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Washington, D.C. –September 29, 2011
Dr. Viviane Morales
Attorney General
Attorney General's Office
Diagonal 22B, No 52-01
Bogotá
Colombia

Dear Attorney General Morales:

I am writing to follow up on the very constructive meeting we had in Bogotá this June regarding the problem of impunity for anti-union violence in Colombia. We are encouraged by the steps the Attorney General's Office is currently taking under your leadership to address this longstanding problem. Yet we also believe further measures are needed to ensure that your efforts succeed and the era of unchecked violence against trade unionists in Colombia is finally overcome.

As you know, Colombia continues to face an extraordinarily high level of anti-union violence.¹ While the number of trade unionists killed every year is certainly less today than a decade ago, it remains higher than any other country in the world. The National Labor School (ENS), Colombia's leading NGO monitoring labor rights, reports that in 2010 there were 51 killings of trade unionists, 22 homicide attempts, and 397 threats.²

A major reason for this ongoing violence has been the chronic lack of accountability for cases of anti-union violence. Colombia has failed to deliver justice for more than 2,500 trade unionist killings committed over the past 25 years.³ As Vice-President Angelino Garzón acknowledged during a November 2010 speech, "[T]he immense majority of crimes [against] trade unionists remain in impunity...there have been advances in the investigations...but we still have not gotten to 200 court rulings, and there are thousands of workers and union leaders killed and disappeared."⁴

¹ According to official statistics, 38 trade unionists were murdered in 2008, 28 in 2009, 37 in 2010, and 13 during the first half of 2011. Presidential Program for Human Rights and International Humanitarian Law, "Avances en los Derechos Fundamentales" undated, <http://www.derechoshumanos.gov.co/Sindicalismo/Paginas/estadisticas-derechosfundamentales.aspx> (accessed July 29, 2011)

² According to statistics compiled by the ENS, 51 trade unionists were killed in 2008, 47 in 2009, 51 in 2010, and 17 between January and June 21, 2011.

³ The figure for the total number of killings that remain in impunity, cited here and elsewhere in the letter, is based on analysis of court rulings, information provided by the Attorney General's Office, and the ENS's database of killings conducted by the Colombian Commission of Jurists (CCJ) and Human Rights Watch.

⁴ Vice-President Angelino Garzón, speech during "Seminario Internacional sobre Derechos Humanos y Sindicalismo," Bogotá, November 25, 2010, transcript at <http://www.ens.co/index.shtml?apc=Na--;5;-;&x=20166203> (accessed July 31, 2011)

In 2006, the Attorney General's Office sought to end this impunity by establishing a sub-unit of prosecutors to focus exclusively on crimes against trade unionists. This initiative brought with it several important advantages: the sub-unit's prosecutors would receive extra material and human resources and have the opportunity to develop expertise in solving these crimes. By working out of Bogotá and other main cities, the prosecutors would generally be less vulnerable to pressure and threats than local justice officials.

Since its creation, the sub-unit has made important progress: there are now scores of convictions for trade unionist killings every year where before there were almost none. Over the past four-and-a-half years, the sub-unit has secured convictions for more than 185 trade unionist killings.⁵

Yet this progress, while welcome, has in fact been very limited. And, unless urgent steps are taken to improve the sub-unit's performance, it will almost certainly prove to be unsustainable.

Over the past several months, Human Rights Watch has carried out a comprehensive evaluation of the sub-unit's work, reviewing hundreds of court judgments for crimes against trade unionists, examining the most recent available data provided by the Attorney General's Office on the status of investigations, and conducting dozens of interviews with prosecutors, judges, rights advocates, and victims.

Our research has found severe shortcomings in both the scope of the sub-unit's work and the investigative methodology that it employs. In terms of the **scope**, we found that:

- The increase in the number of convictions since the sub-unit's creation, while substantial, represents only a small fraction of the total number of cases of trade unionist killings that still need to be investigated and prosecuted.
- The increase in convictions is largely due to confessions provided by paramilitaries under the Justice and Peace process, which does not apply to cases of killings committed after 2006.
- The sub-unit has made virtually no progress in obtaining convictions for killings from the past four-and-a-half years.
- The sub-unit has made virtually no progress in prosecuting people who order, pay, instigate or collude with paramilitaries in attacking trade unionists.

⁵ Human Rights Watch determined this figure based on our analysis of the judgments handed down through May 2011 by the three specialized courts dedicated to crimes against trade unionists that handle all of the sub-unit's cases in which authorities have verified that the victim belonged to a union, and information provided by the Attorney General's Office about the sub-unit's investigations and convictions obtained as of March 15, 2011.

In terms of the **methodology** of the investigations, we found that:

- The sub-unit has routinely failed to thoroughly investigate the motives for the crimes.
- The sub-unit has not conducted the type of systematic and contextualized investigations that are necessary to identify and prosecute all responsible parties.

While we were encouraged to encounter prosecutors in the sub-unit who are very professional and committed to advancing these cases, it is also clear that further measures must be taken to support their work and ensure the sub-unit overcomes its current limitations.

Under the current circumstances, what is at stake is the justice system's ability to act as an effective deterrent to anti-union violence. We are concerned that unless you take action to improve the sub-unit's performance, the office will continue to fall short in ensuring accountability for attacks on trade unionists, and Colombia will remain a uniquely dangerous country for workers seeking to exercise their basic labor rights.

The Scope of the Sub-unit's Work

Convictions Represent Fraction of Total Killings

The annual number of convictions for cases of crimes against trade unionists has risen about nine-fold since the sub-unit began operating in 2007.⁶ Overall, the sub-unit has obtained convictions for more than 185 trade unionist killings.

Despite this accomplishment, a great deal of work remains to be done. At this stage, Colombia has obtained a conviction for less than 10 percent of the 2,886 trade unionist killings recorded since 1986 by the ENS. The sub-unit reported to Human Rights Watch that it had opened an investigation into 787 cases of trade unionist killings as of June 2011.⁷ Investigations into the more than 2000 other reported trade unionist murders presumably remain with ordinary prosecutors, who have long failed to resolve such cases. As concluded by the February 2011 International Labor Organization (ILO) High-level Tripartite Mission to Colombia, "The majority of [trade unionist killings] have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice."⁸

⁶ According to official statistics, between 2000 and 2006 convictions fluctuated between 1 and 12 per year. In 2007, they jumped to 43 and have since ranged between 73 and 83 per year. Presidential Program for Human Rights and International Humanitarian Law, "Lucha Contra la Impunidad," undated, <http://www.derechoshumanos.gov.co/Sindicalismo/Paginas/impunidad-sentencias.aspx> (accessed July 18, 2011)

⁷ Given that some murder cases involve more than one victim who was a trade unionist, it is possible that the total number of such killings investigated by the sub-unit is slightly higher than 787.

⁸ International Labor Organization, "Conclusions of the High-level Tripartite Mission to Colombia," February 18, 2011.

Recent Progress Is Largely Due to Justice and Peace Process

The sub-unit's progress in prosecuting anti-union violence has largely been due to confessions by paramilitaries participating in the Justice and Peace process. Human Rights Watch reviewed all 74 convictions handed down over the past year by the three specialized courts dedicated to crimes against trade unionists⁹ and found that 60 percent of the convictions were the direct result of plea bargains with demobilized paramilitaries participating in the Justice and Peace process. In a majority of the remaining rulings from this period, testimony by defendants in the Justice and Peace process also played an important role in producing the conviction.

This increase in the number of convictions spurred by the Justice and Peace process is certainly a positive development. Unfortunately, it does not by itself represent sustainable progress. The process has allowed prosecutors to resolve cases because it has provided extraordinary incentives for demobilized paramilitaries to confess to their crimes. But these incentives do not apply to crimes committed since paramilitary groups finished demobilizing in 2006 and therefore will not help prosecute individuals who assassinate trade unionists today or in the future.¹⁰

Lack of Convictions for Recent Trade Unionist Killings

When it comes to obtaining convictions for cases from the past several years—which are not covered by the Justice and Peace process—the sub-unit has made virtually no progress. Of the more than 195 such killings that have occurred since the sub-unit started operating in 2007, the special office had obtained convictions in only six cases as of May 2011.¹¹ It had not obtained a single conviction for the more than 60 homicide attempts, 1,500 threats and 420 forced displacements reported by the ENS during this period.

The sub-unit has not opened investigations into the majority of the trade unionist murders that have occurred since the office began operating in 2007. As of March, it had opened an investigation into only one of the 51 trade unionist killings committed in 2010. And the vast majority of the sub-unit's investigations into killings since

⁹ Rulings from May 13, 2010 – May 13, 2011. In 2007, Colombia established three specialized courts dedicated to crimes against trade unionists that hear all of the sub-unit's cases in which authorities have verified that the victim belonged to a trade union. While the specialized courts handle some cases investigated by prosecutors outside of the sub-unit, the vast majority of its rulings are for the sub-unit's cases.

¹⁰ The reduced sentences of 5-8 years offered under the Justice and Peace Law only cover human rights crimes—including trade unionist killings—committed before the law came into force in July 2005. Since paramilitaries must fully disclose the truth about all their crimes in order to benefit from the law, some defendants in the Justice and Peace process have chosen to confess to trade unionist killings committed between July 2005 and their demobilization in 2006.

¹¹ The figure for trade unionist killings for the period from January 2007 through May 2011 is based on the ENS database. Human Rights Watch determined the sub-unit's number of convictions for these killings based on our analysis of the judgments handed down by specialized courts through May 2011 and information provided by the Attorney General's Office about the sub-unit's investigations and convictions obtained as of March 15, 2011.

2007 (89 percent) remain in a preliminary stage in which prosecutors have yet to formally identify a suspect.¹²

We understand that the current Attorney General's Office shares our concern with the lack of progress in prosecuting recent killings. As discussed below, your office has announced steps that could help address this problem, such as instructing prosecutors to prioritize investigations of crimes against trade unionists committed since 2007.

Lack of Prosecutions of Intellectual Authors and Accomplices

We are also concerned that the prosecutions have focused almost exclusively on the commanders of armed groups or triggermen and have not extended to include other individuals who may have instigated or facilitated the crimes. Of the more than 275 convictions handed down through May 2011 by the specialized courts that handle the sub-unit's cases, 80 percent have been against former members of the United Self-Defense Forces of Colombia (AUC).¹³ Yet there is compelling evidence that paramilitaries and the groups that replaced them have not acted alone in killing trade unionists. These groups have historically operated with the toleration or even active support of members of the public security forces, as well as in collaboration with politicians and allies in the private sector.¹⁴ According to several justice officials, rights advocates and victims' lawyers close to these cases, paramilitaries appear to have killed trade unionists at the behest of employers, local officials, or other individuals with particular interests in eliminating the victims.

A review of 50 recent convictions for anti-union violence handed down by the specialized courts¹⁵ found that in nearly half of the cases under consideration, the judgments contained evidence pointing to the involvement of members of the security forces or intelligence services, politicians, landowners, bosses, or coworkers. Rulings in ten of these cases contained evidence indicating that individuals outside the armed groups (including two mayors, a hospital administrator, a plant manager, a captain of the Sectional Judicial Police, and a detective from the Colombian intelligence service) may have hired, ordered, or otherwise instigated paramilitaries to kill the trade unionists.

¹² Evaluation of the sub-unit's open investigations and their status is based on information provided by Attorney General's Office, updated through March 15, 2011. According to Human Rights Watch's analysis of the information, 76 of the sub-unit's 85 investigations into trade unionist killings committed since 2007 were in the stage of "investigación previa" or "indagación," meaning that prosecutors had not yet formally identified a suspect.

¹³ About 7 percent of the convictions were against members of guerrilla groups.

¹⁴ Paramilitary commanders participating in the Justice and Peace process have made very significant—albeit selective and often vague—statements about their accomplices in the military and government and about their financial backers. As of July 31, 2011, statements by defendants in the Justice and Peace process had enabled the Justice and Peace Unit of the Attorney General's Office to issue information to other prosecutors so investigations would be opened into 495 members of the armed forces, 466 politicians, and 178 public servants.

¹⁵ Rulings from September 27, 2010 – May 13, 2011.

Yet despite the evidence of involvement and collusion by third parties in crimes committed by armed groups, the sub-unit has obtained virtually no results in bringing such individuals to justice. Only 10 of the more than 275 rulings handed down by specialized courts since 2007 have convicted politicians, members of the security forces, employers, or coworkers. Only one of the 50 rulings handed down between September 2010 and May 2011 that Human Rights Watch reviewed punished such individuals. Similarly, a comprehensive study by the Center for the Study of Law, Justice, and Society (DeJusticia) reveals that just 3 percent of the judgments in trade unionist cases handed down through March 2010 included the conviction of a “strategic intellectual author” (an individual outside of an armed structure who ordered or otherwise instigated the crime).¹⁶

Prosecuting the triggermen and their commanders for these crimes is a crucial step for accountability. But identifying these individuals alone will not enable the justice system to act as an effective deterrent to anti-union violence. As long as some people believe they can get away with ordering, paying, or instigating armed groups to kill trade unionists, they will continue to find armed groups and gunmen for hire to do their dirty work.

Flaws in the Investigative Methodology

Colombia’s progress in curbing impunity for anti-union violence, while important, has been limited by shortcomings in the investigative strategy pursued by the sub-unit of the Attorney General’s Office. The first is a routine failure to adequately investigate the motive in cases of trade unionist killings. The second—and more troubling—is the failure to conduct the sort of systematic and contextualized investigation necessary to identify and bring to justice all responsible parties.

As discussed below, the current administration of the Attorney General’s Office has recognized the problem of the sub-unit’s methodology and announced the adoption of measures to improve it. But these correctives remain to be fully implemented, and must be followed with additional measures to shore up the quality of the sub-unit’s work.

Inadequate Investigation of Motives

Prosecutors often base their charges almost entirely on testimony by paramilitaries participating in the Justice and Peace process without conducting a thorough investigation that could determine the actual motive for targeting the victim. According to one of the specialized judges, in many cases prosecutors base their charges on “two or three lines from what the defendant in Justice and Peace says.”

¹⁶ “Evaluación de la judicialización de delitos contra trabajadores sindicalizados,” Center for the Study of Law, Justice, and Society (DeJusticia) presentation, Bogotá, November 24, 2010

Given the lack of additional evidence gathered by prosecutors, the judges often rely primarily or exclusively on paramilitaries' accounts to determine the motive for the crime.

Paramilitaries' confessions frequently seek to justify trade unionist killings as counter-insurgency operations, claiming that their victims were guerrilla collaborators. Consequently, a substantial share of judgments for trade unionist killings have identified the victims' alleged links to guerrilla groups as the motive behind the killings.¹⁷

Yet, there are good reasons to suspect that in many cases the paramilitaries label the victims as guerrilla collaborators to disguise the true reasons for the killing. By offering defendants the same reduced sentence no matter how many abuses they admit to, the Justice and Peace Law provides paramilitaries with extraordinary incentives to confess to all of their crimes. But when it comes to testifying about their accomplices—who may have ordered trade unionist killings for their own political or economic interests—paramilitaries often have strong incentives to keep silent and justify the murders as part of their anti-guerrilla campaign. As revealed by several recent judicial investigations and news reports, there are credible allegations that paramilitaries have been repeatedly bribed or pressured to conceal the criminal activity of their political and economic allies.¹⁸ In cases involving collusion with powerful individuals, paramilitaries and their family members could face severe reprisals should they expose their accomplices.

In some court rulings, judges have found reason to doubt the veracity of paramilitaries' anti-guerrilla justifications for the killings. For example, in one recent ruling against paramilitaries who claimed that the union leader had been killed because he was a guerrilla collaborator, the judge wrote that it appeared the group had been paid to murder the victim because of his union activity, noting that: "The excuse provided by the [defendants] regarding the motive of the killing...seems to actually be a form of hiding the existence of a particular interest to silence the victim."¹⁹ The judgment explicitly described how the prosecutor had failed to collect key pieces of evidence that would have helped clarify the motive for the crime. According to DeJusticia's 2010 study, while 102 of the 271 court rulings they analyzed

¹⁷ According to statistics prepared by the specialized courts, 101 of the 259 judgments they handed down through February 15, 2011 identified the victim's alleged collaboration with guerrillas as the motive for the crime.

¹⁸ This May, lawyer Ramón Ballesteros was convicted of attempting to bribe a demobilized paramilitary to retract his testimony against a former Senator accused of having links to the AUC. The same month, the Supreme Court reportedly ordered an investigation against former President of Congress Javier Cáceres Leal—accused of links to the AUC's Heroes of Montes de Maria Block—for allegedly having pressured Justice and Peace defendants to testify in his favor. Demobilized paramilitaries from the Heroes of Montes de Maria Block have also reportedly denounced death threats and pressure to retract their testimony against other regional politicians and business leaders. And several extradited paramilitary commanders have cited threats against family members in announcing that they would stop providing testimony under the Justice and Peace process.

¹⁹ 56th Circuit Court of Bogotá, January 30, 2011, Case reference # 11001310405620100073, Defendants: Carlos Fernando Mateus Morales and Martín Alonso Hoyos Gutiérrez.

identified the trade unionist's alleged guerrilla ties as the motive for the killing, the judges explicitly rejected the allegations in nearly half of those judgments.

Given the inadequacy of investigations, it is impossible at this point to know how many killings were in fact motivated by the victims' union activities. What is clear is that without more thorough investigations, prosecutors will not be able to determine with an adequate level of certainty whether or not the crimes were related to the victims' participation in their union. This is a serious problem in Colombia given the tendency of some officials and commentators to downplay anti-union violence by dismissing the attacks as isolated crimes unrelated to the victims' union affiliation. And worse still, if court rulings based on paramilitaries' testimony indicate that the victims were guerrillas, the stigmatization is confirmed and the risks are worsened for those who exercise union activity.

Lack of Systematic and Contextualized Investigations

With few exceptions, the sub-unit's prosecutors have not pursued investigations that take into account the context of crimes against other members of the victim's union from the same region and time period, and have often neglected to conduct serious inquiries into the victim's union activity at the time of the crime.

Instead, killings have generally been investigated in an isolated case-by-case manner and without any serious effort to determine how the crimes might form part of a broader pattern of anti-union violence. As one top official within the Attorney General's Office recently told Human Rights Watch, until now, the sub-unit has treated each case as "an island." Similarly, in separate interviews, all three current judges from the specialized courts that handle these cases told Human Rights Watch that the cases brought to their courts are investigated as isolated crimes. Victims' lawyers also said that the sub-unit's failure to draw connections between killings is one of the fundamental problems with the investigations.

This serious deficiency in the sub-unit's investigations is also evident in the judgments in cases of anti-union violence. According to DeJusticia's 2010 study, a "systematic approach" to investigations—defined as taking the general context of anti-union violence as the starting point for the investigation—was reflected in five of the 271 court rulings handed down through March 2010.

As a result of this investigative approach, prosecutors have not been able to identify patterns of crimes that could lead them to the individuals—including public officials and employers—who may have ordered, instigated, or otherwise colluded with armed groups in attacking trade unionists. As one of the three special judges who handle cases of anti-union violence said, "To know what's behind the crimes, if there was a state policy or company policy or not, there has to be a macro-investigation. [Prosecutors] have not done that." Another judge specified that the piecemeal

investigations have impeded prosecutors from identifying intellectual authors: “It would make more sense to analyze the historical context of the union and the criminal organization that operates in the region. But in reality, [the cases] come [to the courts] as isolated victims... The investigations have progressed very little in providing the judges with the context. The context would help identify intellectual authors.”

This shortcoming is compounded by the sub-unit’s failure to consistently conduct a thorough inquiry into the context of the victim’s union activity at the time of the crime, which limits prosecutors’ ability to establish leads that could help clarify the motive for the killing and identify potential suspects. While some prosecutors do make an effort to look into such activity, two judges we spoke with said that such rigorous inquiries are not the norm. In our review of 50 recent convictions in these cases, we found the majority of the rulings did not refer to the victim’s union activity in the period leading up to the crime. (If the prosecutors had investigated such activity, a reference to this line of inquiry should at least appear in the judgment, according to jurists consulted by Human Rights Watch.) Of the judgments that did mention the victim’s union activity at the time of the crime, most references were general, suggesting that no in-depth probe had been undertaken.

Steps Your Office Has Announced to Advance Prosecutions

Based on our meeting last June, we know that your office is aware of the problems outlined above and has announced some important initial steps that could help address them.

In terms of increasing the quantity of cases investigated and prosecuted by the sub-unit, we were encouraged by the following measures announced by the Attorney General’s Office:

- The addition of 100 judicial police from the Directorate of Criminal Investigation and Interpol (DIJIN) and planned incorporation of 14 new prosecutors to the sub-unit;
- Your office’s June 2011 memorandum instructing prosecutors to prioritize cases of trade unionist killings committed since 2007;²⁰
- Your office’s April 2011 memorandum mandating the early identification in all new homicide cases of whether the victim was a union member, which should help ensure that in the future the sub-unit can immediately open investigations into these new cases;²¹
- Your office’s recent transfer of 35 cases of trade unionist killings from 2009 to the sub-unit.

²⁰ Dirección Nacional de Fiscalías, *Memorando DNF No. 025*, June 9, 2011

²¹ Dirección Nacional de Fiscalías, *Memorando DNF No. 00017*, April 1, 2011

Your office also has announced measures that could improve the sub-unit's investigative methodology, such as:

- Providing instructions within the April memorandum for prosecutors to take the urgent steps that will allow them “to determine the motives for the crime and the causal relationship between the [homicide] and victim's condition as a trade unionist”;
- Providing instructions within the June memorandum for prosecutors to analyze cases of trade unionist killings based on the region where the crimes occurred;
- Adding six analysts to the sub-unit who will help identify links between cases in order to detect patterns of crimes against trade unionists.

In addition, the current coordinator of the sub-unit told us in May that the sub-unit has adopted a new methodology that involves grouping cases not only on the basis of location, but also based on the victim's union and the suspected responsible armed group.

Yet, we are concerned that the new methodology has not yet been effectively implemented. In separate interviews this May, the prosecutors within the sub-unit appeared to have very different understandings of how they were expected to proceed with their investigations. Two prosecutors said that the sub-unit had not in fact adopted a new methodology. “There is no policy that comes from the coordinators,” one told us. “The methodology depends on each prosecutor... Investigations are case-by-case. It would be important to group [cases] by trade union, but it has not been done.” Other prosecutors mentioned the new investigative policy, but said that it remains to be carried out in practice.

Furthermore, your office's attempt to implement a systematic approach is undercut by the sub-unit's limited caseload and inefficient allocation of investigations among prosecutors. As discussed above, the sub-unit is not investigating the majority of reported trade unionist killings. Consequently, cases from the same union, region, and time period are often split between the sub-unit and ordinary local prosecutors. And of those investigations that have been assigned to the sub-unit, cases involving trade unionists from the same organization and region have generally been divided among the office's different prosecutors.

Recommendations

In order to build on your initial correctives and fully address the problems identified in this letter, we believe it is crucial to adopt the following measures:

- 1) The sub-unit should investigate all reported cases of killings, enforced “disappearances,” and homicide attempts committed against trade unionists. In order to do so, we recommend the Attorney General’s Office:
 - a) Transfers to the sub-unit all reported cases of killings, enforced “disappearances,” and homicide attempts against trade unionists that are currently assigned to local prosecutors;
 - b) Assigns to the sub-unit all future cases of killings, enforced “disappearances,” and homicide attempts against trade unionists.
- 2) The sub-unit should implement a policy to conduct systematic, contextualized and thorough investigations. The policy should ensure that:
 - a) Rather than treating each killing as an isolated case, investigations also examine all other crimes against members of the same union in the same region and time period to identify possible connections and patterns of crimes that could help to determine the motive for the killing, and identify all the responsible parties;
 - b) Prosecutors do not rely inordinately on paramilitaries’ confessions to resolve cases, but instead use this testimony as a starting point to pursue a solid judicial investigation;
 - c) Prosecutors conduct a thorough inquiry into the victim’s union activity at the time of the crime in order to collect evidence that could help clarify the motive for the attack and identify potential suspects;
 - d) Prosecutors vigorously pursue leads that point to the possible involvement of state agents and other actors in crimes against trade unionists.
- 3) Cases should be distributed among the sub-unit’s prosecutors based on the victim’s union and the region where the crime occurred.

As we have pointed out on numerous occasions, overcoming ongoing impunity for violence against trade unionists requires confronting complex challenges. There is an enormous amount of work to be done, and success will not be achieved overnight. Yet we also believe that, if your office rigorously pursues the measures we are recommending here, it will be possible to make significant progress in prosecuting these cases and transform the sub-unit into an effective deterrent to future attacks on trade unionists in Colombia.

A handwritten signature in black ink, appearing to read 'J. Miguel Vivanco', with a long horizontal line extending to the left.

José Miguel Vivanco
Human Rights Watch