August 2010.

These include threats (notably death threats) against the José Alvear Restrepo Lawyers' Collective (Colectivo de Abogados José Alvear Restrepo, CAJAR, [www.colectivodeabogados.org](http://www.colectivodeabogados.org)) in Bogotá in September 2010; intimidation and aggressions against lawyers Sofia Lopez and Alexander Montana in Cali in October 2010; the assassination of lawyer Bernardo Angel Correa Palmera in October 2010.

The Delegation is also concerned by the current administration's recent public pronouncement against the decision of a judge and its resultant failure to respect the principle of the independence of the judiciary.<sup>20</sup>



CAJAR and Caravana lawyers.

## 2.2 Recommendations

The Delegation makes the following recommendations to the Colombian government and / or other officials. The Delegation:

- Invites the Colombian government, upon request, to provide information to lawyers in Colombia and/or any of the participating international organisations in the Caravana about the measures it has taken to diminish/eradicate the impunity that exists in numerous cases;
- Invites the Colombian government and local authorities to demonstrate their efforts and commitment to ensure the respect of the accompaniment and representation work provided by human rights lawyers and to take the appropriate measures to guarantee the necessary safety and security to enable them to exercise their functions, as provided in the United Nations *Basic Principles on the Role of Lawyers*;<sup>21</sup>
- Encourages the Colombian government to publicly endorse the principles outlined in the United Nations *Basic Principles on the Role of Lawyers*;<sup>22</sup>

20 For more, see, in Spanish: <http://www.colectivodeabogados.org/Rectificacion-publica-solicitan> and <http://www.semana.com/nacion/familiares-victimas-del-palacio-justicia-piden-santos-rectificacion/156121-3.aspx>.

21 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <http://www.unhcr.org/refworld/docid/3ddb9f034.html> [accessed 24 March 2011]. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990..

22 Ibid.

- Encourages the Colombian government and local authorities to publicly value the work of judges, lawyers and human rights defenders, and state that these are important professions and that the individuals and organisations that carry out this work should be enabled to do so in safe conditions;
- Encourages the current administration to reiterate its respect for the independence of the judiciary and, in that regard, publicly withdraw its recent pronouncement against the decision of Judge 51 of the Criminal Circuit in Bogotá;
- Encourages the Colombian government to provide adequate financial resources to the judicial authorities to allow them to carry out their duties;
- Invites the Colombian government to provide prosecutors responsible for human rights cases with increased resources so that they have a realistic caseload;
- Encourages the Ombudsman's Office, at a national and regional level, to maintain and publish annual statistics on the number of complaints and denunciations received and the results in those cases to ensure follow-up;
- Encourages the Ombudsman's Office, at a national and regional level, to maintain and publish annual statistics on threats to human rights lawyers;
- Invites the Colombian government to publish reports on the state of the investigations into threats and attacks suffered by lawyers and human rights defenders;
- Invites the Colombian government to implement thorough, independent, and timely investigations into all attacks and threats against lawyers and human rights defenders and to make the findings public;
- Invites the Colombian government to implement the recommendations of the UNSRIJL in her report dated April 15, 2010;
- Invites the Colombian government to strengthen current and open up new permanent spaces of dialogue between authorities and human rights lawyers organisations, ensuring that barriers to access such spaces of dialogue are removed.

In order to ensure continued dialogue between the international legal observation mission, the Colombian authorities, and Colombian human rights lawyers and to ensure that the international community remain apprised of the situation in Colombia, the members of the Delegation commit to the following:

- This report will be communicated to authorities in Colombia as well as authorities in the countries of nationality of the delegates;
- The international individuals and organisations who participated in this legal observation mission commit to continuing to monitor the situation, both through in-country visits and through communications with stake-holders in Colombia;
- The international organisations who organised the Caravana will remain apprised of the situation in Colombia, particularly in relation to attacks against human rights lawyers, and will ensure that such information is responded to and shared with the entire Delegation and the authorities in their home countries;
- The Delegation will continue to encourage representatives of the United Nations to make country visits to Colombia and remain apprised of their conclusions.

In addition to the more general recommendations outlined above, some specific recommendations concerning a particular area or theme are outlined below. The Delegation:

- Calls upon the Colombian government to cease housing prosecutors' offices in military installations in Medellín, Antioquia and in Cúcuta, Norte de Santander, as recommended in the UNSRIJL report of April 15, 2010;
- Invites the Colombian government to undertake an analysis of the effectiveness of the 2005 Justice and Peace Law (JPL), (*Ley 975*) to ensure that victims are enabled full participation in those hearings; to ensure that hearings provide for the attainment of the full "truth" and do not rely solely on the confessions of the demobilized paramilitaries who have submitted themselves to the Justice and Peace process; and to ensure that judgements and awards of reparations are more swiftly imparted;
- Calls upon the Colombian authorities to carry out its commitment to remove the military base from the Indigenous Reserve La Reforma, Huila;
- Invites the Colombian authorities to ensure that international delegates have access to prisons in order to assess the conditions therein.
- Invites the Colombian government to comply with the recommendations of the San José de Apartadó Peace Community in order to restart dialogue and build a positive relationship, namely:
  - o that the police station in San José de Apartadó be moved to a location outside of the Peace Community borders in respect of their neutrality and refusal to allow arms in their community;
  - o that all armed actors respect the neutrality of the demarcated humanitarian zone within the Peace Community and allow members of the community to go about their daily lives free from threats and violence;
  - o that former President Uribe retract his allegations that members of the Peace Community are guerrillas and supporters of guerrilla groups;
  - o that the massacre perpetrated on July 21-22, 2005 by the United Self-Defence Force of Colombia and the Colombian Armed Forces, as well as the continued high levels of impunity enjoyed by those who have harassed or attacked members of the community, be thoroughly investigated and that such investigation include an inquiry to explain why a thorough investigation has yet to take place.

### 3. The Findings of the Regional Visits

It is not possible, in this report, to include all of the issues that were raised during the meetings which took place throughout Colombia, nor all of the cases of human rights violations brought to our attention. The report discusses below only those issues common across all or most of the regions visited by the Delegation or those issues that were of particular importance at the local level. Three thematic sections are included: 1. Lawyers under threat, 2. Access to justice and impunity, 3. Threats to the independence of the judiciary.

Caravana lawyers being interviewed by local Colombian television



#### 3.1. Lawyers Under Threat

Delegates in all regions heard witness testimonies that depicted serious challenges to the ability of lawyers to safely and freely exercise their profession in Colombia. These challenges included assassinations of lawyers, verbal and physical threats from armed groups, break-ins and thefts of sensitive information or support for such information (such as personal computers and voice recorders) at lawyers' offices and general stigmatisation of lawyers, by both public authorities and illegal armed groups, due to the cases they defend, often as a result of public statements made against them by Colombian officials.

The attacks against legal professionals reported to the Delegation are attributable to all actors in the conflict. The Delegation heard reports of violent threats from and acts of violence committed by guerrilla groups, paramilitary groups (and/or former members of such groups) and members of the armed forces, as well as reports of public verbal attacks from members of the government. The Delegation noted a marked contrast between the reality presented by Colombian authorities and that presented by the lawyers and human rights defenders interviewed by the Delegation.

#### 3.2. Threats and Physical Attacks Against Lawyers

In all regions visited by the Delegation, accounts of intimidation of, threats to and assassination of lawyers were presented. In numerous cases, these threats came in written form, often consisting of a letter or pamphlet signed by a local illegal armed group, the names "Aguilas Negras", "Rastrojos" and "Nueva Generación" being the most commonly cited. These groups directly threatened the physical integrity of members of lawyers' collectives and human rights organisations if they did not cease the work they were involved in.

In some regions of Colombia, the Delegation was informed that an alarming number of lawyers have been murdered. For example, delegates in Nariño received information that 6 lawyers had been killed in the region in the last three years, and in Cartagena the delegates heard that 13 lawyers had been killed over the same period of time.

The Delegation was also informed of numerous break-ins to lawyers' offices, including, among others, the theft of computer equipment from the Yira Castro Legal Corporation (*Corporación jurídica Yira Castro*) offices (Bogotá) in 2008, from the Luis Carlos Pérez Lawyers' Collective (*Colectivo de abogados Luis Carlos Pérez*) offices (Bucaramanga, Norte de Santander) in 2010 and from the South-Colombian Lawyers and Professionals Collective (*Corporación de abogados y profesionales sur-colombianos*) offices (Neiva, Huila) in 2010. The lawyers interviewed reported that only professional equipment (such as personal computers, voice recorders, CD-Roms), sometimes with important information on the cases they are

working on, was stolen. These lawyers are of the opinion that these break-ins were targeted toward their offices to hinder their work in representing the victims of human rights violations.

As in 2008, the Delegation was informed by the lawyers' groups with whom they met that few of the perpetrators of these attacks have been successfully investigated, identified and prosecuted. On the other hand, Colombian authorities provided some examples of cases in which steps had been taken to identify and prosecute the material authors of such crimes, such as the case of the murder of lawyer Raimundo Tadeo Morales Castro, in Cartagena. Nonetheless, the information presented to the Delegation suggests that most cases of attacks against lawyers in Colombia have not resulted in those responsible for these crimes being brought to justice. Regrettably, the Delegation is unable to note a significant improvement, during the period 2008-2010, in the extent to which the Colombian government investigates and prosecutes cases of attacks against legal professionals. It noted, however, in its meetings with national authorities discussed below, that some initiatives to improve this situation have been or are in the process of being implemented.

### 3.2.1. Case Studies

**Judith Maldonado**, Director of the **Luis Carlos Pérez Lawyers Collective (CALCP)**, attacked and robbed in Cúcuta, Norte de Santander, in March and August 2010: Threats and harassment of members of the CALCP have been documented over the last 4 years but appear to be worsening. In March of 2010, Judith Maldonado received a message on her mobile phone threatening the Collective and telling them to cease their work. This threat purportedly came from the "Black Eagles" (Aguilas Negras) an illegal armed group. On August 4, 2010, Miss Maldonado was physically assaulted and robbed outside the CALCP office. Since its visit in August 2010, delegates have been informed that on September 6, 2010, Yulina Rico, another member of the CALCP was physically attacked on her way to the CALCP office.<sup>23</sup>



Judith Maldonado (left) with a delegate of the International Caravana of Lawyers

**Sixto Guillermo Asprilla Sánchez**, lawyer, assassinated in Cartagena, Bolivar, April 28, 2009: Lawyer Sixto Guillermo Asprilla Sánchez was shot and killed on April 28, 2009. The Colombian lawyers interviewed in Cartagena report that, despite the fact that the assassination had taken place nearly a year and a half earlier, they had not been provided with any information as to any investigation into this homicide. According to the lawyers with whom the Delegation met, the victim's wife, who was a witness to the assassination, has yet to be called to give her testimony. The Delegation raised the issue of this case when they met with the Prosecution department of Cartagena. The Chief Prosecutor of Cartagena acknowledged the lack of progress in the investigation into this case and committed to immediately provide information about the state of the investigation.

23 For more information on these attacks see the Urgent Action and Public Declaration, in Spanish, available on the CALCP website <http://www.colectivodeabogados.org/Nueva-agresion-contra-Judith>, <http://www.colectivodeabogados.org/Agresiones-contra-miembros-del.2335>.

Numerous other cases of threats were also raised with the Delegation. These include:

**Jaime Rojas Tafur** a lawyer in Huila, who stated that he has suffered two attempts on his life and has received threatening phone calls. Mr. Rojas informed the Delegation that members of the military (Tenerife Battalion) suggested that he leave the region.

The **Legal Freedom Corporation** (*Corporación jurídica libertad*, CJL, [www.cjlibertad.org](http://www.cjlibertad.org)), a lawyers' collective in Medellín, Antioquia, on June 4, 2010 discovered that, in a pamphlet circulated by the United Self-Defence Units of Colombia (*Autodefensas unidas de Colombia*, AUC) a paramilitary group which is now allegedly demobilised, the CJL was listed, along with other individuals and organisations as a "military target". This threat was reported to the Director of Public Prosecutions.

### 3.3. The Discrediting and Criminalisation of Lawyers' Work

The right of lawyers not to be linked to the cases they defend has been recognized internationally. In particular, this is guaranteed in the United Nations *Basic Principles on the Role of Lawyers*<sup>24</sup>, which, at paragraph 18, states that "*Lawyers shall not be identified with their clients' or their clients' causes as a result of discharging their functions*"<sup>25</sup>.

Across the country, human rights lawyers, and the victims groups that they represent, complained of the constant stigmatisation they face. The Delegation was given specific examples of instances when attempts were made to discredit them and their work. In all regions, lawyers met with stated that they had been publicly denounced or delegitimised by public authorities. This discrediting or denunciation of their work came in several forms. Sometimes, where lawyers represented alleged guerrilla members, public claims were made that these lawyers themselves worked with and for the guerrillas. The allegations against their clients were themselves often baseless and, rather, formed part of the same global strategy to discredit any form of opposition or work in the defence of human rights. It was clear from their testimonies that this is viewed as a tactic used by local and national authorities to delegitimise the work of human rights defenders. According to the testimonies heard in Colombia, such public declarations and criticism served not only to discredit their work but also to encourage further harassment and threats resulting in real risks to their safety as well as that of their families, and members of the organisations with whom they work.

The stigmatisation that the Delegation heard about included numerous examples of attacks in the media by the executive branch of the Colombian state, including examples of such public attacks by former President Uribe.<sup>26</sup>

According to those with whom the Delegation met in Medellín, Antioquia, the tactic of using baseless criminal accusations to delegitimise the work of human rights defenders is on the rise. The groups with whom the Delegation met argued that this method allows severe interference with these lawyers' work, while at the same time being less damaging to Colombia's international image than are direct physical threats or assassinations.

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24 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <http://www.unhcr.org/refworld/docid/3ddb9f034.html> [accessed 24 March 2011]. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

25 Ibid at para 18.

26 For a further discussion of this and the implications of such public declarations on the ability to practise law, see the 2007 *Report on the Situation of Lawyers in Colombia* from the Joint mission to Colombia of the American Association of Jurists and Lawyers Without Borders Canada available at <http://www.asfcanada.ca/documents/file/report-lwb-aa-j-english-translation.pdf> at pp. 14 and 20. That report also includes the following further sources of reference: Colombian Commission of Jurists: *Twenty reasons for stating that the human rights and humanitarian law situation is critical and tending to worsen*, 2003, p. 3031; Amnesty International, *Colombia – Fear and Intimidation: The Dangers of Human Rights Work*, 2006, AI Index: AMR 23/033/2006, p. 2425; U.S. Office on Colombia, Washington Office on Latin America, Latin America Working Group Education Fund and Center for International Policy, *U.S. groups, alarmed by increase in extrajudicial executions in Colombia, urge stricter enforcement of U.S. human rights conditions*, October 18, 2007, p. 34.

The United Nations Special Rapporteur on the situation of Human Rights Defenders (UNSRHRD), Margaret Sekaggya, in her March 2010 report, recommends that the Attorney General's Office review all criminal investigations against human rights defenders and immediately close all cases found to be baseless, as well as to prosecute State officials who have maliciously investigated defenders.<sup>27</sup>

### 3.3.1. Case Study

The **Legal Freedom Corporation (CJL)** (Medellín, Antioquia), an internationally recognised and reputable human rights lawyers' association have been publicly criticised and faced criminal investigations during the last years as a result of the cases they defend.

After petitions from lawyers from the CJL, the IACHR has ordered precautionary measures to protect the lawyers of this collective as a result of the threats they face. The CJL, and several human rights groups in the area, have been publicly accused of being associated with the guerrilla. The facts presented to the Delegation indicated that the CJL has been under illegal surveillance and that a baseless investigation against them has been launched by the Prosecution department. The accounts suggest that the CJL was being investigated as a result of the important human rights cases that they work on. The military intelligence reports that apparently form the basis for the investigation accuses the CJL and other well-respected lawyers and human rights organisations in the region of being linked to the FARC guerrillas.<sup>28</sup>

<sup>27</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum: Mission to Colombia (7-18 September 2009). A/HRC/13/22/Add.3, at para 149. Available at : <http://www2.ohchr.org/english/issues/defenders/visits.htm#listvisit> [accessed 21 March 2011].

<sup>28</sup> For more on the illegitimate use of military intelligence reports, see footnote 46 below.

## 4. Access to Justice and Impunity

Accounts heard in all regions visited by the Delegation raise serious concerns about levels of impunity and challenges to accessing justice in Colombia. The main areas of concern include: the functioning of the proceedings conducted under the special process for the demobilisation of paramilitaries (the Justice and Peace Law-JPL, discussed in further detail below), the phenomenon of “*falsos positivos*” (the practice whereby civilians, generally rural farmers, are presented as guerrillas killed in combat)<sup>29</sup>, the slowness of the justice system and lack of investigations or information on the state of investigations of denounced crimes and human rights violations.

### 4. 1. Challenges to Accessing Justice and Continued Impunity

The delegates heard testimonies of significant challenges to accessing justice, including the inability of the poor to receive free legal representation, the slowness of the justice system and inadequate treatment by officials. The level of impunity in cases of serious human rights abuses, such as assassination and forced disappearance, is high.

In Nariño, delegates were provided testimonies from victims groups of disappearances and murders that had occurred between 1998 and 2007.<sup>30</sup> In none of the cases presented to the Delegation was any suspect investigated and convicted of a crime. In many cases, the victims’ families mentioned having received threats from paramilitary or other armed groups as a result of seeking prosecution. In one particularly alarming situation, one of the victims, in the midst of the investigation into the murder of her brother, reported that an official at the Prosecution department told her not to pursue the investigation any further as “*one death in the family was enough*”.

In Huila, most of information provided by those with whom the Delegation met was in relation to cases of violations of human rights, some concerning lawyers as victims, but many concerning other members of society. None of the considerable number of serious cases, including cases of forced disappearance and assassinations, reported to the Delegation has led to a successful prosecution and conviction. In Huila, in the period ranging from January 2006 to January 2010 there have been 157 victims of extrajudicial executions. Some of these cases can be attributed to the phenomenon of “*falsos positivos*”.<sup>31</sup>

In Tunja, Boyaca, delegates reported that when attacks against human rights defenders and community leaders who have sought to ensure the basic rights of their communities have been reported to authorities, there is a lack of investigation and follow-up on these cases. As the Delegation to that region concluded, impunity appears to be the rule.

#### 4.1.1. Case Studies

##### The San José de Apartadó Peace Community

Members of the Delegation met with representatives of the Peace Community of San José de Apartadó, in the department of Antioquia. The area is rich in resources and is of strategic economical importance, both factors contributing to and fuelling the violence the region continues to suffer as part of Colombia’s long running internal conflict.

The Peace Community consists of 32 villages and was formed in 1997 in response to the serious human rights violations community members were suffering, and the lack of respect for civilian neutrality and the rights of the community as enshrined in international humanitarian and national

29 For more information on this, please consult the *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum :Mission to Colombia. A/HRC/14/24/Add.2* of 31 March 2010 available at : <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/132/35/PDF/G1013235.pdf?OpenElement>

30 Note: Nariño was not one of the regions visited by the Caravana in 2008.

31 See note 29 above.

law. The community publicly expressed their desire to remain neutral yet it was clear from what delegates learnt that their neutrality continues to be disregarded by actors in the conflict. The community informed the Delegation that 188 members of the community have been killed since 1997 and members calculated that they have been the victims of over 800 human rights violations. Massacres were reported in 1996, 1997, 1999, 2000 and 2005. It is widely reported that following the 2005 massacre then President Uribe Velez accused the community leaders of wanting to help the FARC and of being in part responsible for the massacre. Community members have also been subjected to harassment and intimidation and, at one point, an economic embargo.

The delegates were concerned by the high levels of impunity for killings in the Community, particularly the 6 massacres of the past 13 years. The delegates learnt that with regard to the 2005 massacre, there had been some legal proceedings, following the confessions of two paramilitaries of their involvement. Their confession implicated 10 members of the military. However, despite these testimonies, all implicated army personnel were acquitted.



Caravana delegates in the San Jose de Apartadó community

On August 12, 2010, not long before the Delegation arrived, Alvaro Montoya, a local community leader, was found murdered approximately 400m from the perimeter of the Peace Community. The delegates were informed that a local armed forces Colonel had publicly criticised the Peace Community for not allowing the military to enter the community and implied that the community was therefore indirectly responsible for the killing of Alvaro Montoya. The Delegation was also informed of public statements by this same local authority that there was no chance that the military were responsible for the killing as they are not present in the area.

However, the delegates came across military presence on several occasions during their time with the Peace Community. The Peace Community explained to the delegates that one of the reasons that they do not want armed actors to come into the community is that their presence puts the community at increased risk and makes them a target for other armed groups.

Delegates learnt of cases where members of the Peace Community who had provided testimony in previous cases of human rights abuses were later accused of being members of guerrilla groups, investigated and prosecuted as such.

Father Javier Giraldo, who has represented the Peace Community for over 30 years including before the IACHR, has himself been the victim of persecution. This includes surveillance by the Administrative Security Department (DAS)<sup>32</sup> and stigmatisation such as graffiti throughout Bogotá

32 "The Administrative Department of Security (DAS) is the Colombian State's most important intelligence service that also directly reports to the President's Office of the Republic. In 1960, the DAS was established in order to specialize in areas related to the Constitutional system and internal and foreign security. As the highest-level State intelligence service, the DAS was created with the main objective to produce the intelligence required by the State, as a governmental tool to make decisions and develop policies on issues of State security." International Federation for Human Rights 2010 Report, *Colombia: Illegal Activities Perpetrated by the DAS*, available at <http://www.fidh.org/The-intelligence-activities-of-the-State-DAS>. See also: The US Office on Colombia's article of September 9, 2009. *Colombia's Intelligence Agency: Spying on Democracy*, available at [http://www.usofficeoncolombia.org/uploads/application-pdf/DAS\\_memo\\_Sept\\_09\\_gen%5B1%5D.pdf](http://www.usofficeoncolombia.org/uploads/application-pdf/DAS_memo_Sept_09_gen%5B1%5D.pdf)

naming him and the Peace Community as guerrillas. This persecution and stigmatisation leaves him and the Peace Community vulnerable to attack from former paramilitary groups.

The Peace Community explained that they had previously had a dialogue with the local and national authorities but broke this relationship after lack of progress into investigations into earlier massacres and the break-down of negotiations about the location of a police station. As the police station was to be located within the community, and the community did not want to live among armed actors due to the history of massacres, the community relocated to its current location outside of San Jose de Apartadó.

### **Indigenous Reserve La Reforma**

In Huila, the majority of allegations of human rights violations were attributable to the armed forces rather than illegal armed groups. Of particular concern were several cases in which military bases were established in close proximity to communities.

In the Indigenous Reserve La Reforma, in Huila, for example, despite Constitutional recognition of the right of indigenous peoples to control their designated territories, the military had established a base in close proximity to the community, having taken possession of two community buildings. During the visit of the Delegation to La Reforma, an agreement was made between the indigenous government and the 9th Brigade of the Armed Forces for the latter to remove itself from the community within one year. A written agreement was signed between the Governor and an official from the 9th Brigade. The Secretary of the Huila departmental government also signed an agreement with the Delegation stating that it will follow up on the reported abuses at the La Reforma Reserve.



Caravana lawyers and representatives of the South-Colombian Lawyers and Professionals Corporation witnessing the signing of a document outlining some of the human rights commitments of the departmental government.

## 4.2 Access to Justice and Living Conditions in Prisons

In most regions visited by the Delegation, plans had been made to visit prisons. However, requests to enter these prisons were denied in all but three cases: Tumaco, Barranquilla and the women's prison in Villa Cristina, Armenia. The Delegation noted its concern that access to the prisons was denied by the Colombian authorities and that such denial of access raises concerns about whether prisoners' rights are being respected, given that an independent assessment of their conditions was not possible. In Huila, delegates were able to speak with the prison director of the Rivera Prison, who informed the Delegation of what seemed like very progressive and generous treatment for prisoners. However, delegates were not permitted to enter the prison to assess these allegations directly and groups with whom the delegates met described conditions in the prisons as much more challenging.

### 4.2.1. Case Studies

In the **prison visit in Barranquilla**, delegates were first-hand witnesses of serious violations of prisoners' rights. One prisoner interviewed had completed his sentence months earlier, been transferred to a holding cell not intended for long-term stay, and continued to be held there without justification. Delegates were informed that, often, unless "fines" are paid, release cannot be secured. Delegates also met with two prisoners who had serious injuries and required immediate medical attention. One of these prisoners demonstrated a bullet that remained in his arm, and had been there for the previous two years.

In the **prison visit to Tumaco, Nariño**, delegates met with an Afro-Colombian prisoner who had been tried *in absentia* and sentenced to 30 years and 9 months in prison without having ever received legal advice. This prisoner stated that he had never been informed that there were proceedings against him. While he stated that he had never known that he had a right to a lawyer, he was aware that an Ombudsman's Office lawyer had been assigned to take his case. He stated that he had never been visited by, nor had any contact with that lawyer. The delegates expressed their deep concern about due process especially given the length of the sentence and the fact that this prisoner received no legal advice at any stage.

In the **prison visit to the Villa Cristina women's prison in Armenia, Quindío**, the delegates met with a female prisoner. At the time of her arrest she was a board member of several local NGOs working on peacebuilding, women's rights and agricultural issues. The delegates expressed great concern over the absence of due process in her case, in particular the lack of information provided to her about the reason for her arrest and the date of her trial, despite her having already spent 18 months in prison.

## 4.3. Prosecutors

One of the factors contributing to the difficulties in accessing justice is the ability of prosecutors to carry out their tasks. Prosecutors who met the Delegation in all regions complained that the caseloads they faced were insurmountably high.

In Nariño, Prosecution department lawyers are managing an average of 700 cases, at any given time. In Cúcuta, all of the crimes currently attributed to the *Bloque Catatumbo*, an AUC related paramilitary group (estimated at approximately 5000 cases of human rights violations) are under the investigation of only two prosecutors. In Medellín, prosecutors are assigned on average 300-500 cases each. In Cali, it was reported by the Ombudsman's Office that the prosecutors need forensic laboratories and trained police investigators on a regular basis and yet in this city, the third largest in Colombia, with a population of approximately 2 million people, there are only 20 investigators working for 180 prosecutors.

Prosecutors in Colombia are not immune from the attacks, threats and assassinations faced by other lawyers. Prosecutors in several regions, notably Medellín and Nariño, also highlighted the difficulties caused by lack of training and staff resources in the introduction of the adversarial system. Moreover, they added that the former inquisitorial system still applied to older cases, which created further challenges to the delivery of efficient justice.

#### **4.4. The Functioning of the Justice and Peace Process**

An area of concern repeatedly brought up in meetings throughout the country was the functioning of the Justice and Peace Law, (JPL). In essence, this law applies to demobilised members of paramilitary groups who, prior to the coming into force of this law, were subject to investigations against them and who opted to submit themselves to this process in which their “full and honest” declaration is given in exchange for a reduced prison sentence ranging from 5 to a maximum of 8 years. The Justice and Peace process is also designed to provide restitution to victims by having property illegally taken from them returned.

Criticisms of the functioning of the Justice and Peace process were raised by all sectors interviewed: victims, human rights defenders, lawyers, judges and officials from the regional Ombudsman’s and Attorney General’s offices.

One of the criticisms repeatedly voiced was that, since the coming into force of this law five years ago, only one judgment was rendered, relating to a massacre in Mampujan, Sucre. Many victims and lawyers criticised the law in general as providing for insufficient maximum sentences given the gravity of the crimes.

Victims are entitled to have a role in the hearings under the Justice and Peace process. Nonetheless, victims whom the Delegation interviewed complained that they faced challenges to their full participation in the system. Lawyers in the Ombudsman’s Office in each region are charged with representing victims in the Justice and Peace process. In all regions, the caseload per lawyer would indicate a near impossible feat to provide effective representation to victims. In Cúcuta, Cali and Barranquilla, victims stated that they had difficulty securing representation by the Ombudsman’s Office’s lawyers and often had to attend hearings without legal representation. In Medellín, the Ombudsman’s Office lawyers stated that they have an average of over 500 cases each at any one time. In the Caribbean region, the 38 lawyers in the Ombudsman’s Office who work in the Justice and Peace section are responsible for the cases of 25,000 victims. Lack of resources has meant, according to Ombudsman’s Office lawyers in the Caribbean region, that these lawyers do not have the capacity to present their own evidence and must rely exclusively on that of the Prosecution department.

Beyond the question of effective representation, victims also complained that they do not have full participation in the hearings. In Barranquilla, victims stated that their complaints and questions during the hearings are not always listened to or taken into account. In Medellín, organisations representing victims groups stated that practical difficulties impede full participation of victims: the fact that they are in a different room than the testifying demobilised paramilitary personnel means that they cannot benefit from the same interactions normally available in cross-examination, and rather than being able to react to body language and ask questions directly, they must send their questions in written form through the prosecutor. In some regions, lack of security measures for victims was raised as a concern.

Further criticisms of the law and process were made because of the almost complete lack of reparation to victims. Reparations and return of illegally obtained property are ordered to be provided to victims only after a sentence had been issued within the Justice and Peace process. The Delegation was informed that, to date, in Nariño and Barranquilla, no restitution has been ordered for victims. Lawyers of the Ombudsman’s Office in Barranquilla stated that there are no real incentives to return illegally obtained property. In Medellín, lawyers in the Attorney General’s Office explained that no restitution has yet been granted because any judgments that have occurred are being appealed, and until all proceedings have been completed, restitution cannot be ordered. There is also a deeper problem with the restrictive definition of what constitutes illegally obtained property as well as a anticipated problem with obtaining this property from demobilised paramilitaries.

The Justice and Peace process, in part, was intended as a means to ascertain the truth. In many of the regions that the Delegation visited, there were complaints that an insufficient investigation had been made and that the testimony of the demobilised paramilitary was left relatively unchallenged.

The Delegation was repeatedly informed of concerns that demobilised paramilitaries are not stating the whole truth and that victims are not getting full reparations and information about the death or disappearance of their loved ones.

Victims also stated that the “truth” should be understood to include the enabling of the recovery of bodies and being provided with the whereabouts of mass graves. Very little of this has occurred.

In its 2006 pronouncement on the JPL, the IACHR called on the Colombian State to comply with the recommendations of the Colombian Constitutional Court with regards to the implementation of the JPL.<sup>33</sup> In particular, it highlighted the importance that the Colombian State ensure that a complete investigation has been completed, whereby the testimonies of the demobilised paramilitaries are duly verified, to ensure that the reduced sentences achieve their aim of obtaining all of the facts.<sup>34</sup> The Court emphasised that it would be insufficient to rely exclusively on the confessions of the testifying demobilised paramilitaries and that their testimonies did not replace the need for full investigations. It also highlighted that victims have a right to participate in the hearing and to integral reparation and restitution.<sup>35</sup>

In addition, the Delegation heard many complaints from lawyers and victims groups that paramilitaries, instead of being investigated and tried under the JPL, had, under the Uribe administration, been extradited to the United States to face charges for drug trafficking, thus precluding victims from finding the truth about what had happened to their loved ones. In fact, many of the highest-ranking paramilitaries have been extradited and, as a result, only lower ranking paramilitaries are testifying.<sup>36</sup>

The accounts that were provided to the Delegation raise doubts as to whether the Colombian state has fulfilled its obligations to ensure victims’ full participation in the process and a thorough investigation to try to achieve truth and justice.

Across the board, those with whom the Delegation met demonstrated a complete mistrust in the Justice and Peace process. There was a general sense that this was a fatally flawed system. Many stated the perception that the system was, at worst, designed to benefit the perpetrators and, at best, had the effect of favouring them rather than the victims.

#### **4.5. Persistent activity of illegal armed groups despite official demobilisation**

As mentioned above, part of the rationale behind the JPL was to help ensure the demobilisation of illegal armed groups in order to enable a transition away from the internal armed conflict in Colombia. Unfortunately, in addition to the problems noted above in relation to the implementation of the JPL, the Delegation’s observations throughout Colombia indicate that in many, if not all, of the regions visited, illegal armed groups remain an important force. In all regions visited, credible allegations were raised of

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33 Statement by the Inter-American Commission on Human Rights Statement on the Application and Scope of the Justice and Peace Law in Colombia. OEA/Ser/L/V/II.125, Doc. 15. 1 August 2006. <http://www.cidh.oas.org/countryrep/Colombia2006eng/Pronunciamiento.8.1.06eng.htm> Available (in Spanish) at [Informe sobre la Ley de Justicia y Paz](http://www.informesobrejusticia.org/). <http://search.oas.org/defaultes.aspx?k=Pronunciamiento%20de%20la%20Comision%20Interamericana%20de%20Derechos%20Humanos%20Sobre%20la%20Aplicaci%C3%B3n%20y%20el%20alcance%20d&s=All+Sites>

34 Ibid. at paras 3, 26 and 27.

35 Ibid. at paras 11 and 16.

36 For further information on extradition to the United States see the 2008 press release of the Inter-American Commission for Human Rights “IACHR expresses concern about extradition of Colombian paramilitaries” available at <http://www.cidh.oas.org/Comunicados/English/2008/21.08eng.htm> and *Colombian Paramilitaries Extradited to U.S., Where Cases Are Sealed*. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/11/AR2010091100080.html>. Sept 11, 2010. For a discussion of the *de facto* amnesty to paramilitaries created by earlier legislation which has further reduced those who could be tried under the JPL, see the 2007 Report on the Situation of Lawyers in Colombia from the Joint mission to Colombia of the American Association of Jurists and Lawyers Without Borders Canada available at <http://www.asfcanada.ca/documents/file/report-lwb-aaj-english-translation.pdf> at pp. 12-13.

recent threats and attacks by illegal armed groups (often referred to by victims groups and human rights defenders as paramilitary groups). In some areas, it is alleged that the same groups who demobilised, subsequently regrouped under a different name.<sup>37</sup>

In Nariño, the Delegation was informed by an official who, for security reasons, wished to remain anonymous, that the *Águilas Negras* and *Rastrojos* armed groups are very active in the region. The activity of these groups was so vast that this official considered that the situation was worse in 2010 than it had been prior to demobilisation.

In Medellín, Antioquia, the Under-Secretary for Civil Justice at the Mayor's Office, Jorge Ceballos Saenz, informed the Delegation that in that region "demobilisation did not demobilise". According to the Permanent Unit on Human Rights of the Medellín Mayor's office, demobilised paramilitaries are still operating in illegal armed groups in the area; the situation having become so challenging, they note, that last year the International Red Cross has intervened in an urban centre. According to this Unit, human rights violations have doubled in Medellín since 2008.

In Tumaco, colonels interviewed by delegates indicated that 90 % of homicides in the region were the result of attempts to control the highway by the illegal armed groups the *Águilas Negras* and the *Rastrojos*.

In Cali, the Delegation received copies of written threats, for example leaflets, against organisations and lawyers explicitly made by *Águilas Negras* and the *Rastrojos*. Victims in Cali also gave oral accounts at the Delegation meetings of threats by both groups in the form of leaflets, e-mails and by telephone.

## 5. Threats to the Independence of the Judiciary

### 5.1. Interference by the Executive Branch to the Independence of the Judiciary

The judges we met with stated they did feel a certain pressure from the Executive branch when handing down their judgements, especially during the mandates of President Uribe. At the meeting of the Medellín Delegation with judges and prosecutors, concern was expressed regarding the well-documented case of **Judge María Stella Jara**. In June 2010, Judge Jara sentenced Colonel Alfonso Plazas Vega to 35 years in prison for his responsibility in the disappearance of 11 persons when the military regained control of the Palace of Justice from occupation by an armed group in 1989. The Delegation noted two distinct concerns. First of all, President Uribe, publicly criticised and openly attempted to discredit the ruling.<sup>38</sup> Secondly, Judge Jara is reported to have received death threats. The IACHR ordered precautionary measures on June 2, 2010 for Judge Jara and her son. It has since been reported that Judge Jara has fled the country. The judges with whom the Delegation met in Medellín noted that, as is the case with many threatened judges, the Colombian Government did not provide support to this judge in exile.

A further example of President Uribe speaking out against, and actively interfering with, the decision of a judge is the case of **Judge Cairo de Jesus Mathieu Zutelo**, formerly a supervisory judge for preliminary

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37 An analysis of the re-emergence of paramilitary groups is provided, in Spanish, in the two reports produced by Colombia's National Commission on Reparations and Reconciliation: *Informe No. 1: Disidentes, rearmados y emergentes: ¿bandas criminales o tercera generación paramilitar?* Área de Desmovilización, Desarme y Reintegración. Comisión Nacional de Reparación y Reconciliación. Agosto de 2007 available at: [http://www.cnrr.org.co/new/interior\\_otros/informeDDR.pdf](http://www.cnrr.org.co/new/interior_otros/informeDDR.pdf) and *La Reintegración: Logros en medio de rearmes y dificultades no resueltos: II informe de la Comisión Nacional de Reparación y Reconciliación*. Bogotá August 2010 available at <http://www.cnrr.org.co/new/publicaciones/DDR.pdf>

38 President Uribe proclaimed that the ruling was "building up a panorama of legal uncertainty which was a threat to the maintenance of public order in Colombia". The President also called for "an impartial justice" for the Armed Forces and advocated, backing up Colonel Plazas Vega, for a special legislation for his protection. (Unofficial translation of the following quote: "construyendo un panorama de inseguridad jurídica que atenta contra el manejo del orden público en Colombia". El mandatario también demandó "justicia imparcial" para las Fuerzas Militares y abogó, al respaldar al coronel Plazas Vega, por una legislación especial para su protección. <http://www.americaeconomia.com/politica-sociedad/politica/colombia-jueza-que-emitió-fallo-contra-un-coronel-salio-del-pais-por-amen>)

proceedings in the municipality of Caucasia, Antioquia. According to Judge Mathieu Zutelo's statements to the Delegation, he had ruled that the arrest and detention of eight detainees could not be legally justified given the numerous violations of their legal rights that had occurred. These breaches of Colombian law and procedure included lack of a warrant, the fact that the arrest had been carried out by the armed forces at night, and failure to comply with the principle of immediacy in bringing the detainees before a judge. Subsequent to Judge Mathieu Zutelo's ruling to release the detainees, President Uribe made a public statement denouncing the ruling and ordering the recapture of the detainees. A national police security assessment subsequently found that Judge Mathieu Zutelo was in danger and he has been relocated to Bogotá. It is to be noted that one of the men ordered to be released by Judge Mathieu Zutelo is alleged to be a member of a well-known drug-trafficking gang, "Los Paisas". The delegates reiterate that the principles of fundamental justice and due process cannot be selectively applied.

The judges with whom the delegates met argued that should the State or any of the parties concerned find that a court ruling is inconsistent with Colombian law, legal mechanisms exist to challenge the finding. They have asked the governmental authorities to use official channels and due process rather than the media in such cases. These judges expressed their hope that the focus will be placed on the actions of police who do not follow legal procedures rather than on judges who order the release of an accused based on these violations of due process. Interference with the independence of the judiciary by the executive is a violation of the separation of powers. This type of conduct also generates a lack of respect for the judiciary and makes the work of judges more difficult. It may also be the catalyst for further threats and intimidation towards the judiciary.<sup>39</sup>

The Delegation notes that the UNSRIJL, in her April 2010 Country Visit Report, recommends that members of the State comply with judicial decisions, abstain from calling for non-compliance with these rulings and cease from making any declarations that intend to discredit magistrates, judges and lawyers.<sup>40</sup>

The Delegation applauds the declaration of President Santos stating that his administration will respect the principles of the independence of the judiciary.<sup>41</sup> Further, the Delegation notes that Vice-President Angelino Garzón made assurances that President Santos' policy of non-stigmatisation of human rights defenders and members of the legal community would be upheld.<sup>42</sup> The delegates applaud this commitment and will follow-up to monitor its implementation.<sup>43</sup>

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39 Meeting with Judges and Prosecutors Association, ASONAL Judicial, in Medellín, Antioquia, on August 25, 2010.

40 UN Doc. A/HRC/14/26/Add.2 at para 88 c) ii) available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.26.Add.2\\_sp.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.26.Add.2_sp.pdf) "Los integrantes de los otros poderes del Estado deben cumplir los fallos judiciales y abstenerse de toda invocación al no acatamiento de una sentencia así como de toda declaración conducente al descrédito o descalificación de magistrados, jueces y abogados."

41 In President Santos' inaugural speech, delivered on August 7, 2010, he made clear commitments that he would ensure and respect the principle of judicial independence. In this speech he also stated that the defence of human rights was a "firm and unavoidable commitment" of his government. For more on this, see the United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Colombia*, 31 March 2011, available at: <http://www.unhcr.org/refworld/docid/4d99aa86a.html> [accessed 14 April 2011] and <http://colombiareports.com/colombia-news/149-2010-elections/10428-santos-promises-courts-judicial-independence.html> (accessed on April 14, 2011).

42 Meeting with Vice President Garzón on 27 August 2010.

43 See footnote 20, above, for indications of the Delegation's current concerns in this regard.

Caravana lawyers from the UK, Brazil, Ireland, Canada and the Ukraine outside the Palace of Justice in Cúcuta, Colombia



## 5.2. Pressures on Judges and Magistrates

The Delegation also heard reports that judges fear disciplinary action if they take an unpopular decision. In Cali, the Delegation heard from retired **Judge Oscar Hurtado Reina**, who had opposed mass arrests in 2002 at the beginning of the Uribe presidency. When he ruled that alleged guerrillas should be released on the basis of lack of evidence, he was subjected to persecution by the Government and pressure was put on him to retire early. He was fired following his refusal to retire voluntarily.

Budgetary pressures also affect the efficacy of the judiciary. According to the judges met with in Medellín, the budget of the judiciary is being reduced annually. The change to oral proceedings, which according to these judges is more time-consuming, has not been accompanied by an increase in the judicial budget.

## 5.3. Threats and Physical Attacks on Members of the Judiciary

Attacks against members of the judiciary, including public denunciations of their rulings, have a long history in Colombia. One of the judges with whom the Delegation met noted that, with the launch of investigations into the *parapolítica* scandal<sup>44</sup> by the Supreme Court of Colombia, attacks on the Supreme Court increased in severity and frequency. The Delegation was informed that, under the Uribe administration, the Executive made concerted attempts to undermine the jurisdiction and independence of the Supreme Court, seeking to legislate to reduce their power and through public denunciations and aggressive personal attacks.

44 The "parapolítica" scandal in Colombia refers to links which have been shown to exist between members of the Colombian Congress and paramilitary groups. For more on this see *Human Rights Watch 2010 World Report: Colombia* available at <http://www.hrw.org/en/world-report-2011/world-report-2011-colombia>. For further information on prosecutions of members of Congress see the list of sources cited in *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*. United Nations High Commissioner for Refugees (UNHCR) 27 May 2010 HCR/EG/COL/10/2. Available at: <http://www.unhcr.org/refworld/pdfid/4bfe3d712.pdf>, namely:

Amnesty International, *Amnesty International Report 2009 – Colombia*; Café Stero Radio Bolivariana, *Los amigos de Uribe de la Parapolítica en Colombia*, 5 August 2009 available at [http://www.ajpl.nu/radio/index.php?option=com\\_content&view=article&id=1026:-los-amigos-de-uribe-de-la-parapolitica-en-colombia&catid=42:nacional&Itemid=160](http://www.ajpl.nu/radio/index.php?option=com_content&view=article&id=1026:-los-amigos-de-uribe-de-la-parapolitica-en-colombia&catid=42:nacional&Itemid=160); Diario Colombia, *Procuraduría colombiana enfrenta a Corte Suprema por "parapolítica"*, 19 September 2009, available at [http://www.diariocolombia.es/\\_n891884\\_Procuraduria\\_colombiana\\_enfrenta\\_a\\_Corte\\_Suprema\\_por\\_parapolitica.html](http://www.diariocolombia.es/_n891884_Procuraduria_colombiana_enfrenta_a_Corte_Suprema_por_parapolitica.html); El País, *La 'parapolítica' ensucia Colombia*, 1 June 2008, available at [http://www.elpais.com/articulo/internacional/parapolitica/ensucia/Colombia/elpepuint/20080601elpepiint\\_1/Tes](http://www.elpais.com/articulo/internacional/parapolitica/ensucia/Colombia/elpepuint/20080601elpepiint_1/Tes); and The Guardian, *Colombia's 'parapolitics' scandal casts shadow over president*, 23 April 2008, available at <http://www.guardian.co.uk/world/2008/apr/23/colombia>.

The impact of this interference with judicial independence was effectively summarised in the 2010 International Federation of Human Rights report on the illegal surveillance by the DAS:

“The Executive Branch’s interference with the judicial branch does not only involve threat crimes or a violation of the privacy of communication. These actions have also disrupted the balance of the whole system of the Colombian State’s separation of powers. They spread a climate of terror so as to not properly exercise these powers and represent one of the gravest attacks against the legitimacy of the rule of law.”<sup>45</sup>

The Supreme Court judges interviewed stated that the most effective protective measures would be for the executive branch to legitimise the role of the Supreme Court. They noted that, when speaking of threats to the independence of the judiciary, a distinction must be made between the pre-August 7, 2010 period and the post-August 7, 2010 period, which marks the date of the inauguration of Juan Manuel Santos as President of Colombia. They noted that the first act of President Santos in his opening speeches was to confirm the principles of respect for judicial independence, respect for the decisions of judges, and the independence and autonomy of the judicial branch. They expressed confidence that the environment would improve. In addition to meeting the members of the Colombian Supreme Court, the Delegation also heard of threats to judges in the regions it visited.

In Nariño, the three judges interviewed mentioned having themselves received direct and/or indirect threats from armed groups. It appears that, in their view, the protection offered by the state was sufficient or, in one case, unnecessary. In the last two years in Nariño, the Delegation was informed, one judge was killed and another was kidnapped.

Judges in Medellín, Antioquia, raised concerns about their safety in more remote areas, noting that the guerrilla, paramilitary and other armed groups have in some areas set up their own parallel systems of justice which creates a risk for judges entering that area. They expressed concern that these judges are insufficiently protected in the course of their displacements.

### 5.3.1. Case Study

**Judge Diego Fernando Escobar Munera** was murdered in Medellín in April 2010. The murderer has been found and pleaded guilty to the murder. He had been arrested for a separate matter and his house searched. The search uncovered documents showing that he had followed the judge and his family. A photo of the judge was amongst the documents – the photo had been taken with a mobile telephone whilst the judge was robbed during a court hearing. The judges’ panel considered this to be an indication that the murderer was a professional killer who had been provided with the photo and paid to kill the judge. The intellectual author of the murder has not been found. A special team from the Prosecution department is investigating the case.

<sup>45</sup> International Federation for Human Rights 2010 Report, *Colombia: Illegal Activities Perpetrated by the DAS*, at pp. 10-11, available at <http://www.fidh.org/The-intelligence-activities-of-the-State-DAS>.

## 5.4. Prosecutors' Offices on Military Premises and Use of Military Intelligence Reports

The Delegation noted that the UNSRHRD in her 2009 country visit report recommended that prosecutors should cease operating from military premises.<sup>46</sup> Regional visits of the Delegation demonstrated that this is a very real and pressing concern.

In Cúcuta, Norte de Santander, lawyers and organisations with whom the Delegation met raised concerns about the fact that the Prosecution department's office was still located on the 30<sup>th</sup> Brigade military base in Cúcuta, Norte de Santander. They noted that there was a perception that the Prosecution department worked too closely with the military to maintain independence. They also complained that military intelligence reports were being used as the basis for criminal prosecutions, contrary to recommendations in the UNSRHRD 2009 Country Visit Report and Colombian law. This issue was raised with the representative of the 30<sup>th</sup> Brigade Armed Forces. He confirmed that the armed forces and Prosecutor's office had a close relationship, living and eating together, but denied that this had any impact on the independence of the Prosecution department at all.

In Medellín, Antioquia, investigations of many human rights defence organisations and lawyers, as well as the incarceration of one defender, was purportedly based on military intelligence reports.<sup>47</sup> While the Prosecution department that had launched the initial investigations in the specific cases mentioned to the Delegation has now been moved out of the military base, other Prosecution department offices remain housed in military installations.

Prosecutors in Medellín stated that they did not have any confidence in the units that were operating from within the 4<sup>th</sup> Brigade Military base as they have been known to take military intelligence reports as the truth without further investigation, and therefore cannot be considered to be independent prosecutors.

### 5.4.1. Case Studies

**Winston Gallegos and Alejandro Sierra**, human rights defenders in Medellín, Antioquia, investigated and, in the case of Mr. Gallegos, detained as a result of military intelligence reports.

Winston Gallegos and Alejandro Sierra, along with numerous other human rights defenders met with in Medellín, Antioquia, have faced investigation as a result of information provided to the Prosecution department through military intelligence reports. The Prosecution Department 74, based at the 4<sup>th</sup> Brigade Military base in Medellín, Antioquia, has launched an investigation against numerous individuals in Medellín for purported links to the FARC, a guerrilla group. According to the testimonies offered to the delegates, the charges are based almost exclusively on military intelligence reports, use of which are not admissible as evidence under Colombian law. Mr. Gallegos, as a result of this investigation, was detained for almost a year prior to his release without charge. Mr. Gallegos was also accused by the Prosecution department of breaching the law which stipulates that a person may not publicly share information about the charge they face or the evidence used against him. Mr. Gallegos, after discovering that the evidence used was from military intelligence reports, and thus breaching previous UN recommendations against such use, sought the assistance of the United Nations. As he disclosed the information about the charge he faced and evidence used against him, he was charged with breaching the law.

Furthermore, the evidence included in the military intelligence reports which had been used as the basis for the investigation of Mr. Alejandro Sierra, either did not establish identity (for example, the evidence from one witness apparently was that "Alejandro is known to him") or was exculpatory as to his identity. A further witness described the accused as having lost his leg. The Delegation confirmed the presence of both of Alejandro's legs.

46 UN Doc. A/HRC/13/22/Add.3 at para 151, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.3\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.3_En.pdf)

47 Information provided to the Delegation in meetings with victims and lawyers.

It is to be noted that military intelligence reports have also purportedly been used to substantiate the investigation in Medellín of human rights lawyers, including members of the Legal Freedom Corporation (CJL).

The UNSRHRD in her 2010 country visit report also highlighted her concerns about the use of the unreliable witness testimony of demobilised individuals and her concerns about the prosecution and investigation of individuals based on information gathered illegally by military intelligence services. She stressed the need for these intelligence archives on human rights defenders to be purged.<sup>48</sup>

## **6. Meetings with Colombian National Authorities**

### **6.1. Meeting with the Vice-President of Colombia, Angelino Garzón and the Director of the Presidential Programme for Human Rights and International Humanitarian Law, Mr. Hernan Ulloa**

After having heard some of the general findings and concerns of the Delegation, Vice-President Garzón stated that the new government had had a very limited time to address human rights violation issues. He affirmed the Santos administration's policy of "zero tolerance" towards human rights violations and crimes against humanity committed by any actors, government representatives or those collaborating with guerrilla groups. The Vice-President renewed his commitment not to isolate or stigmatise human rights defenders. He also stressed the government's focus on fostering exchange and discussions among stakeholders in fora such as the *National Roundtable on Guarantees*,<sup>49</sup> which he committed to expand.

The Government's commitment to human rights issues could be demonstrated, he stated, by the renewal of the United Nations High Commissioner for Human Rights' mandate in Colombia. The Vice-President affirmed that laws on land reform and reparation are currently contemplated by the government; these laws would aim at providing integral reparation (health care and education for example) as opposed to exclusively monetary reparation. He made a commitment to create special programmes for Indigenous and Afro-Colombian peoples in Colombia and to actively monitor any cases brought to his attention by the Delegation.

### **6.2. Meeting with the State Human Rights Ombudsman's Office, Bogotá National Office, Horacio Guerrero García and Claudia Rojas**

Ms. Rojas committed to sending the delegates statistics on murders, threats to and persecutions of human rights defenders in Colombia. She noted, however, that statistics are not a reliable source as fear prevents many from reporting violations to public authorities. Last year, 300 municipalities reported high levels of threats against human rights defenders, the greatest number of threats coming from illegal armed groups. In the opinion of the Ombudsman's Office Early Warning team<sup>50</sup> there is a continuing conflict in Colombia, illegal armed groups exist, and these groups have historic links to the United Self-Defence Force of

48 UN Doc. A/HRC/13/22/Add.3 at para 136, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.3\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.3_En.pdf)

49 The National Roundtable on Guarantees is a space for dialogue which brings together the government, international organisations and embassies, and Colombian human rights organisations to discuss the theme of safeguards and guarantees required to enable the work of human rights defenders and community leaders.

50 "La Defensoría del Pueblo pone al servicio de las comunidades y de las instituciones del país un Sistema de Alertas Tempranas para monitorear y advertir sobre las situaciones de riesgo de la población civil por los efectos del conflicto armado interno y promover la acción de prevención humanitaria con el ánimo de proteger y garantizar los derechos fundamentales de las personas." For more on this, see, in Spanish, the Human Rights Ombudsman's office website at [http://www.defensoria.org.co/red/?\\_item=1102&\\_](http://www.defensoria.org.co/red/?_item=1102&_)

Colombia (AUC) and the leaders are the same, in the same territories. These groups threaten human rights defenders and accuse them of being members or sympathisers of the guerrilla. This situation has been highlighted by the State Human Rights Ombudsman's Office team but is not receiving attention. Ms. Rojas informed the Delegation that a countrywide analysis of all individual threats against human rights defenders was written last year but was never published. The Human Rights Ombudsman's Office has specialised units, working on issues relating to indigenous peoples, early alerts, complaints and lobbying.

No specialised unit on human rights defenders exists. Human Rights Ombudsmen are often threatened, particularly if they work in isolated areas: the community ombudsman of Bajo Atrato was forced to leave due to threats from illegal armed groups and accusations of being a guerrilla ally; the community ombudsman in San Jose de Apartadó, Antioquia was removed from the community, accused by the police of kidnapping. Ms. Rojas agreed that reports of paramilitaries being bribed for false testimonies exist, especially in Tolima, Antioquia and Eje Cafetero. The long term protection measures required to ensure safety of those working for the protection of human rights are the eradication of impunity, investigation into the sources of threats and criminal sanctions for public officials or military who stigmatise judges and lawyers.

### **6.3. Meeting with the Department of Defence, Carlos Franco, Human Rights Director and the National Penitentiary and Prisons Institute (INPEC), Carlos Barragán, Director**

The Department of Defence representative, Carlos Franco, noted that the most recent report of the Department of Defence indicates that 250 members of the armed forces had been convicted. Measures being taken to prevent acts of violence by armed forces include: training of the armed forces, protection of vulnerable groups through the issuing of directives, welcoming international observation missions (of which there have been 42 in the last 8 years), and the creation of a Commission to study crimes committed by public authorities. Mr. Franco emphasised that it must be recognised that there have been advances in recent years in human rights protection in Colombia. He committed to providing information on extra-judicial executions, follow-up on protective measures, a report on the protection of human rights, on meetings held with social organisations in the *National Roundtable on Guarantees*<sup>51</sup>, and to provide information on the policies of the Colombian government and the Department of Defence.

Mr. Barragán stated that conditions in prisons in Colombia were fully respectful of the detainees' rights. He committed to coordinating with the Ministry of Foreign Affairs so that access to certain prisons would be granted in subsequent visits to Colombia. He also committed to verify and follow-up on the problems relating to services and right to health in relation to the Maximum Security Prison La Tramacua (Valledupar), and to verify the situation of detainees incarcerated in Barranquilla who, despite having completed their sentence, have not yet been released. Finally, he committed, upon request by the Delegation, to provide INPEC reports on the human rights conditions in the penitentiaries of Valledupar, La Dorada, Bucaramanga, Popayán and La Picota.

### **6.4. Meeting with the Deputy Attorney General, Fernando Pareja**

Deputy Attorney General Pareja acknowledged that despite the UNSRSHRD's recommendation that files obtained by illegal intelligence operations of the Department of Security Administration (DAS) be destroyed, this has not been done.<sup>52</sup> He explained that these files are evidence in ongoing cases. According to the Deputy Attorney General, in the recent period, 20 prosecutors in Colombia have been threatened. In late 2009, a prosecutor in Cali was murdered and in early 2010 a judge was killed in Medellín. He insisted

51 See note 49 above.

52 UN Doc. A/HRC/13/22/Add.3 at para 160, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.3\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.3_En.pdf)

that both of these murders were narcotics-related. Deputy Attorney General Pareja acknowledged that prosecutions in the *falsos positivos*<sup>53</sup> cases are not moving quickly. He credited the slow process on the fact that it is difficult to persuade witnesses to testify in old cases and the fact that each prosecutor has approximately 1200 cases under their charge. He noted that the Prosecution Department's resources are extremely scarce, having 4030 lawyers and 6860 investigators nationally to handle 2.2 million cases. Staff resources have not increased in the last 5 years despite the fact that the caseload has nearly doubled.

Deputy Attorney General Pareja noted that in 2009 a unit was established in the Prosecution Department to deal with human rights issues focussing on crimes against lawyers. This unit consists of only eight prosecutors. Deputy Attorney General Pareja committed to sending a message to the Delegation with information on statistics on how many cases it deals with and what progress has been made with them. He also informed the Delegation that the Human Rights Liaison Office, contrary to what delegates had been informed by that office, maintains statistics on cases presented to it, but that they are reluctant to disclose this information.



Caravana lawyers in meetings with authorities

## 7. Participants

1	Kim O'Bannon Archer	USA	2	Mark Bishop	United Kingdom
3	Alyssa Brierley	Canada	4	Marina Brillman	Netherlands
5	Niall Buckley	Ireland	6	Gloria Cano Legua	Peru
7	Sara Chandler	United Kingdom	8	Carolina Costa Ferreira	Brazil
9	Alex M. Curtis	USA	10	Luis Dussan	Venezuela
11	Lee Dobbs	United Kingdom	12	Anna Doyle	United Kingdom
13	Emily Dwyer	Canada	14	Nicola Evans	United Kingdom
15	Heiner Fechner	Germany	16	Roman Oria Fernandez De Muniaín	Spain
17	Jeffrey Forrest	United Kingdom	18	Jason Fung	Canada
19	Jean Luc Gaineton	France	20	Charlotte Gill	United Kingdom
21	Claudia Cecilia Gómez Godoy	Mexico	22	Camilla Graham Wood	United Kingdom
23	George Gray	Canada	24	Lorena Ruiz Huerta Garcia de Viedma	Spain
25	Marie-Pierre Grenier	Canada	26	Ole Hansen	United Kingdom
27	Ingrid Heinlein	Germany	28	Sarah-Jane Hillery	Ireland
29	Oliver Holland	United Kingdom	30	Jacinta Jones	United Kingdom
31	Yukiko Ko	Japan	32	Denis L'Anglais	Canada
33	Ioana Luca	Canada	34	Melody Ma	United Kingdom/China
35	Alicia Alonso Merino	Spain	36	Hugh Jacob Moore Jr	USA
37	Beatriz Monasterio Chicharro	Spain	38	Marie-Ève Nolet	Canada
39	Victoria O'Keefe	United Kingdom	40	Rosemary Olleson	United Kingdom
41	David Lee Palmer	United Kingdom	42	Marie-Claude Picard	Canada
43	Monika Pirani Goppold	United Kingdom	44	Réal Policar	Canada
45	Bryony Poynor	United Kingdom	46	Lise Rivet	Canada
47	Gwendolyn Long Robinson	USA	48	Meagan Schronce	USA
49	Ana Arranz Sanz	Spain	50	Hector Luis Trajtemberg	Argentina
51	Edward Turner	USA	52	Adrie van de Streek	Netherlands
53	Gorka Vellé Bergado	Spain	54	Francisco Martín Vivar Castellanos	Guatemala
55	Kutina Williams	USA	56	Oleksandra Zernova	Ukraine
57	Anonymous	Canada			

## 8. Supporting Organisations

**The Colombian Caravana UK Lawyers Group and Lawyers Without Borders Canada would like to thank the following organisations for their support for the Caravana 2010**

### **Organisations represented**

- Advocaten Voor Advocaten / Lawyers For Lawyers (Netherlands)
- Asociación Americana de juristas (Venezuela)
- Asociación Libre de Abogados de Madrid
- Asociación pro derechos humanos (Peru)
- Avocats Sans Frontières France
- Barreau de Clermont Ferrand (France)
- Bufete Jurídico de derechos humanos de Guatemala
- Centrale des Syndicats du Québec (Canada)
- City of Westminster & Holborn Law Society
- Colectivo COA (Mexico)
- Colegio de Abogados/as de Valladolid (Spain)
- Comisión de defensa de la Asociación libre de abogados (Spain)
- Comisión Jurídica de la liga Argentina por los derechos del hombre
- Federation of European Bar Associations (FBE)
- Law Society of England & Wales
- Lawyer's Rights Watch Canada
- Lawyers Without Borders – USA
- Observatorio para la Defensa de los Derechos y las Libertades «Oteando» (Spain)
- Solicitors International Human Rights Group (England & Wales)
- Unión Internacional de Abogados (Spain)
- Verein Demokratischer Juristinnen und Juristen (Germany)

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For further information about the International Caravana  
of Lawyers please contact:

**Lawyers Without Borders Canada**

[www.asfcanada.ca](http://www.asfcanada.ca)

[info@asfcanada.ca](mailto:info@asfcanada.ca)

**Colombian Caravana UK Lawyers Group**

[www.colombiancaravana.org.uk](http://www.colombiancaravana.org.uk)

[colombian.caravana@gmail.com](mailto:colombian.caravana@gmail.com)

**ACADEUM**

[www.acadeum.org](http://www.acadeum.org)

[acadeum@acadeum.org](mailto:acadeum@acadeum.org)