Lawyers' Rights Watch Canada

The Law Society of England and Wales

BAR HUMAN RIGHTS COMMITTEE OF ENGLAND & WALES

International Bar Association Human Rights Institute

The General Council of the Bar · Justice for All ·

Lawyers for Lawyers

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04 December 2018

Your Excellency,

Colombia – Threats against lawyer Daniel Prado Albarracín; judicial independence

The Law Society of England & Wales is the professional body representing more than 180,000 solicitors in England and Wales. It aims to promote and support solicitors while upholding the rule of law, legal independence, ethical values, and the principle of justice for all around the world. The Law Society holds Special Consultative status with the United Nations Economic and Social Council since 2014.

The Bar Council of England & Wales represents over 16,000 barristers in England and Wales. It promotes fair access to justice for all, as well as the Bar's specialist advocacy and advisory services and the highest standards of ethics, equality and diversity across the profession. The Bar Council is committed to championing and upholding the rule of law in England and Wales, and around the world, by highlighting its importance at every opportunity.

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote international human rights, the integrity of legal systems and the rule of law through advocacy, education and legal research. LRWC is a volunteer-run NGO in Special Consultative status with the United Nations Economic and Social Council.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

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Lawyers for Lawyers is an independent lawyers' organization, which seeks to promote and protect the independence of the legal profession through the support of lawyers around the world, who face reprisals, improper interferences or restrictions in carrying out their professional functions. Lawyers for Lawyers has Special Consultative status with the United Nations Economic and Social Council since 2013.

The Bar Human Rights Committee of England and Wales (BHRC) is the independent, international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The Law Society, the Bar Council, LRWC, IBAHRI, Lawyers for Lawyers, and BHRC are very concerned about the situation of the lawyer Daniel Prado Albarracín, who currently represents victims of crimes committed by the paramilitary group "The 12 Apostles". The Attorney General's office opened investigations into the murders and disappearances committed by this group between 1988 and 1997 in the North of Antioquia. Criminal proceedings are ongoing against one of the 12 Apostles' alleged founder, Santiago Uribe Vélez, and several other defendants before the *Juzgado Primero Especializado de Antioquia*. Final submissions are expected to be made between 3 and 7 December 2018.

Throughout the course of these criminal proceedings, Mr. Daniel Prado has been subjected to serious intimidation, including: death threats; being followed by armed men after attending court hearings, and defamatory public statements against him by high ranking public officials. Such statements contribute to Mr Prado's safety risks by fuelling hostility and encouraging reprisals.

Mr. Prado has been granted precautionary measures by the Inter-American Commission on Human Rights (*Medida cautelar* N° 261-16 of 20 November 2017), which found that the requirements of urgency, gravity, and irreparability had been met, and stated that "the rights to life and personal integrity of Mr. Daniel Ernesto Prado Albarracín are at grave risk". We understand that, although the *Unidad Nacional de Protección* provided him with a car as a security measure, the allocated car does not have any windows with fortified glass, which means that the vehicle does not provide adequate protection.

In accordance with the UN Basic Principles on the Role of Lawyers, we emphasise that lawyers should not be identified with their clients or their clients' causes and should be able to carry out their professional duties without outside interference or intimidation. It is the responsibility of the Colombian State to guarantee Mr. Prado's physical and psychological integrity and to provide him with adequate protection measures when his security is threatened in the exercise of his functions. To the extent that Mr. Jaime Herrera Niño and the prosecutor – Mr. Carlos Ibán Mejía have been subjected to intimidation, because of their engagement with the case of "The 12 Apostles", they should also be provided with adequate protective measures, as should the victims and witnesses.

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Only by implementing these measures would the effective functioning of the justice system in Columbia be secured.

We are further concerned that these threats against Mr. Prado are taking place within the context of an environment which is witnessing and increasing number of attacks on lawyers and human rights defenders in Colombia, after the signing of the peace agreement between the Government of Colombia and the FARC. The most recent official statistics of the United Nations Office of the High Commissioner on Human Rights (OHCHR) indicate that:

> "In 2017, OHCHR registered a total of 441 attacks including 121 killings. Fatalities included 84 human rights defenders with leadership roles, 23 members of social and political movements, and 14 people killed during social protests. OHCHR also recorded 41 attempted killings; 213 threats; 61 violations of the rights to privacy and property (e.g., unsolicited photos and information theft); four forced disappearances; and the rape of a woman activist."[1]

The number of attacks has increased from 389 in 2016[2] to 441 in 2017. It is worth noting that these numbers only include attacks on leaders and that more persons have been subjected to such attacks.[3] Moreover, cases may have gone unreported in regions where access to media and international mechanisms is more difficult.

Another development that is of concern to us is your Government's proposal to reform the justice system, to the extent that such reforms would seek to establish one single High Court (thereby eliminating the existing Constitutional Court, Supreme Court, Administrative Supreme Court, and Judicial Council). These reforms are being justified on the basis that they might prevent institutional clashes and increase judicial efficiency. However, proposing such an overhaul within the current transitional context, without first undertaking a gradual and comprehensive review of the Colombian judicial system, also poses a considerable threat to judicial independence that could undermine public confidence. It is also important to note that the Constitutional Court and the Criminal Chamber of the Supreme Court have played an important role in preserving the separation of powers and thus counter-balancing the legislative and executive powers, which is especially relevant in cases where parliamentarians were found to have colluded with paramilitary forces.

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[1] Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 2 March 018, A/HRC/37/3/Add.3, http://www.hchr.org.co/index.php/informes-y-documentos/informes-anuales/8887-informe-del-alto-comisionado-de-las-naciones-unidas-para-los-derechos-humanos-sobre-la-situacion-de-derechos-humanos-en-colombia-durante-el-ano-2017, para. 8.

[2] Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/34/3/Add.3, 14 March 2017, Para. 54. https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session34/pages/listreports.aspx, para. 54.

[3] Ibid.

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Therefore, judicial reform initiatives and public statements that challenge existing judicial structures and undermine judicial legitimacy are of great concern because we feel that they would have the effect of undermining the judiciary. Most importantly, the physical integrity of judges and lawyers might be compromised, which is a worrying trend that could have severe repercussions for the rule of law and democracy in Colombia. As you will be aware, the United Kingdom and other countries take into consideration the effective functioning of the rule of law when making decisions regarding foreign investment and other matters. Apart from the importance of the rule of law *per se*, it is in the interests of Colombia, as a significant player in the Latin American region, to abide by its international legal obligations and the principles underlying adherence to the separation of powers which require that the independence of the judiciary and the legal profession are maintained at all times.

Regarding the physical integrity and the right to private life of Mr. Prado, and the independence of the judiciary, Colombia is bound by the provisions set out in the following international instruments:

The International Covenant on Civil and Political Rights 1966, ratified by Colombia on 29 October 1969:

Article 7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 17. 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference and attacks.

The American Convention on Human Rights, ratified by Colombia on 28 May 1973:

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

Article 11. Right to Privacy

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

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We also draw your attention to **The United Nations Basic Principles on the Role of Lawyers (1990),** which provide that:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened because of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Moreover, the **United Nations Basic Principles on the Independence of the Judiciary** (1985) state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

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The Law Society, the Bar Council, LRWC, IBAHRI, Lawyers for Lawyers, and BHRC respectfully urge the relevant authorities:

1. To investigate promptly and effectively all threats and acts of intimidation and harassment against Daniel Prado and others involved in the legal proceedings in the case of "the 12 Apostles" and ensure that such acts are not repeated;

2. To provide adequate security measures (in consultation with Mr. Prado and in compliance with the precautionary measures ordered by the Inter-American Commission on Human Rights) to ensure the personal safety and physical integrity of Mr. Prado and others involved in the case of "the 12 Apostles";

3. To comply with Colombia's international obligations to ensure that Mr. Prado and other members of the legal profession can carry out their professional duties without harassment and improper interference; and

4. To ensure the independence of the judiciary and other members of the legal profession in Colombia and prevent any law reforms negatively affecting such independence.

We will continue to monitor the situation of lawyers, judges, and human rights defenders in Colombia, particularly the situation of Mr. Daniel Prado.

Yours sincerely,

Christina Blacklaws
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