

Colombia

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**Human rights
defenders trapped
in their own defense**

**The use of the
justice system to
hinder human rights
work**

**Legal pressure
causes
psychological
damage**

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Editorial

Peace Brigades International (PBI) dedicates this special edition to illustrate a form of repression against human rights defenders that has yet to receive much attention: malicious prosecutions based on unfounded accusations. PBI would like to call on the international community to pay attention to the consequences of this practice and to encourage it to develop appropriate forms of action to protect and maintain the working space of human rights defenders.

Through our work in the field accompanying human rights defenders, PBI has observed the destructive effects caused by malicious prosecutions. We have also analysed the context in which they occur, and will present several of these cases in this report. Due to PBI's permanent presence in different countries around the world, it has identified similar cases in countries such as Guatemala and Mexico, which proves that malicious prosecutions are not just a practice in Colombia.

Unfounded criminal charges are directed against a broad range of social sectors, including campesinos, entire communities, the youth movement, professors, members of religious orders, attorneys, and musicians, all of whom are human rights defenders, because they all promote the recognition of fundamental rights and freedoms.

One of the key issues in these unfounded prosecutions is the lack of guarantees to due process, including the use of false testimony. Using the justice system to initiate investigations based on unfounded accusations has very harmful implications on the work, credibility, social integration, freedom of movement, and economic resources of the human rights defender. Minimum conditions for protecting the work of human rights defenders include respect for due process and refraining from initiating unfounded cases motivated by political interests.

A psychosocial analysis reveals the broad impact on individuals, their families, and their professional and social environment. In the case of unfounded charges, protection requires much more than a legal defense. Protection requires measures reinforcing the legitimacy, credibility, and self-esteem of the person as well as an appreciation for his or her work.

At the end of this publication, PBI makes a series of recommendations for the international community with the objective of putting an end to this practice. We thank in advance the persons and institutions concerned about the issue of human rights defenders and committed to their protection.

Thank you for your support and trust in the work carried out by PBI.

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Human Rights Defenders

WHY PROTECT HUMAN RIGHTS DEFENDERS?

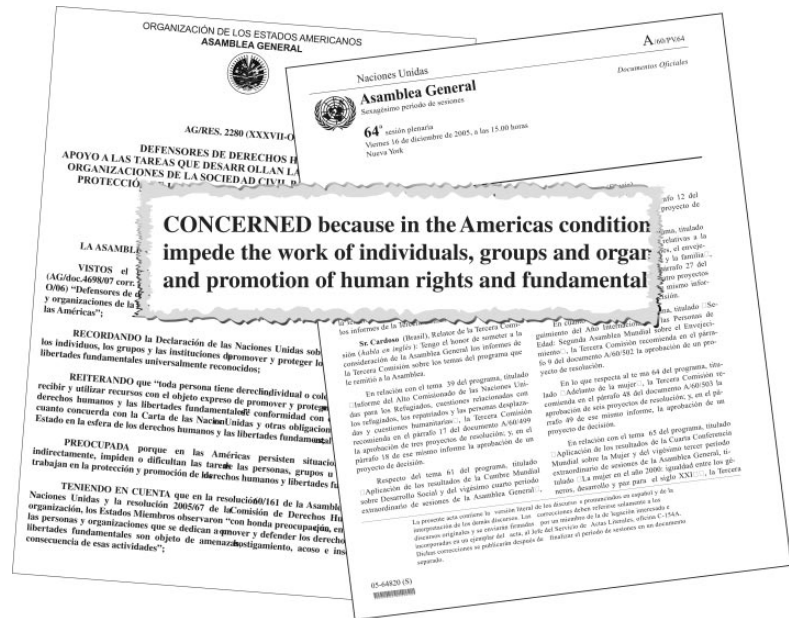
The defense of human rights represents the vindication of fundamental values for all human beings. The right to a defense is related to the historical origin of human rights born of society's struggle for the application of freedom, equality, and justice.

The activity of the person defines the condition of human rights defender. This assertion is supported in the United Nations declaration on human rights defenders, according to which «everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms»¹. Consequently, all persons who strive to promote human rights and fundamental freedoms are human rights defenders.

An exhaustive list of activities considered to be actions relating to the defense of human rights does not exist. Their achievement is the constant pursuit for the ongoing transformation of political, social, economic and cultural institutions. Considering the principle that all human rights and fundamental freedoms are equal, indivisible, and interdependent, human rights defenders act to promote and protect such diverse civil, political, economic and cultural rights as the right to life, freedom of expression, and food.

The political dimension of the culture of human rights involves the participation of persons, as democratic subjects, in the political life of the country. This contribution is based on the notion of human beings as the holders and beneficiaries of their rights and, therefore, taking on an active role in their achievement. Their contribution involves, among other activities, following up on the actions of the State so that it fulfills its duty to make effective all human rights. In this respect, activities leading to the defense of human rights contribute to strengthening democracy, since the full respect of human rights and the participation of citizens are essential elements for the legitimacy of a democracy.

The United Nations General Assembly recognized the importance of the work carried out by human rights defenders in the promotion of democracy, in resolution 60/161 of 2005, emphasizing «the important role that individuals, non-



The documents of various international authorities highlight the importance of the work of the human rights defenders for the construction of a state governed by law.

governmental organizations and groups play in the promotion and protection of human rights and fundamental freedoms, including in combating impunity, promoting access to justice, information and public participation in decision-making and promoting, strengthening and preserving democracy».

Likewise, in resolution 2280 of 2007, the General Assembly of the Organization of American States (OAS) stressed «that the protection and promotion of human rights is legitimate work and that, in the exercise of their duties, human rights defenders contribute decisively to strengthening democratic institutions.

Reaffirming its support for human rights defenders, in 2004 the Council of the European Union adopted the *European Union Guidelines on Human Rights Defenders*, which indicate that the critical role of human rights defenders with respect to the State should not be seen as a negative, since free debate is a tried and tested way of establishing a better level of protection of human rights².

In a democratic State, the work of human rights defenders must be protected and encouraged. The Inter-American Commission on Human Rights (IACHR) asserted this in its report on the situation of human rights defenders in the Americas³. The need to protect human rights defenders is linked to the

legitimacy of their activity, which benefits the fulfillment of the State's obligation to guarantee human rights. Hence, their work should not be hindered in any way⁴.

States have the obligation of protecting, promoting, and making effective all human rights and fundamental freedoms. States also have the obligation of guaranteeing the protection of human rights defenders as well as the free exercise of their activities. Furthermore, human rights defenders should benefit from a special protection because the effect of violations against them is to reduce their capacity to defend the rights of all of society. The effective application of measures guaranteeing that human rights defenders may freely carry out their activities is an indication of the respect for human rights since, as asserted by the United Nations, human rights defenders are often the first victims of violations to these rights⁵.

¹ Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms adopted by the United Nations General Assembly on December 9, 1998 (Resolution 53/144), Article 1.

² "European Union Guidelines on Human Rights Defenders", Paragraph 5, 9 June 2004.

³ "Report on the Situation of Human Rights Defenders in the Americas", OAS/Ser.LV/II.124, 7 March 2006.

⁴ Ibid.

⁵ "Human Rights Defenders", Report of the Secretary-General, A/55/292, August 11, 2000.

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HUMAN RIGHTS DEFENDERS TRAPPED IN THEIR OWN DEFENSE



To say Colombia is one of the most dangerous countries for human rights defenders is nothing new. Countless reports draw attention on the shameful numbers of murders, harassment, threats, and public smears or hostile statements against this sector of the population. Up to now, however, little has been documented on another way of obstructing or paralyzing human rights work: malicious prosecutions based on unfounded accusations.

These specious charges are a sad reality for human rights defenders, not only in Colombia, but in many countries where the human rights movement has traditionally been repressed in the exercise of its legitimate work. According to recent reports by such organizations as Amnesty International and Human Rights First, in Latin America the governments of Mexico, Cuba, Honduras, Venezuela, and Guatemala have all been responsible for the judicial persecutions of human rights defenders.

According to these reports, actions by the State hinder the work carried out by these persons, work which includes reiterating to their government its obligation to protect and promote human rights. The States' actions also clash with

the recommendations prescribed by the OAS, the United Nations, or the IACHR, stressing the need to create a climate that favors the defense of human rights.

In Colombia, just as in neighboring countries, human rights organizations and different Afro-Colombian, indigenous and campesino communities have repeatedly spoken out against cases of unfounded prosecutions which the context of Latin America are known as «*montajes judiciales*». Strictly speaking, criminal prosecution –in other words, investigation and trial– is the right and obligation of a State, provided the adopted procedures are compatible with the rule of law and judicial institutions have well founded grounds to initiate a legal proceedings.

Nonetheless, the use and abuse of the judicial system in Colombia, characterized by irregularities, false testimony, manipulated intelligence reports, among other mechanisms, is framed within a context of repeated public vilification and harassment of human rights defenders. According to Reinaldo Villalba, a lawyer from the José Alvear Restrepo Lawyers' Collective, «this deslegitimization of human rights work, combined with the many cases of criminal prosecution, show that unfounded prosecutions are a part of a systematic repression of any dissident, critical or censorious voice».

Throughout Colombian history, many of the leading human rights defenders have been harassed, persecuted, threatened, or murdered. This hostile climate has weakened the human rights movement and has created a generalized fear for involving oneself in the defense of these rights. These forms of repression are very effective, and the

political cost is very high. Nonetheless, unfounded prosecutions go unnoticed by the international community. Moreover, their effectiveness is undeniable, whether or not the accused persons are convicted. A criminally prosecuted person and the organization they are part of will have to invest much time, money, and energy in their own defense, to the detriment of their work promoting human rights.

To appear in court also casts doubt on the credibility and legitimacy of the affected person, which jeopardizes their possible support in the future. Furthermore, since criminal prosecution is a form of public smear, it places the physical integrity of the person at risk, as indicated in the 2002 annual report by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Moreover, the burden of legal proceedings represents a psychological wearing down, both for the affected person and his or her social environment. Additionally, the fear and distrust that arises may result in a breaking-up of social networks, which are the foundation for a civil society conscious and vindicating of its rights. Lastly, impeding human rights defenders from carrying out their work limits the protection they offer to their principal beneficiaries, including communities of ethnic minorities, victims, trade unionists, political prisoners and the campesino population, among others.

In the context of Colombia and other countries of Latin America, unfounded criminal charges against human rights defenders become another way to stigmatize persons not conforming to the *status quo*. They are another example of how international standards, in particular the presumption of innocence, are repeatedly violated.

Musicians

A great amount of cases of unfounded prosecutions based on false evidence have occurred in Colombia. PBI would like to recall just a few of these, which have affected persons from diverse sectors of society. None of the persons named have been convicted. However, most were jailed, stigmatized as being guerrilla members in the mass media, and have not received any retraction to restore their good name.

Pasajeros is a musical group founded in 1991 that was working with marginal sectors and social organizations in Antioquia. On June 12, 2004, the three members were detained under the charge of conspiracy to commit terrorism and rebellion, an accusation based on statements made by seven informants, who alleged that «their music is charged with ideology and encourages the participation in armed groups». The musicians were released after 173 days of prison, after proving the accusations had no basis whatsoever. Nonetheless, according to their lawyer, the attempts to criminally prosecute them did not cease, which is why the three members decided to go into exile.

Academics

On September 17, 2004, the university professor Alfredo Correa de Andreis was murdered by two paid hit men in the city of Barranquilla. Three months previously, Correa had been detained and accused of rebellion. Correa was released after several weeks in jail, once his lawyer demonstrated the statements by witnesses had been used previously against another person. One week before his death, Correa had presented a study on the human rights crisis and the lack of security affecting the internally displaced population in the departments of Atlántico and Bolívar.

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THE USE OF THE JUSTICE SYSTEM TO HINDER HUMAN RIGHTS WORK

«The aim of these unfounded prosecutions is to produce a criminalization of social action», according to Agustín Jiménez, president of the Foundation Committee for Solidarity with Political Prisoners, who has closely seen the effects of unfounded criminal charges against members of his

organization. Cases concerning the Inter-Ecclesiastical Commission of Justice and Peace, the Corporation for Judicial Liberty, and the Foundation Committee for Solidarity with Political Prisoners are presented below. These three Colombian organizations accompanied by PBI are voices from civil society

demanding respect for human rights, each with their own approach to the problem. Based on these exemplary cases, the common characteristics of unfounded prosecutions will be identified as well as their repercussions in the affected persons and their organizations or communities.

Inter-Ecclesiastical Commission for Justice and Peace (CIJP)

CIJP accompanies victims of human rights violations and in particular internally displaced communities living in humanitarian zones and areas of biodiversity. In May 2003, the Office of the Attorney General opened a preliminary investigation against five CIJP members. Specifically, they were charged with rebellion, conspiracy to commit a crime as members of the Revolutionary Armed Forces of Colombia (FARC), and ordering murders and forced disappearances. During a press conference, convened by the then commanding general of the armed forces, in August 2003, those under investigation were accused of being responsible for corruption and for ties with the FARC. However, at the beginning of 2005, the Attorney General's Office issued a resolution of dismissal¹ when it determined that the evidence was based on false testimony².

In 2004, in parallel to the previously described case, the Attorney General's Office opened another case implicating an additional fifteen people from the Humanitarian Zones of the Curbaradó and Jiguamiandó (Department of Chocó) Afro-Colombian collective territories. Several of the CIJP members, already investiga-



The people living in remote areas of Colombia, such as the members of the communities of Cacarica, Curbaradó and Jiguamiandó, have also been forced to defend themselves against unfounded accusations. (© Jorge Mata/Surimages)

ted in the previous case, were newly implicated through false testimonies in these new proceedings. The persons being investigated only learned of the case against them in 2006.

Both these prosecutions are based on statements by the same witnesses, statements proven to be false and centered on the same issue, namely the CIJP-advised communities and leaders organizing their survival and return processes after they were forcibly displaced ten years ago from the river basins of the Cacarica, Jiguamiandó, and Curbaradó.

A third case came before the Attorney General's Office against CIJP and members of these same communities and community councils in which more than 20 persons were issued arrest warrants. Additionally, in February 2005, CIJP learned of another criminal charge lodged before the Attorney General's Office in Río Sucio, which newly investigated several members of CIJP, coordinators from the communities of Jiguamiandó and Cacarica, and international companions³.

The cases against CIJP and the Afro-Colombian communities of Jiguamiandó, Curbaradó and Cacarica clearly demonstrate the arbitrary nature of many of these prosecutions. In the different investigations, the same evidentiary material was used even though it had been dismissed and discredited in the first case. This constitutes a failure to abide by the principle of reasonableness. Lastly, as expressed by the International Federation for Human Rights in its 2003 annual report, the statements made during the press conference organized by the commanding general contributed «to the stigmatization and discredit of this association»⁴, and violated Presidential Directive 07 and Ministry of Defense Directive 09, which prohibit public officials from issuing statements stigmatising the work of human rights organizations. «Public vilification by government officials is a part of the strategy, as it clearly has consequences on the criminal prosecutions», stated Abilio Peña from CIJP.

¹ Resolution of dismissal: Filing of a case due to not finding merit to open a formal investigation.

² "Proceso 1701 – Inhibidos de los cargos de rebelión integrantes de Justicia y Paz", Executive Report 12, Inter-Ecclesiastical Commission of Justice and Peace, 12 February 2005.

³ "Presiones militares y amenazas a un nuevo proceso judicial contra Justicia y Paz", Executive Report 13, Inter-Ecclesiastical Commission of Justice and Peace, 21 February 2005.

⁴ "Los defensores de derechos humanos frente a la política de seguridad", International Federation of Human Rights, 13 April 2004.

The Church

In the department of Tolima, the Attorney General's Office brought Monsignor José Luis Serna to trial in 2003 for his supposed collaboration with guerrilla groups when he was the bishop of the Diocese of Libano and Honda. As witnesses in this case, former guerrilla members of the National Liberation Army (ELN) accused the religious leader of having coordinated kidnappings and the payment of ransoms for their liberation. Several contradictions undermined the veracity of these testimonies. Later, it was discovered that an agent from the Unified Action Group for Personal Liberty (GAULA) had given the reintegrated combatants a list of persons to accuse of rebellion, including Monsignor Serna, in exchange for financial benefits.

Miners and Campesinos

Teófilo Acuña, president of the Agro-Mining Federation of Southern Bolívar, was detained for 10 days in April 2007. Members of the Army's Nueva Granada Battalion, who had violently entered the Federation's office, accused him of being a member of the ELN. Acuña played an important role in the defense of natural resources in the region. He recovered his freedom after the prosecutor in charge of the case found no evidence to substantiate his detention. Nonetheless, the case remains open.

Human Rights Organizations

The office of the Sumapaz Foundation, a human rights organization from Medellín, was searched in March 2005 with the purpose of uncovering evidence to establish links between the organization and the insurgent group called the Peoples' Revolutionary Army (ERP). Hours before the search, Alejandro Quincena, member of Sumapaz, was arrested under the accusation of being an ERP member. Quincena was jailed for three months, and kept under house arrest for another three, until his case was dismissed, after demonstrating contradictions between the testimony made against him and the evidence presented by State security agencies.

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Corporation for Judicial Liberty (CJL)

CJL carries out the investigation and denunciation of human rights violations and in recent years has focused on the issue of extrajudicial executions. In May 2007, the Coordination Colombia - Europe - United States and the Seeds of Liberty Human Rights Collective published the report *Extra-judicial Executions: Case Eastern Antioquia*, based primarily on CJL documentation, and denounced that members of the Army's IV Brigade were responsible for some 110 homicides. The then commander of this brigade described this publication as «part of the political and legal war» carried out by NGOs against the army⁵.

Within this context, CJL learned that a criminal investigation had been in existence against CJL lawyer Elkin Ramírez for the crime of rebellion since November 2006. However, in a joint mee-

ting convened by the OHCHR in February 2007 to clarify the legal situation of the CJL lawyers, members of the judiciary and the security forces failed to confirm the existence of a criminal case against members of this organization.

In 2005, criminal charges were lodged against Ramírez and others for the crime of defamation, motivated by the different reports presented by this lawyer before the Inter-American Commission on Human Rights. The case was closed after proving no criminal conduct existed whatsoever⁶. Another CJL lawyer, Bayron Góngora, was also the object of a possible unfounded prosecution. According to CJL, in August 2006, members of the Metropolitan Police of the Valle de Aburrá (Department of Antioquia) visited prisoners in several jails to «invite them», in exchange for legal and economic benefits, to accuse Góngora of being a member of a guerrilla organization⁷.



The lawyer Elkin Ramirez, from the Corporation for Judicial Liberty, represents merely one of the cases of human rights defenders that have to dedicate time and resources to defend their work in front of the justice system.

In the case against CJL, the exercise of defense was obstructed by the fact that the existence of legal proceedings was not disclosed to the persons being prosecuted. Just as in the case of CIJP, the evidence consisted of false testimonies and the case coincided with other public smears by army officers.

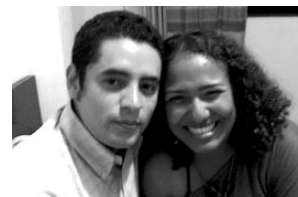
Foundation Committee for Solidarity with Political Prisoners (FCSPP)

As the coordinator for the FCSPP chapter in Bucaramanga, Gabriel González worked on the documentation and denunciation of human rights violations, especially the rights of the prison population. In July 2005, he denounced the threats, surveillance, and harassment he was the target of before the Attorney General's Office. Nevertheless, his situation worsened to the extent that he was forced to move to Bogotá. The Ministry of Foreign Affairs, the Vice-President's Office, and the Ministry of Interior reinforced his security detail.

In these circumstances, González was detained and charged with rebellion in January 2006. His case was based on testimony provided by two reintegrated combatants and intelligence reports by the Technical Investigation Unit (CTI) of

the Attorney General's Office. One of the witnesses made a declaration filled with contradictions. Another witness came to a FCSPP office denouncing he had been forced to testify against González through the threats made by the police and the CTI. The intelligence reports indicated González belonged to the FARC, but did not mention any source to support this accusation⁸.

Moreover, Gonzalez's detention was excessively long: he was released after one year and three months of imprisonment after being acquitted by the Criminal Court of Bucaramanga⁹.



Principe Gabriel González from FCSPP, and his wife Banessa Estrada Martínez, celebrating his release from jail after one year and three months of imprisonment.

Nevertheless, since there was no public effort to restore his good name, due to the public vilification he was subjected to, he and his colleagues fear for his safety, his physical and psychological

⁵ "Combinación de todas las formas de guerra contra la Corporación Jurídica Libertada", Corporación Jurídica Libertad, Medellín, mayo 28 de 2007.

⁶ Ibid.

⁷ "Denuncia pública", Corporation for Judicial Liberty, 18 August 2006.

⁸ "2005 Annual Report", Amnesty International, 2005.

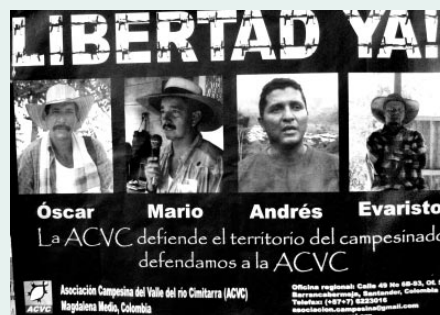
⁹ "El Observatorio", Observatory for the Protection of Human Rights Defenders, Bulletin No. 42, COL 001/0106/OBS 004.1, 12 April 2007.

Youth Organizations

Since 2002, the lawyer Claudia Montoya has been involved with the Youth Network of Medellín, an antimilitarist and non-violent organization. In October 2002, she was detained for the crime of rebellion, an accusation based on testimony of reintegrated combatants, who indicated she was a member of the guerrilla. She was jailed for 49 days and was under house arrest for another 30 days. In January 2007, the Attorney General's Office issued a resolution to close the investigation and Montoya was completely exonerated.

Campesino Organizations

Six members of the Peasant Farmer Association of the Cimitarra River Valley (ACVC) are presently detained in a maximum-security prison in Bucaramanga, all charged with rebellion. Four of them have been imprisoned since September 2007, waiting for the preliminary investigations to conclude. The Association has learnt of another five arrest warrants against their campesino leaders, meaning that at this moment all former members of their board of directors are in prison or under the threat of imprisonment. In addition to these detentions, other attacks have been carried out against members of the organization and the people living in the Cimitarra River Valley. During the last ten years they have been victims of murders, threats, arbitrary detentions, internal displacement, forced disappearances, torture, the burning of their houses, and military or armed blockades of food and medical supplies.



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integrity. It should also be mentioned the threats he received and denounced in July 2005 have yet to be resolved¹⁰.

Over the last years, FCSPP has been affected by other similar cases of criminal prosecutions and prolonged detentions. Yolanda Amaya was detained for two and a half years until she was finally declared innocent.

In 2004, an army intelligence report accused lawyer José Humberto Torres Díaz of belonging to an insurgent group. An investigation was initiated, but was then closed due to lack of evidence. However, the public smears resulting from the investigation caused paramilitary groups to harass him and Torres



Díaz was forced go into exile in Spain for six months.

With respect to the FCSPP cases, it should be stressed that criminal investigations were initiated and arrest warrants were issued based on specious and contradictory evidence, which resulted in the prolonged detention of the accused persons. These actions may constitute a violation to the presumption of innocence, as indicated by the IACHR¹¹. Additionally, this institution recommends that «states must guarantee that no human rights defender will be subjected to detention or imprisonment by causes and methods which, even if considered legal, may be incompatible with respect for the fundamental rights of the person»¹².

Pattern of irregularities

There are many more cases like these. In an interview with PBI, Reinaldo Villalba, member of the José Alvear Restrepo Lawyers' Collective (CCAJAR), mentioned that «in its 25 years of existence, the Lawyers' Collective has handled thousands of cases of unfounded charges against grass root leaders and representatives of communities and social organizations». Most of the cases demonstrated the same irregularities seen in the three previously mentioned cases, such as false testimonies by paid witnesses or reintegrated combatants, obstruction to the access of defense, manipulated evidence, and source less intelligence reports.

With respect to the Attorney General's Office questionable handling of these cases, there is a strong contrast in how cases denouncing human rights violations are kept at a standstill for years, while investigations against human rights defenders are carried out much more vigorously. «There is a clear imbalance in the way in which the public prosecutors act when it concerns investigating persons accused of links with paramilitaries and those who accuse [these

people», stated Iván Cepeda, one of the spokespeople for the Victims' Movement, when he explained the case of slander he faced after publicly presenting a denunciation against a member of congress for having links with paramilitaries and conspiring to murder a member of the Democratic Pole party. «The imbalance is evident in the course of the cases. The principle of justice —of independence— is not being applied. If they were independent and neutral, the cases would have to be investigated in the same manner», commented Peña from CIJP, comparing the investigations initiated against this organization and crimes denounced by the NGO over ten years ago, which remain in impunity.

On several occasions, unfounded criminal charges coincide with smears by public servants. These public smears and the criminal prosecutions that precede or follow them almost always occur where the person has testified against the actions of State actors or of certain economic or political interests. Cepeda confirms this in the context of the difficulties faced by the Victims' Movement in Colombia: «There is an attempt to silence the Movement's investigations and cases searching for the truth».

These human rights defenders, the victims of malicious prosecutions, face a number of different consequences, including fear, self-censure, loss of economic resources, paralysis of their work, loss of trust and support, risk to physical integrity, and rupture of social networks due to distrust and fear, among other factors.

In the case of internally displaced communities, unfounded criminal charges have even more impact. Peña from CIJP



Iván Cepeda, one of the spokespeople of the Victims Movement, during the event organized in San Onofre.

indicated that the communities manage fear in a different manner, since they need more time to understand the interests behind the malicious prosecutions and «to become conscious of the implications of the actions in law». Likewise, Peña mentioned the isolation of the communities and the physical risk involved for those subjected to unfounded criminal charges who live in highly militarized areas and run a high risk of being arbitrarily detained, which in practice leads to a confinement of the communities.

In large part, the consequences of malicious prosecutions based on unfounded accusations are similar to those resulting from other methods of repression. Furthermore, analyzing the affected persons, it could be considered that spurious prosecutions of human rights defenders «are part of a strategy to silence human rights defenders», as stated by Hina Jilani, UN Special Rapporteur on Human Rights Defenders.

Communities

In 2003, members of the Community for Self-Determination, Life and Dignity of Cacarica (CAVIDA) (Department of Chocó) and five members of the Inter-Ecclesiastical Commission of Justice and Peace learned of legal proceedings against them during a press conference by the then commanding general of the armed forces. On that occasion, specious accusations were presented of links between CIJP, CAVIDA and the guerrilla, and the misappropriation of funds. This information was broadly disseminated by the mass media, but in 2005 the Attorney General's Office compelled to issue a resolution to dismiss the case because no evidence was found to substantiate the accusations.

¹⁰ «Colombia's Human Rights Defenders in Danger, Case Studies of Unfounded Criminal Investigations against Human Rights Defenders», Human Rights First, September 2007.

¹¹ «El Debido Proceso en las decisiones de los órganos de control constitucional de Colombia, Perú y Bolivia», Andean Commission of Jurists, <http://www.caipje.org.pe/guia/debi.html>.

¹² «Report on the Situation of Human Rights Defenders in the Americas», Inter-American Commission on Human Rights, Doc. 5 Rev. 1, OEA/Ser.L/V/II.124, 7 March 2006.

Guatemala



Julio Archila and his son, accompanied by a PBI volunteer, during his hearing.

UNFOUNDED CRIMINAL CHARGES AFFECT CAMPESINOS

PBI Guatemala Project accompanies Julio Archila, co-founder and legal outreach worker from the Campesino Workers Movement (MTC). This movement brings together campesino community associations working to defend their labor rights. Since 2005, Archila and his family have endured several acts of intimidation and threats due to their fight for campesino rights. In 2007, Archila was accused of theft, evasion, and coercion and threatened with a 40 year prison sentence, even though the worth of the supposedly stolen coffee did not exceed 200 US Dollars.

Is there currently a case being brought against you and your son? Can you tell us more about this?

Yes, there is a judicial process open against me. It is unfortunate and sad; because one works honorably fighting to achieve the fundamental rights of campesino workers on the estates, while the business interests seek ways in which to make our work more difficult.

In November 2005, my son and I bought coffee from Mr. Eduardo Chalet from the Las Estrellas plantation. While we were transporting the coffee, we were arrested by the police and the inspector from the Las Delicias farm, which borders the plantation. They claimed the coffee was from that estate. The business people from Las Delicias have accused us of theft, evasion, and coercion.

Has the court issued a final judgment?

Up to now, a final decision has yet to be made in the case against us. There was a six-month investigation, during which we had to register ourselves every two weeks at the Peace Court in San Pablo. Later, in June, our hearing was held and the judge ruled in our favor. He said sufficient evidence did not exist. In other words, what the company was accusing us was legally demonstrated to be false. However, the case was then taken to the appeals court in Quetzaltenango. In July, the judges revoked their decision and established a six-month period to investigate the evidence again.

Do you think your case is connected to your work with MTC?

Yes. I am training campesinos in labor rights so they can demand these rights from the estate owners. For instance, in the specific case of the community from the Las Delicias estate, MTC is advising 26 campesino families in the fight for their labor rights and the payment of their wages, which the owner owes them since 2001.

Have you been intimidated or threatened due to your work?

I—as well as my family—have been threatened and intimidated. Some armed men came looking for me on some of my uncle's land in San Pablo. When the case was initiated against me and my son at the end of 2005, we also heard rumors saying it would be easier to kill me than implicate me in a legal case, which is much more expensive and longer.

We have seen cars come and park in front of the house in order to watch us. Sometimes the persons in the cars have been armed.

Have you received more threats because of the case?

Yes. In the hearing in June, two pick-up trucks with armed men inside were parked in front of our house. For me, this is a clear sign of intimidation. And when we were at the court, the owner came with his bodyguards, without exaggerating, some ten well-armed persons. It was not just intimidating for me, but also for my family and my colleagues.

There have also been indirect threats against the work of MTC, defamation, rumors against me and other colleagues, rumors that foretell of forced evictions in estates where campesinos seized land in the demand for their rights.

How does this case affect your private life and work environment?

In a way, it has been a succession of adversities, since one knows the family suffers and one has to support them, but our strength is limited. With the intimidation, we are afraid something could happen to us. Now with this legal process, my family has many concerns, especially my son Antonio, who faces an uncertain situation with regard to his future.

Of course, in the same way, all of these concerns also affect labor conditions. To

have to go register yourself at the peace court is an imposition on your time. You have to be much more careful with your security situation. Presently, we are accompanied by PBI, which we requested after the prosecution was initiated. This accompaniment has strengthened us and has helped us continue with our work. And thanks to God, now we are also strong spiritually.

Do you know of other cases of criminal charges against human rights defenders in Guatemala?

There are colleagues with criminal charges, but right now I would especially like to mention three colleagues from MTC who have security problems due to their fight for a more dignified life in the San Marcos communities. José Ramo and Luciano Ramírez have been threatened for defending their labor rights. Additionally, José Manuel Morales is threatened due to his fight to defend the natural resources in the region of San Rafael, where there is a hydroelectric construction project.

Last year on November 15, the campesinos from the Las Delicias estate, who had been advised by Archila in their action to seek payment for their work and the benefits they were owed, finally reached an agreement with the owner, who agreed to pay them 500,000 quetzales (equivalent to 66,000 US dollars). Furthermore, the owner promised to drop the charges against Archila and his son. Finally, the campesinos were able to purchase a new estate in January 2008 and now are in the process of constructing their new community. At the time of publication, the promise to drop the charges against Archila had yet to be fulfilled.

Mexico

THE STATE OF GUERRERO: AN EMBLEMATIC EXAMPLE

The PBI Mexico Project has carried out accompaniment work in the State of Guerrero since 2001. This state has been shown to be a paradigmatic example of the situation experienced by human rights defenders and leaders of social movements, who have been victims of discrediting, threats, intimidation, persecution, and criminal prosecution by the authorities to punish, obstruct, or impede their human rights work¹. In 2007, social and human rights organizations were particularly outspoken about the lack of dialogue offered by the national government in response to the social conflicts and demands². According to these organizations, repression and the use of the criminal justice system does not resolve the root problems; instead, the problems are worsened.

In 2003, the Office of the United Nations High Commissioner for Human Rights in Mexico (OHCHR) indicated the need to reform the Mexican justice system because «the absence of due process in Mexico [...] allows persons to be jailed for political motives by charging them with common crimes»³. The lack of dialogue has caused the organizations to carry out actions such as occupying public spaces or blocking highways so their demands could be heard. According to the Tlachinollan Human Rights Centre, «the public institutions, including the Office of the State Attorney General, have been motivated by evident political criteria when dealing with enforcing the law on social activists»⁴.

For instance, on November 8, 2007, José Manuel Olivares Hernández, director of the *José María Morelos y Pavón* Regional Human Rights Centre and well known human rights defender was detained while documenting police abuses during a social protest lead by the Chilapa Citizen's Council. The municipal assistant gave the order to detain Olivares: «detain this jerk that is causing us problems». Olivares Hernández argued in vain that he was only carrying out his work as a human rights defender and that he was not participating in the blockades. The protesters were beaten and 15 of them were arrested. On November 9, they were released on bail, and although they were all accused of the same crimes, Olivares Hernández's bail was much higher than that of the other detainees.

This is not an isolated case. The movements demanding respect for the indigenous population have also been affected by the arbitrary detentions in the state of Guerrero, as seen in the following cases:

In August 2004, David Valtierra Arango, leader of Radio Ñomndaa, the indigenous community radio station in the municipality of Xochistlahuaca, was detained and accused of unlawful deprivation of liberty⁵. On October 13, Cirino Plácido Valerio, founder and councilman of the Regional Coordination of Community Authorities, which is a community police force, was detained under the same charges, as well as for the abuse of authority and the impersonation of a public officer⁶. Both were released on bail⁷. In the opinion of these organizations, their members are criminalized for exercising their right to the freedom of expression through the use of the radio, and for enforcing their own legal system to administer justice within their communities.

In October 2007, Cándido Félix Santiago, director of the Regional Council for the Development of the Me'Phaa Peoples, was arrested and accused of attacking communications networks⁸. Félix Santiago has led a series of protests to demand the fulfilment of agreements already signed with the government concerning the education of the Me'Phaa Peoples in their own language. This was his fourth detention in 2007.

Lastly, Rodolfo Chávez Galindo was detained in April that year. He is one of the members of the Council of Ejidos and Communities Opposed to La Parota, CCEP, a hydroelectric dam to be constructed in the state of Guerrero. The police had used an arrest warrant that had been cancelled in 2004. Local human rights organizations secured the release of Chávez later that day, emphasizing the fact his illegal detention had been politically motivated⁹.



Map of the state of Guerrero, Mexico.

¹ "Campana de Desprestigio contra Defensores de Derechos Humanos en el Estado de Guerrero", 'All Rights for Everybody' National Network of Civilian Human Rights Organizations, September 23, 2004.

² "La Represión y el Encarcelamiento como Método de Atención a los Conflictos", Tlachinollan Human Rights Centre, Chilapa Citizen's Council, Council of Ejidos and Communities Opposed to La Parota, Carrizalillo Community Authorities, Regional Council for the Development of the Me'phaa Bathaa Peoples, José María Morelos y Pavón Regional Human Rights Centre, November 12, 2007.

³ "Diagnóstico sobre la Situación de los Derechos Humanos en México", Office of the High Commissioner for Human Rights, December 2003, page 11.

⁴ Tlachinollan Human Rights Centre, *ob cit.*

⁵ "Acción Urgente", Tlachinollan Human Rights Centre, August 10, 2007.

⁶ La Jornada Guerrero, October 14, 2007.

⁷ El Sur, August 13 and October 16, 2007.

⁸ "Boletín de prensa", Tlachinollan Human Rights Centre, October 19, 2007.

⁹ "Urgent Action", Amnesty International, AI Index: AMR 41/019/2007, May 2, 2007.

Psychosocial impacts

LEGAL PRESSURE CAUSES PSYCHOLOGICAL DAMAGE

AVRE Corporation has been carrying out interdisciplinary psychosocial and mental health work in Colombia with a focus on human rights since 1992. In this interview, three professionals from the organization explain how the psychosocial impact caused by spurious criminal charges not only affects the victim, but also the entire organizational, family and social environment. This impact is similar to psychological torture and has an evident purpose of breaking people down, undermining opposition, and destroying the social and community fabric.

With respect to your work assisting victims of political violence, do you have experience working with persons or communities affected by unfounded prosecutions?

Yes, we offer individual clinical consultations here in Bogotá and in different parts of the country. As we have observed, it is not only the unfounded charges against a single person, but also a series of actions against what the person represents. There are many other actions –legal or otherwise–, which surround the specious accusations and cast doubt, uncertainty, and fragmentation on the collective action, including increased military presence in the organization's areas of influence, further stigmatization and intimidation, and surveillance of family members and the activities of the organization.

What psychosocial impact is caused by these unfounded charges?

It is something that touches absolutely every aspect of life. It affects the person and family. A very considerable unease even develops within society. We have identified an increase in irritability, distrust, rage, and indignation. People often do not have anywhere to place these sentiments, which often comes back to haunt them or affects their interaction with family and friends, causing pessimism, hopelessness, and distrust. When a human rights defender goes from accuser to accused, these manifestations are reinforced, which can result in a loss of confidence in oneself, a lack of belief in society and in the conception of justice. We find there to be greater vulnerability in physical and mental health. There are also elements similar to psychological torture, such as ongoing hyper-watchfulness due to the fear of being harmed. This can reach a

breaking point when the person is not able to be their former self again.

How long may this impact last?

The effects can become permanent. They can cause emotional wounds if one does not recognize what is happening and does not take the appropriate measures. Furthermore, reliving what happened –receiving phone calls, seeing unknown persons, knowing they have the personal information of your family– perpetuates this impact. This is especially true when the setting of impunity has remained in place.

Do unfounded prosecutions also have an impact on the family of the persons directly affected?

Of course, it affects all intrafamily dynamics. The young suffer from waves of sadness and rage. They see limitations to their life in the future. Their partner and children also develop contradictory feelings: «*I admire you for what you do, for what you fight for, but at the same you are affecting my life*». Moreover, there is much ambiguity concerning the authority figure within the family. Past conflicts are taken up again and, hence, along with the anguish and fear for the criminally prosecuted family member, the nuclear family is weakened.

From the psychosocial point of view, how have the unfounded criminal charges affected the organizations?

The strategic objective of the State is to «*break the organization*». The «*spurious charges*» thwart response capability because no one is directly threatened. No one is being disappeared. It is much more subtle. Little by little, these investigations paralyze people, who decide to progressively give up what they have been doing. What happens to the criminally prose-

cuted leaders –or those deprived their liberty– affects other aspects of the same community, creating a climate of anxiety and uncertainty and causing the community to halt their actions. The members of the organization fear that what happened to their leaders may also happen to them. The collective also experiences this hopelessness.

Is this impact intentional or collateral?

The impact has the purpose of permeating everything: the individual, the family, and the collective. The three levels are well related and the purpose is evident: if harm is caused to the individual, there are consequences in other areas. If confidence is undermined in the human being, the family, and the organization, the opposition is also undermined. This is a clear purpose.

How do these kinds of unfounded criminal charges affect the imagination of Colombian society? And what consequence may this have?

The consequence is an apparent polarization of Colombian society. Human rights defenders are stigmatized, because they are presented as persons hindering the development of society and deserving persecution. This creates paralysis in the development of civil processes and has transgenerational impact.

In this context, what role can be played by psychosocial work?

Our duty is to decipher the hidden purpose behind these apparently erratic actions. It is important to carry out comprehensive support and strengthen the individual, the family, and the organization so the perverse effects of malicious prosecutions do not achieve their objective of fracturing and breaking up the social fabric.

«Jail created a label, which has made relationships difficult with acquaintances and friends, since some people will always wonder if I really was a terrorist as the Public Prosecutor's Office stated. On the other hand, there is the exasperation when the issue is mentioned as well as the self-prohibition of remembering such painful moments such as the day I entered the jail». Claudia Montoya, lawyer at the Youth Network of Medellín.

«It is logical to imagine the existential turmoil for family relations caused by the deprivation of liberty, given that the loss of my freedom, as well as the coverage

given by the news, created an environment of anxiety, uncertainty, and anguish, compounded by an acute stress, and an even more complex smear in certain social spaces of my personal and family life that misinterpreted the situation and immediately condemned me». Alejandro Quincena, human rights defender in Medellín.

«His mom used to call me up with anguish. She thought it was unjust, that fighting for the people wasn't worth the trouble, because it only caused problems. Gabriel's family was very upset with him, with his

radical position, with the FCSPP, truly with much hopelessness. Gabriel told me he wanted to commit suicide, that he felt very alone, that he was worried about the situation in jail, because it was said that the paramilitaries were going to come in and there would be confrontations. I told him: 'You have a family, you have a son, and this situation was not going to last the rest of his life. You are worth a lot, your work is worthwhile, and you are in jail due to an injustice'. Banessa Estrada Martínez, wife of Gabriel González, coordinator of the FCSPP Santander chapter.

Recommendations

PBI recognizes that every State demonstrates the existence of the rule of law when accusations against those presumed to be responsible for committing criminal acts lead to legal investigations in which the guarantees to due process are respected.

However, PBI, through its work accompanying human rights defenders and providing international observation, has observed with concern a pattern of harassment through judicial persecutions against human rights defenders, as has been presented in this publication. PBI observes that the unfounded prosecution of human rights defenders hinders the work of those affected, questions their legitimacy, and even violates their safety and integrity.

PBI makes the following recommendations to the international community:

1. Reiterate to the Colombian State its obligation **to respect the presumption of innocence**, to not initiate legal proceedings based on uncorroborated intelligence reports or manipulated testimony, and ensure the right to defense. Furthermore, the State should guarantee that no human rights defender is subjected to detention or imprisonment through grounds and methods, while still being legal, may be considered incompatible with respect to fundamental rights.
2. **Monitor cases of legal investigations** initiated against human rights defenders, principally when the grounds for these investigations are their very activities to defend human rights. Under these circumstances, it could be suspected the investigations are stimulated by political motives.
3. Urge the Colombian State, in accordance with its international obligations, **to actively recognize and support human rights defenders** and the legitimacy of their work and provide a system of comprehensive reparation, including the moral reparation of the affected human rights defender.
4. Request the Colombian State to implement the repeated recommendations of the Office of the United Nations High Commissioner for Human Rights¹. Specifically, the recommendation referring to **the revision of the military intelligence files** by the Procurator-General's Office so as to exclude baseless, erroneous or biased information, which incriminates or falsely accuses human rights defenders.
5. Remind senior officials from the Colombian State of the applicability of Presidential Directive 07 (1999) and Ministry of Defense Directive 09 (2003), which **prohibit State officials from making groundless accusations** against human rights defenders, and insist that institutions and senior public officials develop a culture of support for the service provided by human rights defenders to democracy as an important means of control by civil society.
6. Establish indicators that allow governments and aid agencies to **develop certification parameters** for the conditioning of official development aid to the fulfillment of guarantees to due process.

¹ Recommendation number 8 (Paragraph 135) from the 2004 annual report (Session 61, February 2005), recommendation number 6 from the 2005 annual report (Session 62, January 2006, Appendix 1) and recommendation number 13 (Paragraph 125) from the 2006 annual report (March 2007) from the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia.



www.pbi-colombia.org

Peace Brigades International (PBI) is a Non Governmental Organization registered with the United Nations which since 1994 has a permanent team of international observers/accompaniment in Colombia. Its aim is to protect the space of legally recognized human rights defenders, who suffer repression for their non violent work on behalf of human rights.

To achieve this objective, the PBI Colombia Team accompanies (always through local petition) people or organizations who are threatened, distributes information on the evolution of the conflict, and carries out advocacy and lobbying activities with civil and military authorities, as well as with state organisms, NGOs, the Church, diplomats and other organizations, promoting international action.

If you consider that PBI's presence is useful to protect the persons who work on behalf of human rights, you could:

- ❖ Support us financially, as an individual or through an organization.
- ❖ Join the PBI group closest to you. Support the international network from your city.
- ❖ Become a PBI volunteer (regardless of origin, race, sexual orientation or religion).

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