

COLOMBIA: ILLEGAL ACTIVITIES PERPETRATED BY THE

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A nnihilate
S abotage

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



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Original version in Spanish, available on: <http://www.fidh.org/IMG/pdf/ColombiaEsp542e.pdf>

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AGAINST WHOM?

- 1. Judges from the Constitutional Court and the Supreme Court of Justice**
- 2. Parliamentarians**
- 3. Journalists**
- 4. Trade unionists**
- 5. Political and social leaders**
- 6. Human rights defenders**
- 7. Members of the opposition political parties**
- 8. Human rights and other related groups, organizations and/or individuals opposed to government policy.**

HOW?

- 1. Persecution and surveillance**
- 2. Communications interception**
- 3. Threats against the targets, family members, and close ones**
- 4. Pressure and blackmail**
- 5. Sabotage and misrepresentation**
- 6. Raids and theft of documents**
- 7. Smear campaigns**
- 8. Homicide?**

WHY?

To destabilize and neutralize «individuals or organizations opposed to government policy.»

INTRODUCTION

What is the DAS?

The Administrative Department of Security (DAS) is the Colombian State's most important intelligence service that also directly reports to the President's Office of the Republic. In 1960, the DAS was established in order to specialize in areas related to the Constitutional system and internal and foreign security.¹ As the highest-level State intelligence service, the DAS was created with the main objective to produce the intelligence required by the State, as a governmental tool to make decisions and develop policies on issues of State security.² In this context, the agency has carried out activities for nearly fifty years in the areas of intelligence, counter-intelligence, criminal investigation, immigration, anti-corruption in State institutions, and the issuing of criminal background certificates.

The DAS's intelligence and information-gathering activities should be conducted within the framework of respect for constitutional guarantees and human rights according to the Constitution and the Law³.

Nonetheless, in view of the recent discoveries of the facts analysed in the following document, the government and allied institutions have unfortunately used this agency as an instrument to attack and carry out harassments, threats, extortions, blackmail, and all kinds of illegal operations at the verge of illegality and against human rights. Realistically, it is a program to politically and psychologically exterminate all individuals or institutions that adversely affect the government's interests. The targets of their attacks include human rights defenders, members of the political opposition, and judges from the Constitutional Court and the Supreme Court of Justice.

FIDH missions

FIDH has closely monitored the issues of the DAS and has carried out various actions, including:

- A FIDH Mission in Colombia. August 2009
- A FIDH Mission to observe the trial against Jorge Noguera in Colombia (which also included the World Organization against Torture within the framework of their joint program, the Observatory for the Protection of Human Rights Defenders). February 2010.
- Meeting with the DAS director in Brussels. March 2010.

FIDH Mission in Colombia. August 2009

FIDH delegation, which came to Colombia from August 25 to 28, 2009, included the participation of Luis Guillermo Pérez Casas (FIDH Secretary General), Juan Carlos Capurro (FIDH Vice-President), and Susana Villarán (former Commissioner and Rapporteur for Colombia and

1. Administrative Department of Security, DAS, Republic of Colombia, www.das.gov.co.

2. Decree 643 of 2004, amending the structure of the Administrative Department of Security, Article 1, Objective.

3. Decree 643 of 2004, amending the structure of the DAS, in Article 40, provides that *"to fulfil its mission, the Administrative Department of Security, as a State Intelligence Agency, will be authorized to gather the necessary information and carry out intelligence activities to protect National Security, acting with full respect for constitutional rights and guarantees [Bold italics not in original text]."* For its part, Law 489 of 1998, establishing norms on the organization and functioning of national-level institutions, in Article 3, establishes: "The administrative function will be carried out in accordance with constitutional principles, in particular those of good faith, equality, morality, expeditiousness, economy, impartiality, effectiveness, efficiency, participation, publicity, responsibility, and transparency."

Women's Rights of the Inter-American Commission on Human Rights).

First of all, FIDH and its member organisations in Colombia express their gratitude for the presence of the Colombian State authorities for having the opportunity to meet them. FIDH deeply regrets not having the opportunity to meet with the Prosecutor General, the Minister of the Interior, and the Vice-Minister of Defence, with whom FIDH would have liked to discuss very important matters with regard to the goals of the mission. Additionally, FIDH wishes to thank all the persons from the various Colombian State institutions, the international community, and the civil society who provided valuable information and perspectives on these issues addressed during this visit to Colombia.

The mission was conducted for the following fundamental reasons: 1. to achieve complete clarification around the facts and the identification and criminal prosecution of the responsible parties; 2. to speak out nationally and internationally against the spying committed by the DAS; and 3. to raise awareness about the actions carried out in this respect.

The mission also had the goal of having FIDH be represented as a civil party in the criminal proceedings against the DAS by the Prosecutor's Office. This would be taking similar action as had done the organisation of "José Alvear Restrepo" Lawyers' Collective (CCAJAR), a member organisation of FIDH and a long-standing victim of the relentless persecution perpetrated by the Colombian government to encourage its destruction. Additionally, FIDH expresses its solidarity with all of the judges, journalists, trade unionists, and human rights defenders who have been the targets of attacks by this government agency.

In this respect, the members of the mission conducted many activities and interviews with different institutions, including the Prosecutor General's Office (*Fiscalía General de la Nación*), the Inspector General's Office (*Procuraduría General de la Nación*), the Vice-President's Office of the Republic (Presidential Human Rights Program), the Supreme Court of Justice, the Ministry of Defense, the current Director of the DAS, the Office of the United Nations High Commissioner for Human Rights, and the Embassies of Sweden, Spain, and France.

I. THE DAS: A SYSTEM MEANT TO DESTABILIZE, EXTERMINATE AND ANNIHILATE

Report by the United Nations High Commissioner

According to the 2010 Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia:⁴

“14. Information was made public in 2009 that DAS (the national civil intelligence agency reporting directly to the President) had conducted widespread and systematic illegal intelligence operations going at least as far back as 2003. These operations targeted, inter alia, human rights defenders, political opposition leaders, journalists and high-level Government officials, such as the Vice-President. Furthermore, disturbing information appeared in the public domain that even magistrates of the Supreme Court were subject to surveillance. The Inter-American Commission on Human Rights, a United Nations special rapporteur and OHCHR-Colombia itself were targeted as well. These actions, in many cases, had the objective of invalidating the work of the victims, who were considered as “legitimate targets” for being potential opponents to Government policies.

15. Illegal activities by DAS included wire-tapping of phones and Internet lines, surveillance, harassment and threats, theft of information and break-ins into offices and homes. This has provoked a climate of fear and insecurity and, in some instances, sabotage and discrediting of the work of human rights defenders. Actions against women included direct threats against their children, at times with violent sexual content.

16. These activities appear to have been carried out by informal structures created by high-ranking officials within DAS, which provided the semblance of legality and hierarchy necessary to obtain, administer and exchange information, as well as access to the human, technical, and financial resources of the agency. In some cases, even DAS protection schemes for human rights defenders and others were used to obtain information.”

1. The Facts

Though the intelligence activities carried out by the DAS have been immersed in scandals for more than fifteen years, the situation has increasingly worsened since the beginning of the Álvaro Uribe Vélez government.

In 2005, the former DAS Chief of Information Technology, Rafael García Torres, was arrested for having used his position to help paramilitary groups and drug traffickers. Consequently, García decided to cooperate with the judicial system and his testimony has made him a key

4. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia. Human Rights Council, 13th Session, Agenda Item 2, March 4, 2010.

witness. For instance, according to García, Jorge Noguera Cotes –DAS Director during the first Alvaro Uribe administration, specifically from August 2002 until October 26, 2005– used his position to put the security agency at the service of the paramilitary group under the command of Rodrigo Tovar Pupo, aka Jorge 40. Furthermore, Noguera also allegedly facilitated this group’s involvement in the selective murder of trade unionists and other activists in Colombia, providing the paramilitaries with the information used for his persecution. Jorge Noguera Cotes was appointed consul in Milan during the second Uribe administration. However, soon thereafter Noguera had to resign from this post in Milan to return to Colombia after he was summoned to make a statement before the Prosecutor’s Office. At first, Noguera was vigorously defended by President Álvaro Uribe Vélez, who stated that he would stand by Noguera. In fact, President Uribe appointed Noguera consul in Italy when the criminal investigation was first opened.⁵

It should be remembered that in 2002 Noguera was one of the directors of Uribe’s presidential campaign in the department of Magdalena. He was also appointed as director of the DAS seven days after Uribe took office and held the position for almost four years. On February 22, 2007, Noguera was arrested for charges of conspiracy for committing a crime and aggravated homicide. When president Álvaro Uribe Vélez first heard the news, he stated that if Noguera was indeed found guilty, that he would apologize to the country for having appointed him as Director of the DAS.

In May 2007, 11 police generals were removed after it was revealed that the Police Intelligence Office had carried out new interceptions.⁶ In fact, the scandal in February 2009 was the third one of this nature to come to light during the Uribe government.

In February 2009, the mass media revealed that the DAS –through special strategic intelligence groups as classified under “confidential expenses”– conducted surveillance and interceptions, among other operations, against various national and international public figures. These included parliamentarians, journalists, political and social leaders, judges from the Constitutional Court and the Supreme Court of Justice, and members of opposition political parties, human rights and related organizations, as well as organizations opposed to government policy. These targets (“*blanco*” in Spanish) objectives or ‘targets’ were considered to be “threats against the security of the State and President,” as was revealed to the mass media by a detective from the DAS Deputy Director’s office.⁷ In this respect, some of the intelligence activities conducted by the DAS that have caused the greatest outrage include gathering information on the affected individuals’ residence, activities, finances, nuclear family, work, routines, and displacements. To that end, telephone lines and emails were intercepted and national and international contacts were analysed. These are only some of the measures that have directly impacted at least 600 people.⁸

Continuing with its mission, the DAS ensures to use information obtained from both public and private institutions. For instance, the DAS obtained information from the Official Program to Protect Human Rights Defenders and the Financial Information and Analysis Unit (UIAF) under the Ministry of Finance. The UIAF specifically facilitated information about some of the judges’ financial records, without even an order from the relevant authority, the Accusation Commission of the Chamber of Representatives. This inevitably gravely affected the protection

5. “Frases de Uribe sobre Jorge Noguera.” *Semana* magazine, http://www.semana.com/wf_InfoArticulo.aspx?IdArt=101222.

6. “*The illegal and unwarranted interception –violating democratic ethics, the liberty of citizens, their privacy, their freedom to express their political ideas, and their role as journalists– is an offense against the rule of law. It is a restriction of freedom that we must guarantee for every citizen. The practice of believing that freedom means a government official may abuse and restrict the freedom of citizens has to end. This cannot happen any longer in our Homeland!*” warned President Uribe in 2007. Nonetheless, illegal telephone interceptions continued to be conducted. See: “*El DAS-gate y las ‘chuzadas’, vuelve y juega.*” *El Espectador* newspaper, February 21, 2009, <http://www.elespectador.com/impreso/judicial/articuloimpreso120201-el-das-gate-y-chuzadas-vuelve-y-juega>.

7. “*Petro señala que ‘chuzadas’ del DAS son orden de Uribe.*” *El Espectador* newspaper, February 21, 2009, <http://www.elespectador.com/articulo120242-petro-senala-chuzadas-del-das-son-orden-de-uribe>.

8. “*Más de 600 personas habrían sido ‘chuzadas’ ilegalmente por el DAS, según investigadores.*» *Caracol* Radio, April 17, 2009, <http://caracol.com.co/nota.aspx?id=796294>.

of personal information and the fundamental rights of these individuals.⁹ In April 2010, some of the information was disclosed from the files confiscated at the DAS offices, which will be analysed in the following section. Additionally, according to the information and testimony revealed by the Prosecutor's Office, the President's Office of the Republic has been implicated not only passively but also actively throughout this affair (since the orders to intercept and monitor the judges may have come directly from the Presidential Palace of Nariño).¹⁰

2. Excerpts from DAS documents confiscated by the Prosecutor's Office

Regarding what the DAS's general intelligence Operations Office called "POLITICAL WARFARE," the confiscated DAS documents, specifically pages 159 to 169 in AZ Folder No. 63-2005, prioritized operations for the Amazonas, Transmilenio, and Bahía cases, and defined several absolutely terrifying objectives, strategies, courses of action, and actions:

Objectives: "*Defend Democracy and the Nation*" and "*create awareness on the consequences of a communist system.*"

Strategies: Smear campaigns through mass media, distribution of pamphlets, graffiti, brochures, and posters; the creation of web pages with press releases, denunciations, and false accusations; sabotage through terrorism using explosive, incendiary, and technological methods, as well as public utilities; pressure through threats and blackmail.

Expected results: Misinformation of the population in favour of government critics, division within opposition movements, hindrance to organizing mobilizations convened by the political opposition.

Some of the different DAS operations:

Operation AMAZONAS: The objective was to "*promote actions beneficial to the State for the 2006 elections*" and the targets were "*opposition political parties and the Constitutional Court,*" citing specific opposition political parties –Social and Political Front, Colombian Liberal Party, and Alternative Democratic Pole– and the first and last names of several Constitutional Court judges.

Operation TRANSMILENIO: The overall objective was to "*neutralize the destabilizing actions of NGOs in Colombia and the world,*" specifically those that "*establish their ties with narco-terrorist organizations in order to bring about their criminal prosecution.*" Specific courses of action were defined to carry out this operation, allowing us to understand how the DAS operates by distinguishing between its objectives, strategies, and actions.

Operation Publisher: Objective: Obstruct the publication of books. Strategies: Sabotage and pressure. Action: Public utilities, distribution trucks, threats, and legal warfare.

Operation Halloween: Objective: Raise the population's awareness on the reality of communist ideology. Strategy: Smear campaign. Action: Publication of ten thousand copies of a book.

Operation Arauca: Objective: Establish the ties between the José Alvear Restrepo Lawyers' Collective (CCAJAR) and the ELN guerrilla group. Strategy: Sabotage. Action: Email correspondence with the ELN leadership which would be found during a raid on the office.

9. In accordance with Article 15 of the Colombian Constitution (Chapter I – Concerning Fundamental Rights), every individual has the right to personal and family privacy, as well as to know and rectify information gathered about them in data banks and in the records of public and private institutions. Freedom and the other guarantees established in the Constitution will be respected in the gathering, handling, and circulation of data.

10. "Pierna arriba." *Semana* magazine, April 17, 2010, <http://semana.com/noticias-nacion/pierna-arriba/137723.aspx>.

Operation Exchange: Objective: Neutralize the influence of the Inter-American Court of Human Rights. Strategy: Smear campaign and sabotage. Action: Alliance with foreign intelligence services; press releases and denunciations on web pages; and legal warfare.

Operation Europe: Objective: Neutralize the influence of the European legal system, the Human Rights Commission of the European Parliament, the Office of the United Nations High Commissioner for Human Rights, and national governments. Strategy: Smear campaigns. Action: Legal warfare.

Operation Risaralda: Objective: Generate division among the Redepaz leadership (Ana Teresa Bernal). Strategy: Operative investigation, smear campaigns, and sabotage. Action: Demonstrate the illicit activities carried out by a Redepaz official to obtain economic benefits in exchange for facilitating political asylum; press releases; and withdrawal of the DAS security detail.

Operation Internet: Objective: Generate controversy with regard to NGOs. Strategy: Smear campaign. Action: Issuing press releases through the creation of web pages (Truth and Justice Corporation and Colombian Information and Statistical Service for Conflict Prevention). It should be noted that a preliminary Internet search was carried out with negative results.

Operation Foreigners: Objective: Neutralize the actions of foreign citizens who attack State security. Strategy: Operative investigations, smear campaigns, and pressure. Action: Deportation, press releases, and denunciations.

The previously mentioned list of operations is a transcription of a Power Point presentation included in the material confiscated from the DAS.

3. The DAS's Victims

The DAS's mission is to “*produce privileged information and provide data to the President of the Republic for making decisions and setting policy on issues relating to the State's internal and foreign security; safeguard the State's highest interests; and investigate crimes that threaten the State's existence and stability*”, according to the agency's official web page.¹¹ Nonetheless, the succession of these illegal actions do not concern the defence of public interests by the State's highest intelligence service. To the contrary, these actions represent a government policy which has devastated legality so as to maintain its control of power.

It has been revealed that an actual program was carried out –including private information gathering, investigations, surveillance, persecution, threats, blackmail, and the creation of psychological profiles– against innocent people who did not represent in any way a threat against the State's internal or foreign security.

a) The judicial branch

First of all, the separation of powers, which is one of the cornerstones of a democratic system, has been seriously attacked. This principle means that the legislative, executive and judicial powers control each other through a system of checks and balances. The Administrative Department of Security, reporting to the executive branch (i.e. the President's Office of the Republic), illegitimately violated this principle when it intercepted communications and conducted surveillance and threats against the judges of the Constitutional Court and the Supreme Court of Justice.

11. The DAS's mission and vision according to official web site, <http://www.das.gov.co/>.

In 2005, during the first Uribe government (2002 to 2006), the DAS ordered “*actions to be carried out for the benefit of the State*” to discredit, pressure and sabotage the five Constitutional Court judges who were allegedly known to be against a constitutional reform that amended the regulation which impeded a presidential re-election. The DAS classified these judges as actual “targets.” Consequently, the judges Jaime Córdoba Triviño, Humberto Sierra, Jaime Araujo Rentería, Tulio Alfredo Beltrán Sierra, and Clara Inés Vargas Hernández, became targets of persecution. The intimidation may have had an impact on the Constitutional Court, which is made up of nine judges. The reform was passed and led the way to authorize Uribe’s re-election. Of these judges, two dissented partially and two completely.

The Executive Branch’s interference with the judicial branch does not only involve threat crimes or a violation of the privacy of communication. These actions have also disrupted the balance of the whole system of the Colombian State’s separation of powers. They spread a climate of terror so as to not properly exercise these powers and represent one of the gravest attacks against the legitimacy of the rule of law.

It is extremely preoccupying that orders were given to intercept and monitor the judges from the Constitutional Court and Supreme Court. According to a statement made by a witness, which was read by the Prosecutor delegate in charge of the case, this even resulted in illegally recording the private sessions of the Supreme Court judges when “*they discussed such issues as re-election, extradition and information related to the President.*”¹²

During FIDH mission, the Supreme Court of Justice –as the self-proclaimed victim of surveillance, threats, harassment, and smear campaigns– indicated the gravity of the operations being carried out. This concerns such fundamental rights as the right to the free development of one’s personality, privacy, physical safety, and life. According to the Court, it consequently faces a high level of vulnerability, since the DAS attempted to incriminate the judges and pressure them. They did this through the means of espionage of banking and tax information, surveillance, interceptions, threats, and attacks. In other words, the DAS attacked the very autonomy of one of the branches of State power. In fact, FIDH mission received information from one of the judges who had been the victim of an attack against her life, for which she claimed the government was responsible. With the purpose of ordering the government’s protection, the Supreme Court judges have been granted precautionary measures of protection from the Inter-American Commission on Human Rights.

b) Journalists and human rights defenders

The meeting held with human rights defenders and journalists, who explained the persecution they have had to endure (in particular by sectors of the DAS), was one of the most revealing parts of FIDH mission. For instance, the journalist Claudia Julieta Duque stated that the government has encouraged the persecution of independent journalists. Specifically, according to the journalist, the government attempts to maintain control of public opinion in the field of journalism by maintaining the critical voices in silence. Duque has also been the victim of systematic attacks including persecution, kidnapping, theft and threats, both against herself and her family, and other situations. These have forced her into exile on three different occasions. As a concrete example, a document, recently disclosed by the Technical Investigation Unit of the Prosecutor’s Office (AZ No. 54-2004), revealed the methods and the horrifying threats carried out on the person of Ms. Claudia Julieta Duque.

12. “Pierna arriba.” *Semana* magazine, April 17, 2010, <http://semana.com/noticias-nacion/pierna-arriba/137723.aspx>.

The following is the transcript of the procedure ordering the threat:

Page 170, document that is without a title or any information on who created it or to whom it was directed.

It should be noted that the information has been summarized since this concerns an action plan that included threats to be made against Ms. CLAUDIA JULIETA DUQUE, printed with a background reading “EXCLUSIVELY FOR USE BY THE DAS.” This document is also dated “17-nov-2004”. The complete text of the document is as follows:

“LANDLINE NO.: XXXXX
 XXXXX (Possibly a two-way radio)

ADDRESSEE: Claudia Julieta Duque
POSITION: Lawyer with the José Alvear Restrepo Lawyers’ Collective
CONCERNS OF SECURITY: At her residence, CJD has caller identification and records her conversations.

RECOMMENDATIONS: Make the call near the Police Intelligence headquarters.
 Do not stutter or extend the call beyond 49 seconds.
 Preferably call from an ETB-card telephone booth, in case the call is immediately returned.
 Confirm that there are no security cameras within the perimeter, even transit cameras.
 Whoever carries out the call should do so alone and should get to the site by bus.
 Increase prevention measures, since Claudia Julieta will immediately report the call to Colonel Novoa of the National Police (who, on prior occasions, has affected us institutionally).

TEXT

GREETING: Good morning (afternoon). Is Dr. Claudia Julieta Duque there?

MESSAGE: Ma’am, are you XXXX’s mother (wait for reply). Well, I have to say you left us with no other choice. You were warned but you didn’t heed the advice. Now armored cars and bullshit letters won’t help you. We will now have to go after what you hold most dear. This is what happens for being a bitch and for getting involved in what doesn’t concern you, you old motherfucking whore....”

This threat was included in the press clipping of an El Tiempo newspaper article titled “*Denuncian Amenaza a periodista*” [Alleged threat against a journalist] dated November 22, 2004, which implies the threats suffered by Ms. Duque.

Since 2003, the journalist and CCAJAR have questioned the DAS’s responsibility in these acts of surveillance and harassment. Due to this situation, this journalist entered into the Protection Program for Journalists and accepted the DAS security system. Ironically her situation worsened. As a result, in April 2008, she suspended the security mechanism and filed a legal action to protect her constitutional rights, which was decided in her favour with regard to protecting her right to habeas data. Though the DAS was ordered to provide her with all relevant information through the writ of habeas data, the agency has yet to comply.

Testimony by Claudia Julieta Duque¹³

«Claudia Julieta Duque has had a stormy and difficult relationship with the DAS. If even one percent of what has been said about G-3's actions against her are proven true, even with that she would deserve an apology.» Felipe Muñoz, DAS director, May 4, 2010.

«I remember that while I was being harassed and intimidated I considered bargaining with the caller, telling him that I had had given up and would do whatever they wanted, begging him not to touch her, telling him that if he wanted I would give myself up that very night so they could do everything to me that they said they would do to her. I would offer myself up for this torture provided that she, my daughter, would never even be mentioned again.

I was overcome with despair. Up to then, I had been able to keep a minimum balance over the previous two years, even though I would continually find messages on my answering machine with blood-curdling screams that could only be of people being tortured, with funeral music, with people screaming at me: “motherfucker,” “whore,” “we’re going to chop you up alive,” “bitch,” “idiot,” “speak with a feminine voice,” or telling me in the middle of laughs that they had kidnapped my daughter, that she would «never again» return... I had known how to keep myself clear-minded despite the more than eight months of insomnia, the multiple and ongoing surveillance, the kidnapping in July 2001, the attempted forced disappearance on October 13, 2004, the Ministry of Interior and the DAS mocking my allegations, and their silence after I discovered this agency’s responsibility in the persecution that they carried out against me. Of all of my fears., I broke down. I broke down and I am breaking down five years later while I write these lines.

I hung up the telephone and immediately tried to call on a two-way radio to a member of the José Alvear Restrepo Lawyers’ Collective (CCAJAR), which was the organization I had worked for since August 2003. However, the service was blocked and the word «restricted» appeared on the screen, despite the fact that just a minute before I had received a call that would definitively change my life, the memory of which still today causes the same shock, the same terror, the same suffering. Without thinking much about it, I tried to call on the telephone land line, but the result was the same. It did not even have a dial tone.

I ran to the living room and looked for the mobile telephone that I had bought a few hours before as I knew it was urgent to have means of communication that were secure and unknown to those persecuting me. At last, I was able to speak with Soraya Gutiérrez, then the president of CCAJAR. As I cried uncontrollably, but in a low voice so my daughter would not learn about what happened, I told her about “the call”. She asked me to tell her the number from which the call had been made (310 569 2455) and another lawyer, Pilar Silva, verified whether this number existed, if it was real.

As appears in the script produced by the Administrative Department of Security (DAS), the original of which lies in folder 54, on page 170, of the case mistakenly known as the “wire-tapping” case, the individual who answered tried to divert the responsibility of the threat to the National Police. This fact has not yet warranted any statement from the latter institution. Certain that she was deceiving him, the caller responded to Pilar’s flirting. She asked him: “My love, where are you? I hear lots of noise.” He responded: “Here, leaving from the Sixth Station.”

That evening the police human rights coordinator, Colonel Luis Alfonso Novoa, cordoned off the Station and the station commander ordered the confinement and review of all of the civilian and police personnel who were present at 7:52 pm. on November 17, 2004. At the same time, I renewed my absurd and dreadful pilgrimage that had already forced me to leave the country in 2001. That night I had to hide at a friend’s house. Then I got a furnished apartment and a few weeks later went into my second exile.

IN ZUGZWANG POSITION

I remember that I still played chess with the DAS the evening before “the call,” which is what I would do during these months when the stress and fear would not let not me sleep. I had

13. “Ocho años en primera persona de DAS.” Claudia Julieta Duque, May 7, 2010, <http://www.colectivodeabogados.org/Ocho-anos-en-primera-persona-de>.

Additionally, this testimony was edited and published in the Gente Colombia magazine in May 2010, <http://revistagentecolombia.wordpress.com/2010/05/06/claudia-julieta-duque-y-el-das/>.

played chess since I was eleven years old and was well-versed in game –or situation– analysis. I concluded that I was close to finding myself in the «zugzwang» position, which is a German word that comes from “zug” (or “move”) and “zuwang” (or “coercion”). This position means that the person, whose turn it is to move will lose no matter what move is taken.

In the file at the Prosecutor’s Office, there are dozens, if not hundreds, of illegally intercepted emails in which I told Alirio Uribe –the lawyer for the Jaime Garzón case– about my fear of losing this game because of who was, is, and will always be, my greatest vulnerability: my daughter.

It is not necessary to belong to a criminal group within the Colombian State to know the importance of a child for a father or mother. Nonetheless, someone from the DAS named Jair, was charged with breaking the codes that Alirio and I used to “protect” our messages and discussions on the Garzón case, my research, and my security problems. This eventually led to the orders to “urgently liquidate” me and to threaten my daughter.

The evening of November 16th was the last game of chess that I played-- in which two days before the government had granted me protection with an armoured car and police patrols conducted with extreme efficiency and commitment by Sargent Fabio Cepeda. I concluded thereafter that something could happen to my daughter if she went to school the next day. Fortunately, I was able to convince her father to pick her up before dawn on November 17th (at an hour when even murderers sleep), while using as an excuse that she had indeed the right to meet her recently born sister.

What took place later, and much of what had happened previously, was not eliminated from the archives of DAS’s Strategic Intelligence Group No. 3 (G-3) and are now held by the Prosecutor’s Office. Nonetheless, the allegations I have made over the last five years remain unpunished.

Colonel Novoa, a man who brought honour to the uniform until 2008 and who saved my life on at least two occasions, triangulated and verified the threatening calls. In particular, there was a two-way radio number which until recently had been answered by a captain (I remember some of them: Lagos, Tabares) and several mobile telephone numbers which ended up being quite suspicious for the police investigators.

However, Prosecutor No. 23 from the Human Rights Unit, Marlene Barbosa Sedano (the same prosecutor who had recently released the alleged paramilitary known as El Cebollero) immediately concluded that the telephone number used to torture me psychologically was that of a public telephone.

Last December, I learned of the existence of the memorandum that Semana magazine called a “threatening manual,” which made me cry for several days and nights as I relived the pain from the three exiles and eight years of persecution and terror. I especially also remembered everything I lived through in the immense effort that I undertook in ensuring my daughter’s education and growth with the fear that the Presidential Security Agency created on us.

In spite of everything, today my daughter is a beautiful adolescent who has been able to take advantage of every opportunity. At fifteen years old, she already speaks four languages and smiles at feeling in control of the world, even though ironically she has never known the meaning of the word «freedom» in her own country.

For my part, I have been fortunate to have loyal and loving friendships and I have created an “international” resume, although I am also still quite frustrated by not having been able to exercise my profession as I would have liked or where I would have liked: in Colombia.

Over these years, my daughter and I have taken photographs of ourselves in five of the places that are the wonders of the world. We have climbed snow peaks merely two thousand meters high and were able to discover some places where the sun sets close to midnight and where people bathe in the rivers at dawn without ever running the risk of being kidnapped.

Nonetheless, we have not been able to enjoy salsa music and traditional Colombian food at Christmas time. And, on December 31st, we are not able to sing “I am running to my house to embrace my mom.” We have cried because of the absence of caring relationships which we would never have wanted to leave behind and we have also complained because the DAS has tentacles that have followed us everywhere... When will all of this end?”

Along these same lines, this kind of persecution is also aptly revealed in the case of the journalists **Hollman and Juan Pablo Morris**. As co-directors of the “Contravía” television program, they have spoken out against **the murder of Jaime Garzón and the massacre of the Peace Community of San José de Apartadó**. Due to these allegations, they were subjected to a series of threats, which brought them to request precautionary measures of protection from the Inter-American Commission on Human Rights. In fact, the Morris’s security guards identified the perpetrators of these acts as DAS agents, facts that were corroborated during the DAS scandal since they a file with information on the Morris family, their movements, and actions, was also discovered. The DAS’s main objective was simply to discredit the work of the journalists, as confirmed by the journalists Juan Pablo Morris and Claudia Julieta during a meeting with FIDH.

Here is a brief summary of the harassment suffered by the journalist Hollman Morris:

OPERATION PUERTO ASÍS:

Operation Puerto Asís was conducted by the DAS’s illegal operations group (G-3). Its objective was to delegitimize, discredit, psychologically destabilize, threaten, and even initiate baseless criminal investigations, against the journalist Hollman Morris. According to various documents, in order for this to be done, “*real-time surveillance of the journalist and his family members*” was carried out, including surveillance and threatening telephone calls to his wife, surveillance of his two underage children, and communications interception of the entire family, including his siblings and parents.

This operation also included the illegal gathering of private information (for instance the bank accounts of the entire Morris Rincón family) and even threats against his life, which took place on May 16, 2005, according to FIDH records.

Recently, the Prosecutor’s Office discovered further actions that were carried out against the journalist, which included ongoing surveillance, an international smear campaign using press releases and FARC videos, efforts to suspend his visa, and acts of sabotage, including the theft of his passport and national ID card, among other actions.

Consequences:

Ten years ago, Hollman Morris and his wife Patricia Casas decided to go into exile due to the threats that they had been receiving. These threats continue till this day. Nonetheless, Hollman Morris has continued to work with his Contravía television news program, despite being the most stigmatized journalist in Colombia (even alerted twice by the President of the Republic).

Presently, the economic support to continue producing Contravía, the program directed by Hollman Morris, has been blocked. The production team is searching for new sources of financing to contribute to continuing with the program.

Hollman Morris has been invited by the Harvard’s Nieman Foundation for Journalism to be one of their international scholars from 2010 to 2011.

The mission also held interviews with the lawyers from the Inter-Church Justice and Peace Commission (CIJP) who have been stigmatized and persecuted by the DAS. CIJP, which provides comprehensive follow-up and support for the resettlement of communities that are forcibly displaced by paramilitaries, has been slanderously accused of collaborating with guerrilla groups. For instance, according to General Mora Rangel, the new settlements for the displaced peasants whom were accompanied by the Commission were actually “*concentration and training camps and collaborated with the guerrilla.*” This stigmatization has been subject to legal investigations. However, the discovery of a telephone conversation between the former Minister of the Interior and the former General Rito Alejo del Río, was further proof of the existence of a plan meant to discredit the name of the Commission, has not yet itself produced any openings for an investigation.

c) FIDH and its member organizations

Strategic surveillance and infiltration operations have affected multiple human rights organisations, including the International Federation for Human Rights (FIDH) and its four member organisations in Colombia: the José Alvear Restrepo Lawyers' Collective (CCAJAR), the Permanent Committee for the Defence of Human Rights (CPDH), the Latin-American Institute for Alternative Legal Services (ILSA), and the Popular Women's Organization (OFP). The Colombian Commission of Jurists –along with CCAJAR– has also been one of the most affected organisations.

In this respect, FIDH has fallen victim of surveillance and the tracking of its members' movements and activities, among other operations. Consequently, FIDH decided to request its recognition as a civil party in the case. Since senior State officials are allegedly involved, these acts presume an attack on public liberties in Colombia and represent a flagrant violation of the rule of law.

In this respect, it should be stressed that the previously described intelligence operations have occurred within the context of grave attacks by the government against civil society and coincide with the unsubstantiated accusations made by the President of the Republic and other senior government officials against human rights organizations.¹⁴ For instance, during the period when the DAS's illegal surveillance took place, the José Alvear Restrepo Lawyers' Collective was victim of multiple threats, slanderous stigmatization, and the theft of computer equipment. Indeed, many of the threats received by the alleged targets of these operations, including human rights defenders, occurred at the same time as when the information was obtained from the DAS's investigations. This allows us to presume the involvement of this public institution that reports directly to the President's Office.

Soraya Gutierrez was honoured with the ABA (American Bar Association) Human Rights Lawyer Award in 2006. The cover of the present report has a photograph of a doll that was sent to her as a clear threat against the physical safety of her daughter. The accompanying note read: «*You have a pretty daughter, do not sacrifice her.*» As seen in the photograph, the package contained a dismembered and naked doll with a red cross on its chest simulating blood and with red stains on its neck, arm, crotch, and head, separated from the body.

Due to the following reasons, it is presumed that the threat was the work of the DAS:

- The package was sent by mail from the municipality of Sogamoso (Boyacá) from the grandparents' address. The documents confiscated from the DAS demonstrated that this agency ordered and conducted intelligence work against Soraya in this municipality, which included her parents' names and address.
- The address on the package corresponds to the house in Sogamoso where Soraya lived years ago when she was a child. This address also appears in the information confiscated at the DAS.
- The name on the package's return address was Soraya's grandfather. This name is also found in the information confiscated at the DAS.

14. In 2003, the situation worsened when President Uribe referred to human rights defenders as 'political intriguers,' 'human rights traffickers,' 'spokespersons of terrorism', totally disqualifying their work and breached the United Nations Declaration on Human Rights Defenders. FIDH spoke out against these statements before the United Nations Human Rights Commission. In this respect, in 2009, after the release of 3 police officials and one army soldier in the hands of the FARC, President Uribe referred to the Colombians for Peace Movement as the "intellectual bloc of the FARC." FIDH requested that he retract and rectify these accusations. See: "Exposición escrita presentada por la FIDH al Secretario General." E/CN.4/2004/NGO/154, March 10, 2004; "Acusaciones de Uribe contra periodistas generan cascadas de reacciones." El Tiempo, February 11, 2009, http://www.eltiempo.com/colombia/politica/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDL-4808710.html.

The case of Alirio Uribe:

Mr. Alirio Uribe is a lawyer with the José Alvear Restrepo Lawyers' Collective. Over the last ten years, he has handled some of the most sensitive cases in Colombia. In 2003, Mr. Uribe received the Martin Ennals Award for Human Rights Defenders. Presently, he is the lawyer for the victims in the case against Jorge Noguera.

The folders confiscated at the DAS include more than 1,000 pages of intelligence work conducted against Alirio Uribe.

Some of these documents should be highlighted (See ANNEXES):

One document, classified as SECRET, has information available on Alirio Uribe Muñoz as the president of the Lawyers' Collective. It includes three of his photographs and fully identifies him. The document reads: CHECK WITH CURRICULUM VITAE.

Another document, also classified as SECRET, we can find a whole PSYCHOLOGICAL PROFILE. This thoroughly exhaustive analysis without a doubt undertaken by professionals, specifies his strengths, weaknesses, habits, preferences, hobbies, and friendships. There is no doubt that this profile was also used in the preliminary stages to carry out the future surveillance and harassment against Alirio. Indeed, an INTELLIGENCE REPORT was drafted under the heading of CLASSIFIED and dated May 12, 2004.

It should be noted that images of his wife and children were also included in these confiscated documents.

It has also been verified that a vacant apartment close to Alirio Uribe's residence was rented to carry out immediate and ongoing surveillance. In addition to this ongoing surveillance of his residence, telephone calls and emails, his home was also illegally searched and several documents concerning his human rights defence work were removed. It should also be noted that intelligence activities were carried out against him abroad, since photographs were found of Alirio Uribe during his trips to Australia and Chile. In other words, international espionage was carried out against a human rights defender.

Other documents describe his activities and the events in which he participated. However, the most serious elements are those of the acts of sabotage. Indeed, attempts were made to obstruct his trips through the theft of his documents as well as attempts to discredit him through false allegations of narcotics consumption.

The facts described above call into question the government's supposed political will to cease its persecution of human rights defenders.¹⁵

Moreover, these operations threaten the constitutional guarantees and rights of individuals, groups, and organizations under surveillance. If we take into account the probable illegitimate use of this illegally obtained information, then it is evident that the following rights are also harmed: personal and family privacy, good name, freedom of expression, human dignity, and life. Furthermore, this puts at great risk the legitimate exercise of of fundamental activities found within a democracy, such as those that are undertaken by the Supreme Court of Justice, journalists, and human rights defenders.

d) Missions and international bodies

The DAS's operations have also affected international human rights missions visiting the country, as in the case of the former United Nations Special Rapporteur on the rights of indigenous peoples and the Inter-American Commission on Human Rights.¹⁶

15. It should be noted that Presidential Directive No. 07 of 1999 orders public officials to refrain from questioning the legitimacy of the work carried out by human rights organizations and their members, provided that the latter conduct their work in accordance with the Constitution and the law.

16. On this issue, the Inter-American Commission on Human Rights expressed its "deep concern" for the existence of DAS intelligence operations against this organisation and established that a special intelligence group "was created to monitor activities tied to the litigation of cases at the international level." These operations violate the State's commitment to respect the privileges and immunity of OAS representatives. See: "Fiscalía y Procuraduría investigan supuestos seguimientos del DAS a una misión del CIDH: Gobierno." El Tiempo newspaper, August 14, 2009, http://www.eltiempo.com/colombia/justicia/fiscalia-y-procuraduria-investigacion-supuestos-seguimientos-del-das-a-una-mision-del-cidh-gobierno_5845387-1.

The European Parliament and the Human Rights Sub-Commission of the European Parliament have also been gravely affected in what is known as Operation Europe.

In this respect, the type of confiscated documents demonstrate what kind of events tend to be monitored by the DAS, for example: “Week for Peace” (identifying the organizers and foreign participants); “International Day of Indigenous Resistance” (identifying participants, leaders, issues, and promotional literature); “IV Marx Lives” (list and photographs of panellists); “International Peace Seminar” (conducting comprehensive surveillance against the participants and the length of stay in Colombia, since some of the seminar participants were considered sympathizers of organisations which were the alleged ideological platforms of subversive groups in Colombia); “Re-election: The Spell Continues” publication release; “Voices for Life in Colombia”; “XXXV FIDH Congress” in Ecuador; “Visit by the 2003 Nobel Peace Laureate”; “Conference: Monologue and Negotiation with Paramilitaries” and “25th Anniversary of the Permanent Committee for the Defence of Human Rights.”

The question is: who would actually consider these types of events dangerous for national security to the point of justifying espionage?

e) Opposition

As described above, Operation AMAZONAS targeted “*political parties opposed to the State and the Constitutional Court*” and listed the following opposition political parties: the Social and Political Front, the Colombian Liberal Party, and the Democratic Alternative Pole.

The alarming information below appeared in an article by Patricia Lara Salive in the El Espectador newspaper on May 5:

“The candidate Gustavo Petro and other Democratic Pole parliamentarians accused the DAS, an intelligence agency reporting to the President’s Office, of being used by the government to “exterminate the opposition” and find evidence to “link them with illegal armed groups”. [...] The former DAS director of intelligence, Carlos Arzayús, [stated before the Supreme Court of Justice] why the DAS conducted this type of surveillance. According to this DAS official, the surveillance against former judge and Democratic Pole presidential candidate, Carlos Gaviria Díaz, was justified because “he had attempted to weaken the executive branch, especially State security agencies.” The surveillance against the current Democratic Pole presidential candidate, Gustavo Petro, was justified because “he was a point person with the principal ‘left-wing’ leaders in the world, which was a threat to the Colombian State.” The surveillance against former mayor Luis Eduardo Garzón was justified because “he used the Bogotá city government to create and strengthen ‘left-wing’ urban support networks that were also used by the FARC and ELN terrorist groups.” The surveillance against the governor of Nariño, Antonio Navarro Wolff, was justified because he is the “principal opponent to government policies, especially those related to democratic security.” Lastly, the surveillance against Senator Piedad Córdoba was justified because she is “close to important political figures essentially interested in the failure of President Uribe’s political project.”¹⁷

These statements demonstrate the clear absence of political space for left-wing groups. The fact that there is already an internal conflict with the allegedly left-wing guerilla groups further worsens this situation.

In all functioning rule of law systems there should be room for both the government and opposition political parties. Political pluralism is one of the cornerstones of democratic rule of law. A State institution that employs criminal methods to persecute government opponents calls

17. Lara Salive, Patricia. “Aunque usted no lo crea.” El Espectador newspaper, May 6, 2010, <http://www.elespectador.com/columna201919-aunque-usted-no-crea>.

into question the basic components that nourish the democratic legitimacy of the Colombian State.

4. Concerns about the continuation of the DAS's illegal activities

Information on the scope of the illegal activities carried out within the DAS seems to have become an ever-growing snowball. It is also extremely concerning that this information –which has come to light many years after the fact– is also only the tip of the iceberg. Furthermore, it should be remembered that although the overall problematic and essential documents have been revealed, the DAS has yet to cease its illegal activities. FIDH has serious concerns in this respect and remains cautious.

On March 25, 2010, along with other non-governmental organizations, FIDH had a meeting with DAS director Felipe Muñoz. The meeting took place in the offices of the Belgian Federal Parliament and the Belgian parliamentarian Bruno Tuybens was present.

During this meeting, FIDH secretary general Luis Guillermo Pérez, Secretary General of FIDH, recalled that the International Federation for Human Rights had carried out a mission in Colombia in August 2009. During this visit, the mission had a long conversation with DAS director Felipe Muñoz in which he affirmed that the DAS had carried out political intelligence work against men and women Colombians (which nonetheless could not be made public because it was classified information). It was then asked if the DAS kept any intelligence files against Luis Guillermo Pérez and if this was the case, then for these files to be returned to him. Mr. Muñoz expressed that the law did not permit this.

During the meeting on March 25, FIDH again raised the question about Luis Guillermo Pérez and for the DAS to declassify and turn over intelligence files that they had both against Mr. Pérez and his family. Yet the response was the same. The director of the DAS replied that the information was classified, that the law did not authorize him to turn it over, and that he could only do so by an order of the court.

After the director of the DAS refused to turn over this information, CCAJAR lawyer Reinaldo Villalba Vargas lodged a formal request with the Prosecutor's Office for the DAS to declassify and turn over all information on human rights defenders that they still held in their files. It should be remembered that the DAS obtained this information illegally.

As was previously stated, we are gravely concerned that the DAS still holds information about human rights defenders and that it actually still employs the same types of action.

Along these same lines, some of the acts that have taken place since Mr. Felipe Muñoz has held the position of director of the DAS are exemplified in the following cases:

- First, in April 2008, with regard to the Claudia Julieta Duque case, she gave up her security system and lodged a legal action for the protection of her constitutional rights. The latter was ruled in her favour with respect to protecting her right to habeas data and the DAS was ordered to turn over all information concerning Ms. Duque. However, as of today, the DAS has yet to turn over the full amount of information on file.
- A few weeks ago, Marta Leal Llanos, former DAS official currently under investigation and detained for the DAS scandal, provided testimony before the Supreme Court. During this hearing, she stated that she did not want to provide any further testimony because her family (siblings and mother) was being persecuted by the DAS.
- In the spring of 2009, Cambio magazine published an article entitled "*Los aliados de las*

FARC en Europa [FARC's Allies in Europe],” which claimed that FIDH was one of these allies. FIDH immediately contacted the magazine and requested a rectification and demanded to know the sources of this information. The magazine's editor stated that this information came directly from the DAS. Since FIDH is recognized as a civil party in the case, it has thus discovered high-level DAS orders for smear campaigns against CCAJAR and FIDH in Europe.

- In March 2010, Swedish students travelled to Colombia to meet with students and Colombian NGOs. In Santa Marta, the DAS intercepted their telephone calls and they were deported from the country.

- In the meeting between FIDH and the DAS in August 2009, FIDH expressed its concern that German Villalba was in charge of gathering information on Colombia-related NGOs in Europe. This same month, Germán Villalba was removed from the DAS. This type of reaction is especially concerning because the DAS has reacted in this fashion on a recurring basis. When it is reported that a certain DAS official has allegedly committed abuses, this official is immediately removed before the rest of the agency has a chance to be involved.

For instance, Jorge Noguera Cotes was removed from his position as the director of the DAS and appointed consul in Milan, just before he was charged with the crimes of aggravated homicide and conspiracy to commit a crime as the director of the DAS. Additionally, on September 27, 2007, at the request of the national police, Mr. Luis Isnardo Barrera, 12th Prosecutor of the National Anti-Terrorist Unit, ordered the interception of the emails of some 100 individuals and/or human rights organizations, social organisations, victims' organisations, professors, and journalists, including FIDH. This prosecutor was then removed from the Anti-Terrorist Unit after FIDH brought this issue to Vice-president Francisco Santos during a meeting in 2008. In this respect, the system of “custom-made solutions” employed by the government is extremely concerning. Now that the agency has become thoroughly ridden with scandal, the only solution is to definitively “liquidate” the DAS and bring it back to life with another name: “ACI” (Agencia Central de Inteligencia), which will erase its sinister and corrupt past.

Throughout the investigation, new information has continually been revealed, thus increasing the gravity of the crimes. It should be remembered that what began as a “wire-tapping” or the communications interception scandal has developed into a complex mix of threats, surveillance, and baseless criminal prosecutions, among other acts. Additionally, only a small number of officials were at first allegedly responsible. Now, the latest information directly implicates even the President's Office.

It is doubtful and one should remain sceptic with regard to the theories that attempt to reduce the gravity of these acts by claiming that those who are responsible are DAS officials acting as individuals only.. It is only senior ranks of the Administrative Department of Security (i.e. the government) The scale of these operations, which follow an elaborately who can actually elaborate such a planned scheme, may only derive from the senior ranks of the Administrative Department of Security, or in other words the Government. It is illogical to use the argument that individual officials devised such a plot is illogical on their own, especially when it has been proven in the investigation that President Alvaro Uribe Vélez was informed of many of these actions. The sophistication of the operational structure necessarily entails a high level of professional capabilities and experience, which inevitably leads to the alleged implication of the individuals at the most senior levels of the executive branch.

For instance, Operation Europe attempted to neutralize the influence of the European legal system, including the European Parliament's Human Rights Commission, among other bodies. It should be remembered that many jurists from countries in the European Union are not familiar with the internal organization of the European Parliament and therefore the very existence of the Human Rights Commission. It is improbable that Colombian officials –totally removed from

European Union bodies and most likely inexperienced in European law and the legal system—would know of the existence of this Commission and its work in defence of human rights to the point of having as its mission its “neutralization.” In this respect, due the institutional hierarchy within the DAS, it is likely that low ranking officials only obey to the orders coming from the highest levels of the agency and the government, which would also receive a level of support from embassies. It should be asked: How could the President of the Republic not be informed of what occurred with this agency, especially when these illegal operations were carried out in his favour as well as to his benefit?

Indeed, according to the president of the Supreme Court of Justice, judge Jaime Arrubla, the investigation carried out by the Prosecutor’s Office reveals several factors: “*First, the DAS officials did not act autonomously, but rather under the orders of the agency’s director [María del Pilar Hurtado]. Second, the director of the DAS reported to the Presidential Palace of Nariño and several meetings took place. In other words, she also did not act autonomously.*” The judge considered that the surveillance was “*the State conspiring against the Supreme Court of Justice.*” “*According to the report by prosecutor Rodríguez, it appears that senior government officials were coordinating these activities [...]. They were certainly not directed by middle ranking officials,*” stated Jaime Arrubla.¹⁸

On September 19, 2009, after meeting with the United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, President Uribe stated: “*The defence of human rights is a necessary and legitimate action for democracy in a country like Colombia which takes pride in being fully open and willing to receive international scrutiny on this issue.*” It must be stressed that that the the Administrative Department of Security is not an independent agency, rather operates under the direct orders of the President’s Office of the Republic. However, in an incoherent and contradictory manner, the DAS has also gravely persecuted Colombian and international human rights defenders. Specifically, it has developed and undertaken smear campaigns to undermine their efforts and morale and spread a paralysing fear so as to neutralize their work. These activities have been undertaken in Colombia, Europe, and other regions of the world, as demonstrated by “Operation Europe” (see above).

The scope and gravity of the operations that have been revealed severely affect the victims, the Colombian people, and the international community.

Due to the aforementioned reasons, FIDH considers that there are no guarantees that the DAS will not continue its illegal activities –as it has to date– or that other State agencies have not done or are not already doing the same. It should be remembered that the army and the police have their own structures for conducting intelligence and counter-intelligence activities. Within the framework of the Uribe government that claims that human rights defenders are carrying out a “legal war” against the State, evidence is still being gathered that these illegitimate activities conducted against human rights defenders are part of an actual State policy.

Certainly this situation is very concerning. It should be highlighted that the mission’s interviews with the diplomatic community and international organizations confirmed that the situation has worsened due to the political context in the period of re-election, in addition to the president’s authority in presenting three candidates for the position of Prosecutor General. These reason create an institutional power imbalance.

18. “‘Esto era una conspiración de Estado contra la Corte Suprema’: Arrubla.” *Semana* magazine, April 11, 2010, <http://www.semana.com/noticias-nacion/seguimientos-no-solo-actividad-independiente-del-das/137498.aspx>.

THE CASES

1. The case against Jorge Noguera Cotes

1.1 Former DAS director Jorge Noguera Cotes prosecuted for the crimes of homicide, aggravated conspiracy to commit a crime, and other offences.

On February 1, 2010, the former DAS director was brought to trial before the Supreme Court of Justice. FIDH monitored the judicial proceedings jointly with the World Organization against Torture (OMCT), as part of their joint program called the Observatory for the Protection of Human Rights Defenders. A French lawyer was present to accompany this trial.

Charges were brought against Mr. Noguera for the alleged crimes of “aggravated homicide” and “aggravated conspiracy to commit a crime,” among other offences. Various pieces of evidence were presented during this trial that allegedly demonstrate that Mr. Noguera abused his position as director of the DAS in order to develop lists of trade unionists, human rights defenders, and political opponents, which were thereafter given to paramilitary leaders to carry out their persecution. In 2004, these actions led to the murders of professor Alfredo Correa D’Andreis, journalist and trade unionist Zully Esther Codina, and former parliamentarian Fernando Piscioti. Through the use of an organized power structure, Mr. Noguera was the indirect perpetrator of these crimes. Mr. Noguera occupied a privileged position within this structure, which allowed him to exercise control and authority over the criminal acts.¹⁹

During its plenary hearings, the Supreme Court of Justice has received the testimony of witnesses, attorneys, and victims, who have been threatened due to their participation in these proceedings. Consequently, this Colombian high court has requested that the Prosecutor’s Office provide immediate protection through a Victim and Witness Protection Program, as will be explained further below.

Various pieces of evidence have also been examined, including some of the following testimonies provided by former DAS official Marta Leal Llanos, paramilitary leader William Mayorga Suárez, former DAS Deputy Director of Operations Luz Marina Rodríguez, Tarcisio Mora (President of the CUT, Colombia’s largest trade union confederation), and Julio Cesar Piscioti (brother of the politician Fernando Piscioti, one of the individuals murdered by the paramilitary groups).

The trial against Jorge Noguera, who is under preventive detention while the criminal proceedings take place, is of utmost importance for clarifying the ties between senior-level State officials and paramilitary groups in the commission for such grave crimes as homicide, especially against human rights defenders and political activists, among other individuals.

During this trial before the Supreme Court of Justice, Jorge Lagos León, former DAS Deputy Director of counter-intelligence under the Andrés Peñate Administration, demonstrated that investigations could prove that the DAS developed diverse actions carried out by its agents in order to intimidate trade unionists and journalists, including producing pamphlets, letters and making telephone calls.²⁰ However, he did not provide specific names or offices that carried out these activities.

19. Under JORGE NOGUERA COTES, the DAS had a list of persons (some of whom were even protected by the very DAS due to their left-wing activism), including such trade unionists and human rights defenders as university professor Alfredo Correa D’Andreis (†), journalist Ms. Zully Codina Pérez (†), former parliamentarian Dr. Fernando Piscioti (†), who were later murdered at the hands of paramilitaries under the command of the paramilitary leader known as JORGE 40, as has been publicly recognized before the Justice and Peace Unit.

20. “Transmisión en directo: Interrogatorio a Carlos Alberto Arzayús, ex subdirector de inteligencia del DAS.” CCAJAR, May 5, 2010, <http://www.colectivodeabogados.org/Transmision-en-directo,2090>.

According to Lagos León, 260 officials are under formal investigation and approximately forty have been indicted. As stated by Lagos, during the Noguera administration, a strong ideological slant further focused the DAS on cases related to guerilla groups, to the detriment of cases concerning paramilitary groups. *“One of the objectives of Dr. Peñate (Noguera’s successor) was to determine the information’s objectivity,”* indicated Lagos.

1.2 Testimony provided by the paramilitary leader Salvatore Mancuso

During his first testimony hearing before the Supreme Court of Justice, former paramilitary leader Salvatore Mancuso, who is imprisoned in a US maximum security prison, reconfirmed and broadened several of the statements that he had provided before the Justice and Peace proceedings. Additionally, he stated that the Colombian government facilitated his extradition as a way to silence him.

Mancuso states that senior army and police commanders collaborated in the consolidation of para militarism

Once again, this time before the Supreme Court judges, Mancuso stated that the paramilitaries have always had a permanent and fluid relationship with all State security agencies, including the police, army, and DAS, without which these illegal armed groups would not have been able to expand their actions throughout Colombia. *“Most of the information we received for military operations came from the military forces. The army and police provided us with lists and photographic albums of the military targets.”*

In this respect, according to Mancuso, on several occasions he had met with retired General Iván Ramírez, former commander of the Army’s First Division, stationed in Santa Marta, in order to coordinate military operations. *“[H]e ordered the division and for the troop commanders to guard certain rural areas, like in Córdoba or the Sierra Nevada.”*

Additionally, Mancuso referred to the Police General Antonio Gómez Méndez, Lieutenant Colonel Marco Antonio Pedreros (Metropolitan Medellín Police), and the Police General Rosso José Serrano. According to Mancuso, General Serrano came to his aid when he was detained, along with paramilitary leaders aka Jorge 40 and aka Reinel Ríos or Santiago Tobón, on the road from Cesar to La Guajira. As what really occurred, he said that *“Commander Castaño called General Rosso José Serrano had Colonel Danilo González travel by plane to La Guajira in order to speak with the police commander in La Guajira so as to have them released.”*

Mancuso was nevertheless also able to recall that the paramilitaries had met with several army brigade commanders within the framework of the consolidation of the paramilitary blocs. For instance, according to Mancuso, General Manosalva, along with Carlos Castaño, provided the information to carry out the operation in El Aro.

Furthermore, as stated by Mancuso, he enjoyed a close friendship with General Martín Orlando Carreño Sandoval, former brigade commander in Córdoba and Urabá, who was one of the military and police commanders who supported them. *“We knew each other since Córdoba and had carried out some joint operations.”* Mancuso also claimed that he was in permanent and ongoing communication with police Colonel Raúl Suárez in Córdoba, who provided them with information on explosive attacks perpetrated in the area.

Lastly, Mancuso mentioned retired General Mario Montoya who sent a special message during the demobilization process to ask them not to demobilize because *“it would be crazy to abandon these territories, since we would not be able to keep complete control the guerilla would then repossess them, as in fact happened.”*

The relationship between the DAS and para militarism

According to Mancuso, not only did the DAS transmit information, but more importantly it “sometimes carried out raids, as for example in Montería, where an operation took place against some members of guerilla groups, at the time the ELN.” He also made reference to the DAS director in Cúcuta. “Basically, he was a member of the self-defence forces. He operated jointly with us and directly with Pedro Fronteras.”

According to Mancuso, the paramilitary known as Felipe (one of the commanders of the Northern Bloc, which operated in Cesar, Magdalena, and Atlántico) was asked if he could investigate a list of 10 or 12 people, which had been given to him by the commander known as Andrés. Felipe responded that “no one in the region can give us information on Córdoba, but I have direct access and a good relationship with Dr. José Miguel Narváez and Dr. Noguera. I will get it from one of them.” Later, Andrés and Felipe coordinated the retrieval of the information, with which “I imagine he was able to carry out the pertinent operations.”

In this respect, Mancuso expressed that they were interested in establishing ties between some individuals in the department of Córdoba and members of the FARC. “The type of information held on them by intelligence agencies was being verified, because we had several indications, according to what I was told by commander Andrés, that these individuals had strong ties –some were proxies and others operated false businesses and conducted intelligence in the department of Córdoba– and would try to carry out attacks against the negotiations we were initiating with the national government at the time.” However, he stated he did not remember the names on the list to be investigated, but he did remember that commander Andrés thanked him for the help that he was already benefiting from.

Mancuso also described the way in which former DAS director José Miguel Narváez provided them with the same ideological training that he gave to the military forces. “On many occasions, he helped us get in contact with generals or colonels to resolve our problems or obtain their support or aid.” Additionally, he stated that Narváez believed that paramilitaries “had to work jointly and directly with the military forces in the fight against subversive groups and that we had to win this battle for the country.”

Mancuso stressed that the the DAS, including many regional directors, supported them from 2002 to 2005, but that unfortunately it was difficult to remember all of their names. However, according to Mancuso, paramilitary leader Carlos Castaño claimed to have met with different DAS directors on several occasions and claimed that their superiors knew specifically about the support that they were providing. Moreover, Mancuso stated that when the director of a regional DAS office –or the commander of a brigade, battalion or the departmental or municipal police– did not have a good relationship with paramilitaries, “the National Director of the DAS, police, or army, was told to get rid of these officials or members of these institutions who obstructed the work that we were jointly carrying out.”

According to Mancuso, he personally provided Rómulo Betancourt-- one of Noguera’s key officials who was the director of the DAS regional office in Córdoba-- with intelligence reports on “the guerrilla and members of subversive groups,” which allowed certain “military operations” to be carried out.

Mancuso also stated that he learned of the existence of the former DAS director, María del Pilar Hurtado, and former intelligence chief Marta Leal, when he was detained at the prison in Itagüí. “I was in Itagüí when I realized they were developing a baseless criminal investigation against the Supreme Court of Justice, against you specifically, with the case of Tasmania. [...] They tried to set up a meeting with certain people, some of the commanders in Itagüí, including Juan Carlos Sierra Ramírez (through his lawyer, who I believe is named Sergio González). I

know that María Del Pilar Hurtado and Martha Leal participated in this meeting to obtain information on TASMANIA.”

Lastly, Mancuso claimed to have met with Jorge Noguera to coordinate security in Ralito before he was demobilized. According to Mancuso, when Noguera met with Jorge 40, they spoke with much familiarity. *“They were pretty affectionate and friendly with each other.”*

The “noc santos” Santos

As he had asserted on prior occasions, Mancuso stated to the judges that vice-president Francisco Santos proposed the creation of the paramilitary Capital Bloc. *“Commander Carlos Castaño told me to go and pick up Pachito Santos, the one from the El Tiempo publishing house, the Santos from Bogotá, a very prestigious family. I went to the airport and picked up Mr. Francisco Santos. I spoke with him on the way and took him to a rural area in the municipality of Tierra Alta, where the meeting took place.”*

Additionally, Mancuso stated that Francisco Santos asked for the Capital Bloc to be established and Commander Castaño proposed Santos to be the commander of the area, *“because he can provide weapons for a bloc and a person with institutional and authority contacts, considering the region’s political and economic leadership”*.

According to Mancuso, a few days before his testimony in May, the Vice-President was even seen on a television news program and explained the reasons why this meeting took place, approximately at the end of 1996 or the beginning of 1997. The reason why Santos mentioned this meeting is that a few days before, Mancuso had told the Peace Commissioner in Itagüí that he would begin to name everyone whom he knew, including the members of the national government like the Vice-President and the Minister of Defence.

Moreover, Mancuso added that during this meeting *“we described the political and ideological vision, the military component, the growth, and the expectations, of the self-defence forces.”* They also requested that he help the self-defence forces gain national exposure, which Francisco Santos agreed to do.

In this respect, according to Mancuso, *“around this time, Francisco Santos published an article entitled, “Vientos Contrainsurgentes» [Counter-Insurgent Winds], which announced the creation of the United Self-defence Forces of Colombia.”* He also supported the publication of a news piece on the release of a person kidnapped by the paramilitaries. *“I personally called Castaño who told me to immediately call Pachito to help us with the news coverage on the release of the kidnapped person and the creation of the AUC.”*

Nonetheless, Salvatore Mancuso’s account goes even further. He also spoke about the time in which president-elect and former minister of defence Juan Manuel Santos proposed that *“we carry out a kind of coup d’etat against then President Samper, that we obtain evidence on drug trafficking and Samper’s ties to drug trafficking”*. This coup even involved the FARC and other public figures belonging to what Mancuso referred to as the *“oligarchy.”*

In this respect, Mancuso stated that they carried out two meetings. At the first meeting, Carlos Castaño had Orlando Henao, one of Castaño’s drug trafficking partners, lend him a helicopter to bring Juan Manuel Santos to an area near the municipality of Guadual to the south of Tierra Alta. At the second meeting, Santos met *“with Víctor Carranza –right now I do not remember who else was there–. It was at Camp 21, which belonged to commander Carlos Castaño. It is on the way to Valencia. When you return to Valencia on the way to Montería, there is a town called Villanueva and from Villanueva to San Pedro de Urabá –on an inland road the self-defence forces built–, just along the border between the departments of Córdoba and Antioquia, a few months later.”*

The reports

According to Mancuso, the reports provided by different State institutions were always classified as SECRET. *“The information related to active guerilla members, militia members, collaborators, front people, and ideological advisors for these groups. Basically it contained the entire subversive structure for these guerilla groups.”*

Additionally, he stated that the reports also included photographs. *“Some also had information on the family, children, and their movements.”*

2. Initiation of disciplinary and criminal investigations

Due to the previously described allegations, the Offices of the Inspector General and the Prosecutor General initiated disciplinary and criminal investigations.

The Inspector General’s Office initiated disciplinary investigations against three former DAS directors and four senior public officials, three of them whom were from the presidential Palace of Nariño.²¹ The Public Ministry will decide now whether it should sanction former directors José Noguera Cotes and Andrés Peñate, former Deputy Director José Miguel Narváez, and Director of the Information and Financial Analysis Unit (UIAF) Mario Aranguren. The Inspector General’s Office is also investigating the cases of presidential Secretary General Bernardo Moreno Villegas, presidential Press Secretary Cesar Mauricio Velásquez, and presidential Advisor Jorge Mario Eastman.

For its part, the Prosecutor General’s Office is investigating former DAS directors María del Pilar Hurtado, Andrés Peñate, Joaquín Polo, and Jorge Noguera.²² They are being investigated for seven crimes, namely conspiracy to commit a crime, illicit communications violations, illicit use of transmitters or receivers, abuse of authority, falsification of public documents, procedural fraud and destruction, suppression or concealment of public documents. At the time of the publication of this report, the case remains in its preliminary stages and no legal decision has been issued on any of these individuals under investigation.

In addition to the previously described individuals, another 30 current and former DAS officials have been summoned to make statements before the court, many of them after being removed from their positions at the DAS. Recently, the Prosecutor’s Office ordered the preventive detention of 12 former DAS officials.²³ As part of this case, the 11th prosecutor delegated before the Supreme Court pressed charges against seven officials, including Deputy Director José Miguel Narváez and the mid-level officials in charge of the intelligence, operations and analysis offices. The next step is for the case to go to trial. The other officials remain under investigation.

21. The Inspector General’s Office (Procuraduría General de la Nación) represents citizens before the State. It is the highest body within the Public Ministry, which is also made up of the Human Rights Ombudsman’s Office (Defensoría del Pueblo) and the Human Rights Liaison’s Office (Personería). It has the obligation of ensuring the proper exercise of the functions entrusted to public servants in the constitution and the law, monitoring the actions of public servants, and reporting any act that may violate the norms in force, without this implying co-administration or interference in the administration of public institutions. The Inspector General’s Office intervenes before administrative authorities; the police; the Superior Council of the Judicature; contentious-administrative and constitutional jurisdictions; and the different courts in the following areas: criminal, military criminal, civil, environmental and agrarian, family, and labor jurisdictions. Its power to intervene is imperative and not optional. This power is also carried out selectively when the Inspector General deems it necessary and becomes transcendent, provided that it is carried out in defense of fundamental rights and guarantees. The Inspector General’s Office is also in charge of opening, conducting and ruling on the investigations concerning disciplinary infractions carried out against public servants and against individuals who exercise public functions or handle State funds. See: http://www.procuraduria.gov.co/html/foinstitucional/foinst_quehacemos.htm

22. The Prosecutor General’s Office (Fiscalía General de la Nación) belongs to the judicial branch in Colombia. Its principal function is to investigate and press charges against the alleged responsible parties of a crime (under the accusatory criminal system implemented under Law 906 of 2004). From 2005 to 2009, the Prosecutor General was Mario Iguarán. Presently, the acting Prosecutor General is Guillermo Mendoza Diago, until the Supreme Court of Justice selects one of the three candidates presented by Alvaro Uribe government.

23. Nine former area and regional Deputy Directors from the intelligence agency, namely: 1. Carlos Alberto Arzayús, 2. Jacqueline Sandoval Salazar, 3. Jorge Armando Rubiano Jiménez, 4. Martha Inés Leal, 5. José Miguel Narváez, 6. Hugo Daney Ortiz García, 7. Jorge Alberto Lagos León, 8. José Alexander Velásquez Sánchez, 9. Fernando Alonso Tabárez Molina, and 10. Luz Marina Rodríguez Cárdenas.

The seven officials were called to trial for the crimes of aggravated conspiracy in committing a crime and other minor crimes related to the interceptions. Nonetheless, the victims' representatives requested that the alleged torture and persecution be recognized as crimes against humanity. The Prosecutor's Office has not yet made any decision in this respect.

Furthermore, different victims have also provided testimony for the case, including former Senator Gustavo Petro, Redepaz president Ana Teresa Bernal, Colombian Commission of Jurists President Gustavo Gallón, Minga Organisation Director Gloria Inés Florez, and CCAJAR lawyer Alirio Uribe.²⁴

The investigation undertaken by the Prosecutor General's Office has been able to establish that the DAS's political espionage had the objective of "*monitoring organisations and individuals opposed to government policy to restrict or neutralize their actions,*" as expressed in the report drafted by the Technical Investigation Unit (CTI) of the Prosecutor's Office.²⁵ This report comprises 104 folders and 12,000 pages of information, including the minutes to meetings and memorandums signed by different former DAS officials and the records of 183 million missed, received and dialled telephone calls, among other documents.²⁶ These documents confirmed that countless interceptions took place without any court order. Criminal legislation classifies these actions as crimes, including manipulation of documents, violation of privacy, and communications violations.

By means of example, we should refer to the memorandum signed by detective Edwin A. Sierra and sent to DAS Counter-Intelligence Director, Jorge Lagos, dated June 14, 2007. The memorandum establishes that "in accordance with democratic security policies," from June 1 to 13, interceptions were carried out against targets of Congress members, Gustavo Petro and Wilson Borja, so as "to neutralize potentially illicit activities that may affect national security."²⁷

In April 2010, the prosecutor delegated before the Supreme Court of Justice laid charges against the following former officials from the Administrative Department of Security (DAS): Fernando Tabares, Jorge Lagos, Bernardo Murillo, Luz Marina Rodríguez, and Germán Ospina, contending "*that the illegal surveillance against the judges was directed from the Palace of Nariño.*"²⁸

Nonetheless, with respect to the so-called "*DAS wire-tapping scandal,*" the government has refused to accept its responsibility. On the one hand, the government claims that no evidence exists. On the other hand, it argues that if something did indeed happen, that it was not within the knowledge of the Palace of Nariño. Recently, the government claimed that the affected individuals also included senior government officials and pro-government members of congress. However, the testimony provided by DAS agents has established that this was a means for the agents to protect themselves (since they were following irregular orders..)²⁹

24. Persons summoned to make a statement include more than 150 victims of the DAS interceptions, for example politicians, judges, journalists, and members of non-governmental organizations. This includes more than 65 members of CCAJAR. See: "Más de 150 'chuzados' por el DAS declararán ante la Fiscalía." Caracol Radio, June 11, 2009, <http://www.caracol.com/noticias/justicia/articulo142258-mas-de-150-chuzados-el-das-declararan-la-fiscalia>.

25. Report by the Technical Investigation Unit of the Prosecutor's Office (104 folders) turned over to the 8th Prosecutor's Office delegated before the Supreme Court of Justice (Rad.: 11 001 60 00686 2009 00002) – Folder 33-2004, Page 40. Order issued by the DAS deputy director of operations, Carlos Alberto Arzayús Guerrero.

26. "Más de 600 personas habrían sido 'chuzadas' ilegalmente por el DAS." Caracol Radio, April 17, 2009. Op: Cit

27. "Nuevas revelaciones y seguimientos halló la Procuraduría. Más perlas del 'dossier' del DAS." El Espectador newspaper, May 31, 2009, <http://www.elespectador.com/impreso/articuloimpreso143410-mas-perlas-del-dossier-del-das>.

28. "Esto era una conspiración de Estado contra la Corte Suprema": Arrubla." Semana magazine, April 11, 2010, <http://www.semana.com/noticias-nacion/seguimientos-no-solo-actividad-independiente-del-das/137498.aspx>.

29. "Colombia: From Espionage to Sabotage – and the Dirty War." Inter Press Agency, Bogotá, August 25, 2009, <http://www.ipsnews.net/news.asp?idnews=48209>.

In this respect, it is still necessary to carry out a large discussion on the political responsibility of the President's office, which directs the DAS. For instance, on April 17, Semana magazine published new testimony that reinforces the theory that the President's Office is also involved. According to a witness statement, which was read by the prosecutor who was delegated to the case, illegal recordings were even carried out of the private sessions held by Supreme Court judges when *"they discussed such issues as the re-election, extraditions, and information related to the President."* *"This could not be told to anyone, not even the coordinator [...] and this job was needed by Monday since it was for the Director of the DAS, who would present it thereafter to the President."*³⁰

SEMANA magazine gained access to a letter that demonstrates that presidential Secretary General, Bernardo Moreno, one of the president's closest and most loyal advisors, was involved in the surveillance that was carried out against the judges.

30. "Pierna arriba." Semana magazine, April 17, 2010, <http://semana.com/noticias-nacion/pierna-arriba/137723.aspx>.

III. CONCLUSIONS

During the different missions and thanks to FIDH member organisations, information has been gathered that establishes that State intelligence activities were –and appear to continue to be– carried out at a scale and gravity progressively degenerating the rule of law in Colombia. Furthermore, it establishes the grave violations of fundamental rights of the following types of individuals and organisations: human rights defenders, journalists, lawyers, opposition politicians, Supreme Court judges, judiciary officials from the Public Ministry, executive branch officials, international organisations that enjoy special diplomatic protection, including the United Nations and the Inter-American Commission on Human Rights.

What started out as a wire-tapping scandal or interceptions of communications, has ended up being a real investigative program, of taxing, layouts of psychological profiles, persecutions, attacks, threats and blackmailing. This has to do with the opposite of democratic regimes, that is authoritarian-specific. One of the ex-Directors of the DAS, Jorge Noguera Cotes, is currently facing a judicial hearing at the Supreme Judicial Court for various crimes such as “aggravated homicide” and “conspiracy of aggravated delinquency.” The multiple proofs demonstrate that Mr. Noguera used his function as Director of the DAS to establish lists of trade unionists, human rights defenders and leaders of the opposition, with the goal of transmitting them to leaders of the paramilitary so as to persecute them. He thus would become the intermediate author of the assassination of three individuals in this case.

Additionally, this current context of a weakened rule of law further harms constitutional rights and freedoms, the independence of the judicial branch, and the work carried out by State oversight agencies. Paradoxically, the Administrative Department of Security (DAS), a civilian intelligence agency reporting directly to the President’s Office, has transformed itself into an agency that attacks the public liberties and democratic guarantees of other State power branches (in addition to others such as officials, international bodies, and human rights defenders). All of them being fundamental actors in the promotion of the rule of law and peace.

It would be difficult for FIDH mission to state with certainty that the President of the Republic knew of the illegal acts being conducted by the DAS. Nonetheless, ever new revelations continue to be disclosed and point in that direction. Hence, FIDH is increasingly convinced that the information that is revealed even years later only represents the top of the iceberg and to this day illegal activities still take place.

For example, in the spring of 2009, Cambio magazine published an article entitled “*Los aliados de las FARC en Europa* [FARC’s Allies in Europe],” which claimed that FIDH was one of these allies. FIDH immediately contacted the magazine and requested a rectification and demanded to know the sources of this information. The magazine’s editor stated that this information came directly from the DAS. Since FIDH is recognized as a civil party in the case, it has thus discovered high-level DAS orders for smear campaigns against CCAJAR and FIDH in Europe.

Furthermore, recent information obtained during the meetings with the current Director of the DAS, Felipe Muñoz, show that the DAS still keeps information about human rights defenders in its secret files. There has yet to occur a complete purging of the illegal records of intelligence files, as well as the responsible people of those activities within the DAS.

It is urgent to clarify the acts and identify the responsible parties. FIDH and its member organisations in Colombia urge that the Prosecutor General’s Office carry out due action and adequately protect the witnesses and officials who fulfil their duties.

Even if the government has provided resources to properly carry out the investigations, FIDH and its member organisations fear that the politics of accusation against the Constitutional functions of the judges will continue, so as to allow to speak once again about the two personalities of the Colombian government or to allude to the metaphor of the fire-fighter pyromaniac.

IV. RECOMMENDATIONS

First, FIDH reaffirms the recommendations made in the Annual Report by the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia:³¹

“20. The challenge now is to establish the responsibilities and circumstances that facilitated these illegal DAS activities and to identify those who allowed them to happen and/or who benefited from them. Difficulties faced by the prosecutors in the initial phase must be overcome to enable the investigations to continue safely and independently, without pressure or threats. Impunity, as well as a lack of democratic control and oversight of intelligence services, has made such criminal conduct possible.

21. Therefore, beyond the announced closing of DAS, the necessary legal, political and administrative conditions as well as robust controls and oversight of its intelligence services should be established. The new Intelligence Law and its corresponding Decree should be enabling in this regard. The Government is urged to take specific, time-bound and transparent measures for their implementation. In this respect, a plan of action for the creation of a national mechanism to purge files should be expedited by the relevant Government institutions, in consultation with all relevant stakeholders and victims, facilitating an active role of the Procurator General, as previously recommended by OHCHR-Colombia.»

For its part, FIDH has the following recommendations:

To the Colombian authorities:

- Urge to cease the threats, harassment, attacks and illegal intelligence activities in Colombia.
- Demand truth and justice for the victims of illegal intelligence operations, clarification of the acts, identification of those benefiting from the operations, determination of the crimes carried out that used the gathered information, purging of the corresponding records, and guarantees of non-repetition.
- Urge all state agencies to purge intelligence records on judges, human rights defenders, opposition members and any public official who has been the target of persecution for carrying out their constitutional functions. This process should be accompanied by the Office of the United Nations High Commissioner for Human Rights in Colombia.
- Recommend that President Álvaro Uribe Vélez publicly recognize his inherent responsibility for the actions of a state agency like the DAS (that depends directly on his orders). Additionally, it is recommended that he apologize to the victims for the irregular actions perpetrated by DAS and that he order the adequate reparation for the damage caused.
- Request that the Colombian government fully guarantee the investigations and trials being carried out against DAS members, including the physical safety of victims, witnesses lawyers, judges, and human rights defenders under threat due to their participation in the different procedural stages. Moreover, the work and independence of the Colombian judicial branch should be respected, specifically the Supreme Court

31. Human Rights Council, 13th Session, Agenda Item 2, March 4, 2010.

of Justice, which has been intimidated and criticised by current members of the National Government.

- Recommend that the President of the Republic and other State institutions recognize the legitimate and indispensable work of the Supreme Court of Justice, respect its rulings, and withdraw the complaint against the former president of the Supreme Court of Justice, Dr. César Julio Valencia Copete, who is currently under investigation by the Accusation Commission of the Chamber of Representatives.
- Within this context of espionage and grave threats and intimidation perpetrated by an agency reporting directly to the President of the Republic, FIDH recommends that this same President Uribe publicly recognize the legitimacy of the work performed by human rights defenders and peace activists and take all the necessary measures to guarantee their activity.
- Contemplate a fundamentally deep and structural reform of the Colombian intelligence system. This reform must be the result of a broad and transparent debate between different sectors of the State and civil society. It is also fundamental that truth be protected. In any case, the reform must not affect or attempt to conceal the truth. It is also essential to have the legal and participatory creation of a Commission made up of academic and respected public figures who determine the suitable goals of intelligence activity. They should also look to collaborate on the design of a new independent intelligence agency, based on the respect of human rights and a commitment to the democratic precepts of the rule of law, in line with international standards and the recommendations made by United Nations agencies.
- Highlight that the agency remaining in charge of the intelligence service should be led by well respected and prestigious individuals in the field of law and security. Whatever reform is adopted, a human rights education program should be implemented for officials in charge of intelligence and counter-intelligence services.
- Indicate that the transition process to reform the intelligence service should be careful with the staff and information to be protected (as part of the affected persons' fundamental rights). All reforms should be implemented within the framework of the constitution and law, especially the intelligence law that, inter alia, orders the creation of data protection centres to safeguard the gathered information and guarantee the rights to honour, good name, and privacy. It is also recommended that intelligence and counter-intelligence manuals be drafted to establish who may give orders and what exactly may be done with these orders.
- Request that the Prosecutor General publicly explain the reasons behind the resignation of the two prosecutors in charge of conducting the investigation against the crimes perpetrated within the DAS. The Prosecutor General should publicly support the work performed by officials from the Prosecutor's Office who have been questioned by State agents or in the mass media for fulfilling their duty to investigate human rights violations. The Prosecutor's Office should also guarantee the necessary security measures for these officials. These should be provided by the Ministry of Interior and Justice and not by any private organization. Additionally, the Prosecutor's Office should guarantee an immediate investigation into the allegations published by *Semana* magazine on August 29, 2009.³² These allegations demonstrate that the DAS continues to conduct illegal intelligence operations, which brings up the question of the involvement of the current administration which either has been complicit with

32. "Increible... siguen 'chuzando'." ("Incredible...they are continuing to wiretap." *Semana* magazine, August 29, 2009, <http://www.semana.com/noticias-nacion/increible-siguen-chuzando/127960.aspx>).

these illegal actions or has not been able to purge the agency of the officials who carry out these types of practices.

- Urge the Inspector General to investigate the disciplinary responsibilities that could derive from the alleged obstruction to the Prosecutor's criminal investigation into the irregular actions committed by the DAS as well as the latest allegations that DAS agents continue to perpetrate acts against the Constitution and law.
- Recommend that the Prosecutor General and the Inspector General publish regular reports on the state of their investigations into the irregular actions perpetrated within the DAS, as this would have an impact on the credibility of their own work.
- Propose that the Congress of the Republic create a Commission to monitor the disciplinary and criminal investigations into these acts, so as to ensure that the crimes do not remain unpunished.
- Propose that the Accusation Commission of the Chamber of Representatives investigate the possible criminal responsibility of the President of the Republic, by action or omission, with respect to the irregular actions of a State agency, which depended directly upon his orders, in accordance with Article 27 of the Rome Statute of the International Criminal Court on the irrelevance of official capacity, establishing that "*official capacity as a Head of State or Government, [...] shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.*"
- Request that President Álvaro Uribe, his cabinet, and the commanders of the armed forces and police, do not interfere with the legitimate activity of the judicial branch or oversight agency officials, in addition to human rights defenders representing the victims before national and/or international courts in search of the fulfilment of the rights to truth, justice, reparation, and especially guarantees for the non-repetition of the acts.
- Recommend that the Colombian State increase the resources designated to effectively resolve the cases under scrutiny, especially those concerning violations of the rights of human rights defenders. In this respect, the investigative capabilities of the human rights units at the Prosecutor's Office must be strengthened; judges and prosecutors need to be trained; and the protection programs must be improved to encourage victims and witnesses to participate in the investigations and legal proceedings.

To the international community and multilateral bodies:

- Recommend that the United States, the European Union, and its member states, verify the disbursement of international aid. In particular, taking into account the framework to support the fight against drug trafficking, Colombia has received a substantial amount of equipment aid, principally from the United States and Great Britain. It is also of public knowledge that the aforementioned interceptions and surveillance were carried out using instruments provided by international aid in the fight against terrorism and drug trafficking. In other words, instead of using these tools in this fight, they were used to persecute people who were not under any type of legal investigation. Consequently, the United Kingdom decided to re-direct its aid to institutions other than the DAS or intelligence services under the Palace of Nariño.³³ However, despite these situations implicating intelligence services, United

33. "El oscuro laberinto de la Inteligencia estatal." El Nuevo Siglo newspaper, May 29, 2009, <http://www.elnuevosiglo.com.co/noticia.php>.

States certified Colombia's human rights record and authorized the disbursement of 32 million US dollars corresponding to fiscal year 2009. Fortunately, it has also been reported that "the US government announced the suspension of aid to the DAS."³⁴

- Exhort the Prosecutor's Office of the International Criminal Court to consider this political persecution within the context of the crimes against humanity that should be investigated in Colombia with the purpose of activating the principle of complementarity established in the Rome Statute if the Colombian justice system does not identify and punish the most responsible parties of these serious acts that violate fundamental rights and the rule of law itself.
- Recommend that the Office of the United Nations High Commissioner for Human Rights in Colombia pay special attention to the criminal and disciplinary investigations pertaining to the case against the DAS.
- Request that the international community continue to monitor and support the defence of human rights in Colombia.

Immense effort is needed to ensure that the violations do not remain unpunished and that reparations are made to the victims.

34. "Pierna arriba." *Semana* magazine, April 17, 2010, <http://semana.com/noticias-nacion/pierna-arriba/137723.aspx>.

ANNEX I

The liquidation of the DAS: A clean slate?

Given the gravity of this situation, the President of the Republic ordered the DAS to be liquidated. In effect, the legislative bill drafted to liquidate this agency established the creation of a new Administrative Department, the Central Intelligence Agency of Colombia (ACI). This agency's mission would be limited to producing intelligence and counter-intelligence required by the country as well as managing immigration services as a basic element to national security. The new agency would not have any criminal investigation powers, would handle criminal background records and serve as the liaison in Colombia for the International Police (Interpol). Additionally, with respect to protection systems, these activities are not compatible with intelligence work and instead facilitate the abuse of power. This transformation would also entail the re-assignment of more than 6,500 employees who initially would be transferred to the Technical Investigation Unit (CTI) of the Prosecutor's Office, the Criminal Investigation and Intelligence Police Agency (DIJIN), or the Ministry of the Interior. In this respect, current DAS director Felipe Muñoz has established that the government will sign agreements with the National Education Service (SENA), the Superintendency of Surveillance and Private Security, and other State institutions, to facilitate the process of work relocation.³⁵

It is feared that the agency's elimination will open the doors to impunity and leave the current investigations unresolved. Moreover, the situation of more than 6000 workers who will be affected by this decision is concerning. In any case, the President's Office has paradoxically urged the liquidation of this agency while at the same time refusing to make any statements on the gravity of the acts that affect, for example, human rights organizations, journalists and opposition members of Congress. Ironically, on April 29, 2009, the DAS issued a resolution to create a human rights group within the organization.

It is fundamental that the new intelligence agency come about through an open and transparent debate between the different sectors of State and society, under the framework of the guarantee of fundamental rights and Intelligence Law 1288 of March 5, 2009. This law would contribute to regulating the intelligence and counter-intelligence activities conducted by the Colombian state, prohibiting surveillance against politicians and destroying the records relating to these issues. However, we are sceptical that what has been established by this law will effectively be brought into practice. Additionally, it is fundamental that the implemented reform address the guarantees to truth and justice for the victims, ensuring the clarification of the acts, the identification of the beneficiaries of these operations, the crimes perpetrated due to the gathered information, and access to the records for the affected individuals. It should also be taken into account that according to the intelligence law's regulatory decree, which took more than six months to be implemented despite the scandals, all intelligence agencies (military forces, police, DAS, and UIAF) must update and purge information on a regular basis as well as consult institutions familiar with these procedures, including the United Nations. The intelligence law and its regulatory decree indicate that the activities of intelligence agencies may not affect the rights and guarantees of opposition political parties. By March 2010, these agencies should have intelligence and counter-intelligence manuals that establish who gives orders and how they may be applied. Lastly, if a new agency must be established, it should be independent from the President's Office and guarantee that it will not be controlled by illegal armed groups.

35. "Pedirán al Congreso otorgar facultades a Uribe para crear nueva agencia de inteligencia", El Espectador newspaper, September 18, 2009, Bogotá. <http://www.elespectador.com/noticias/judicial/articulo162195-pediran-al-congreso-otorgar-facultades-uribe-crear-nueva-agencia-de>.

In accordance with this law, these intelligence reports will not have evidentiary value in criminal investigations (Article 24) and any operation must have specific and explicit authorization (Article 10). In this respect, the principles of competence and need, refer to reaching the desired constitutional objectives when there are no other means; while proportionality means its benefits should not exceed the restrictions imposed on other constitutional principles and values (Article 5). Furthermore, there should be congressional oversight through a special follow-up commission, in charge of monitoring the operations and verifying the efficient use of resources that respect constitutional guarantees and comply with the principles, limits and objectives established by law (Article 13). Lastly, it should be indicated that any agency conducting intelligence activities will have a data protection centre, so as to guarantee that the processes of gathering, storing, producing and disseminating information abide by the Constitution and the law. In order to achieve this, training workshops will be carried out in accordance with the needs of each centre (Article 18).

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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

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- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

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FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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