

COUNTRY FILE: COLOMBIA

LAWYERS IN DANGER: THE USE OF JUSTICE AS A PERSECUTION MECHANISM

Hundreds of lawyers have been murdered and thousands have suffered various types of attacks in the last ten years



INTERNATIONAL
OBSERVATORY
FOR LAWYERS

LAWYERS IN DANGER: THE USE OF JUSTICE AS A PERSECUTION MECHANISM IN COLOMBIA

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1. Background and social and political context

Colombia is a country that has experienced many years of upheaval from the beginning of the armed conflict to the present day, even after the peace agreements signed in Havana.

The prospect of a united Colombian society in which democracy would triumph over violence was the objective of these agreements, however, in recent years we have seen a new escalation of violence and conflict fuelled by the polarisation of a country that continues to suffer the ravages of the past.

Specifically, in May 2021, we have seen how the Colombian people have participated in numerous protests provoked by the latest tax reform¹ that threatened to widen the country's economic and social gap.

The actions of the state security forces and bodies have received numerous complaints from national and international civil society organisations, revealing abuses and arbitrary detentions, exceeding their functions and using disproportionate force against the demonstrators. Recently, the Inter-American Commission on Human Rights (IACHR) has denounced the disproportionate use of public force in the "Observations and recommendations", published after the working visit to Colombia².

In addition, it has been a disastrous year for human rights defenders in the country, who have seen an increase in the number of murders of indigenous and peasant leaders defending the rights of communities and the environment.

As the IACHR recalled after its working visit³, according to State data, in 2020, 53 murders of human rights defenders were recorded, which is much lower than the 133 murders reported by the Office of the United Nations High Commissioner for Human Rights (OHCHR)⁴. Likewise, the Institute for Development and Peace Studies (INDEPAZ)

¹ The proposed reform aimed to increase taxes for both companies and individuals, raise VAT on basic services and increase the price of petrol, as well as abolish many tax exemptions.

² (46) "The IACHR has been able to verify that, on repeated occasions, as well as in various regions of the country, the State's response was characterised by the excessive and disproportionate use of force, in many cases, including lethal force."

https://www.oas.org/es/cidh/informes/pdfs/ObservacionesVisita_CIDH_Colombia_SPA.pdf

³ The Inter-American Commission on Human Rights carried out a working visit to Colombia from 8 to 10 June to observe the human rights situation in the context of the protests that began on 28 April 2021. During the visit, the IACHR met with various representative sectors of Colombia, including authorities from different levels of government, representatives of civil society, collectives, unions and trade unions.

⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), Presentation of the Annual

puts the number of registered homicides of social leaders and human rights defenders at 310 during 2020⁵.

Behind these repressed persons, there is a legal profession concerned with the defence of human rights which, on numerous occasions, **is hampered in its professional practice and even sees its physical integrity endangered due to the extent of the risk involved in taking on the specific cases it deals with.**

2. Weaknesses of the rule of law in Colombia

The transitional justice system designed for the period we are living through resulted in the creation of the Special Jurisdiction for Peace, a system charged solely with the prosecution of the parties to the Colombian conflict of recent years⁶.

These Ad Hoc tribunals are composed of Colombian judges of recognised prestige and specialised in the matter. In the last webinar⁷ about lawyers at risk and the rule of law in Colombia coordinated by the International Observatory of Lawyers in Danger, the president of this organisation, Patricia Linares, denounced pressures from high levels of political and economic power that endangered the principle of independence of the magistrates and that the terms of the peace agreements were not being complied with, stigmatising their work.

In this same space, the renowned lawyer and president of the José Alvear Restrepo Lawyers' Collective, Reinaldo Villalba, denounces the persecution of human rights lawyers and representatives of victims of the armed conflict by state intelligence agencies.

It is not the first time that Colombian judges and lawyers have denounced through these spaces of international visibility this external interference by people who could see their personal and economic interests affected as a consequence of the activity of this body. In order to prevent fear from acting and impunity from prevailing, the Colombian state **must ensure the impartiality and independence of these judges.**

In recent months we have seen how the Colombian state security forces have

Report of the UN High Commissioner on Human Rights for Colombia, February 2021, p. 3.

⁵ Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ), Social leaders and human rights defenders assassinated in 2020, June 2020.

⁶ This special jurisdiction was created by the peace agreement signed in 2016, the purpose of which was to put an end to the conflict between the Colombian government and the FARC, in order to bring justice to the victims of this conflict.

⁷ OIAD and OMCT Webinar: Human Rights and Legal Mechanisms in Colombia: a special focus on the situation of the legal profession - September 2020 <https://www.youtube.com/watch?v=J7RH0E06kQo> Min. 25 a min. 50

disproportionately repressed protests against government measures, resulting in arbitrary arrests and even the deaths of dozens of protesters⁸.

The right to demonstrate and protest could undermine other fundamental rights such as the right of assembly, which is strongly linked to freedom of expression and freedom of conscience. A democratic state is effective when, within the obvious limits of maintaining public order, it allows citizens to express themselves freely and exercise their right to protest without restrictions; even more so when these citizens are a social minority, who see this form of demonstration as their only means of political participation and deliberation.

3. Advocacy at Risk: The OIAD and Caravans of Jurists Experience

The International Observatory of Lawyers in Danger (OIAD) has extensive experience dedicated to the protection of the Colombian legal profession. The support, protection and monitoring activities carried out by the OIAD allow it to observe the situation of continuous risk faced by lawyers defending human rights in Colombia. It is worrying to note how the various forms of attack have persisted for years and, unfortunately, are still in full force today.

As Reinaldo Villalba pointed out in the aforementioned webinar coordinated by the OIAD in 2020, ***"in Colombia more than 700 lawyers have been murdered in the last 10 years and more than 4,400 have suffered different types of aggressions according to the records"***⁹.

The visits organised by the Caravana Colombiana Internacional de Juristas and their respective reports also provide a record of the reality of the legal profession at risk in this area. According to the document published in 2014 after its fourth visit throughout the country, the risks are materialised through murders, threats and attacks, stigmatisation, obstruction of the performance of their professional duties and functions, as well as legal proceedings used against lawyers¹⁰.

⁸ (29) *"In the framework of the working visit, the Inter-American Commission received information on serious human rights violations and different obstacles to guarantee social protest"*.

https://www.oas.org/es/cidh/informes/pdfs/ObservacionesVisita_CIDH_Colombia_SPA.pdf

⁹ OIAD and OMCT Webinar: Human Rights and Legal Mechanisms in Colombia: a special focus on the situation of the legal profession - September 2020

<https://www.youtube.com/watch?v=J7RH0E06kQo> Min. 57

¹⁰ *"In each of the regions visited, delegates heard testimonies of attacks and threats against lawyers and defenders, as well as the failure of the state to investigate, prosecute and convict those responsible. The high level of killings of*

Of particular concern is the latter instrument of repression against lawyers and human rights defenders. The OIAD has been observing how, in a generalised manner, **human rights lawyers in Colombia are victims of judicial persecution against them.**

This pattern, also known as "judicial false positives", consists of the use of the judicial system to retaliate against the work of lawyers and human rights defenders through the elaboration of judicial frame-ups based on false evidence. In this regard, the Caravana's report on the Bucaramanga region, published in 2013, denounced this reality¹¹.

Similarly, the Caravana's report on its last visit in 2018 provides evidence of this avenue of persecution. It documents that member of a human rights lawyers' collective specialised on defending marginalised communities and victims of human rights abuses in Santander and Norte de Santander "*are being threatened with the fabrication of false evidence against them by individuals belonging to the local prosecutor's offices*"¹².

Polarisation and an evident interference by the spheres of power have meant that many lawyers have been victims of this and other types of attacks. Recently, lawyers' organisations such as Colectivo de Abogados José Alvear Restrepo and Equipo Jurídico Pueblos have denounced wiretapping by the Colombian intelligence agency and arbitrary detentions respectively.

Indeed, the OIAD has recorded these episodes over the last year in the alerts of

human rights defenders means that threats, attacks and stigmatisation against them must be taken very seriously".

<http://www.colombiancaravana.org.uk/wp-content/uploads/2013/04/CC-Report2.compressed.pdf>

¹¹ "*There are a large number of cases in which judges actively legitimise false evidence or fail to challenge the actions of the army police*" (Page 17).

Regional report of the fourth International Caravan of Jurists 2014: Bucaramanga Group:

<http://www.colombiancaravana.org.uk/wp-content/uploads/2013/04/Bucaramanga-report.pdf>

¹² "*In particular, the Caravana was informed by Equipo Jurídico Pueblos that some officials working within the local office of the Fiscalía threatened them saying that if they are not careful, attempts would be made to alter the content of some USB devices to associate EJP with the ELN.*

Furthermore, the EJP denounced having been informed that demobilised former FARC members are being pressured by the authorities, including through economic incentives, to testify against members of social movements. The EJP claimed that the National Directorate of Investigation against Organised Crime (DECOC) of the Attorney General's Office and police and army officers are behind these attempts to delegitimise and criminalise dissidence and social movements".

(Page 24)

http://www.colombiancaravana.org.uk/wp-content/uploads/2019/03/Report_Colombian_Caravana_6th-Delegation.pdf

Sebastián Escobar¹³ and Johan Sebastián Moreno Castro¹⁴. In the second case, it should be noted that the illegal detention was committed in the context of the mobilisations for the National Strike while the lawyer was verifying one of the social protests. Although the lawyer was released, it is feared that this event could lead to a future attempt to criminalise the lawyer¹⁵.

The OIAD regrets the absence of an official institution of professional nature in Colombia aimed at supporting, ensuring and protecting the free exercise of the legal profession, as well as effectively guaranteeing the right to defence.

In this regard, in order to promote the protection of the legal profession in Colombia, in 2011 the Fundación Abogacía Española produced a report calling for an official national membership system in an official Bar Association to provide institutional protection to each and every lawyer, regardless of the case they take on¹⁶.

This project, although promising at first with the creation of an Executive Committee, was interrupted in 2012 by the State's passivity in providing it with legal coverage.

According to recent testimonies of lawyers that the Observatory has been able to gather, *"the context of the national strike that began in April 2021 triggered the demand for legal assistance to victims of arrests, abuses, disappearances, judicial set-ups and other attacks"*¹⁷.

In reaction to this lack of institutional response, the Colombian legal profession, together with members of other professions, has developed associative and collaborative mechanisms to try to guarantee legal assistance to those in need¹⁸.

¹³ <https://protect-lawyers.org/en/item/sebastian-escobar-uribe-4/>

¹⁴ <https://protect-lawyers.org/en/item/johan-sebastian-moreno-castro-3/>

¹⁵ *"On 5th May 2021, a Specialised Prosecutor granted the lawyer habeas corpus and ordered his release, finding that the detention had been unlawful.*

However, the investigation file of the lawyer was referred to a local prosecutor in Piedecuesta, which raises concerns that this could lead to an attempt to criminalise the lawyer on charges of "attacks on authority".

<https://protect-lawyers.org/en/item/johan-sebastian-moreno-castro-3/>

¹⁶ Report on the feasibility of a mandatory bar association in the Republic of Colombia and Strategic Plan for its promotion and consolidation. - Fundación Abogacía Española - August 2011

<https://protect-lawyers.org/wp-content/uploads/INFORME-COLEGIATURA-ABOGADOS-EN-COLOMBIA- Fundacion.pdf>

¹⁷ Testimony of Felipe Robredo, criminal lawyer representing victims of police repression in the department of Quindío and member of the collective "Primera Línea Jurídica".

¹⁸ [Primera Línea Jurídica – Primera Línea \(1linea.org\)](http://PrimeraLíneaJurídica.org)

4. Conclusions and Recommendations

- **The Colombian State must:** protect the life and guarantee the free exercise of the legal profession, in accordance with the United Nations Basic Principles on the Role of Lawyers. To this end, the establishment of a collegiality and institutional structuring of the legal profession at the national level would be highly desirable.

- OIAD deploras the fact that human rights lawyers are confronted with a situation of particularly serious risk and threat, notably resulting from judicial persecution techniques. **The Colombian State must:** institute special vigilance with regard to key procedural elements, such as investigative procedures and the judicial chain of evidence.

- **The Colombian state must:** protect the impartiality of judges, by guaranteeing their independence, so that international fair trial standards are met.

- **The Colombian state must:** protect the freedom of demonstration and protest of citizens by requiring police forces to control such demonstrations only with strictly proportionate force.