

COLOMBIA

Human Rights Committee Consideration of the Eight Periodic Report of Colombia

Submission on the List of Issues by the Lawyers for Lawyers Foundation and Lawyers' Rights Watch Canada

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I. Introduction

Submitting Parties

1. Lawyers for Lawyers ('L4L') is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has had special consultative status with ECOSOC since 2013.¹
2. Lawyers for Lawyers promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.² In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights ('ICCPR')³ and the United Nations (UN) Basic Principles on the Role of Lawyers ('Basic Principles').⁴
3. Lawyers' Rights Watch Canada ('LRWC') is a committee of Canadian lawyers and human rights defenders who promote human rights and the rule of law internationally. Established in 2000, LRWC has held Special Consultative status with the Economic and Social Council of the United Nations since 2005. LRWC advocates for the independence and integrity of the legal profession, and for the protection of lawyers and other human rights defenders in danger because of their advocacy.

Concerning

4. In November 2020, Colombia submitted its eighth report on its implementation of the ICCPR.⁵ At the 135th session, the Human Rights Committee ('the Committee') will adopt a List of Issues on Colombia ('State party'). Lawyers for Lawyers welcomes this opportunity to contribute to the List of Issues on the State party in preparation for the Committee's eighth periodic review. Our submission focuses on the situation of lawyers in Colombia who advocate human rights, and in particular, the obstacles to the independent exercise of their profession and the rights violations committed against them.

Methodology

5. L4L and LRWC been closely following the situation of lawyers in the State party. The information for this submission is collected through ongoing open-source research, interviews, and reports from Colombian lawyers and other local and international stakeholders.

II. Substantive Considerations: Implementation of the ICCPR and Related Issues

Issues of concern

6. In this submission, L4L and LRWC set out its concerns with regard to the State party's failure to comply with article 14 of the ICCPR. Pursuant to this provision, the State party is required to uphold the right

¹ For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>.

² For more information visit our website: <https://lawyersforlawyers.org/over-ons/wat-doen-wij/>.

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR').

⁴ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('Basic Principles').

⁵ Eighth Periodic Report Submitted by Colombia under Article 40 of the Convention, 5 November 2020, CCPR/C/COL/8.



of all persons to equality before the courts and tribunals, as well as the right to a fair trial, which right encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.⁶

7. Adherence to the Basic Principles is considered a fundamental precondition for the adequate protection of the human rights and fundamental freedoms to which all persons are entitled.⁷ In its task of promoting and ensuring the proper role of lawyers, the State party must respect and take into account the Basic Principles within the framework of its national legislation and practice.⁸
8. Consequently, it is the State party's duty under the ICCPR to respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or without the threat of sanction for any action taken in accordance with lawyers' recognized professional duties, standards and ethics.⁹
9. The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties and that lawyers are not identified with their clients or their clients' causes.¹⁰ In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.¹¹ The Basic Principles also affirm that lawyers, like other citizens, effectively exercise the right to freedom of expression and assembly.¹²
10. In the follow-up report to the concluding observations, the Committee notes the establishment of several institutional bodies, the creation of a special investigation unit, and the data provided on measures of protection in response to the worrying increase in the number of attacks against human rights leaders and defenders. However, the Committee states that it requires:

[I]nformation on their impact, such as with regard to investigations into and the prosecution of allegations of acts of intimidation, threats or attacks against human rights defenders, journalists, trade unionists, judicial officials, lawyers and social or human rights activists. The Committee also requires information on the claim that, since the signing of the peace agreement, there has been a worrying increase in the number of attacks against human rights leaders and defenders.¹³

⁶ Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that "lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter." See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular, article 12.

⁷ Basic Principles, Preamble, paragraph 9.

⁸ Idem, Preamble, paragraph 11.

⁹ Idem, Principles 1, 2 and 16.

¹⁰ Idem, Principles 17 and 18.

¹¹ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to "meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications." See also Principle 22 of the Basic Principles.

¹² Idem, Principle 23 of the Basic Principles.

¹³ Report on follow-up to the concluding observations of the Human Rights Committee, 22 September 2020, CCPR/C128/3Add, par. 5.

The Committee requested that the State party provide the requested information in its eight periodic report.

11. In its eighth periodic report, the State party stated the following with regard to the vital role of human rights defenders ('HRDs'), which includes lawyers who work on human rights cases:

*The Government recognizes that the role of human rights defenders is fundamental for a social welfare State governed by the rule of law, democratic participation and human rights for all Colombians. Hence, it condemns and rejects all threats, violence, intimidation and aggression against them.*¹⁴

With regards to its efforts to protect HRDs at risk, the State party stated:

*In that spirit, in 2018 the Government drew up the Timely Action Plan for Individual and Collective Prevention and Protection concerning the Rights to Life, Freedom, Integrity and Security of Human Rights Defenders, Social and Community Leaders and Journalists. This document is in line with the "Pact for Colombia, Pact for Equity" National Development Plan 2018–2022, whose "Pact for Legality" component includes, under Objective 5 entitled "Pact for Life", the goal of formulating and implementing a national public policy for prevention and the comprehensive protection of social and community leaders, journalists and human rights defenders.*¹⁵

*The National Commission on Security Guarantees was established by Decree No. 154 of 2017. In line with that measure, pursuant to Decree No. 898/2017, the Special Investigation Unit was created within the Attorney General's Office to dismantle criminal structures responsible for homicides and massacres targeting human rights defenders, social movements and political movements, among others. This Unit has 35 branch offices and more than 3,500 prosecutors throughout the country, meaning that it is present in the areas where these events occur. During 2020, the Attorney General's Office reinforced its investigation and prosecution strategy with a view to: (i) boosting and expediting its presence at crime scenes; (ii) focusing research projects on areas where crimes against human rights defenders are most frequent, in order to delve deeper into the association between crimes against human rights defenders and the criminal organizations operating in Colombia; and (iii) further enhancing the investigation methodology that takes a differentiated approach to investigations of crimes against human rights defenders. To significantly improve the outcomes of investigations into threats against human rights defenders, the Government and the Attorney General's Office successfully advocated the adoption by Congress of Act No. 1908 of 2018, which strengthens the investigation and prosecution of criminal organizations and includes additional measures for bringing the members of such organizations to justice. The Act includes a new criminal offence of making threats against human rights defenders.*¹⁶

12. According to our information, however, the State party has failed to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR.

¹⁴ Eighth Period Report Submitted by Colombia under Article 40 of the Covenant, 7 September 2021, CCPR/C/COL/8, par. 160.

¹⁵ Eighth Period Report Submitted by Colombia under Article 40 of the Covenant, 7 September 2021, CCPR/C/COL/8, par. 160-161.

¹⁶ Eighth Period Report Submitted by Colombia under Article 40 of the Covenant, 7 September 2021, CCPR/C/COL/8, par. 167-169.

13. This submission highlights the following issues of concern:

- A. Threats against and harassment of lawyers**
- B. Insufficient effective protection measures for lawyers**
- C. Insufficient investigations of threats and attacks against lawyers**

14. These concerns support the conclusion that the professional rights and privileges of lawyers in the State party are violated systematically. The resulting impairment of lawyers' ability to provide effective legal representation severely undermines the proper functioning of the rule of law and access to justice for all persons through the adequate protection of rights to which all persons are entitled, including the rights to an effective remedy and a fair trial. This situation undermines public confidence in the administration of justice.

15. Given the vital role lawyers play in the protection of the rule of law and of rights, and given that lawyers in the State party are specifically targeted because of their work as lawyers, L4L and LRWC recommend that the Committee specifically addresses the position of lawyers, as appropriate, when reviewing the State party's implementation of the ICCPR.

A – Threats against and harassment of lawyers

16. L4L and LRWC have long been concerned about harassment, threats and other efforts to disrupt the professional functioning of lawyers in Colombia who work on cases involving human rights or represent victims of crimes committed by current or former Colombian Army or State officials. The right of lawyers to perform their professional activities free from intimidation, threats, attacks or harassment is often not respected. Where improper interference or reprisals become widespread and systematic, a chilling climate emerges, one consequence of which is to deter lawyers from representing clients connected to politically sensitive or controversial issues out of fear of becoming the target of harassment or acts of retaliation.

17. In accordance with Principle 16(a) of the Basic Principles, governments must ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".

18. Since the last periodic review of Colombia in October 2016, new cases of harassment and threats have come to the attention of L4L and LRWC:

Daniel Prado: When the politically sensitive case of 'Los Doce Apóstoles' reached its final stages in the fall of 2018, the threats and harassment against began to surge against Mr. Prado, who served as counsel for several victims. In December 2018, Mr. Prado reported an instance of bullets being fired at his office, attempted robberies of his office, receiving death threats via his office and home landline, and many instances of being followed by individuals who appeared to be armed.¹⁷ Around the same time, defamatory public statements were made against him by high ranking officials.¹⁸ All of these events are believed to be directly linked to Mr. Prado's work as a lawyer and HRD and constitute attempts to disrupt his professional work.

¹⁷ L4L, Joint letter on behalf of Daniel Prado (6 December 2018) <https://lawyersforlawyers.org/joint-letter-on-behalf-of-lawyer-daniel-prado/>.

¹⁸ Ibid.



Gérman Romero Sánchez: Over the course of the late summer and fall of 2019, Mr. Romero Sánchez received a death threat over the landline at his home; had his laptop containing sensitive information relating to his work as a lawyer stolen in a robbery performed by four individuals; and was followed by two persons on a motorbike. A family member received multiple calls from an unknown person demanding that Mr. Romero Sánchez come to the phone.¹⁹ During 2020, the surveillance by individuals in motorcycles and other vehicles continued at his place of residence and office. In March 2021, a new direct threat was made via a telephone call, presenting risks for his family members. Mr. Romero Sánchez believes the harassment and threats are related to his work as a lawyer and HRD, as he often works on cases of enforced disappearances and extrajudicial killings in which the alleged perpetrators are retired and active State agents and senior officers of the army and police. The death threat and other forms of harassment have hindered Mr. Romero Sánchez's ability to do his work effectively as a lawyer and HRD.

19. Colombia has a history of conducting State-sponsored illegal intelligence activities against HRDs, including lawyers. Illegal intelligence activities and surveillance threaten the security of HRDs, and some instances of illegal surveillance are alleged to have led to serious crimes, such as assassination attempts and murders. L4L and LRWC call on Colombia to ensure the effective protection of HRDs by putting a stop to the potentially dangerous illegal surveillance of HRDs and ensuring that each act of surveillance of an HRD complies with international human rights law standards.
20. In its eight periodic report, the State party notes that: *"Intelligence and counter-intelligence activities conducted by the security forces are governed by the legal framework, which guarantees protection from unlawful attacks on reputation and safeguards the rights to privacy, personal and family integrity, due process and legal confidentiality. The aim of these activities is to protect human rights and they are in strict compliance with the Constitution and the law"*.²⁰
21. Notwithstanding this assertion, since Colombia's last periodic review, there have been various instances of illegal surveillance of HRDs, including lawyers. One such instance is described below.

Illegal surveillance by the Army Cyber-Intelligence Battalion ('BACIB') and other military bodies: On 1 May 2020, the Colombian magazine *Semana* reported the existence of "secret files" containing the personal information of at least 130 persons, including lawyers who had previously represented victims in criminal cases against State agents.²¹ These persons were subject to surveillance and profiling by members of the Colombian National Army, which reportedly intended to prepare military intelligence reports on the private and professional lives of these persons, without legal justification.²² Prior to this, in December 2019, the Supreme Court of Justice of Colombia ordered an investigation into the information held by the BACIB. The investigation revealed that intelligence activities had been

¹⁹ L4L, Joint letter on threats against Gérman Romero Sánchez (6 November 2019) <https://lawyersforlawyers.org/en/joint-letter-on-threats-against-german-romero-sanchez/>.

²⁰ Eighth Periodic Report Submitted by Colombia under Article 40 of the Convention, 5 November 2020, CCPR/C/COL/8, par. 151.

²¹ <https://www.semana.com/nacion/articulo/espionaje-del-ejercito-nacional-las-carpetas-secretasinvestigacion-semana/667616/>.

²² L4L, illegal intelligence activities against lawyers in Colombia (27 July 2020) <https://lawyersforlawyers.org/joint-letter-on-the-alleged-illegal-espionage-against-colombian-lawyers/>.

coordinated by the BACIB and other military intelligence bodies.²³ These illegal surveillance activities against lawyers and other HRDs are a serious threat to the independence and security of HRDs.

B – Insufficient effective protection measures for lawyers

22. Regarding the threats and harassment of lawyers which lead to security risks, the Basic Principles specify that “where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.²⁴
23. In light of this, the Special Rapporteur on the Independence of Judges and Lawyers has stated that “States must respond appropriately to patterns of violence against lawyers, prevent and redress attacks against lawyers (...)”.²⁵
24. In its eight periodic report, the State party stated that it has made various changes to upscale its efforts to provide protection measures for HRDs at risk, including lawyers.

The National Protection Unit reported that, as of September, 3,686 social leaders, 1,235 human rights defenders and 458 former FARC combatants are covered by protection schemes. The National Protection Unit has strengthened its technical body for the collection and analysis of information, resulting in a 37 per cent reduction in the average time taken to respond to protection requests. The Unit’s working groups on citizen assistance, protection requests and correspondence are setting up a one-stop shop to further improve response times.

Furthermore, 30 analysts and 21 legal advisers have been recruited to eight regional offices of the National Protection Unit. The Unit has signed an agreement with the National Police to improve risk analysis. Various differentiated approaches are being applied in protection schemes and a decision has been taken to strengthen collective protection schemes, of which there are now 160.

*Meanwhile, the security forces are deploying personnel to the most at-risk regions in order to combat organized armed groups who target the population in general and human rights leaders and defenders in particular. The implementation of the National Security Policy has yielded positive results. During the first half of 2020, Colombia recorded its lowest homicide rate in 46 years: 23.33 homicides per 100,000 inhabitants. Between 1 January and 28 June 2020, 5,281 violent deaths were recorded, compared with 6,128 in the same period in 2019 (down 13.8 per cent). According to the National Police, 496 out of 1,103 municipalities (45 per cent) did not register a homicide during that period in 2020.*²⁶

25. However, in view of the reports L4L and LRWC have received, these efforts are viewed accurately as insufficient. According to the information received, the Colombian authorities have not only failed to take adequate measures to ensure the effective protection of lawyers, but in several cases, partially withdrew the personal security measures accorded to certain lawyers, even when the risk for the individual had not diminished. The partial withdrawal of personal security measures is

²³ Ibid.

²⁴ Basic Principle 17.

²⁵ UN General Assembly, Independence of judges and lawyers, 22 August 2016, A/71/348, par. 73.

²⁶ Eighth Period Report Submitted by Colombia under Article 40 of the Covenant, 7 September 2021, CCPR/C/COL/8, par. 175-179.



counterproductive to the effective protection of lawyers and makes them more vulnerable to harassment and threats.

C – Insufficient investigations of threats and attacks against lawyers

26. In its eighth periodic report, the State party stated that it has increased its efforts to protect HRDs by reinforcing its investigations of crimes against them:

During 2020, the Attorney General's Office reinforced its investigation and prosecution strategy with a view to: (i) boosting and expediting its presence at crime scenes; (ii) focusing research projects on areas where crimes against human rights defenders are most frequent, in order to delve deeper into the association between crimes against human rights defenders and the criminal organizations operating in Colombia; and (iii) further enhancing the investigation methodology that takes a differentiated approach to investigations of crimes against human rights defenders.

To significantly improve the outcomes of investigations into threats against human rights defenders, the Government and the Attorney General's Office successfully advocated the adoption by Congress of Act No. 1908 of 2018, which strengthens the investigation and prosecution of criminal organizations and includes additional measures for bringing the members of such organizations to justice. The Act includes a new criminal offence of making threats against human rights defenders.

The Attorney General's Office also assigned Special Investigations Unit teams to 11 local authorities designated as high-priority on account of their vulnerability and the greater challenges they face. The armed forces have neutralized 115 crime bosses and broken up the groups responsible for criminal activity. Furthermore, the National Protection Unit recently adopted a strategy of thoroughly examining the circumstances of potential victims in order to prevent any criminal acts against them.

The Attorney General's Office recently launched a website (<https://www.fiscalia.gov.co/colombia/defensores/>) on which it publishes all official information on the murders of human rights defenders, including the comprehensive strategy being pursued in the investigations.²⁷

27. Nonetheless, these efforts are insufficient in light of the reports L4L and LRWC have received from lawyers in Colombia. Measures adopted to protect lawyers against threats and harassment can only be truly effective if the Colombian authorities respond to cases of threats, attacks or killings of lawyers by initiating prompt, effective, independent, and impartial investigations that are capable of providing evidence sufficient to hold the perpetrators accountable through fair trials. However, many cases that have come to the attention of L4L and LRWC demonstrate that the Colombian authorities have thus far failed to conduct effective investigations into the threats and attacks against lawyers, thereby allowing the impunity of these alleged perpetrators of human rights violations to persist.
28. L4L and LRWC have identified a number of cases of harassment or threats against lawyers in which the relevant authorities failed to launch a timely and impartial investigation and trials to hold the perpetrators accountable, among which is the following paradigmatic example.

²⁷ Eighth Period Report Submitted by Colombia under Article 40 of the Covenant, 7 September 2021, CCPR/C/COL/8, par. 167-174.



Adil Jose Meléndez Marquez: In late 2019, Mr. Meléndez received a number of threats by telephone. These threats are believed to be directly linked to his work as a lawyer in various land restitution cases and prosecutions of former paramilitary members in the Bolivar region.²⁸ As of this time period, Mr. Meléndez had been subjected to death threats, harassment and assassination attempts on numerous occasions.²⁹ Mr. Meléndez promptly reported all of these threats to the relevant authorities. The threats, together with the lack of genuine efforts by the relevant authorities to investigate these threats and hold those responsible accountable, has impeded Mr. Meléndez's efforts to effectively carry out his work as a lawyer and HRD.

III. Conclusions and Recommended Questions

29. Based on information we have assembled, the State party has failed to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR. As a result, the lawyers' professional rights and privileges have been violated. This situation impairs their ability to provide effective legal representation and means that lawyers are increasingly wary of working on sensitive cases. A further consequence is to severely undermine the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to an effective remedy and a fair trial, as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. Finally, in failing to ensure effective justice for all persons, the foregoing reality undermines public confidence in the administration of justice in the State party.
30. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach on other rights to which lawyers, as with other citizens, are entitled, including the rights to security of person (article 9), and to privacy and protection from unlawful interference or attacks on a person's honour and reputation (article 17).
31. Given the vital role of lawyers in the protection of the rule of law and of fundamental rights and freedoms, and given that lawyers in Colombia are specifically targeted because of their professional work as lawyers, **Lawyers for Lawyers and Lawyers' Rights Watch Canada recommend that the Committee specifically address the position of lawyers, as appropriate, when reviewing the State party's implementation of the ICCPR.**

Recommended Questions to State Party

Please provide information on what measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently without fear of threat, intimidation, hindrance, harassment, improper interference, reprisals, or criminal prosecution.

Please respond to reports of lawyers at risk being insufficiently protected despite the purported efforts of the State Party to upscale its efforts to provide protection measures for human rights defenders at risk.

²⁸ L4L, Joint letter on threats against Adil Meléndez (6 February 2020) <https://lawyersforlawyers.org/jointletter-on-threats-against-adil-melendez/>.

²⁹ L4L, Joint letter on behalf of Adil Meléndez (16 March 2019) <https://lawyersforlawyers.org/joint-letter-onbehalf-of-adil-melendez/>.

Please provide information on what additional measures the State party will take to ensure prompt, effective, independent and impartial investigations of threats and attacks against lawyers.