Submission Before the
Inter-American Court of Human Rights

Carlos Augusto Rodríguez Vera and others (“Palace of Justice”)

Against the State of Colombia

(Caso Número 10.738)

Amicus Curiae* prepared by

The American Bar Association

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# TABLE OF CONTENTS

1. INTRODUCTION AND STATEMENT OF THE CASE .........................................................3

2. PURPOSE AND INTEREST OF THE AMERICAN BAR ASSOCIATION .........................6

3. SUMMARY OF ARGUMENT ............................................................................................9

4. STATES HAVE A DUTY TO PROTECT JUDICIAL FUNCTIONARIES IN ORDER TO GUARANTEE THE RIGHT TO A JUDICIAL REMEDY AND TO SECURE AN INDEPENDENT JUDICIARY ..................................................................................10
   4.1. THE DUTY TO PROTECT JUDGES IS INTRINSIC TO THE DUTY TO INVESTIGATE AND PROSECUTE HUMAN RIGHTS VIOLATIONS UNDER THE CONVENTION .................................................................................................10
   4.2. THE DUTY TO PROTECT JUDGES AND LAWYERS UNDER GENERAL INTERNATIONAL LAW .................................................................................................................................12
       *The duty to protect judges from any infringement on their independence* ..........12
       *The duty to protect lawyers from any infringement on their independence* ......14
   4.3. THE DUTY TO PROTECT JUDGES AND LAWYERS UNDER THE EUROPEAN CONVENTION ..................................................................................................................................................15

5. IF PROVEN, THE ALLEGATIONS RELATING TO THE KILLING OF MAGISTRATE URÁN ROJAS AND THE LARGER CONTEXT OF THREATS AND OTHER PRESSURES AGAINST JUDICIAL FUNCTIONARIES IN COLOMBIA CONSTITUTE VIOLATIONS OF THE RIGHT TO AN INDEPENDENT JUDICIARY AND JUDICIAL PROTECTIONS ..................................................................................................................................................17
   5.1. THE FAILURE TO INVESTIGATE THE KILLING OF MAGISTRATE URÁN ROJAS .............................................................................................................................................................................17
   5.2. THE FAILURE TO PROTECT JUDGE JARA GUITERREZ ......................................20

6. CONCLUSION ..................................................................................................................21
1. INTRODUCTION AND STATEMENT OF THE CASE

1. The American Bar Association (the “ABA”), the leading organization of legal professionals in the United States of America, respectfully submits the present brief to the Inter-American Court of Human Rights in Case No. 10.738 Carlos Augusto Rodríguez Vera and others (“Palacio de Justicia”) v. Colombia.

2. Consistent with this Court’s jurisprudence, the ABA has long recognized that human rights must be protected in practice as well as in theory, and that the practical enjoyment of all human rights relies, in the final analysis, upon the availability of judicial remedies administered by an impartial and independent judiciary, aided by prosecutors and lawyers, investigators, and witnesses, all of whom must be protected by the relevant State Parties so that they are free to perform their respective functions and duties without fear for their own lives or safety. While the present case involves many issues, the ABA’s special concern rests with the alleged extrajudicial killing of a magistrate and the State of Colombia’s alleged failure to fulfill its duty to investigate that killing, to take required affirmative action in light of a pattern of inappropriate pressures and threats, and to protect the judicial functionaries, including judges and prosecutors, who worked on cases related to the incident in which that killing occurred. As this Court held in the Case of Myrna Mack Chang v. Guatemala, the kind of misconduct alleged in this case threatens the very possibility of effective human rights enforcement, and, if proved, would violate numerous provisions of the American Convention on Human Rights (the “Convention”), including Article 1 (Obligation to Respect Rights), Article 8 (Right to an Independent Judiciary), and Article 25 (Right to Judicial Protection). Indeed, as the Court said in the Myrna Mack Chang case, this type of misconduct not only injures those immediately

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2 Article 1 provides that “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition”. Organization of American States, American Convention of Human Rights, art. 1, November 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American HR Convention].

3 Article 8 provides in relevant part that “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature”. Id. at art. 8.

4 Article 25 provides in relevant part that “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties”. Id. at art. 25.
involved, but impedes the right of “society as a whole” to be informed of “everything that has happened in connection with [grave violations of human rights].”

3. This case arises out of a November 1985 hostage taking that occurred during the internal armed conflict that has raged in Colombia for several decades. In November 1985, members of a guerilla group took control of the Palace of Justice in Bogotá, Colombia, holding hostage approximately 350 judges, public servants, workers, and visitors. When government security forces sought to regain control of the Palace of Justice, a number of judges, civilians, and guerillas were killed. In addition, at the time of the incident, Magistrate Carlos Horacio Urán Rojas was seen being escorted out of the Palace of Justice by government security forces and was later found dead, with a gunshot wound to his head, having been shot at close range. When, in 2010, the prosecutor assigned to the case opened an investigation for crimes against humanity against three generals implicated in the killing of Magistrate Urán Rojas, the Prosecutor General, within a matter of days, re-assigned the case to a different prosecutor. Three years later, according to public reports, no progress has been made in the case. As a result, almost 30 years after the killing of Magistrate Urán Rojas, no adequate investigation has occurred and his killers have not been brought to justice.

4. The same is true with respect to many of the other crimes that allegedly occurred in connection with the Palace of Justice incident, including the detention and torture of an attorney and two law students by Colombian security forces during the incident. Moreover, it is alleged that numerous judges, prosecutors, and attorneys working on cases arising out of the Palace of Justice incident have been subjected, throughout the course of the investigations that did occur, to inappropriate pressures and violent threats from which the State of Colombia was required to protect them, but failed to do so. Indeed, one attorney involved in the investigations was murdered. In addition, Judge María Stella Jara Gutierrez presented evidence to the Inter-American Commission on Human Rights (the “IACHR”) to show that she had been threatened throughout the course of a trial in which she was called upon to adjudicate allegations of misconduct by

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7 Juan David Laverde Palma, Proceso por el Palacio de Justicia, El Espectador, August 2, 2013 http://www.elespectador.com/noticias/judicial/rafael-nieto-sale-del-caso-del-palacio-de-justicia-articulo-437652.

8 IACHR, Merits Report, supra n. 6, paras. 279-299.

9 Ibid. para. 67.

certain military personnel involved in the Palace of Justice incident. Indeed, the record shows that the IACHR was required, on June 2, 2010, to issue precautionary measures directing the State of Colombia to provide protection for Judge Jara Guiterrez and her son. Nonetheless, after Judge Jara Guiterrez convicted one of the commanders involved in the incident, she decided that she could not adequately protect herself and her son in Colombia. Judge Jara Guiterrez therefore relinquished her judicial office and fled the country.

5. Upon reviewing the State of Colombia’s efforts to investigate and prosecute human rights violations that allegedly occurred during the Palace of Justice incident, the IACHR concluded that the State of Colombia is responsible for the violation of various rights protected by the Convention and other human rights documents (right to personal liberty, right to life, right to personal integrity, right to a humane treatment, etc.). Most important, the IACHR concluded in early 2012 that “26 years after the events, the state has sanctioned only two intellectual authors, some processes have not had significant progress and are still at the preliminary stage, and others have been subject to procedural delays.” The IACHR therefore concluded that the State of Colombia had taken insufficient steps to investigate and prosecute those responsible for the torture of four individuals and the forced disappearance of thirteen individuals, including Magistrate Urán Rojas, in violation of the right to judicial guarantees and judicial remedies provided for in Articles 1(1), 8(1), and 25(1) of the Convention.

6. As this Court has previously held, enforcement and application of the Convention’s right to judicial guarantees and judicial remedies unambiguously require State Parties, such as the State of Colombia in this case, to “provide sufficient security measures to the judicial authorities, prosecutors, witnesses [and] legal operators”. This brief will argue that Colombia’s alleged failures to protect Magistrate Urán Rojas, Judge Jara Guiterrez, and other judicial functionaries, including prosecutors, and attorneys, if proven, constitute violations of the right to judicial guarantees and judicial protection, to the detriment not

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12 Letter of the IACHR presenting case 10.738, Carlos Augusto Rodriguez Vera and others (Palacio de Justicia) v. Colombia. While two commanders – including the colonel convicted by Judge Jara Gutiérrez – have been convicted as intellectual authors for their role in overseeing the operations that resulted in the excessive use of force, torture, and the extrajudicial killing of some of the victims, no prosecution has been instigated with respect to the direct perpetrators of the crimes, or, indeed, with respect to other high level commanders who are suspected of involvement. See IACHR, Merits Report, para. 121 & 335: “La Comisión observa que han transcurrido más de 25 años de ocurridos los hechos material del reclamo y aún no se habría establecido la condena definitiva de ninguna persona por la desaparición y las demás investigaciones se encuentran en etapa de investigación”. [“The Commission observes that 25 years have passed since the events in question occurred and still there has not been a definitive condemnation of anyone for the disappearance and the other investigations remain in the investigative stage”(unofficial translation)].

just of the victims and their next of kin of the victims, but to that of society at large, which is entitled to know the truth and to see that justice is done.

2. PURPOSE AND INTEREST OF THE AMERICAN BAR ASSOCIATION

7. The ABA is one of the largest professional membership organizations in the world. Its nearly 400,000 members include lawyers in private practice, legislators, prosecutors, government lawyers, judges, law professors, and other legal professionals.14

8. The present case raises important concerns relating to the integrity of the judicial process, the independence of the judiciary and the legal profession, and individual access to justice, all of which have long been core concerns of the ABA. In general, the core concerns of the ABA are set forth in a series of “Goals”, to which the ABA subscribes and which it seeks to advance. In this case, the relevant Goal is Goal IV, which is entitled “Advance the Rule of Law” and commits the ABA to strive to “[p]reserve the independence of the legal profession and the judiciary”.15 Goal IV reflects the ABA’s longstanding recognition that the integrity of the judicial process, together with the independence of the judiciary and the legal profession, are essential to the rule of law and the cornerstone of any legal regime that purports to give meaningful recognition to fundamental human rights.

9. The ABA has worked for decades to protect the independence of the judiciary and the legal profession, both in the United States of America and throughout the world. In 1974, for example, the ABA’s House of Delegates adopted policy affirming its “support for the Rule of Law in the international community and its recognition of the need for an independent judiciary and the independence of lawyers,” and noting its concern with respect to “the reported arrest and detention or sentencing of lawyers in an increasing number of foreign countries because of their representation of individual clients”.16 In

14 Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the ABA. No inference should be drawn that any member of the Judicial Division Council participated in the adoption or endorsement of the positions set forth in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.


16 100 ABA Rep. 466 (1975). The resolution and report are available from the ABA. Resolutions, but not their accompanying reports, become the ABA’s policy after approved by vote of the ABA House of Delegates, which is composed of more than 560 representatives from states and territories, state and local bar associations, affiliated organizations, ABA sections, divisions and members, and the Attorney General of the United States, among others. For further information, see http://www.americanbar.org/groups/leadership/house_of_delegates.html.
1980, the ABA House of Delegates adopted similar policies, again reaffirming its support for the rule of law in the international community and the importance of an independent judiciary and the independence of lawyers, and noting its concern with respect to “the arrest, detention without charge and disappearance of lawyers in Argentina,” and also expressing its concern with respect to “the case of Lev Lukyanenko, who is presently in prison in the Soviet Union, reportedly for attempting to defend and preserve the integrity of the rule of law in that country”. More generally, in February 2006, the ABA adopted as policy the “Statement of the Core Principles of the Legal Profession”, namely:

1) An impartial, independent judiciary, without which there is no rule of law.
2) An independent legal profession, without which there is no rule of law or freedom for the people.
3) Access to justice for all people throughout the world, which is only possible with an independent legal profession and an impartial, and independent, judiciary.

10. Similarly, in August 2007, the ABA adopted as policy its support for international standards of judicial independence, including the U.N. Basic Principles on the Independence of the Judiciary, which provide in relevant part that “the independence of the judiciary shall be guaranteed by the State,” and that “the judiciary shall decide matters before them impartially [and] without any restrictions, improper influences, inducements, pressures, threats or interferences”.

11. Most recently, in August 2013, the ABA adopted policy specifically concerning the duty to investigate and prosecute any case of “grave violations of human rights,” such as those alleged in this case. In a report presented to the ABA’s House of Delegates in support of that policy, it was observed that, “the prohibition against impediments to investigation and prosecution of such crimes is firmly settled in international law”.

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17 105 ABA Rep. 642 (1980). The resolution adopted as policy and supporting report are available from the ABA.
20 ABA Policy 107A (adopted August 2013) (adopting policy urging countries, consistent with international law, not to apply statutes of limitations with respect to genocide, crimes against humanity, and serious war crimes) available in English at http://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_107A.authcheckdam.docx, citing Escrito Presentado Por Juristas Especializados en Derechos Internacional en Calidad de Amici Curiae, Caso Rios Montt y otros, relativo a la Masacre de Dos Erres [Brief of International Law Experts as Amici Curiae, Case of Rios Montt and others, concerning the Massacre of Dos Erres], at 13, No. 3829-2012 (Corte de Constitucionalidad de Guatemala, Sept. 25, 2012), available at http://www.americanbar.org/content/dam/aba/administrative/individual_rights/AMICUSDosErresFINAL.authcheckdam.pdf.
12. The ABA adopted these principles out of concern that threats against judges and lawyers not only endanger the individuals involved, but also threaten the principle of access to justice, the rule of law, and the very possibility of democratic government. Throughout the history of the United States, the independence of the judiciary and the legal profession has been deemed critical to ensuring the effective exercise of fundamental rights by all citizens. For example, during the civil rights movement of the 1950s and the 1960s, which sought to end racial segregation and violence against minority communities in the United States, many judges who adjudicated civil rights cases, as well as the lawyers and prosecutors who tried them, and the witnesses who testified in connection with them, faced profound threats from those who opposed desegregation and the achievement of equal rights for all citizens.21 The United States government was required to deploy countless law enforcement officials to protect those judges, lawyers, prosecutors, and witnesses, and was even required, on occasion, to deploy federal troops to enforce the courts’ orders.22 This history forms part of the background of the ABA’s commitment to promoting the independence of the judiciary and protecting the courts and the legal profession from threats and intimidation, both in the United States and around the world.

13. In recent years, the ABA has worked diligently to protect judges, prosecutors, and lawyers who have faced a range of violent threats, as well as politically-motivated disciplinary proceedings, in such diverse places as Latin America, Central and Eastern Europe and Sub-Saharan Africa.23 Some of these threats emanate directly from government officials who fear the results of independent and impartial adjudications, while other threats emanate from other actors who may simply be emboldened by the failure of governmental authorities to protect the judiciary, or, alternatively, are actively or tacitly encouraged by government officials in their activities. In either case, the result is the same: the undermining of the rule of law and the endangering of human rights.

21 Jack Bass, *Unlikely Heroes: A vivid account of the implementation of the Brown decision in the South by southern federal judges committed to the rule of law* 86 (1990) (describing death threats against numerous judges, public criticism of them, and other harassment, including the bombing of the home of one judge’s mother); J.W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* 152 (1971).

22 See, e.g., U.S. v. Barnett, 346 F.2d. 99, 109 (1965) (Wisdom, J., dissenting) (James Meredith, who was denied admission to the University of Mississippi because of his race, finally “registered at the University of Mississippi October 1, 1962. To win this battle, the United States Army had more soldiers under arms at Oxford, Mississippi, or held close by in reserve, than George Washington in the Revolutionary War ever commanded at one time”).

14. With specific regard to the independence of the judiciary in the State of Colombia, the ABA adopted policy in February 1990 resolving to support the “judges, lawyers and public officials of Colombia who have refused to surrender their country, their judicial system, and the rule of law to those who traffic in drugs and death” and “to provide such support to the judicial system of Colombia as may be appropriate”. The report supporting the ABA policy recites that 220 officers of the court, including 41 judges, were killed in Colombia between 1979 and 1990.

15. Threats against the judiciary continue in Colombia. In its most recent report on human rights defenders, the IACHR noted that 750 threats were made against judicial authorities in Colombia in the brief period from 2008 to 2011. Colombian lawyers also face a range of threats, including violent attacks that have resulted in the deaths of over 300 attorneys in the last fifteen years.

16. The ABA’s long history and substantial experience in supporting and advocating for the independence of the judiciary and the legal profession, both in the United States and throughout the world, against both official and unofficial efforts to nullify that independence, provide the ABA with a unique perspective on the impact that threats to such independence can have with respect to the guarantee of access to justice and respect for human rights. It is for that reason that the ABA respectfully submits this brief in this singularly important case.

3. SUMMARY OF ARGUMENT

17. The requirements imposed on State Parties by the Convention are rigorous and interconnected, designed not simply to sketch out theoretical or “paper” rights, but to provide for the effective protection and enforcement of human rights in the real world. Thus, where, as here, grave violations of the Convention are alleged, the fundamental duty of the State to guarantee the rights of its citizens enshrined in Article 1(1) of the Convention not only imposes on State Parties an affirmative duty to investigate, but requires, as this Court has previously said, that any such investigation must be “carried out by all available means with the aim of determining the truth and the investigation,”


25 Second Report on the Situation of the Human Rights Defenders in the Americas, Inter-Am. Comm’n H.R., OEA/ser.L/V/II. Doc 66, para. 398 (2011): “During the follow up period there have also been continued death threats against the judicial authorities to induce them to favor one of the parties in a proceeding or to cease investigating some crime. The information available to the IACHR indicates that in Colombia there have been reports of 750 cases of threats against judicial authorities in the last four years”.

26 See Abogados Sin Frontera de Francia, Informe 2011: La Situación de Derechos Humanos de Abogadas y Abogados en Colombia; Letter of the Comité Ejecutivo de la Abogacía Colombiana to ABA President (August 21, 2013).
pursuit, capture, prosecution, and punishment of the masterminds and perpetrators of the facts, particularly when state agents are or may be involved". As Articles 8(1) and 25(1) of the Convention also recognize, the effective protection and enforcement of human rights in practice necessarily require the existence of an independent and impartial judiciary, an effective access to the courts, and the availability of timely and effective remedies. The full realization of each of these rights is essential to the rule of law. But these rights cannot be given effect if, as here, magistrates are killed, and the judges charged with investigating those killings are so seriously threatened that they genuinely fear for their own lives or those of their children. The rule of law cannot exist where judges, to protect themselves and their families, must choose between exile and death. The allegations in this case, if proved, demonstrate violations of each of these guarantees that cumulatively threaten the rule of law itself.

4. STATES HAVE A DUTY TO PROTECT JUDICIAL FUNCTIONARIES IN ORDER TO GUARANTEE THE RIGHT TO A JUDICIAL REMEDY AND TO SECURE AN INDEPENDENT JUDICIARY

4.1. THE DUTY TO PROTECT JUDICIAL FUNCTIONARIES IS INTRINSIC TO THE DUTY TO INVESTIGATE AND PROSECUTE HUMAN RIGHTS VIOLATIONS UNDER THE CONVENTION

18. This Court’s jurisprudence has explained the law applicable to this case with abundant clarity. For example, in the case relating to the State of Guatemala’s failure to investigate, for over 10 years, the extra-judicial killing of Myrna Mack Chang, a Guatemalan anthropologist, the Court specifically addressed the relationship between the State’s duty to investigate and prosecute human rights violations, on the one hand, and its duty to protect the judicial functionaries charged with conducting such investigations and prosecutions, on the other hand. The Court concluded that prolonged threats and harassment against judges, witnesses, and police investigating that case resulted in “deficient” judicial proceedings, in violation of Articles 1(1), 8 and 25 of the Convention. In particular, the court found that judges and police investigators were routinely threatened, monitored, and harassed, and, in one instance, a police investigator was murdered. The harassment of several members of the investigative and judicial teams forced them into exile, and, at the time of the Myrna Mack Chang decision, the

29 Ibid. para. 188.
State of Guatemala had not yet brought to justice those responsible for that harassment.\textsuperscript{30} The Court finally concluded that “in light of the above, this Court deems that the State, to ensure due process, must provide all necessary means to protect the legal operators, investigators, witnesses and next to kin of the victims from harassment and threats aimed at obstructing the proceeding and avoiding elucidation of the facts, as well as covering up those responsible for said fact”.\textsuperscript{31}

19. A similar pattern of harassment has been alleged in the present case, and, as with the Myrna Mack Chang case, it is further alleged in the present case that the State of Colombia has not brought those responsible to account for what they allegedly did.

20. In the Myrna Mack Chang case, the Court noted in particular that the State’s obligation to investigate and prosecute includes the duty to “provide sufficient security measures to the judicial authorities, prosecutors, witnesses, [and other law enforcement personnel]”.\textsuperscript{32} The failure to do so was seen by the Court to impede the judicial proceedings, thereby generating “feelings of insecurity, defenselessness, and anguish in the next of kin of the victim” and “foster[ing] chronic recidivism of the human rights violations involved”.\textsuperscript{33} Significantly, as previously noted, the Court found that the failure to protect the judicial functionaries working on the case, and the resulting failure to investigate and prosecute those responsible for the killing, violated the right of the “society as a whole” to be informed of “everything that has happened in connection with [grave violations of human rights]”.\textsuperscript{34}

21. This Court has consistently held that the mere existence of formal remedies is not itself sufficient to satisfy the requirements of Article 25; such remedies also must be demonstrably effective in practice, ensuring the restoration of rights, where possible, the reparation of any harm caused by the violation, and the punishment of those responsible.\textsuperscript{35} Among other things, the availability of effective remedies depends on the

\textsuperscript{30} Ibid. paras. 189 and 197.
\textsuperscript{31} Ibid. para. 199.
\textsuperscript{32} Ibid. para. 277.
\textsuperscript{33} Ibid. paras. 271-272; see also Inter-Am. Ct. H.R. Gonzalez et al., (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009 Series C No. 205, para. 289 (noting, with regard to failure to investigate, that “impunity encourages the repetition of human rights violations”).
\textsuperscript{34} Ibid. para. 274.
existence of an independent judiciary and legal profession and on the State Parties’ discharge of their responsibilities with respect to the protection of that independence.

22. Thus, in the case of Reverón Trujillo, which concerned the alleged arbitrary dismissal of a member of the Venezuelan judiciary, this Court noted the central importance of the State Parties’ duty to protect judges, recognizing that the duty to protect judges from all form of threats and pressures “inspires legitimacy [...] not only to the parties, but to all citizens in a democratic society”. Given the critical importance of ensuring that judicial officials operate free from all undue influence, the Court in that case recognized that even indirect threats may compromise the right to an independent judiciary and judicial protection, and therefore called upon “public officials, particularly the top Government authorities, [...] to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action”.

4.2. THE DUTY TO PROTECT JUDGES AND LAWYERS UNDER GENERAL INTERNATIONAL LAW.

The duty to protect judges from any infringement on their independence

23. This Court’s jurisprudence on the duty to protect judicial functionaries from all forms of threats, harassment, and other forms of interference, whether official or not, is consistent with a host of universal and regional human rights treaties and with general principles of international law. One of the most important treaties, the International Covenant on Civil and Political Rights (the “ICCPR”), states in Article 14(1) that “everyone shall be entitled to a fair trial and public hearing by a competent, independent and impartial tribunal established by law”.

24. The U.N. Human Rights Committee, the body charged with authoritatively interpreting the ICCPR, has interpreted Article 14(1) to require, among other things, “the actual independence of the judiciary from political interference by the executive branch and the Commission has noted that such remedies are no substitute for a full investigation and prosecution. In doing so, the Commission has accurately summarized upon the jurisprudencia constante of the Court; See IACHR, Merits report, supra n.6, para. 436-446.

38 Colombia acceded to the International Covenant on Civil and Political Rights on October 29, 1969.
For example, such practices as the reassignment of cases away from judges who are deemed to be too experienced, or to be making too much progress, or to be too determined to seek the truth, would impermissibly interfere with the independence and effectiveness of the judiciary, as would the simple “churning” of files to prevent a judge from becoming sufficiently knowledgeable to make progress in a case.

25. Many entities and representatives of the United Nations have emphasized the connection between the protection of human rights and independence of the judiciary. For example, the U.N. General Assembly reiterated the need for complete independence of the judiciary from all threats and improper pressures in the Basic Principles of Independence of the Judiciary, noting that “judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens”.40

26. In 2003, when Leandro Despouy, the U.N. Special Rapporteur on the independence of judges and lawyers, presented his first Report to the Commission on Human Rights on the Economic and Social Council, he specifically “noted that his mandate is derived from the Commission's concern at the frequency of attacks on judges, lawyers and court officials and its realization of the link existing between the safeguards for the judiciary and lawyers and the gravity and frequency of human rights violations”.41

27. The Special Rapporteur’s 2003 report identified various infringements on the independence and impartiality of judges and lawyers and the right to a fair trial, including pressures and threats against magistrates and lawyers. The Special Rapporteur expressly noted that:

“Among the legal professions, judges and lawyers seem to incur the gravest risks. [...] And yet the work of the Commission over a period of 10 years shows how frequently judges and lawyers are exposed to risks that may range from harassment, intimidation or threats to assault, including physical violence and murder, to arbitrary arrest and detention, to restrictions on their freedom of movement, or to economic or other sanctions for measures they have taken in accordance with recognized professional obligations and standards and ethics. In the case of lawyers, it is not uncommon for such


situations to result from the fact that Governments identify them with their clients’ cause, particularly in politically sensitive cases. However, there can be no independence of judges and lawyers if those individuals can be exposed to such situations and if the State does not take steps to prevent and remedy them”.

28. In a 2010 report, the Special Rapporteur specifically stated that the State is responsible for protecting judicial bodies from all attacks, acts of intimidation, threats, and reprisals, which responsibility includes the identification of those who perpetrate such threats, the proper investigation of all reports and complaints, and the undertaking of measures to protect judges and their family members, especially in sensitive cases such as those concerning terrorism and organized crime.

The duty to protect lawyers from any infringement on their independence

29. Maintaining the rule of law and ensuring the efficient protection of human rights in a democratic society not only requires an independent judiciary, but the existence of an independent legal profession as well. Recognizing the importance of the independence of the legal profession, the U.N. Congress on the Prevention of the Crime and the Treatment of Offenders adopted the Basic Principles on the Role of Lawyers. The ninth paragraph of the preamble to the Basic Principles on the Role of Lawyers specifically acknowledges that “Adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession”.

30. To carry out their professional duties effectively, lawyers and prosecutors must not only be granted all due process guarantees afforded by domestic and international law, they must also be free from improper threats or other pressures. In 2011, while reporting on a special mission to Mexico, the Special Rapporteur observed that this obligation requires that prosecutors be protected from improper influences and stated that “the prosecution’s lack of autonomy of the executive branch, [...] can erode the credibility of authority responsible for investigating crimes objectively and undermining confidence in its ability to do so”.

In other words, a just and efficient administration of justice requires that

42 Ibid. para. 48-49.
lawyers and prosecutors also should be allowed to do their work without being subjected to physical attacks, harassment, corruption, and other kinds intimidation, harassment, and interference.

31. Principle 16 of the Basic Principles on the Role of Lawyers charges the State with the responsibility for ensuring lawyers can do their work without being subjected to such interference: “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

32. Principle 17 specifically provides that, “where security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”

4.3. THE DUTY TO PROTECT JUDGES AND LAWYERS UNDER THE EUROPEAN CONVENTION

33. This Court has often looked to the jurisprudence of the European Court of Human Rights (the “ECtHR”) and to European human rights legal documents as authoritative sources of guidance in this area. Here, the relevant jurisprudence of the ECtHR also recognizes that State authorities have an affirmative obligation to ensure that the rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms (the “ECHR”) are made “practical and effective”, and are not relegated to the realm of the merely theoretical or illusory.

34. More specifically, the ECtHR has given effect to Article 6(1) of the ECHR, which guarantees the right to an “independent and impartial tribunal established by law”, by holding that “the work of the courts, which are the guarantors of justice and which have a fundamental role in [...] the rule of law, needs to enjoy public confidence. It should therefore be protected from unfounded attacks.”

46 Basic Principles on the Role of Lawyers, supra note 44, Principle 16.
47 Ibid., Principle 17.
48 See e.g. Inter-Am Ct. H.R., Constitutional Court Case v. Peru, Judgment of January 31, 2001 Series C No. 71, para. 75.
49 See Artico v. Italy, No. 6697/74, ECHR (Judgment on merits and just satisfaction), para. 33, 13 May 1980.
50 Skalka v. Poland, No. 43425/98, ECtHR (Judgment on merits and just satisfaction), para. 34, 27 May 2003; See also, Findlay v. United Kingdom, No. 22107/93, ECtHR (Judgment on merits and just satisfaction), para. 73, 25 February 1997; INCAL v. Turkey, No. 41/1997/825/1031, ECtHR (Judgment on merits and just satisfaction), para. 18.
35. The European Council, through its Committee of Ministers, has described the necessity and indispensability of an independent judiciary as follows:

“The external independence of judges is not a prerogative or privilege granted in judges’ own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges’ impartiality and independence are essential to guarantee the equality of parties before the courts”.

36. More specifically, the European Commission on Human Rights has stated that the independence of a judicial body depends, among other things, on the manner in which its members are appointed, and with regard being given “to the existence of guarantees against outside pressures and to the question of whether the body presents an appearance of independence”. The European Commission also has stressed that regard must be given to whether influence from outside sources or any actual bias has occurred. In other words, in determining whether a tribunal enjoys the necessary degree of independence and impartiality, the reality of the situation must be taken into account. Judges must be protected from outside pressures, not simply in theory, but effectively and in practice.

37. In a recent report on Ukraine, for example, the European Commissioner for Human Rights of the Council of Europe outlined the fact that “the independence of the judiciary – which also implies the independence of each individual judge – should be protected both in law and in practice”. The Commissioner noted with concern the public perception in Ukraine that “judges are not shielded from outside pressure, including of a political nature. Decisive action is needed on several fronts to remove the factors, which render judges vulnerable and weaken their independence. The authorities should carefully look into any allegations of improper political or other influence or interference in the work of the judicial institutions and ensure effective remedies.”

saturation), para. 65, 9 June 1998; Brudnicka and others v. Poland, No. 54723/00, ECHR (Judgment on merits and just satisfaction), para. 38, 3 March 2000.

51 Recommendation CM/Rec (210) 12 of the Committee of Ministers of the State Parties on Judges, Independence, Effectiveness and Responsibilities, Adopted by the Committee of Ministers on 17 November 2010, en 1098th session of Deputy Ministers, para. 11.


53 Ibid.


55 Ibid. at 2.
his report, the Commissioner also underscored that “a strong and well-functioning judicial system, fully integrating the respect for human rights, is an indispensable component of the rule of law, which in turn constitutes the basis of a genuine democracy”.

5. IF PROVEN, THE ALLEGATIONS RELATING TO THE KILLING OF MAGISTRATE URÁN ROJAS AND THE LARGER CONTEXT OF THREATS AND OTHER PRESSURES AGAINST JUDICIAL FUNCTIONARIES IN COLOMBIA CONSTITUTE VIOLATIONS OF THE RIGHT TO AN INDEPENDENT JUDICIARY AND JUDICIAL PROTECTIONS

38. The Commission has alleged that, notwithstanding the passage of almost thirty years since the alleged crimes occurred, no significant progress has been made in the investigation and prosecution of persons responsible for the torture, disappearance and execution of victims in this case. The petitioners have alleged that the failure to investigate is due, in part, to inappropriate pressures and threats made against judges, prosecutors, and lawyers working on this case. Moreover, public records support the assertion that in this and other cases, judges, prosecutors, and lawyers working on sensitive human rights cases in Colombia have faced a consistent pattern of pressures and threats, both direct and indirect, from both public and private actors.

5.1. THE FAILURE TO INVESTIGATE THE KILLING OF MAGISTRATE URÁN ROJAS

39. The IACHR has alleged that no meaningful progress has occurred in the investigation into the killing of Magistrate Urán Rojas. Indeed, nearly twenty-eight years after the killing, the persons responsible have not been brought to justice and the case remains open. The petitioners allege that part of this long delay is attributable to the Prosecutor General’s decision to remove the case from Dr. Ángela María Buitrago, a prosecutor who diligently investigated and prosecuted the cases on her docket, and re-assign it to the National Unit for Human Rights and International Humanitarian Law, an entity which has not made significant progress in several of the important cases assigned to it.

56 Ibid. para. 24.
57 IACHR, Merits Report, supra note 6, at paras. 61-67.
40. In 2006 and 2007, multiple cases assigned to the National Unit for Human Rights and International Humanitarian Law appeared to have stalled. In contrast, during that time period, Dr. Buitrago was proceeding with diligence in her investigations, one of which had resulted in the detention of a high-level commander.

41. In 2008, the Prosecutor General assigned the case of the execution of Magistrate Urán Rojas to Dr. Buitrago. In 2010, Dr. Buitrago secured the conviction of a high-level commander in another case. Two months later, when Dr. Buitrago opened an investigation concerning three generals implicated in the killing of Urán Rojas, the Prosecutor General immediately removed Dr. Buitrago from the case and re-assigned it to the National Unit for Human Rights and International Humanitarian Law. When the IACHR issued its report in October 2011, the National Unit for Human Rights and International Humanitarian Law was continuing the investigation. That continues to be the case, according to recent press reports. The IACHR also has found that the National Unit for Human Rights and International Humanitarian Law had failed to demonstrate progress in other investigations assigned to it.

42. The alleged failure to investigate fully and to prosecute those responsible for the killing of Magistrate Urán Rojas raises particularly troubling questions about the State’s commitment to ensuring the independence of the judiciary. It is alleged the Magistrate Urán Rojas was videotaped leaving the Palace of Justice wounded and in the custody of security forces, and that he was later found dead with a bullet-wound to the head fired at close range. It is further alleged that crucial information in the possession of Colombian security forces concerning the killing has been withheld for years, and that new revelations concerning the incident at the Palace of Justice continue to emerge.

43. If proven, the alleged killing of Magistrate Urán Rojas amounts to a summary execution, which is a “grave violation” of the Convention. According to the jurisprudence constant of this Court, States must “identify, try, and punish all the direct perpetrators

\[58\] Ibid. paras. 61 - 64 (alleging the continued absence of progress in the cases).
\[59\] Ibid. para. 51.
\[60\] Ibid. para. 338.
\[61\] Juan David Laverde Palma, Proceso por el Palacio de Justicia, El Espectador, August 2, 2013
http://www.elespectador.com/noticias/judicial/rafael-nieto-sale-del-caso-del-palacio-de-justicia-articulo-437652
\[62\] IACHR, Merits Report, supra note 6, para. 340.
\[63\] Id. note 6, at paras. 271-276.
\[64\] El Tiempo, En bóveda del B-2 apareció la billetera de magistrado muerto en el Palacio de Justicia (May 12, 2007); Juan David Laverde Palma, El reporte secreto del Palacio de Justicia (parte II), El Espectador, June 22, 2013 http://www.elespectador.com/noticias/judicial/articulo-429452-el-reporte-secreto-del-palacio-de-justicia-parte-ii.
and accessories, and the other persons responsible for the extrajudicial killing of Myrna Mack Chang and for the cover-up of the extrajudicial killing [...]"

As the Court has repeatedly held, in a “democratic society [...] the truth on grave human rights violations must be known. This is a fair expectation that the State must satisfy, on the one hand, through the obligation to investigate the human rights violations, and on the other hand, through the public disclosure of the results of the criminal and investigation processes”.

44. While some of the individuals under investigation for the killing of Magistrate Urán Rojas have been convicted for other crimes, no one has been brought to justice with respect to this crime. Nearly twenty-eight years after the fact, the matter of the killing of Magistrate Urán Rojas remains open. To say the least, the lack of progress achieved in the investigation undermines the ability of his family members and friends, as well as those of the other victims, to find peace. This lack of judicial clarification of the facts also compromises the Colombian public’s ability to assess the possible responsibility of key officials for the events in question, thereby undermining the ability of the public’s right to know and to participate in a meaningful way in the democratic process.

45. Recognizing the State of Colombia’s undeniable legal and moral obligation to investigate and punish grave human rights violations while also pursuing a lasting peace, the ABA respectfully notes that this Court has repeatedly held that, even in the context of an armed conflict, States must fully investigate and prosecute grave human rights violations and “abstain from [...] the establishment of measures designed to eliminate responsibility”. Such a full elucidation of the facts is necessary, not simply to redress human rights abuses, but also to ensure against their repetition. If not, there can be no closure in this case, neither justice nor the appearance of justice being done, and no guarantee that impunity will not simply beget further impunity.

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5.2. THE FAILURE TO PROTECT JUDGE JARA GUTIERREZ

46. During proceedings in cases related to the Palace of Justice incident, Judge María Stella Jara Guiterrez stated that she had been the subject of ongoing threats.\(^{68}\) In addition to threats that were delivered directly to her, threatening statements were also published in newspapers; among the newspaper threats was an invitation to the judge’s funeral.\(^{69}\) These threats were taken with sufficient seriousness by the IACHR that it issued precautionary measures to protect her on June 2, 2010:

“The IACHR granted precautionary measures for Maria Stella Jara Gutierrez and her son, in Colombia. In the request for precautionary measures and in additional information sent later, it is alleged that Judge Jara Gutierrez, who is in charge of the Palace of Justice case, has received threats from alleged armed groups operating outside of the law. It is also alleged that the threats have intensified in recent months, as the date for issuing the final judgment in the case draws near. The information also indicates that there has been a delay in the implementation of a security plan designed to safeguard the life and integrity of Judge Jara Gutierrez and her youngest son. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of Maria Jara Gutierrez and her son; to reach agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the events that led to the adoption of precautionary measures.”\(^{70}\)

47. On June 9, 2010, Judge Jara Guiterrez convicted the colonel in charge of the military operations. On June 10, the President of Colombia publicly criticized the decision.\(^{71}\) He also called for reforms to protect the military from future prosecutions.\(^{72}\) The Minister of Defense likewise issued a statement expressing his sadness at the conviction and calling the colonel a “soldier of the homeland”.\(^{73}\)

\(^{68}\) Juzgado Tercero Penal del Circuito Especializado de Bogotá, proceso 2008-0025 contra Luis Alfonso Plazas Vega, sesión de audiencia pública, (6 de agosto de 2009).


\(^{73}\) Ibid.
48. On June 11, 2010, two days after Judge Jara Guiterrez had convicted the colonel, the Office of the U.N. High Commissioner for Human Rights urged the Colombian government to “to take all necessary steps to continue ensuring the security of Judge María Stella Jara, who is facing numerous threats”\(^74\) and emphasized the need to provide for the “full protection of witnesses, lawyers, the families of victims, members of the administration of justice involved in these cases”.\(^75\) Judge Jara Guiterrez subsequently was forced to leave Colombia with her son because she feared for their safety.

49. Notwithstanding the many interventions by international and foreign institutions, which repeatedly called on Colombian authorities to fulfill their legal obligations to protect Judge Jara Guiterrez, those authorities have failed to do so. The consequences for that failure have been grave and will be long-lasting.

6. CONCLUSION

50. For all of these reasons, the threats to the judiciary and legal profession that have been alleged in this case are of grave concern to the international community. The ABA therefore respectfully urges that if the Court finds that these allegations are supported by the evidence, it hold that the State of Colombia violated Articles 1(1), 8(1) and 25(1).


\(^75\) Ibid.
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