

A Human Rights First White Paper

# Colombia's Human Rights Defenders in Danger

Case Studies of Unfounded Criminal Investigations against Human Rights Defenders

September, 2007

## About Us

Human Rights First believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will stem tyranny, extremism, intolerance, and violence.

Human Rights First protects people at risk: refugees who flee persecution, victims of crimes against humanity or other mass human rights violations, victims of discrimination, those whose rights are eroded in the name of national security, and human rights advocates who are targeted for defending the rights of others. These groups are often the first victims of societal instability and breakdown; their treatment is a harbinger of wider-scale repression. Human Rights First works to prevent violations against these groups and to seek justice and accountability for violations against them.

Human Rights First is practical and effective. We advocate for change at the highest levels of national and international policymaking. We seek justice through the courts. We raise awareness and understanding through the media. We build coalitions among those with divergent views. And we mobilize people to act.

*Human Rights First is a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.*

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## Executive Summary

Human rights defenders in Colombia play a legitimate and essential role in protecting basic rights and strengthening democratic institutions. Yet they are frequently subjected to spurious criminal charges such as rebellion, alleging that they are members of guerrilla organizations, as is described in this White Paper in relation to Príncipe Gabriel González Arango. Other human rights defenders, such as Iván Cepeda Castro, are speciously charged with slander or libel for exposing human rights violations. Human Rights First fears that these charges are often politically motivated and intended primarily to discredit and stigmatize human rights defenders, thereby preventing them from performing their important work and placing them at risk of attack by paramilitary organizations.

This White Paper contains the following recommendations in order to address this problematic situation:

1. The Colombian Attorney-General, or the prosecutors in charge of each respective case, should close the criminal investigation against Iván Cepeda Castro and drop the appeal against the acquittal of Príncipe Gabriel González Arango.
2. The offences of slander and libel should be removed from the Colombian Criminal Code (decriminalized). While legitimate civil complaints, the Inter-American Commission on Human Rights has repeatedly stated that such criminal offences are incompatible with the American Convention on Human Rights.<sup>1</sup>
3. The Attorney-General should conduct a comprehensive internal investigation, focusing especially on regional prosecutors, into corruption, including connections with paramilitary organizations. On the basis of that investigation the government should dismiss from its employment all individuals, from judicial and prosecutorial institutions, shown to be corrupt or connected to paramilitaries.
4. The Attorney-General should question the use, by prosecutors, of witnesses who are ex-combatants and who are receiving reintegration benefits, or whose testimony might otherwise be influenced through coercion or inducements. Prosecutors should reject uncorroborated testimony by witnesses with paramilitary backgrounds.
5. The Attorney-General should issue a resolution or directive addressed to all judicial and prosecutorial institutions reemphasizing the Colombian and international law (cited in this White Paper) which sets standards for impartial investigations, fair trials, and bars politically motivated criminal proceedings. The resolution should also instruct prosecutors that as a matter of policy the Attorney-General will not tolerate the initiation of criminal investigations against human rights defenders without due cause.
6. Public officials, especially senior government members, should refrain from making statements which discredit or stigmatize human rights defenders and that can give the impression that the government condones illegal acts of violence against them.
7. The Attorney-General should create a centralized unit within his office responsible for investigating all criminal allegations against recognized human rights defenders. The office should be led by a renowned prosecutor. All current cases against defenders should be transferred to this unit.
8. The Colombian government should enact legislation that regulates how the information contained in government intelligence reports is collected and used. The Ombudsman (*Procurador General*) should be mandated to review intelligence reports to exclude from those reports all unfounded information which incriminates or is prejudicial to human rights defenders.<sup>2</sup> The law should also include a bar on the dissemination of information from intelligence reports to law enforcement or private citizens that defames or prejudices human rights defenders from uncorroborated sources.

## I. Introduction

Colombia is one of the most dangerous countries in the world for human rights defenders. A human rights defender is anyone who nonviolently promotes or protects human rights.<sup>3</sup> In the context of decades of internal armed conflict between the army, paramilitary groups and guerrilla forces, dozens of human rights defenders are still murdered every year, including labor rights activists, lawyers, indigenous leaders, members of nongovernmental human rights organizations (NGOs), and community and religious leaders. The Colombian Commission of Jurists reported that in 2005 alone at least 41 human rights defenders were murdered or forcibly “disappeared.”<sup>4</sup> In very few of these cases are those responsible brought to justice.

Human Rights Defenders also face a range of other attacks and forms of intimidation such as smear campaigns and break-ins, threatening and omnipresent surveillance, death threats, physical assaults, kidnapping, and assassination attempts. However, this White Paper focuses on one particular problem: the use of politically motivated criminal charges to harass, stigmatize, detain, and endanger the lives of human rights defenders.

Through two detailed case studies the White Paper demonstrates that the work of human rights defenders in Colombia is often impeded by unsubstantiated criminal charges leveled against them by government authorities. It shows how the law and the judicial system are misused to harass and intimidate human rights defenders. These specious criminal charges, typically based on spurious allegations, are often widely publicized and thus undermine the credibility of defenders, which causes them to become stigmatized and marks them as targets of physical attack, often by paramilitary groups.<sup>5</sup> Legal proceedings often entail prolonged arbitrary detention of the accused during open-ended investigations. Investigations are generally undertaken with respect to one or more of a standard set of offences that are particularly open to political misapplication: slander, defamation, rebellion, contempt of authority, attacks on public order, or the formation of an illegal or terrorist group. Such criminal investigations are often carried out against defenders under the guise of combating terrorism and defending “democratic security.” However, Human Rights First is concerned that such prosecutions are often part of an official strategy to distract the attention of human rights defenders from exposing human rights violations. Defenders themselves are sometimes not informed of, or are not otherwise aware of, the charges against them, and government authorities have in some cases allegedly paid witnesses to give false testimony. Those under investigation or in detention are frequently and wrongly portrayed by public officials as supporters of subversive groups — hobbling their ability to work for human rights and routinely exposing them to the risk of assassination.

Human Rights First has documented this problem and advocated on behalf of many Colombian human rights defenders who have been subject to spurious criminal charges.<sup>6</sup> The use of baseless charges against human rights defenders has been recognized by a large number of institutions including: the United States’ Department of State;<sup>7</sup> United Nations Human Rights Committee;<sup>8</sup> Office of the High Commissioner for Human Rights in Colombia;<sup>9</sup> Special Representative of the Secretary-General on human rights defenders<sup>10</sup>; Representative of the Secretary-General on the human rights of internally displaced persons;<sup>11</sup> United Nations Working Group on Enforced or Involuntary Disappearances;<sup>12</sup> Special Rapporteur on the right to education;<sup>13</sup> Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance;<sup>14</sup> Special Rapporteur on the independence of judges and lawyers;<sup>15</sup> Inter-American Commission on Human Rights (IACHR);<sup>16</sup> Amnesty International;<sup>17</sup> Observatory for the Protection of Human Rights Defenders;<sup>18</sup> Latin America Working Group;<sup>19</sup> Center for International Policy;<sup>20</sup> Washington Office on Latin American;<sup>21</sup> and the U.S. Office on Colombia.<sup>22</sup>

This White Paper presents two emblematic case studies of human rights defenders subject to specious criminal charges. The two cases were selected because they illustrate different types of criminal charges and are at different stages in the legal process. The case studies thereby illuminate the broad spectrum of problems which human rights defenders face when subject to unfounded criminal charges. Both individuals are recognized human rights activists whose human rights work has been recognized by the Colombian government. Both have suffered numerous threats due to their advocacy and are now subject to criminal investigations initiated with surprising speed and vigor given the wider impunity which exists in Colombia for even the most serious human rights violations. Section 2 of this White Paper details the baseless nature of the slander and libel charges against Iván Cepeda Castro, while section 3 explains how the rebellion charges against Príncipe Gabriel González Arango are

unfounded. Section 4 highlights the common aspects of the case studies, reflects on the problem of political prosecutions more broadly, and presents recommendations addressing this serious situation.

## II. The Case of Iván Cepeda Castro



Iván Cepeda, delivering acceptance speech for receiving Human Rights First's Roger Baldwin Medal of Liberty, June 2007

### A: Iván Cepeda: A Renowned Colombian Human Rights Leader

Iván Cepeda is a brave human rights defender who has selflessly promoted the rights of victims of Colombia's internal armed conflict and created a national social movement to call for justice.<sup>23</sup> He is an outspoken critic of paramilitarism in Colombia, and a powerful advocate for human rights. Motivated into activism by the brutal assassination of his father, Colombian Senator Manuel Cepeda Vargas, Iván Cepeda is currently the Director of the Manuel Cepeda Vargas Foundation and Spokesperson for the National Movement for Victims of State Crimes (MOVICE), an umbrella organization of more than 200 Colombian human rights organizations. He is also a columnist in the leading Colombian newspaper *El Espectador* where he writes on human rights, victims' rights, and impunity. His human rights advocacy has been well documented by the international media.<sup>24</sup> In recognition of his outstanding promotion of human rights, at considerable personal risk, Human Rights First awarded him the Roger N. Baldwin Medal of Liberty in June 2007.<sup>25</sup> The award recognizes the importance and legitimacy of his human rights work.

Through remarkable perseverance Cepeda has demonstrated that paramilitary groups, with the complicity of members of the Colombian armed forces, have committed numerous serious human rights violations. He has sought accountability for a two-decade political campaign to assassinate members of the Patriotic Union political party which his father belonged to. Cepeda's method has been to expose government violations and shame responsible officials. He has helped demonstrate the legal culpability of the government in various serious human rights violations in both Colombian courts and the inter-American human rights system.<sup>26</sup> Despite facing considerable personal risk, he has participated actively in the documentation of more than 40,000 cases of crimes against humanity with the *Nunca Mas* (Never Again) investigation.<sup>27</sup> He has also been extremely active in creating public spaces which incorporate historical memory, such as the Gallery of Memory program where victims from all over the country are honored.

As a result of his high-profile defense of human rights, Cepeda has been subject to a variety of death threats and attacks. He has twice been forced to live in exile, returning to Colombia most recently in 2003. On July 26, 2006, the IACHR awarded him and his wife precautionary measures.<sup>28</sup> Precautionary measures are only awarded to

protect life and personal integrity in “serious and urgent cases... to prevent irreparable harm to persons.”<sup>29</sup> The Colombian Interior and Justice Ministry has included him in their human rights protection program and provide him with an armored car, bodyguard and bullet-proofing to the windows in his residence, among other protective measures.<sup>30</sup> Despite this protection, he continues to be at risk. In April 2006 and August 2007, he received email death threats from paramilitaries.<sup>31</sup> On November 24, 2006 his car was stopped by armed men allegedly from the state Judicial and Investigative Police (SIJIN) who acted threateningly and fled the scene when they realized Cepeda was not in the car.<sup>32</sup>

## **B: Unfounded Charges: Slander and Libel for Exposing Human Rights Violations**

### **i. Overview of Charges**

Cepeda is now facing another type of threat. The Fifth Delegate of the prosecutor’s office in Sincelejo, Sucre Department, North-Western Colombia initiated a criminal investigation against him for allegedly committing criminal slander and libel.<sup>33</sup> The investigation was the result of a formal complaint lodged against Cepeda by Jose María Conde Romero, a congressman from Sucre in the Colombian House of Representatives (*Camara*).<sup>34</sup> Conde complained that Cepeda had criminally defamed him during a speech Cepeda made on November 27, 2006, at a public meeting in San Onofre, Sucre. The hearing was convened jointly by Cepeda’s organization, MOVICE and the Human Rights Commission of Colombia’s Senate to support victims and witnesses to come forward with information they had about connections between paramilitaries and politicians in Sucre.

As Cepeda explained in that speech, from the 1990s until recently, San Onofre suffered under brutal paramilitary control.<sup>35</sup> According to local organizations more than 3,000 human rights violations were committed in San Onofre by paramilitary groups between 1999 and 2005.<sup>36</sup> Those violations reportedly included torture, assassinations and enforced disappearances.<sup>37</sup> Paramilitary threats have successfully deterred most citizens from publicly testifying about the relationships between paramilitaries and politicians in that region. For example, in October 2006 a paramilitary extermination list came to light which contained the names of 26 people including human rights defenders from Sucre and members of MOVICE.<sup>38</sup> However, recently, a few brave victims and human rights defenders, such as Cepeda, have started to report on those relationships and the human rights violations that were committed.<sup>39</sup>

At the hearing, and after testimony from San Onofre residents of links between public officials in the region and paramilitary groups, Cepeda stated the following:

“We want to report at this hearing that Congressman José Conde Romero... has had connections with paramilitary groups of the region. We possess testimonies and information that Representative Conde was accused of planning the assassination of Victor William Ramírez Salcedo, now a member of the *Polo Democrático* (political party). In August 2004, Conde and his political allies met with paramilitaries to devise an attempt on the life of their opponent.”<sup>40</sup>

With those words, Cepeda allegedly committed criminal slander and libel. In the same speech he also called for the Mayor of San Onofre, Jorge Blanco Fuentes, to resign given his reported paramilitary connections.<sup>41</sup> On May 3, 2007, the prosecutor’s office attempted to raid the offices of the Senate Human Rights Commission, reportedly in connection with its investigation against Cepeda.<sup>42</sup> The Commission, which co-organized the hearing in San Onofre, possesses sensitive and confidential human rights information.<sup>43</sup> It is not clear what legitimate motive the prosecutor’s office had in seeking information from the Commission in carrying out its investigation into whether Cepeda’s comments constituted slander or libel.

After extensive advocacy by Human Rights First<sup>44</sup> and a letter from members of U.S. Congress,<sup>45</sup> on August 8, 2007, the Colombian Attorney-General issued a resolution appointing a Bogota-based prosecutor to head the investigation instead of the Sucre prosecutor.<sup>46</sup> In that resolution the Attorney-General stated that given “the special

circumstances of the Department of Sucre... and in the interests of obtaining an investigation that cannot be labeled as partial, it is best to order the re-assignment [of the prosecutor].”<sup>47</sup>

## ii. Spurious Charges and Partial Investigation

Cepeda’s comments and opinion were not made falsely or out of malice towards Conde, as would be necessary before the prosecutor could justly entertain a claim of slander or libel of a public official. Conde has publicly recognized that in 2004 Ramirez lodged a complaint with a prosecutor in Sucre alleging that Conde was involved in planning an attempt on his life.<sup>48</sup> In February 2007, Cepeda formally lodged that complaint with the Supreme Court of Justice.<sup>49</sup> Moreover, in the current political climate in Colombia, the accusation that a member of Colombia’s Congress is affiliated with paramilitary groups is not exceptional. In what has become labeled the “parapolitics” scandal, revelations of the sort that Cepeda gave at the hearing in San Onofre have led to dozens of congressman and public officials being imprisoned, charged, sentenced, and forced to resign for connections to paramilitaries.<sup>50</sup> The list of implicated officials includes many of Conde’s fellow Congressman from Sucre.

Cepeda was bravely and publicly exposing what he considered, on the basis of testimonial evidence, to be public corruption and the involvement of Conde in potential human rights violations. He was expressing his opinion as to the fitness of a public official to fulfill his elected duty. Such comments on a matter of public interest cannot constitute criminal slander or libel. On the contrary, it is the right of Cepeda and every citizen to criticize public officials. While human rights defenders, like any other citizen, should not abuse their freedom of expression by making false and spiteful statements against public officials, it is especially important that they should not feel constrained in speaking openly about the observance of human rights principles by state officials.

An impartial investigation would have revealed the allegations against Cepeda to be unfounded given the lack of facts to justify them. However, as the Attorney-General recognized in his resolution re-assigning a Bogota prosecutor to the case, an impartial investigation in Sucre may be difficult to obtain. Evidence of the partial nature of this investigation was the speed with which it was initiated in contrast to the criminal complaints that Cepeda and MOVICE lodged with the Sucre prosecutor after the November hearing, which have not been acted upon.<sup>51</sup> Instead of investigating Cepeda, the prosecutor should be investigating the allegations that Cepeda and MOVICE have leveled at public officials.

Finally, it is clear that that some politicians and paramilitary groups are fearful that Cepeda’s human rights work might implicate them in human rights violations.<sup>52</sup> The interception of Cepeda’s car, reportedly by government agents, as described above, just days before the well publicized hearing in San Onofre may suggest that some elements of the Colombian security services did not want him testifying at that hearing. Given the unfounded nature of the charges against Cepeda and the high levels of corruption in Sucre, Human Rights First is concerned that the investigation may have been motivated by a desire to deter Cepeda from performing his valuable work.<sup>53</sup>

## C: The Importance of Human Rights Defenders Freely Expressing Opinions

The right to freedom of expression is a fundamental right accorded protection in the International Covenant on Civil and Political Rights (ICCPR) and American Convention on Human Rights (ACHR) as well as many other international legal documents.<sup>54</sup> As the Inter-American Court of Human Rights has stated, freedom of expression “is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion... Consequently it can be said that a society that is not well informed is not a society that is truly free.”<sup>55</sup> Human Rights Defenders play a critical role in the formation of public opinion and enhance a society’s ability to receive information and divergent ideas. When human rights defenders like Cepeda are charged for expressing their opinions it not only deters them from performing their valuable human rights advocacy but also has a wider “chilling effect” on society discouraging various forms of political scrutiny and criticism.<sup>56</sup> When human rights defenders and others are dissuaded from scrutinizing public officials “democracy is transformed into a system in which authoritarianism and human rights violations find fertile ground for imposing themselves...”<sup>57</sup>



The United Nations Human Rights Defenders Declaration specifically recognizes the right that everyone has to publicly air their opinions and criticize public officials by protecting the rights to:

- “discuss, form and hold opinions on the observance ... of all human rights ... and, through these and other appropriate means, to draw public attention to these matters...”;<sup>58</sup> and
- “submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights...”.<sup>59</sup>

On April 30, 2007, Colombian President Alvaro Uribe said that the Colombian government was “preaching and practicing” the principles contained in the U.S. government’s Guiding Principles on Non-Governmental Organizations.<sup>60</sup> Principle 3 states that “NGOs should be permitted to carry out their peaceful work in a hospitable environment free from fear of harassment, reprisal, intimidation and discrimination.”<sup>61</sup> Yet the environment in which Colombian human rights defenders operate could not be further from this ideal. Subjecting defenders, such as Cepeda, to baseless criminal charges, is a form of harassment and intimidation which discredits and dangerously stigmatizes them.

### III. The Case of Príncipe Gabriel González Arango



Príncipe Gabriel González Arango is a prominent student leader and was Regional Coordinator of the Political Prisoners Solidarity Committee (*Fundacion Comité de Solidaridad con los Presos Políticos* (CSPP)) in Santander department.<sup>62</sup>

#### **A: The Political Prisoners Solidarity Committee: Under Threat for Standing Up for Human Rights**

The CSPP is one of Colombia’s oldest human rights organizations, established in 1973. Originally focused exclusively on providing legal and non-legal assistance to prisoners, it now also engages in a full spectrum of national and international human rights advocacy. The CSPP highlights human rights violations as they occur and is a participant in the formulation of the National Action Plan for Human Rights.<sup>63</sup> It continues to provide legal and non-legal assistance to prisoners, especially to victims of arbitrary detention and of torture and other cruel, inhuman and degrading treatment in detention centers and prisons around the country.

On July 30, 1999 the IACHR recognized the caliber of its human rights work and the risks that it faces due to the nature of its work. The IACHR requested that the Colombian government adopt precautionary measures to protect the life and personal integrity of the members of CSPP.<sup>64</sup> The IACHR noted in doing so that members of the CSPP

have already been assassinated, “disappeared,” threatened, and attacked. Since 2005 alone, four members of the CSPP have been killed.<sup>65</sup> CSPP has also been subject to politically motivated break-ins and members have been unjustly detained and subject to baseless criminal charges.

The CSPP provides important services to prisoners, including legal representation, and is cited widely as a committed voice for human rights in Colombia by both the international human rights community and in sources including the U.S. Department of State’s annual human rights report.<sup>66</sup> The majority of attacks against the CSPP have been attributed to paramilitary forces which often incorrectly assume that the CSPP, through its assistance of political prisoners and the denunciation of human rights abuses, supports guerrilla movements such as the FARC (Revolutionary Armed Forces of Colombia). The CSPP rejects these false insinuations and makes extraordinary efforts to ensure its work adheres to the highest standards of human rights protection.<sup>67</sup> The CSPP has in place strict policies to ensure that its members are not engaged in activities contrary to the human rights aims of the organization. These policies are enforced through regular evaluations and screening procedures.<sup>68</sup>

### **B: Príncipe Gabriel González Arango: A Human Rights Defender at Risk**

Príncipe Gabriel González was born in 1976 and is married to Jiseth Baness Estrada Martinez, a lawyer with the well-known human rights organization Regional Corporation for the Defense of Human Rights (CREDHOS), in Barrancabermeja. González started his promotion of human rights in the 1980s as a leader in the Catholic Church and Colombian Scout Association. In the 1990s, as a leader of the local council of community action (*junta de accion comunal*) he promoted the participation of young people in the local democratic process in Pamplona, North Santander.<sup>69</sup> From 1995 he was heavily involved in advocating on behalf of university students as a student leader at the Industrial University of Santander (UIS) in Bucaramanga, Santander, where he was studying engineering and later law. From 2000 to 2002, as student leader, he instigated a series of organized and well-publicized student protests against UIS in relation to education issues which elevated his profile.<sup>70</sup> In 2005 he was Human Rights Secretary for the National Student Federation in Colombia.<sup>71</sup>

He has been a member of the CSPP in Santander since 2002 where he worked with prisoners in detention centers who had been the victims of arbitrary detention, torture or cruel, inhuman or degrading treatment. As Santander Coordinator for CSPP he visited prisoners to provide seminars about human rights and related legal topics and in some cases also provided referral services by locating public defenders or lawyers for them.<sup>72</sup> The president of the CSPP, Agustin Jimenez Cuello, testified that González was an outstanding and valued member of the CSPP.<sup>73</sup>

Santander and North Santander departments were, and remain, an area of significant paramilitary strength.<sup>74</sup> González’s efforts in assisting the local community and UIS students to organize may have unsettled paramilitary groups who sought to control communities through fear and intimidation. In 1999 he received his first threat from Pamplona paramilitaries for his work with the local council of community action.<sup>75</sup> Those threats increased as his work with CSPP and for prisoners intensified. The dangerously polarized nature of Colombia’s armed conflict explains why paramilitary groups often wrongly equate human rights organizations, especially those working with prisoners, with guerrilla organizations such as FARC.

The threats against González culminated on June 15, 2005 when he was named in a document produced by the Central Bolivar block of the paramilitary group AUC (United Self-Defense Forces of Colombia), which had long operated in the region.<sup>76</sup> The document threatened those named with death if they did not leave Bucaramanga and identified them as legitimate military targets. Given the gravity of these threats, González was forced to move temporarily to Bogota until December 2005. At the same time, González was also subject to intimidation by regular government forces. On November 21, 2002 he was harassed by members of the Anti-Disturbance squadron of the National Police in Bucaramanga and on December 4, 2004 he was detained briefly by the same squadron.<sup>77</sup>

González’s important human rights work and the considerable risk he faced as a consequence was repeatedly recognized by the Colombian Interior and Justice Ministry’s human rights protection program that consisted of a system of secure telephonic communication (2001); economic assistance (2003); and a bodyguard after the serious threats against him in 2005.<sup>78</sup> There is a clear contradiction in Colombian government policy given that one branch

of the government recognized him as a human rights defender and granted him protective measures, while another stigmatized him through false prosecutions which portrayed him as a guerrilla and placed his life at risk.

### **C: Unjustly Charged and Detained: Held in Prison for 15 months**

Just over one month after González returned to Pamplona, on January 4, 2006, members of the prosecutor's office in Pamplona arrested and detained him.<sup>79</sup> He was subsequently moved to the Modelo prison in Bucaramanga where he remained for 15 months until his release in April 2007.<sup>80</sup> The 21<sup>st</sup> Division of the Bucaramanga prosecutor's office was in charge of the investigation and prosecution.<sup>81</sup> His application for bail was denied despite his apparently fulfilling the conditions for bail, namely that he was of no danger to society and was likely to appear at court hearings.<sup>82</sup> The prosecutor argued that his detention was necessary to prevent the commission of future crimes. Almost four months after his arrest, on April 26 2006, he was formally charged with the crime of aggravated rebellion for allegedly being a commander of an "urban militia force" in Pamplona and being a member of an "urban network of assistance" for FARC prisoners in Bucaramanga and of providing medicine and supplies to FARC.<sup>83</sup>

On March 30, 2007 Judge Jose Alberto Pabon Ordóñez of the 8th Criminal Circuit in Bucaramanga found that the rebellion charges against González were baseless and relied on witness evidence and government reports which lacked impartiality and credibility.<sup>84</sup> Moreover, the judge also recognized for the record the valuable role that González fulfilled as a human rights defender by stating, "the accused at no time has denied his political ideology and his defense of human rights and in fact it is exactly that which led him to become a part of the Political Prisoners Solidarity Committee."<sup>85</sup> The judgment confirmed that the charges against González should never have been initiated. However, the prosecutor has formally lodged an appeal to the acquittal. Under Colombian law, an acquittal of criminal charges by one court does not preclude a subsequent finding of guilt by another court. As such, González still faces the possibility of being found guilty of rebellion and returning to prison.

On April 4, 2007 he was released and returned to Bogota.<sup>86</sup> However, the charges against him branded him as being a guerrilla and he was at high risk of reprisal attacks from paramilitary or other covert forces, especially given the earlier paramilitary threats. In the past, human rights defenders have been found innocent of rebellion charges, only to be attacked or killed upon their release.<sup>87</sup> In early June 2007, González was granted protective measures by the Colombian government (consisting of secure and protected transport and telephone communications).<sup>88</sup> By granting him this latest round of protection, the Interior and Justice Ministry tacitly recognized that the actions of the prosecutors contributed to Gonzalez's security risk.

### **D: Lack of Due Process: Why the Court Found the Charges Unfounded**

The case against González was so weak that the prosecutor should never have brought the charges against him. The case relied exclusively on two witnesses and an intelligence file, all of which the judge found to be baseless.

#### **i. Unreliable, Incoherent, and Fabricated Witness Testimony**

The prosecution relied principally on one witness for the evidence for the case. The witness, Wilman Patiño, was allegedly a FARC member for 16 years until 2003, when he deserted in Bogota.<sup>89</sup> He stated that he was a member of the 12<sup>th</sup> Front of FARC which had particular influence in Santander department. In December 2005, two years after allegedly deserting the FARC he sought benefits under a legal framework constructed to encourage members of armed groups to demobilize and reintegrate into society.<sup>90</sup> Principally aimed at paramilitaries, that legal framework allows members of illegal armed groups to obtain a range of legal, economic, protective, health, and educational benefits if they demobilize and cooperate with authorities. Specifically, demobilized individuals can, under certain circumstances, receive amnesties for crimes that they may have committed.<sup>91</sup>

The evidence of witnesses eligible for reintegration benefits must be treated with particular care. As Judge Pabon stated, while it can provide valuable information about guerrilla activities, it can also be used to incriminate innocent people.<sup>92</sup> The ruling cited Colombian superior court jurisprudence that the testimony from such witnesses must be

treated suspiciously because it comes from witnesses who are not impartial, but rather are interested in receiving benefits which they can only obtain by collaborating with authorities.<sup>93</sup> As such they are not driven by motivations of truth and justice, but rather by personal interest. That court concluded, “for such testimonies to be credible they must be analyzed and evaluated with particular rigor and care, because a superficial examination could give rise to the commission of grave injustices.”<sup>94</sup>

Patiño’s evidence in this case is representative of other criminal cases in which such witnesses were relied upon almost exclusively. In his initial declaration, Patiño stated that he knew a person by the name of Alirio Cordoba who was allegedly the Commander of the Pamplona Militia force. However, he did not identify González as Alirio Cordoba nor was he even able to provide a physical description of Cordoba, let alone González. Patiño stated that he had a poor memory and could not remember Cordoba well enough to describe him yet according to Patiño the two of them had met on many occasions and were friends. Judge Pabon found Patiño’s inability to give even a basic description of Cordoba as “inconceivable.”<sup>95</sup>

The only time that Patiño linked González to Cordoba was in a line-up of suspects on March 23, 2006; nearly two months after González had been arrested.<sup>96</sup> Despite stating his earlier inability to describe or remember what Cordoba looked like, he declared that he immediately recognized González as Cordoba at the line-up. The judge found that González has distinctive physical characteristics such as skin color, frizzy hair and a prominent abdomen which, at a minimum, Patiño should have been easily able to describe in his witness statements prior to the line-up.<sup>97</sup> By the time the line-up occurred the prosecution had reportedly already publicized photos of González via prominent media outlets as an alleged guerrilla member, thereby calling into question the positive identification by Patiño.<sup>98</sup>

Raul Mendez González, a prisoner at Modelo prison, and former member of the 12<sup>th</sup> Front of FARC like Patiño, gave evidence that he had never heard of Cordoba as a leader of a Pamplona Militia Force but that he did know González as a CSPP activist who taught a diploma course about human rights at the prison.<sup>99</sup>

The evidence of Patiño was marked by a series of other inconsistencies, irregularities, and implausibilities. The judge found that his statements were contradictory and that he changed his evidence on numerous occasions in relation to critical dates and places where he supposedly met Cordoba.<sup>100</sup> Moreover, the allegation that González was Cordoba was not substantiated. Patiño stated that Cordoba had visited prisons such as the Modelo Prison in Bucaramanga since 2001 to provide money and other supplies to FARC prisoners. Yet prison records indicate that González’s first visit to that prison was in 2002 and that he participated in an authorized seminar to teach prisoners about human rights.<sup>101</sup> Furthermore, the Modelo prison has in place strict regulations which prohibit visitors entering with money or other supplies, so that González could not have supplied FARC prisoners with grand sums of money as Patiño alleged.<sup>102</sup>

The judge also found that the factual basis underpinning the charges was unsubstantiated. He decided that there was no evidence (such as media reports or military intelligence reports) that the Pamplona Militia force, which González supposedly led, even existed.<sup>103</sup> Moreover, even if it did exist, González could not have been leading it from December 2001 as Patiño suggested. During that time period González was a full time student at UIS in Bucaramanga, a city in another department. The judge cited extensive testimony from academic staff at UIS to corroborate that González was at UIS on a full time basis and had significant extra-curricular activities as a student leader.<sup>104</sup> The judge decided that his presence outside of Pamplona and his extensive ties to UIS rendered implausible the suggestion that he was leading a militia force in that city.<sup>105</sup>

Patiño could not be located for the trial and so the defense did not have the ability to examine the main prosecution witness. The judge concluded that Patiño’s allegations were no more than “mere speculation which aimed to distort.”<sup>106</sup> He also stated that Patiño’s “assertions could not be supported in light of the rules governing evaluation of evidence, because of their internal contradictions and....far-fetched nature”<sup>107</sup>

Another witness, Lilia Lozano, also receiving reintegration benefits, stated only that she knew of a Príncipe or a Gabriel who was in charge of obtaining medical and legal services for the 20<sup>th</sup> Front of FARC.<sup>108</sup> The judge quickly

dismissed this vague evidence especially given that her statements had previously been used in the trials of four other individuals accused of rebellion, all of whom were acquitted.<sup>109</sup> More alarmingly, in January 2005 she told the CSPP that her witness statements were made under duress from members of the police and the Attorney-General's Technical Investigations Unit (CTI) in Bucaramanga who allegedly pressured her to provide evidence against González.<sup>110</sup>

## **ii. Reliance on Intelligence Files**

The Prosecution also relied on two intelligence files prepared by the CTI, the same unit allegedly responsible for pressuring one of the witnesses to provide evidence against González.<sup>111</sup> The judge described the reports as constituting no more than a summary of the witness statements, which duplicated but did not include any new evidence to corroborate those statements.<sup>112</sup> In particular he was scathing in his assessment of how the reports could have been useful to the prosecutor given that they did not provide any evidence to establish that González was in fact Alirio Cordoba, who witness Patiño stated was the supposed guerrilla leader.<sup>113</sup> He also cited jurisprudence from the Colombian Supreme Court which stated that such intelligence reports are not per se an independent source of evidence and should be closely evaluated.<sup>114</sup> Uncorroborated intelligence files have a long history of being misused against human rights defenders in Colombia, especially in Bucaramanga.<sup>115</sup>

## **E. Conclusions**

### **i. Investigation Breached Right to Fair Trial**

The analysis above reveals that various aspects of the investigation conducted by the Bucaramanga prosecutor against González breached Colombian and international standards as to a fair trial. The judge specifically stated that the investigation was contrary to the right to a fair trial contained in the ICCPR (art 14), the ACHR (art 8), the Basic Principles on the Role of Lawyers,<sup>116</sup> and the Basic Principles for the Treatment of Prisoners<sup>117, 118</sup>. The most glaring breach of the right to a fair trial was the inability of González to examine the witnesses against him as provided by article 14(3)(e) of the ICCPR and article 8(2)(f) of the ACHR. It is a fundamental right of any defendant to be able to question and probe witnesses in order to present a robust defense. It is also vital because it enables the judge or jury to be presented with a fair and balanced presentation of the witness evidence without which their search for the truth is severely hampered. It is even more important for the defendant to be able to examine witnesses when, as with the charges against González, they rely almost exclusively on witness evidence.

Other aspects of the investigation also violated fundamental aspects of the right to a fair trial. That the prosecution took almost four months after they arrested González to formally charge him arguably breached his right to be informed promptly of the nature and cause of the charges against him as enshrined in article 14(3)(a) of the ICCPR. Moreover, the prosecutor's actions in reportedly publishing photos of González and identifying him as a guerrilla fighter before the witness had even identified him fundamentally undermines the presumption of innocence recognized by art 14(2) of the ICCPR and article 8(2) of the ACHR.

### **ii. Fear that Investigation was Politically Motivated**

The suggestion that the charges against González were politically motivated is extremely serious. The judge made a reference to the manipulation of the legal system by dismissing witness Patiño's evidence in part "due to the fear that his evidence was being used to direct the judicial system against those who are fighting for social or democratic causes or claiming their rights."<sup>119</sup> He also alluded to the fact the prosecutor had a discriminatory attitude to human rights defenders and may have fabricated elements of the offence, describing the case as "symptomatic [of broader practice] and contrary to [the international legal instruments cited above] that the prosecutor tries to make out as an element of rebellion the fact that NGOs are providing valuable services to prisoners, which often make up for the absence of State assistance."<sup>120</sup>

The U.N. Special Representative for Human Rights Defenders, Human Rights First, and other human rights organizations have also expressed their concern that the charges may have been motivated by González's activities defending human rights.<sup>121</sup> This concern is supported by the admission of witness Lozano that the CTI office pressured her into providing evidence against González. That concern is further heightened given that the CTI was also responsible for preparing the intelligence reports which the prosecution relied upon.

Another reason to conclude that this case was motivated out of a desire to prevent González and others from performing human rights work is that the prosecutor simply did not have sufficient evidence to initiate a criminal investigation against him. As the judge found: "the probative standard used by the prosecutor to issue a resolution of accusation against González did not reach the threshold of certainty required given the weakness of the witness testimony and the lack of other supporting evidence."<sup>122</sup> Colombian criminal law is quite detailed and explicit about the level of evidence needed by a prosecutor. Article 397 of the Procedural Criminal Code states that "The prosecutor... will formally charge the accused only when the occurrence of an act can be demonstrated and a confession or testimony exists which shows serious and credible motive, serious evidence and is supported by documents, or other probative means which indicate the responsibility of the defendant."<sup>123</sup> Article 232 states "Every decision must be based on legal evidence and regular and timely allegations. A guilty sentence cannot be passed without evidence that shows the certainty of the punishable conduct and the responsibility of the accused."<sup>124</sup> Finally article 234 directs officials such as prosecutors to "search and determine the real truth. They must ascertain with equal zeal both the circumstances that demonstrate the existence of the punishable conduct as well as those that reduce or exonerate the responsibility of the accused or that demonstrate their innocence."<sup>125</sup>

These provisions also mirror international law. Article 14 of the United Nations Guidelines on the Role of Prosecutors, which provides authoritative guidance on international standards, states that "prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded."<sup>126</sup>

As demonstrated above (section II. D) and by Judge Pabon's decision, any impartial investigation would have revealed the charges, and the witness testimony upon which they relied, to be unfounded; not least because at the time that González was arrested the prosecutor's office had no idea that the allegations contained in witness Patiño's statement supposedly related to González. It is difficult to understand on what basis the prosecutor's office decided to arrest González. Even after witness Patiño had identified González in a line up, his evidence, as the judge concluded, was so incoherent, far-fetched, and self-contradictory that it failed to reach even the most rudimentary standard of evidence required to underpin such serious charges.

Finally, the pro-active nature of this investigation stands in stark contrast to the lack of investigation or prosecution for the majority of serious crimes in Colombia.<sup>127</sup> The Colombian justice system suffers from corruption and a lack of resources and expertise which ensures that the majority of serious crimes remain unpunished.<sup>128</sup> Given such widespread impunity, the decision to prosecute this case on the basis of such patently unreliable evidence raises questions about the motivation of the investigation.

#### IV. Conclusions and Recommendations

Prosecutors in Colombia, as in any State, must investigate and prosecute crimes and ensure that perpetrators are brought to justice. However, those investigations must be conducted in accordance with both Colombian and international law. In relation to accusations against human rights defenders, it is especially important that Colombian prosecutors impartially and independently verify them to ensure that they are not politically motivated. Given limited judicial resources in Colombia, such an independent verification should occur before initiating a full criminal investigation or before detaining the accused. Where such verification reveals the accusation to be baseless, as in the two emblematic cases presented in this White Paper, an investigation should not be initiated. Fundamental tenets of due process and the rule of law dictate no less. Moreover, prosecutors and security agencies should be barred from publicizing information branding human rights defenders as subversives or criminals that has not yet been tested in a court of law.

This White Paper has demonstrated that in two cases, which Human Rights First believes are symptomatic of many others, human rights defenders have been subject to charges that were baseless and that should never have been initiated by the respective prosecutors. The cases of Iván Cepeda and Príncipe Gabriel González relate to different criminal charges and are at different stages in the proceedings, one at an initial investigation and the other on appeal post-acquittal. Nevertheless they reveal that investigations were commenced based either on accusations alone or coupled with fabricated and implausible evidence from witnesses lacking impartiality. In the case of Príncipe Gabriel González the witness statements did not in fact identify him as the alleged perpetrator of rebellion, while the prosecutor failed to verify whether the militia force he allegedly led even existed. In the case of Iván Cepeda, the investigation appears to rely solely on the accusations of a congressman, who sought to dispute claims of his involvement in criminal acts. Colombian law, in particular articles 232, 234 and 397 of the Procedural Criminal Code, and international law, require that prosecutors vet accusations for plausibility and then, before the accused is detained, gather independent evidence via an impartial investigation to corroborate such accusations.

President Uribe has also recently committed his government to these due process standard by recognizing the U.S. State Department Guiding Principles on Non-Governmental Organizations, principle 5 of which states that “Criminal and civil legal actions brought by governments against NGOs, like those brought against all individuals and organizations, should be based on tenets of due process and equality before the law.”<sup>129</sup> A number of executive directives issued before the administration of President Uribe enshrine similar protections for human rights defenders and direct Colombian public officials to abstain from making false accusations against defenders.<sup>130</sup>

The practice of bringing unfounded criminal charges against human rights defenders is damaging for them in at least four ways. First, by stigmatizing them as criminals or as terrorist sympathizers, it places them at considerable risk of reprisal attack by the armed groups such as paramilitaries that act covertly throughout Colombia, often in collaboration with the armed forces. Second, the proceedings force defenders to expend their limited time and resources defending themselves, diminishing the amount of productive human rights work they can perform. Third, the charges discredit them and tarnish their reputations as legitimate human rights activists, thereby reducing the effectiveness of their work. Last, the threat of political prosecution has a chilling effect, encouraging defenders to practice self-censorship and limit their activities. All of these effects also have undemocratic repercussions on Colombian society more broadly, by diminishing the diversity of opinions available in the public domain and degrading the quality of human rights advocacy services available to the community.

In order to stop the practice of bringing unfounded criminal charges against human rights defenders, Human Rights First has the following recommendations for the Colombian government, which should be implemented with the assistance from the international community where appropriate and needed:

1. The Colombian Attorney-General, or the prosecutors in charge of each respective case, should close the criminal investigation against Iván Cepeda Castro and drop the appeal against the acquittal of Príncipe Gabriel González Arango.

2. The offences of slander and libel should be removed from the Colombian Criminal Code (decriminalized). While legitimate civil complaints, the Inter-American Commission on Human Rights has repeatedly stated that such criminal offences are incompatible with the American Convention on Human Rights.<sup>131</sup>
3. The Attorney-General should conduct a comprehensive internal investigation, focusing especially on regional prosecutors, into corruption, including connections with paramilitary organizations. On the basis of that investigation the government should dismiss from its employment all individuals, from judicial and prosecutorial institutions, shown to be corrupt or connected to paramilitaries.
4. The Attorney-General should question the use, by prosecutors, of witnesses who are ex-combatants and who are receiving reintegration benefits, or whose testimony might otherwise be influenced through coercion or inducements. Prosecutors should reject uncorroborated testimony by witnesses with paramilitary backgrounds.
5. The Attorney-General should issue a resolution or directive addressed to all judicial and prosecutorial institutions reemphasizing the Colombian and international law (cited in this White Paper) which sets standards for impartial investigations, fair trials, and bars politically motivated criminal proceedings. The resolution should also instruct prosecutors that as a matter of policy the Attorney-General will not tolerate the initiation of criminal investigations against human rights defenders without due cause.
6. Public officials, especially senior government members, should refrain from making statements which discredit or stigmatize human rights defenders and that can give the impression that the government condones illegal acts of violence against them.
7. The Attorney-General should create a centralized unit within his office responsible for investigating all criminal allegations against recognized human rights defenders. The office should be led by a renowned prosecutor. All current cases against defenders should be transferred to this unit.
8. The Colombian government should enact legislation that regulates how the information contained in government intelligence reports is collected and used. The Ombudsman (*Procurador General*) should be mandated to review intelligence reports to exclude from those reports all unfounded information which incriminates or is prejudicial to human rights defenders.<sup>132</sup> The law should also include a bar on the dissemination of information from intelligence reports to law enforcement or private citizens that defames or prejudices human rights defenders from uncorroborated sources.

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**Endnotes**

<sup>1</sup> The Inter-American Commission on Human Rights Special Rapporteur For Freedom Of Expression has consistently called on states to abolish criminal defamation laws given their incompatibility with the American Convention on Human Rights, see e.g., Special Rapporteur for Freedom of Expression, *Annual Report Of 2002*, Chapter V; Inter-American Commission on Human Rights, *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*, (17 February 1995) OEA/Ser. L/V/II.88, doc. 9 rev. pp. 197-212.

<sup>2</sup> See also, Office of the United Nations High Commissioner for Human Rights in Colombia, *Annual Report 2005* (Commission on Human Rights, Sixty-second session) E/CN.4/2006/9, May 16 2006, p. 32.

<sup>3</sup> For a more detailed definition and explanation of human rights defenders, see United Nations Office of the High Commissioner for Human Rights, *Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29* (Geneva: United Nations, 2004) pp. 2- 8.

<sup>4</sup> Colombian Commission of Jurists, *Colombia 2002-2006: Situation Regarding Human Rights and Humanitarian Law* (Bogota: CCJ, 2007), footnote 21.

<sup>5</sup> See, e.g., Heather Hansen and Rogers Rombero Penna, "The Failure of Colombia's "Democratic Security", *NACLA Report on the Americas* Vol. 38, No. 6, p. 22.



- <sup>6</sup> See Human Rights First, Colombia country page: [http://www.humanrightsfirst.org/defenders/hrd\\_colombia/hrd\\_colombia.asp](http://www.humanrightsfirst.org/defenders/hrd_colombia/hrd_colombia.asp)
- <sup>7</sup> State Department Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: Colombia 2005* (Washington D.C.: State Department, March 8, 2006), Section 1d and Section 4; State Department Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: Colombia 2004* (Washington D.C.: State Department, February 28, 2005) Section 1d and Section 4; State Department Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: Colombia 2003* (Washington D.C.: State Department, February 25, 2004) Section 1d and Section 4; State Department Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: Colombia 2002* (Washington D.C.: State Department, March 31, 2003) Section 4.
- <sup>8</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee on Colombia's Fifth Periodic Report*, CCPR/80/COL, May 26 2004, para. 11 (recognizing that human rights defenders are subject to arbitrary detention).
- <sup>9</sup> Office of the United Nations High Commissioner for Human Rights in Colombia. *Annual Report 2006*. (Human Rights Council, Fourth Session) A/HRC/4/48, March 5, 2007, pp. 13, 38; Office of the United Nations High Commissioner for Human Rights in Colombia, *Annual Report 2005*, (Commission on Human Rights, Sixty-second session) E/CN.4/2006/9 May 16 2006, pp. 12, 21, 32; Office of the United Nations High Commissioner for Human Rights in Colombia, *Annual Report 2004*, (Commission on Human Rights, Sixty-first session) E/CN.4/2005/10, February 28 2005, pp. 10, 29-30, 50-51, 59.
- <sup>10</sup> Hina Jilani, *Report of the Special Representative of the Secretary-General on Human Rights Defenders* (Commission on Human Rights, Fifty-eighth session) E/CN.4/2002/106/Add.2, April 24 2002, pp 4, 12, 14-25.
- <sup>11</sup> Walter Kälin, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons: Mission to Colombia*, (Human Rights Council, Fourth Session) A/HRC/4/38/Add.3, January 27, 2007, p. 6.
- <sup>12</sup> Working Group on Enforced or Involuntary Disappearances, *Report: Mission to Colombia* (Commission on Human Rights, Sixty-second session) E/CN.4/2006/56/Add.1, January 17, 2006. p. 21.
- <sup>13</sup> Katarina Tomaševski, *Report of Special Rapporteur on the Right to Education*, (Commission on Human Rights, Sixtieth session) E/CN.4/2004/45/Add.2, February 17 2004, pp. 6, 17.
- <sup>14</sup> Doudou Diène, *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Commission on Human Rights, Sixtieth session) E/CN.4/2004/18/Add.3, February 24 2004, p. 13.
- <sup>15</sup> Param Cumaraswamy, *Report of the Special Rapporteur on the Independence of Judges and Lawyers* (Commission on Human Rights, Fifty-fourth session) E/CN.4/1998/39/Add.2, March 30 1998, Paras. 65-83, 91-94, 114-117.
- <sup>16</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev.1. March 7, 2006; Inter-American Commission on Human Rights, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc. 9 rev. 1, 26 February 1999, Chapter VII; Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (New York: HRW, 1998) Section II.
- <sup>17</sup> Amnesty International. *Colombia: Fear and Intimidation: The Dangers of Human Rights Work*, (London: Amnesty International, 2006) AI Index: AMR 23/033/2006, pp. 11-16; Amnesty International. *Colombia: Killings, Arbitrary Detentions, and Death Threats – the Reality of Trade Unionism in Colombia* (London: Amnesty International, 2007) AI Index: AMR 23/001/2007; Amnesty International, *Colombia: Open Letter to Presidential Candidates*, AI Index: AMR 23/013/2004, April 27 2006; Amnesty International USA, *Annual Report 2004: Republic of Colombia* (New York, Amnesty, 2005); Amnesty International USA, *Annual Report 2003: Republic of Colombia* (New York: Amnesty, 2004); Amnesty International, *Colombia: Protection of Human Rights Defenders: One Step Forward, Three Steps Back*, (London, Amnesty, 2000) AI Index: AMR 23/022/2000.
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- <sup>21</sup> Washington Office on Latin America & U.S. Office on Colombia, *WOLA and USOC call on U.S. and Colombia officials to act on attacks against human rights defenders in Colombia*, 15 June 2007 [http://www.wola.org/media/DOS%20Coverletter%20for%20HR%20Defenders%20Incidents%20Letter%20June%202007%20\(2\).pdf](http://www.wola.org/media/DOS%20Coverletter%20for%20HR%20Defenders%20Incidents%20Letter%20June%202007%20(2).pdf)
- <sup>22</sup> U.S. Office on Colombia, *Colombia Forum Issue 33*, May 2003, <http://usofficeoncolombia.org/coloforum/33.htm>
- <sup>23</sup> For more information about Iván Cepeda, see Human Rights first, Iván Cepeda Castro Webpage available at: [http://www.humanrightsfirst.org/defenders/hrd\\_colombia/hrd\\_cepeda.asp](http://www.humanrightsfirst.org/defenders/hrd_colombia/hrd_cepeda.asp)
- <sup>24</sup> See, e.g., Juan Forero, "A Colombian Fighting for Victims of a Political War", *New York Times*, January 8, 2005; Nora Boustany, "Keeping Alive the Memories of Colombia's Victims", *Washington Post*, October 19, 2005; Page A17; "Colombian Human Rights Campaigner Iván Cepeda Named Winner of Roger Baldwin Liberty Award", *International Herald Tribune*, June 5, 2007.
- <sup>25</sup> Human Rights First, "Colombian Human Rights Leader Iván Cepeda Wins Roger Baldwin Liberty Award", *Press Release*, June 5, 2007; See further information at this webpage: <http://www.humanrightsfirst.org/defenders/baldwin/2007/>
- <sup>26</sup> See, e.g. Colombian Constitutional Court, *Sentence T-959 of 2006*, T-1.391.105, November 20, 2006.
- <sup>27</sup> Colectivo de Abogados "José Alvear Restrepo", CSPP, Fundación "Manuel Cepeda Vargas" et al, *Colombia: Nunca mas Crímenes de Lesa Humanidad* (Bogotá, 2000).
- <sup>28</sup> Inter-American Commission on Human Rights, *2006 Annual Report* (2007) section C para. 17.
- <sup>29</sup> *Rules of Procedure of the Inter-American Commission on Human Rights*, Approved at 109 Special Session, December 4-8, 2000 and subsequently amended, art. 25.
- <sup>30</sup> See Inter-American Commission on Human Rights, *Request for Precautionary Measures*, MC-126-06 Colombia (June 26, 2006).

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- <sup>33</sup> Investigation Number 70763.
- <sup>34</sup> Corporación Colectivo de Abogados Jose Alvear Restrepo, *Señalamientos y Hostigamientos contra Iván Cepeda Castro*, DR-002/07, May 14, 2007.
- <sup>35</sup> Iván Cepeda, *Speech Delivered to Citizen Hearing*, San Onofre, Sucre, November 28, 2006, p 4, available in Spanish at: <http://www.movimientodevictimas.org/node/254>; Translated excerpts of the majority of Cepeda's statement are also available in: Center for International Policy, *The Victims' Movement and the View from San Onofre*, Sucre, December 7, 2006: <http://www.cipcol.org/?p=311>
- <sup>36</sup> Movimiento de Crímenes de Estado, *Lista De Exterminio De Líderes De Este Movimiento*, October 31, 2006: <http://www.movimientodevictimas.org/node/235>
- <sup>37</sup> Ibid.
- <sup>38</sup> Ibid.
- <sup>39</sup> See, e.g., Juan Forero, "Colombia Unearthing Plight of Its 'Disappeared'", *New York Times*, August 10, 2005.
- <sup>40</sup> Cepeda, *Speech Delivered to Citizen Hearing*, p. 4.
- <sup>41</sup> Ibid.
- <sup>42</sup> Alexander Lopez Maya, *Constancia Publica*, May 8, 2007. The attempted inspection was reportedly performed by members of the 64th prosecutors Office, Unit for Crimes against Economic Order, Office Number 086-07.
- <sup>43</sup> Ibid.
- <sup>44</sup> Human Rights First, *Drop Baseless Charges against Colombian Human Rights Leader*, June 1, 2007, [http://www.humanrightsfirst.org/defenders/hrd\\_colombia/alert060107\\_cepeda.htm](http://www.humanrightsfirst.org/defenders/hrd_colombia/alert060107_cepeda.htm); Human Rights First, *Petition to Colombian Attorney-General*, June 11, 2007 <http://www.humanrightsfirst.info/pdf/07813-hrd-iván-petition-eng-public.pdf>
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- <sup>47</sup> Ibid, p. 1.
- <sup>48</sup> Jose Maria Conde Romero, *Clarification of Representative*, December 14, 2006, available at: <http://abc.camara.gov.co/camara/site/artic/20070326/pags/20070326164731.html>
- <sup>49</sup> Iván Cepeda, *Memorandum to Human Rights First*, May 10, 2007.
- <sup>50</sup> See Center for International Policy, *Para-politics Scandal Update*, March, 14, 2007, available at: <http://www.cipcol.org/?m=20070314>
- <sup>51</sup> Cepeda, *Memorandum to Human Rights First*.
- <sup>52</sup> Center for International Policy, *"Specious legal proceedings" against Iván Cepeda*, July 19, 2007, available at: [www.cipcol.org/?p=446](http://www.cipcol.org/?p=446)
- <sup>53</sup> See also, Center for International Policy, *"Specious legal proceedings" against Iván Cepeda*.
- <sup>54</sup> ICCPR, art. 19; ACHR, art. 13.
- <sup>55</sup> Inter-American Court of Human Rights, *Ivcher Bronstein Case*, Judgment of February 6, 2001, Series C No. 74, para. 149.
- <sup>56</sup> Hina Jilani, *2004 Annual Report by Special Representative of the Secretary-General on Human Rights Defenders*, UN Doc. E/CN.4/2005/101, para. 54.
- <sup>57</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II.124 Doc. 5 rev.1, March 7, 2006, para 81.
- <sup>58</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, March 8, 1999, art 6(c).
- <sup>59</sup> Ibid, art. 8(2).
- <sup>60</sup> Presidential Press Release, *Principios Rectores Sobre ONG's En Estados Unidos Coinciden Con Criterios Del Presidente Uribe*, April 30, 2007 available at [http://www.presidencia.gov.co/prensa\\_new/sne/2007/abril/30/11302007.htm](http://www.presidencia.gov.co/prensa_new/sne/2007/abril/30/11302007.htm)
- <sup>61</sup> State Department Bureau of Democracy, Human Rights, and Labor, *Guiding Principles on Non-Governmental Organizations*, December 14, 2006.
- <sup>62</sup> For more information about Príncipe Gabriel González, see Human Rights First, Príncipe Gabriel González Webpage available at: [http://www.humanrightsfirst.org/defenders/hrd\\_colombia/hrd\\_González.asp](http://www.humanrightsfirst.org/defenders/hrd_colombia/hrd_González.asp)
- <sup>63</sup> Human Rights First, *Interview with Agustín Jimenez Cuello, President, CSPP*, December 4, 2006.
- <sup>64</sup> Inter-American Commission on Human Rights, *Annual Report of 1999*, OEA/Ser.L/V/II.106, April 13 2000.
- <sup>65</sup> Alirio de Jesús Pedraza, Javier Barriga Vergel, Julia Ernesto González, Everardo de Jesús Puerta: See Observatory for the Protection of Human Rights Defenders, *Detencion Arbitraria – Col 001/0106/Obs 004*, January 13, 2006.
- <sup>66</sup> See, e.g., State Department, *Country Reports on Human Rights Practices: Colombia 2004*.
- <sup>67</sup> Human Rights First, *Interview with Agustín Jimenez Cuello, President, CSPP*, December 4, 2006
- <sup>68</sup> Ibid.
- <sup>69</sup> CSPP, *Personal Profile of Príncipe Gabriel González Arango* (provided to Human Rights First February 13, 2007).
- <sup>70</sup> Judge Jose Alberto Pabon Ordóñez, *Decision of First Instance*, 8<sup>th</sup> Criminal Circuit Bucaramanga, Process 2006-0179-00, March 30, 2007, p. 8
- <sup>71</sup> CSPP, *Personal Profile of Príncipe Gabriel González Arango*.

<sup>72</sup> Pabon, *Decision of First Instance*, p. 11.

<sup>73</sup> *Ibid.*

<sup>74</sup> International Crisis Group, *Colombia's New Armed Groups, Latin America Report N°20* (Brussels: ICG, 2007); Organization of American States, *Ninth Quarterly Report Of The Secretary General To The Permanent Council, On The Mission To Support The Peace Process In Colombia* (OAS/MAPP) OEA/Ser.G CP/doc.4237/07, July 3 2007.

<sup>75</sup> CSPP, *Personal Profile of Príncipe Gabriel González Arango*.

<sup>76</sup> See Observatory for the Protection of Human Rights Defenders, *Detencion Arbitraria – Col 001/0106/Obs 004*, January 13, 2006.

<sup>77</sup> CSPP, *Memorandum to Human Rights First about González case*, November 15, 2006.

<sup>78</sup> Pabon, *Decision of First Instance*, p. 11; *Letter from Colombian Government to Special Representative on Human Rights Defenders*, Nov. 6, 2006, contained in Hina Jilani, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders: Addendum Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1*, March 27, 2007, para. 206.

<sup>79</sup> Colombian Embassy to the United States, *Correspondence to Human Rights First*, December 28, 2006; *Letter from Colombian Government to Special Representative on Human Rights Defenders*, para. 206; See also, Human Rights First, *Call for Release of Imprisoned Colombian Human Rights Leader*, January 17, 2007 available at [http://www.humanrightsfirst.org/defenders/hrd\\_colombia/alert011707\\_gonzales.htm](http://www.humanrightsfirst.org/defenders/hrd_colombia/alert011707_gonzales.htm).

<sup>80</sup> After his initial arrest by the Pamplona prosecutor's office he was transferred to the custody of a specialized national Police unit, the Group of Unified Action for the Liberty of Colombia (GAULA) and then to the prosecutor's Immediate Reaction Unit.

<sup>81</sup> Reference number 261831.

<sup>82</sup> Decision by prosecutor Areyda Monsalve Acevedo, Jan. 13, 2006.

<sup>83</sup> Pabon, *Decision of First Instance*, p. 11.

<sup>84</sup> Pabon, *Decision of First Instance*.

<sup>85</sup> Pabon, *Decision of First Instance*, p. 11.

<sup>86</sup> Human Rights First, "Colombian Human Rights Defender, Principe Gabriel Gonzalez Arango, Released from Jail", *Press Release*, April 13, 2007: <http://www.humanrightsfirst.info/pdf/07413-hrd-González-stat.pdf>

<sup>87</sup> See, e.g., the killing of Alfredo Correa de Andreis, professor and peace activist in Barranquilla who was killed on September 17, 2004 after being cleared of rebellion charges and being released from detention. See *Open Letter to President Uribe from 12 NGOs*, Oct. 29, 2004 available at [www.usofficeoncolombia.org/signon/detentions.pdf](http://www.usofficeoncolombia.org/signon/detentions.pdf)

<sup>88</sup> Human Rights First, *Protect Released Colombian Human Rights Leader*, April 18, 2007

[http://www.humanrightsfirst.org/defenders/hrd\\_colombia/alert041807\\_gonzales.htm](http://www.humanrightsfirst.org/defenders/hrd_colombia/alert041807_gonzales.htm); Human Rights First, *Petition sent to Colombian Government seeking Protective Measures*, April 25, 2007, <http://www.humanrightsfirst.info/pdf/07509-hrd-span-dan-gonzalez-apr18.pdf>

<sup>89</sup> Pabon, *Decision of First Instance*, p. 4.

<sup>90</sup> Decree 128 of 2003, January 22, 2003 implements a legal framework consisting of Law 418 of 1997, Official Gazette No. 43201, December 26 1997 and Law 782 of 2002, Official Gazette No. 4043, December 23, 2002.

<sup>91</sup> Art 13. of Decree 128 allows those who demobilize to receive "pardons" and other legal benefits for "political and related offences" so long as they have not been investigated or condemned for crimes such as terrorism, genocide or murder committed outside combat (Law 782, art 19). Given high impunity levels in Colombia, the vast majority of members of armed groups who have committed such acts have not been investigated or condemned for those crimes so they can avail themselves of the benefit scheme. Those who obtain these benefits may not in the future be prosecuted in relation to the same facts giving rise to the granting of benefits (Law 418, art. 62).

<sup>92</sup> Pabon, *Decision of First Instance*, p. 5.

<sup>93</sup> Honorable Magistrate Luis Edgar Albarracin Posada, Judgment at Second Instance, Superior Tribunal, Sep. 12. 2005

<sup>94</sup> *Ibid.*

<sup>95</sup> Pabon, *Decision of First Instance*, p. 7.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> Príncipe Gabriel González Arango, *Defense Intervention*, 8<sup>th</sup> Criminal Circuit, Bucaramanga, Jan. 22, 2007, p. 9.

<sup>99</sup> Pabon, *Decision of First Instance*, p. 7.

<sup>100</sup> Pabon, *Decision of First Instance*, p. 6.

<sup>101</sup> Pabon, *Decision of First Instance*, p. 10.

<sup>102</sup> González, *Defense Intervention*, p. 5.

<sup>103</sup> Pabon, *Decision of First Instance*, p. 10.

<sup>104</sup> Pabon, *Decision of First Instance*, p. 8.

<sup>105</sup> Pabon, *Decision of First Instance*, p. 9.

<sup>106</sup> Pabon, *Decision of First Instance*, p. 7.

<sup>107</sup> Pabon, *Decision of First Instance*, p. 10.

<sup>108</sup> Pabon, *Decision of First Instance*, p. 11.

<sup>109</sup> González, *Defense Intervention*, p. 7.

<sup>110</sup> CSPP, *Memorandum to Human Rights First about González case*; See also Amnesty International. *Colombia: Fear and Intimidation: The Dangers of Human Rights Work*, p. 14.

<sup>111</sup> The two military reports were prepared by Juan Carlos Forero Baron of the CTI: SIA 2005-863, Dec. 14, 2005; SIA 2005-095, Jan. 8, 2005.

<sup>112</sup> Pabon, *Decision of First Instance*, p. 3.

<sup>113</sup> Pabon, *Decision of First Instance*, p. 5.

<sup>114</sup> Supreme Court of Justice, *Sentence of 25 May 1999*, Magistrate Carlos Eduardo Mejia Escobar, No: 12.885; *Sentence of 20 June 2001*, Magistrate Alvaro Orlando Perez Pinzon.

<sup>115</sup> In October 1997, in Bucaramanga, the offices of a human rights organization REDES were raided by judicial and military officials and four of their leaders were found guilty of rebellion based solely on military intelligence files and imprisoned for five years. See further, Amnesty

International, *Colombia: Protection of Human Rights Defenders: One Step forward, Three Steps Back*, AI Index: AMR 23/022/2000, May 19, 2000.

<sup>116</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>117</sup> G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990).

<sup>118</sup> Pabon, *Decision of First Instance*, p. 10.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Hina Jilani, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders 2007*, para. 176; Human Rights First, *Letter to President Bush*, March 1, 2007, <http://www.humanrightsfirst.info/pdf/07302-hrd-ltr-bush-re-latin-ameri.pdf>; Human Rights First, *Letter to Secretary of State Rice*, January 10, 2007 <http://www.humanrightsfirst.info/pdf/07117-hrd-ar-m55on-165117.pdf> See also Amnesty International, *Colombia: Fear and Intimidation: The Dangers of Human Rights Work*, p. 14.

<sup>122</sup> Pabon, *Decision of First Instance*, p. 12.

<sup>123</sup> *Criminal Procedural Code*, Law 600 of 2000, Official Diary No. 44.097, July 24, 2000, art. 397.

<sup>124</sup> *Ibid.*, art. 232.

<sup>125</sup> *Ibid.*, art. 237.

<sup>126</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>127</sup> See, e.g. Human Rights Watch, *A Wrong Turn: The Record of the Colombian Attorney-General's Office*, (HRW, New York, Vol 14(3)(B); 2002).

<sup>128</sup> See, e.g., State Department, *Country Reports on Human Rights Practices: Colombia 2005*, Section 1d.

<sup>129</sup> State Department, *Guiding Principles on Non-Governmental Organizations*; Presidential Press Release, *Principios Rectores Sobre ONG's En Estados Unidos Coinciden Con Criterios Del Presidente Uribe*, April 30, 2007, available at [http://www.presidencia.gov.co/prensa\\_new/sne/2007/abril/30/11302007.htm](http://www.presidencia.gov.co/prensa_new/sne/2007/abril/30/11302007.htm)

<sup>130</sup> Minister of National Defense, *Defense Ministry Directive 9 of 2003: Policies of Defense Ministry with respect to the Protection of human rights, union leaders and human rights defenders*; President of the Republic, *Presidential Directive 7 of 1999: Support, Exchange and Collaboration of the State with Human Rights Organizations*, September 9, 1999; President of the Republic, *Presidential Directive 7 of 2001: Support, Exchange and Collaboration of the State with Human Rights Organizations that Develop Humanitarian Activities in the Country*, November 21, 2001.

<sup>131</sup> See e.g., Special Rapporteur For Freedom Of Expression, *Annual Report Of 2002*, Chapter V.

<sup>132</sup> See also, Office of the United Nations High Commissioner for Human Rights in Colombia, *Annual Report 2005*, p. 32.