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A WRONG TURN

The Record of the Colombian Attorney General's Office

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COLOMBIA

A WRONG TURN The Record of the Colombian Attorney General's Office

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I. SUMMARY AND RECOMMENDATIONS

Since taking office in August 2002, President Álvaro Uribe has toured the United States and Europe seeking increased help to rout Colombia's illegal armed groups. Whether or not this aid will be forthcoming should depend largely on whether his government is able to curb human rights violations committed by government forces and break persistent ties between the military and right-wing paramilitaries. Unfortunately, however, he may find that he cannot count on the Colombian state's single most important mechanism for accomplishing these tasks: the Attorney General's Office.

In the past year, under the leadership of Attorney General Luis Camilo Osorio, the office's ability to investigate and prosecute human rights abuses has deteriorated significantly. This deterioration is the product of several factors under the attorney general's control: a lack of support for prosecutors working on difficult human rights cases; a failure to provide adequate and timely measures to protect justice officials whose lives are threatened; and the dismissal and forced resignation of veteran prosecutors and judicial investigators.

As a result, major human rights investigations that had gathered momentum during his predecessor's term have been severely undermined under Osorio's watch. The attorney general's handling of these cases is likely to encourage the common perception among military and paramilitary forces that human rights abuses are an acceptable form of warfare.

Within days of taking office on July 31, 2001, Attorney General Osorio forced the resignations of the director and former director of the specialized Human Rights Unit. Over the following months, he continued purging the office of officials who had worked on sensitive human rights cases and sent a clear message to those who remained that efforts to prosecute human rights violations committed by army officers would not be welcome. Over a dozen current and former justice officials described Osorio as having damaged morale among prosecutors and investigators and undermined the prospects of achieving justice in key cases.

Under international law, Colombia has an obligation to investigate and prosecute human rights abuses. For many years, the country failed to meet this obligation, allowing major atrocities to go unpunished. Then, in 1995, the Attorney General's Office established a special Human Rights Unit to investigate and prosecute human rights crimes. Over the next six years, the unit made significant progress on a wide range of important cases involving army and police personnel, paramilitaries, and guerrillas.

Progress on these cases is critical in determining whether Colombia is meeting the conditions that currently regulate U.S. military aid. The conditions specifically require that the Colombian military cooperate with civilian justice officials prosecuting human rights cases. They also require the military to sever links with the country's abusive paramilitary groups, a goal most effectively served by the prosecution of military officers known to have collaborated with the paramilitaries.

In recognition of the important work of the Attorney General's Office, the United States has, since 2000, invested over \$25 million in the office. In addition to providing the office with needed training and equipment, it has funded the creation of eleven new satellite Human Rights Units in cities beyond the capital, Bogotá. It should be of particular concern to the U.S. government, therefore, that many of the justice officials forced from their jobs in the past year were those who had received special training in the United States, headed satellite units, or participated as instructors in programs run by the U.S. Department of Justice. It should also be troubling that the attorney general has responded to international concern about human rights cases by publicly accusing members of the U.S. Congress, several European governments, and international NGOs of engaging in a "war" to discredit Colombian authorities.

Unless concrete steps are taken to restore the effectiveness of the Attorney General's Office, Colombia could lose one of its most important mechanisms for curbing human rights violations and fortifying the rule of law. To reverse this dangerous trend, the Colombian government should take the following steps:

- ensure the autonomy and impartiality of prosecutors and investigators within the Human Rights Unit by limiting the ability of the attorney general to fire prosecutors and investigators without cause;
- issue a presidential directive that emphasizes the importance of the work of the Human Rights Unit followed by frequent, public expressions of support from the president, his ministers, and the security forces leadership;

- ensure that the attorney general has hired experienced professionals able to administer the Human Rights Unit and related agencies with the highest level of independence;
- increase the resources available to Human Rights Unit prosecutors and investigators for transportation, forensic technology, training and basic administration;
- ensure that current and former judicial officers facing credible threats related to their work on human rights cases receive adequate police protection, even after they have left office.

The United States government should:

- make clear to the president of Colombia that the State Department will not be able to certify progress on human rights unless the attorney general stops undermining human rights investigations and can demonstrate significant progress on human rights cases;
- urge President Uribe to use his own authority as president and commander-in-chief to suspend officers who are credibly alleged to have committed human rights violations and who have aided and abetted the abuses committed by illegal paramilitary groups;
- continue to investigate and indict paramilitary and guerrilla leaders when it has credible information about criminal activities;
- revise legislation to include a reporting requirement on progress by the Attorney General's Office on key human rights cases.
- commission a General Accounting Office report on the effectiveness of U.S. aid to Colombia's Attorney General's Office and specifically the Human Rights Unit;
- provide the Human Rights Unit increased funding to purchase basic tools, like telephones, computers, and fax machines;
- express publicly, via the embassy and visits by administration and military officials, support for the vital work of human rights prosecutors and judicial officials.

II. THE RECORD OF THE ATTORNEY GENERAL'S OFFICE

On July 31, 2001, Luis Camilo Osorio took charge of an Attorney General's Office that had been struggling for several years to make progress on human rights prosecutions. In 1995, a Human Rights Unit consisting of specially selected prosecutors as well as investigators from the Technical Investigations Unit (*Cuerpo Técnico de Investigación*, CTI) was formed to focus on human rights abuses and violations of international humanitarian law.¹ In its first six years in operation, the Human Rights Unit made real headway in investigating and prosecuting grave abuses involving army and police personnel, paramilitaries, and guerrillas. Among its achievements were investigations into massacres from the 1980s and high profile cases from the 1990s. Prosecutors from the unit were the first to open formal investigations against high-level military officers for their alleged collaboration with paramilitary groups.

In June and July 2002, Human Rights Watch conducted a two-week mission in Colombia to investigate whether the progress on human rights cases had continued under Attorney General Osorio. We conducted interviews with sixteen current and former prosecutors, as well as CTI investigators and high level officials in the Inspector General's Office, the national police and the army. We also met with the attorney general. Most of the justice officials we interviewed requested anonymity out of fear for their personal safety and, in some cases, their job security.

A Distorted Mandate

Upon taking office, Attorney General Osorio made clear that he was deeply suspicious of human rights prosecutions, particularly when they involved allegations against members of the military. Publicly, he promised to correct what he described as excessive attention to these allegations by prosecutors. This alleged excess, he claimed, had resulted in cases against guerrillas being neglected. As he put it in one press interview: "What I found here was a serious distortion, with an international and local chorus interested in directing actions only against a select group of actors."² Osorio said he would rectify this problem by instructing his prosecutors to "balance" their caseload.³

The attorney general's public criticism of the Human Rights Unit echoed charges commonly made by military officers and their supporters that justice officials unfairly single out the military for prosecution and, thereby, serve the interests of guerrillas by pursuing human rights cases.⁴ Unfortunately, coming from the country's highest-ranking law enforcement official, they lent undue credence to these unfounded charges.

Osorio went further in an interview with the *Wall Street Journal*, which quoted him denouncing members of the U.S. House of Representatives who had expressed concern about human rights in Colombia. Osorio claimed that there was a

war...being waged internationally ... to discredit the authorities, not only in the military but also in the judicial system. It's an international movement not only by NGOs but by some European states, Sweden, Norway, France in the past and some groups in the U.S., including some U.S. Democratic congressmen.⁵

Accusations of this nature cast serious doubt on the attorney general's claim that he seeks balance from his prosecutors. Indeed, by arguing that the Human Rights Unit's caseload needed balancing, he appears to have ignored the fact that the unit has investigated and prosecuted numerous crimes by guerrillas.⁶ He has also failed

¹ Although the unit handled cases involving violations of international humanitarian law from its inception, its mandate was officially expanded in October 2001 to include these cases and its name was changed to "Human Rights and International Humanitarian Law Unit." The unit is not the only group within the Attorney General's Office that investigates human rights and international law violations. Its purpose is to handle exemplary, complex or particularly dangerous cases.

² "Soy independiente," *El Espectador*, October 28, 2001.

³ The attorney general used the term "*igualar*." Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, October 18, 2001.

⁴ For one example of this argument, see Plinio Apuleyo Mendoza, "Esquilando el lobo," *El Espectador*, July 7, 2002.

⁵ Mary Anastasia O'Grady, "Capitol Hill Leftists Side With Colombian Terrorists," *Wall Street Journal*, August 23, 2002.

⁶ These cases included convictions of members of the Revolutionary Armed Forces of Colombia-People's Army (Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo, FARC-EP) and the National Liberation Army-Camilitar Union (Unión Camilista-Ejército de Liberación Nacional, UC-ELN) for a variety of cases, including the abduction of soldiers in El

to acknowledge that many cases involving allegations of guerrilla abuses are assigned to other units within the Attorney General's Office, among them the Abductions and Terrorism Units.⁷

Whatever the attorney general's intentions, the message transmitted through his office is, in the words of one prosecutor: "reduce attention given to cases involving paramilitary activity."⁸ Or, in the words of another, "Don't mess with the military."⁹ Over a dozen active and former justice officials told Human Rights Watch that Attorney General Osorio, through his actions and statements, had made it clear that efforts to hold high-level army officers accountable for human rights abuses are not welcome.

Human Rights Watch believes that all parties to the conflict in Colombia should be subject to aggressive and impartial prosecution for the crimes they commit. But given the crucial importance of—and the special difficulties associated with—prosecuting abuses committed by government forces, it is clear that these cases warrant the sort of sustained attention that the Human Rights Unit was designed to provide. Unfortunately, by pressing the unit to "balance" its caseload with more cases against guerrillas, the attorney general has undercut the unit's original mandate.

An Office Purge

For current and former members of the Human Rights Unit who spoke with Human Rights Watch, the clearest signal that the new attorney general opposed human rights prosecutions was his decision to rid the office of the prosecutors who had carried them out. Within seventy-two hours of his arrival, Osorio had demanded the resignations of two high-ranking, veteran officials who had handled some of the institution's most important and complex human rights cases. A third official felt compelled to resign in response to the attorney general's actions.

The purge began after Osorio asked the director of the Human Rights Unit, Pedro Díaz, and Deputy Attorney General Pablo Elías González to update him on one of the most important and controversial human rights cases investigated by the unit. The case involved alleged collaboration between the head of the army's Seventeenth Brigade, Gen. Rito Alejo Del Río, and paramilitaries between 1995 and 1997. During this time, the paramilitaries had launched a campaign to force the Revolutionary Armed Forces of Colombia -People's Army (*Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo*, FARC-EP) out of the Urabá region, made up of parts of the departments of Córdoba, Antioquia, and Chocó. Paramilitaries attacked villages, executed local civic leaders, and provoked mass displacement and severe hardship for thousands of residents in an attempt to rob guerrillas of supplies and support, and terrorize people into fleeing.¹⁰

Following widespread and credible reports that General Del Río had ordered troops to support the paramilitaries and was himself in contact with them, the Human Rights Unit opened a preliminary investigation in August 1998. Among the evidence collected were testimonies from eyewitnesses, a local mayor, and three soldiers under Del Río's command, including a former bodyguard and the general's chief of staff, Col. Carlos Alfonso Velásquez.¹¹

Billar and Patascoy in 1997; the massacre of Machuca (Antioquia) in 1998; the massacre in Puracé (Cauca) in 1994; the massacre of judicial officials in Bogotá in 1991, the assassination of civilians in Nariño and Dabeiba (Antioquia), Juradó (Chocó), Roncesvalles (Tolima), Mitú (Putumayo), and Curillo (Caquetá) between 1998 and 2000. They also include the assassinations of two generals and two retired colonels in 2000.

⁷ If any impropriety existed, it could not have been the fault of prosecutors, who cannot assign themselves cases. Cases are assigned by the attorney general and his team. Only rarely does the Human Rights Unit request a case and it can only be given with the attorney general's approval. Human Rights Watch interview with prosecutor, Santafé de Bogotá, June 26, 2002; and Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, October 18, 2001.

⁸ Human Rights Watch interview with prosecutor, Santafé de Bogotá, June 26, 2002.

⁹ Human Rights Watch interview with prosecutor, Santafé de Bogotá, June 27, 2002.

¹⁰ *War Without Quarter: Colombia and International Humanitarian Law* (New York: Human Rights Watch, 1998), Chapter 3.

¹¹ According to witnesses interviewed by government prosecutors, members of the paramilitary group had regularly visited the Seventeenth Brigade army base, the two forces had maintained roadblocks in close proximity to one another, and they had carried out joint operations. According to one soldier interviewed by government prosecutors, General Del Río ordered his troops to take measures that would disguise paramilitary killings as casualties of confrontations between the army and the guerrillas. See also *War Without Quarter: Colombia and International Humanitarian Law* (New York: Human Rights Watch, 1998), Chapter 3.

The evidence against General Del Río was compelling enough to prompt then-President Andrés Pastrana to cashier him in 1998. The U.S. government also canceled his visa to the United States, reportedly on the grounds that there was credible evidence that implicated him in “international terrorism” and drug trafficking.

The Human Rights Unit opened an investigation into the case in 1998. In July 2001, the prosecutor in charge of the case terminated the preliminary investigation and, based on the nature of the crime and the strength of the evidence against Del Río, concluded that Colombian law mandated the general’s arrest.¹² Once Del Río was detained, the prosecutor immediately scheduled a mandatory hearing. When it was concluded, she had five days, under Colombian law, to determine whether or not to continue with the investigation. At the end of the fifth day, July 31, she submitted a signed resolution to Díaz in which she ordered Del Río’s continued detention and opened the next stage of the investigation against him. July 31 was also the day that Osorio was sworn in as the new attorney general. By the time Osorio took office, the prosecutor had already made a determination and was preparing her written resolution. Attorney General Osorio was duly informed of the resolution the following morning by Human Rights Unit Director Díaz and Deputy Attorney General González.¹³

The arrest of an army general for human rights abuses represented a major advance for the Human Rights Unit. Yet, Osorio treated it very differently. During his first week in office, he publicly criticized the prosecutor’s ruling and forced Díaz’s resignation. González, meanwhile, felt compelled by the Attorney General’s actions to offer his own resignation. Recounting the series of meetings he had had to discuss the case with Díaz and González, Osorio said: “What I did was to tell the prosecutors: ‘You have to be loyal to the person who is going to direct the institution.’ And after seventy-two hours of working with them, it turns out that they had already prepared something behind my back.”¹⁴ The attorney general told Human Rights Watch that, in his first meeting with Díaz and González (on his first full day in office), the two men had told him that they were unfamiliar with the substance of the Del Río case. He also claimed that Díaz had given him an unsigned copy of the prosecutor’s resolution and only told him the next day that the resolution had in fact already been signed.¹⁵ Once signed by the prosecutor in charge of the case, a resolution of this sort cannot be subject to revision.

Díaz and González offered a very different account of what took place. They maintain that they told the attorney general exactly what they knew about the case during their meeting with him on his first full day in office. Díaz also maintains that he had previously provided detailed information on the case to Osorio’s transition team, and he insists that the only copy of the document he had in his possession when he met with Osorio was the one that the prosecutor on the case had submitted to him. Both maintain that the document was signed—a claim that is supported by the fact that, according to several members of the Human Rights Unit, Díaz only received signed resolutions from the prosecutors working on cases (thereby protecting the prosecutors’ ability to act with independence).¹⁶

But, whatever may have taken place at the meeting that day, there is no doubt that the arrest of General Del Río was the culmination of a three-year investigation carried out in accordance with Colombian law and in close consultation with the attorney general’s team—that is, with the men who occupied the office at the time: Alfonso Gómez Méndez, who was Osorio’s predecessor, and González, who served as acting attorney general in the brief interim between their terms.¹⁷ By forcing the resignation of a top official who had helped see this landmark case to fruition, and making another feel compelled to resign, Osorio sent a powerful message that he disapproved of this effort.

The resignations of these officials do not represent an isolated case. During his first week in office, Attorney General Osorio also forced the resignation of Virgilio Hernández, a former Human Rights Unit director

¹² Colombian law requires preventative detention of individuals under investigation for crimes that carry a minimum prison sentence of four years. Article 357, Colombian Code of Criminal Procedure.

¹³ “No se asaltó la buena fe del señor Fiscal,” *El Espectador*, August 3, 2001; and Human Rights Watch interviews with current and former justice officials, June 2002.

¹⁴ “Soy independiente,” *El Espectador*, October 28, 2001.

¹⁵ Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, July 4, 2002.

¹⁶ “No se asaltó la buena fe del señor Fiscal,” *El Espectador*, August 3, 2001; and Human Rights Watch interviews with current and former justice officials, June 2002.

¹⁷ Before leaving office in June 2001, Gómez instructed González and Díaz to ensure that sensitive and outstanding cases, including that of General Del Río, be resolved in a timely and responsible fashion. Human Rights Watch interviews with former justice officials, June 2002.

then leading the Anti-Corruption Unit.¹⁸ And in the coming months, other prominent justice officials who had worked on important human rights cases would lose their jobs. In the fifteen months Osorio has been Attorney General, at least nine prosecutors and investigators working on human rights cases have been fired and another fifteen have either been forced to resign or have felt compelled to do so under pressure. Most of these individuals worked with the Human Rights Unit.

In December 2001, for instance, Osorio fired four senior CTI officials: Fernando Niño, head of the CTI's Office of Information and Analysis; Carmen Maritza González, head of the CTI's Investigation Division; Carlos Valdes, head of the Criminology Division; and Martha Janeth Pedroza, advisor to the CTI's national director. The individuals—all described as outstanding professionals by other prosecutors, former attorney general, and CTI managers¹⁹—were fired shortly after assisting in the capture of a top paramilitary assassin and relative of paramilitary leader Carlos Castaño.²⁰

What is particularly disturbing about some of these dismissals is that they took place at critical moments in the investigation and prosecution of cases. One glaring example is the April 2002 dismissal of Luis Augusto Sepúlveda, a prosecutor in the Human Rights Unit. Sepúlveda had been working for over a year on a highly publicized case involving the attempted assassination of a prominent union leader, Wilson Borja, in December 2000. Through an exhaustive investigation, Sepúlveda assembled compelling evidence, including cell phone records, linking an army major and professional killers working for the paramilitaries to the crime. Sepúlveda ordered Army Maj. César Maldonado arrested and opened a formal investigation against him. But just as he was drafting the indictment, Sepúlveda was fired.²¹

When asked by Human Rights Watch about Sepúlveda's dismissal, Attorney General Osorio accused the former prosecutor of having missed the deadline for filing an indictment against Major Maldonado.²² But this charge is inaccurate. On April 23, the day before Sepúlveda was dismissed, two time periods had indeed expired: one was a 360-day period during which the suspect could be detained pending an indictment; the second was an eight-day period during which parties to the case submit documents (*alegatos*) in response to evidence collected by the prosecutor. But the expiration of these two time periods simply meant that two new ones began: a fifteen-day period allowing the prosecutor to prepare an indictment or close the case and a three-day period giving the prosecutor to respond to a detainee's petition for release.²³ In other words, Sepúlveda missed *no* deadlines. According to Colombian law, he had until April 26 to release the detainee and until May 8 to file an indictment.²⁴

But even if Sepúlveda had missed a deadline, Colombian law does not define this as a serious error. In interviews with current and former prosecutors, Human Rights Watch found a strong consensus that these deadlines are often missed, usually because of the dramatic overload of cases that plagues most judicial employees. Rarely, if ever, does missing a deadline result in dismissal. The deputy director of the Inspector General's Office (*procuraduría*), Carlos Arturo Gómez, confirmed this assessment. He insisted that Sepúlveda had engaged in no misconduct and that there was no investigation against him.²⁵

While the attorney general alleged misconduct on the part of both Pedro Díaz and Luis Augusto Sepúlveda, he also insisted that this was not the cause for dismissal. This distinction is relevant because, by law, the attorney general has the authority to fire prosecutors and investigators without explaining any motive, but not

¹⁸ The attorney general never publicly stated the reason for dismissing Hernández.

¹⁹ Human Rights Watch interviews with current and former justice officials, Santafé de Bogotá, June 24-27, 2002.

²⁰ The detainee was Jesús Emiro Pereira Rivera, alleged to have participated in the execution of three members of a powerful ranching family in the department of Casanare who had failed to pay all the extortion money charged by paramilitaries. Human Rights Watch interview with paramilitary witness, Santafé de Bogotá, July 4, 2002; "El nuevo hombre fuerte de las AUC," *El Espectador*, June 27, 2002.

²¹ Memo from Leonardo Martínez Bejarano, Procurador 2o. Judicial Penal II to Dra. Nubia Herrera Ariza, Procuradora Delegada, April 25, 2002; Human Rights Watch interviews with current and former justice officials, Santafé de Bogotá, June 24-27, 2002.

²² Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, July 4, 2002.

²³ Capítulo IV, Ley 600 de 2000, art. 168, of the Código de Procedimiento Penal Colombiano, Libro Primero: Disposiciones Generales.

²⁴ If Sepúlveda had filed the indictment on or before April 26, he would have been able to deny the detainee's petition for release; if he filed it after releasing the detainee on April 26, he would have been able to issue a new arrest warrant.

²⁵ Human Rights Watch interview with deputy director of Inspector General's Office (*Procuraduría*), Carlos Arturo Gómez, Santafé de Bogotá, June 25, 2002.

as a means of addressing alleged misconduct on the part of the person being dismissed. When misconduct is the basis for dismissal, the person is entitled to an administrative procedure that provides an opportunity to refute the allegations. Consequently, the attorney general is only allowed to justify dismissals on the more general grounds that the removal of a given person will improve the “service” provided by the office.²⁶

Unfortunately, these dismissals seemed to have produced precisely the opposite effect. Far from improving the service provided by the Human Rights Unit, they have compromised important work on human rights cases. The firing of Sepúlveda is a good example. The damage allegedly caused by Sepúlveda missing a deadline was that it ensured the release of the detained army major, who, once free, would be able to go into hiding and avoid re-arrest at the time of the indictment. But, in fact, it was *Sepúlveda’s dismissal* that ensured the suspect’s release. The case file that Sepúlveda had built consisted of seventeen notebooks and some 8,000 pages. There was no way the prosecutor who took over the case from Sepúlveda would be able to process that information in time to file an indictment before the deadline for releasing the detainee passed. Rather than attempt to do so, the new prosecutor ordered Major Maldonado released from prison on April 25, 2002.²⁷

The Inspector General’s Office investigator monitoring the case acknowledged the damage done by Sepúlveda’s dismissal. This official warned his superiors of the threat of “paralysis of the investigation of national import given the nature of the victim,” a prominent labor leader.²⁸ Fortunately, this official’s previously submitted brief had provided a thorough analysis of the evidence, making it virtually impossible for the new prosecutor to close the case on the grounds that incriminating evidence was lacking. The new prosecutor indicted Major Maldonado and had him rearrested on May 15, 2002.²⁹

The long-term impact of the dismissals has been to deprive the Attorney General’s Office of some of its most experienced and dedicated professionals. In Pedro Díaz, for example, the Human Rights Unit lost an accomplished director. In Sepúlveda, it lost a seasoned prosecutor who had received extensive training from the U.S. Department of Justice. Other seasoned prosecutors who were fired or forced to resign include Virgilio Hernández, César Rincón, and Gregorio Oviedo. Other, equally accomplished prosecutors and investigators have not received new cases to work on or have been transferred out of the Human Rights Unit. Others have resigned out of frustration with Osorio’s hostility toward human rights investigations. One government investigator described the Human Rights Unit as effectively “finished off” during Osorio’s first year in office.³⁰

Although veteran prosecutors still work within the Human Rights Unit, new hires lack the experience of their predecessors, according to several sources consulted by Human Rights Watch. In one case, a novice prosecutor was assigned a case involving a major paramilitary massacre that a fired prosecutor had spent two years building. According to one government investigator close to the case, the new prosecutor had already undermined the investigation by committing basic errors in hearings before a judge.³¹

Osorio has crippled the CTI in a similar fashion. After Attorney General Osorio fired his four-member management team without warning, CTI head Gen. Ismael Trujillo (ret.), a veteran police official, resigned, telling an assembly of CTI employees that he could no longer do his job without these trusted professionals.³² One former CTI official, who requested anonymity, described these firings as leading to a “profound change, and a negative one. It means that experienced professionals are being replaced by people without experience who are easily manipulated. I don’t see any signs that the leadership within the Attorney General’s Office supports the defense of human rights.”³³

²⁶ Ibid.

²⁷ Prosecutor Gustavo Adolfo Reyes Leyva’s order to release César Alonso Maldonado Vidales, “Radicado No. 943-B UDH y DIH,” Santafé de Bogotá, April 25, 2002.

²⁸ Memo from Leonardo Martínez Bejarano, Procurador 2o. Judicial Penal II to Dra. Nubia Herrera Ariza, Procuradora Delegada, April 25, 2002; Human Rights Watch interviews with current and former justice officials, Santafé de Bogotá, June 24-27, 2002.

²⁹ Indictment filed by Prosecutor Gustavo Adolfo Reyes Leyva against César Alonso Maldonado Vidales, Santafé de Bogotá, May 15, 2002.

³⁰ Human Rights Watch interview with government investigator, Santafé de Bogotá, July 3, 2002.

³¹ Ibid.

³² Human Rights Watch telephone interview with CTI official, July 11, 2002.

³³ Human Rights Watch interview with former CTI official, Santafé de Bogotá, July 3, 2002.

Cases Stalled

Prosecutors who remain in the Attorney General's Office told Human Rights Watch that their work on human rights cases has been undermined by Osorio and his team of managers. They report that it has become more difficult to obtain resources for pursuing cases involving paramilitaries.³⁴ Several prosecutors told us that they had been instructed to consult with the attorney general before proceeding with any cases against military officials, violating the independence that Colombian law grants prosecutors to determine the course of inquiries.³⁵

Several prosecutors pursuing investigations against high-level military officials were removed from cases before they were able to arrest or indict suspects, putting in jeopardy the future of the investigations. One example is the investigation into the 2001 massacre in the village of Chengue, Sucre. According to witnesses, several Colombian navy units looked the other way as heavily armed paramilitaries traveled past them to the village, where they proceeded to kill twenty-six villagers, crushing their heads with heavy stones and a sledgehammer, and then set fire to the houses.³⁶

During Attorney General Osorio's first weeks in office, the Human Rights Unit prosecutor handling the Chengue case met with him to report that she had compelling evidence linking Navy Gen. Rodrigo Quiñones and other Navy officers to the massacre. However, within ten days of that August meeting, the case was reassigned to another prosecutor. The new prosecutor allowed the investigation to stall until December, when he sought to have it reassigned once again to the original prosecutor. The original prosecutor believed her successor had recognized that the evidence already obtained was too compelling to close the case and feared indicting a powerful general. Once again in charge of the case, the original prosecutor informed Osorio's new Human Rights Unit director that she was considering opening a formal investigation of General Quiñones. A few days later, the unit's director accused her of committing errors on the case and reassigned it to yet another prosecutor. The original prosecutor told Human Rights Watch that the director also pressured her to sign a letter stating that she had never intended to open a formal investigation of General Quiñones. She refused to sign the letter. After receiving death threats, she fled Colombia. Since then, the case has remained stalled.³⁷

Another example is the Del Río case, which Osorio had reassigned from the prosecutor who had been working on it for two years. On the day after Pedro Díaz was fired, a judge accepted a *habeas corpus* petition from General Del Río and ordered his release on the grounds that the Human Rights Unit prosecutor had lacked the legal authority to pursue a case against the retired general. According to the judge, Del Río was entitled to special jurisdiction of the Supreme Court with one of a select group of Supreme Court prosecutors, because the alleged criminal conduct had been committed as part of his active military service.³⁸

The ruling was blatantly erroneous on two levels. First, it disregarded a Supreme Court ruling that determined that writs of *habeas corpus* were not the proper mechanism for addressing questions of prosecutorial jurisdiction.³⁹ Second, it contradicted a Constitutional Court ruling that held that crimes against humanity and human rights violations could not be considered acts of service.⁴⁰

The attorney general is in no way responsible for the judge's decision. The granting of *habeas corpus* could not be rescinded, however erroneous it may have been. But under Colombian law, Osorio did *not* need to

³⁴ Human Rights Watch interviews with current and former prosecutors, Santafé de Bogotá, June 25-27, 2002.

³⁵ Human Rights Watch interview with prosecutors, Santafé de Bogotá, June 27, 2002, and Medellín, June 28, 2002.

³⁶ Scott Wilson, "Chronicle of a Massacre Foretold," *Washington Post*, January 28, 2001.

³⁷ Human Rights Watch telephone interview with prosecutor, May 14, 2002.

³⁸ Decision by Judge Omar Augusto Camargo Machado, 31st Circuit, Habeas Corpus petition 0004/2001 August 4, 2001.

³⁹ Supreme Court, Judgment 13628, May 26, 1998; Constitutional Court, T-260, April 22, 1999.

⁴⁰ Article 235 of the Colombian Constitution establishes special jurisdiction for high level public functionaries such as generals, but limits this jurisdiction in cases of retired functionaries to "punishable conduct that is related to functions carried out." The Constitutional Court has made clear that human rights and humanitarian law violations do not fall within this category when it comes to determining jurisdiction. "There are certain conducts that are always outside of service, such as those serious violations of human rights or international humanitarian law, because it is not possible to maintain that through them the public forces are fulfilling a constitutionally legitimate end." Constitutional Court Judgment No. SU-1184/2001, November 13, 2001, §19. The Constitutional Court also maintains that acts of omission may be considered outside of service "when they do not prevent serious violations of human rights or international humanitarian law...." ("*cuando no se impiden las graves violaciones a los derechos humanos o al derecho internacional humanitario...*") Constitutional Court Judgment No. SU-1184/2001, November 13, 2001, §20.

abide by the judge's views on the proper jurisdiction for this case.⁴¹ Nevertheless, he assigned the case to a deputy who discarded two years of work by the original Human Rights Unit prosecutor. The attorney general told Human Rights Watch that the new prosecutor would start from zero. He also said that in the ten months that this prosecutor had been working on the case, the prosecutor had only invited General Del Río's subordinates to provide evidence.⁴²

It is difficult to imagine the prosecutor would find any incriminating evidence among this group of witnesses given the *esprit-de-corps* that characterizes the army, as well as the threat of institutional retaliation against would-be whistleblowers. In 1997, the highest-ranking witness against General Del Río, Col. Carlos Alfonso Velázquez, was convicted of "insubordination" by a military tribunal for providing information to his superiors about the general and dismissed from the army.⁴³

Lives in Danger

The investigation and prosecution of human rights violations in Colombia has always been dangerous work. In recent years, a large number of prosecutors and investigators have been killed. In 1998, for example, after the Attorney General's Office opened an investigation into the paramilitaries' financing networks in Medellín, twelve investigators were murdered and two prosecutors working on the case forced to flee the country.⁴⁴ A prosecutor and three judicial investigators were murdered in 2001 while investigating the Chengue massacre.⁴⁵ Another prosecutor was forced to leave the country and seek asylum in the United States.⁴⁶ Similarly, three judicial investigators who worked on cases involving paramilitary massacres in the department of Cúcuta were murdered in 2001.⁴⁷

Many more justice officials have received threats against their lives. Colombia's leading newspaper, *El Tiempo*, reported that 196 members of the Attorney General's Office received serious threats between January 2000 and November 2001.⁴⁸ This constant intimidation has had a profound impact on justice officials. As one prosecutor told Human Rights Watch: "Whenever you get assigned a case, the first thing you think about is what dangerous people might be involved."⁴⁹

But if the risks are not new, justice officials feel they have increased since the arrival of Attorney General Osorio, in large part because of his inadequate response.⁵⁰ In April 2002, for example, a paramilitary death list containing the names of Human Rights Unit personnel began to circulate. (One of those threatened told us that paramilitaries not only made personal threats, but also provided a detailed summary of the activities of a family member and two small children.) Although the information about threats against justice officials was considered confirmed and highly credible, the measures taken by the Colombian government to protect threatened employees were inadequate, and several either fled the country or plan to do so in the near future. Five Human Rights Unit prosecutors and one CTI agent sought the intervention of the Inter-American Commission on Human Rights, which responded by requesting the Colombian government to implement urgent measures to protect their lives.⁵¹

Not only did the Attorney General's Office fail to provide these officials with adequate protection, Osorio himself has questioned the seriousness of the dangers they faced, going so far as to suggest that they had "victimized themselves."⁵² He also complained inaccurately that these officials had petitioned the Inter-American Commission without having first notified their superiors within the Attorney General's Office of the threats, thus

⁴¹ A judge has the authority to grant *habeas corpus* to an individual, but not to interfere in management of the investigation by the Attorney General's Office.

⁴² Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, July 4, 2002.

⁴³ "Hay omisión en lucha contra paramilitares," *El Tiempo*, January 10, 1997.

⁴⁴ Human Rights Watch interview with former CTI official, Santafé de Bogotá, July 3, 2002; Human Rights Watch interview with former prosecutor, Medellín, June 30, 2002; and Human Rights Watch interview with former CTI official, Medellín, June 29, 2002.

⁴⁵ Human Rights Watch telephone interview with justice official, June 2002.

⁴⁶ Ibid.

⁴⁷ Human Rights Watch interviews with justice officials, Cúcuta, July 1-2, 2002.

⁴⁸ "Siguen amenazas contra funcionarios judiciales," *El Tiempo* (Bogotá), December 22, 2001.

⁴⁹ Human Rights Watch interview with prosecutor, July 2, 2002.

⁵⁰ Human Rights Watch interviews with current and former prosecutors, Santafé de Bogotá, June 24-27, 2002.

⁵¹ Letter from Ariel Dulitzky, Inter-American Commission on Human Rights, to Amelia Pérez and others, April 25, 2002.

⁵² Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, July 4, 2002.

giving the institution an opportunity to provide them the protection they sought. However, the prosecutors had notified and requested assistance from the director of the Human Rights Unit, Elba Beatriz Silva, and only resorted to the Inter-American Commission when their request was disregarded.⁵³ Nonetheless, the Attorney General told Human Rights Watch that he had suffered “great mortification” caused by the “lack of loyalty to the institution” that these officials had demonstrated when they had sought the Inter-American Commission’s intervention to protect their lives.⁵⁴

The attorney general may have further increased the vulnerability of justice officials by publicly questioning their handling of cases. His unfounded criticisms may have lent credibility to the charges made by the military and paramilitary leaders that these justice officials are ideologically driven (or even guerrilla collaborators) and therefore legitimate military targets, according to the moral logic of the paramilitaries.

In the weeks after Osorio publicly criticized the Human Rights Unit’s handling of the Del Río’s case, for example, a wave of persecution was unleashed against the justice officials who had worked on the case. Two investigators received invitations to their own funerals, prompting them to flee the country. The prosecutor who signed the arrest warrant against General Del Río also fled Colombia after receiving threats. The two officials forced from office by Attorney General Osorio, Pedro Díaz and Pablo Elías González, also left the country out of fear for their safety.⁵⁵

In addition to damaging the cases they handle, the attorney general’s dismissal of prosecutors and investigators exacerbates the risks they face because of their past work on human rights cases. As civilians, these men and women are not afforded the same degree of protection from the government. Acts of violence against them are not likely to attract the same national and international scrutiny as the assassination of public officials.

In several cases, prosecutors under serious threat have been fired, then had their security details – including bodyguards and vehicles – withdrawn shortly thereafter. This has occurred even when police security specialists recommend continued support due to death threats or even credible evidence that a prosecutor is under surveillance by potential assassins.

The firings play into the hands of paramilitary members who view justice officials as military targets. One CTI investigator told Human Rights Watch that the firings of members of the Human Rights Unit were welcomed by paramilitary leaders. According to one of this investigator’s informants, paramilitary leader Carlos Castaño had instructed his allies not to kill the prosecutors while they were still employed, but rather to wait for them to be fired so that their murders would not cause as much public outcry.⁵⁶

One of the officials who appeared on the paramilitary’s death list in April 2002 and who sought protective measures from the Inter-American Commission was Luis Augusto Sepúlveda. When Osorio fired him a week later, the official from the Inspector General’s Office in charge of monitoring the progress of the investigation into the attempted assassination of trade unionist Wilson Borja felt obligated to warn his superiors that the firing would seriously jeopardize Sepúlveda’s personal safety.⁵⁷

Another prosecutor who appeared on the list was César Rincón, who had been assigned bodyguards in December 2001 in response to threats he had received for his work on several high-profile cases involving a series of paramilitary massacres in the department Norte de Santander. Osorio fired Rincón on May 10, 2002.⁵⁸

Demoralized Officials

The direction the Attorney General’s Office has taken over the last year has had a profoundly negative impact on the morale of the Human Rights Unit. Several active prosecutors told us that they or their colleagues would no longer pursue human rights cases assigned to them. As one prosecutor told Human Rights Watch,

⁵³ Human Rights Watch interviews with current and former prosecutors, Santafé de Bogotá, June 24-27, 2002. Letter to Elba Beatriz Silva Vargas from Amelia Pérez Parra, Lucía Luna Prada, Luis A. Sepúlveda R., César A Rincón, Leonardo Cabana F., Amparo Ceron Ojeda, Giovanni Alvarez S., and Martha C. Camacho, April 19, 2002.

⁵⁴ Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, July 4, 2002.

⁵⁵ Human Rights Watch interviews with current and former justice officials, June 17-27 2002.

⁵⁶ Human Rights Watch telephone interview with CTI employee, July 11, 2002.

⁵⁷ Memo from Leonardo Martínez Bejarano, Procurador 2o. Judicial Penal II to Dra. Nubia Herrera Ariza, Procuradora Delegada, April 25, 2002.

⁵⁸ “‘El Profe’, enemigo de fiscales,” *El Espectador*, May 12, 2002.

“People know that if they advance on these delicate cases [involving the military and paramilitary groups], they risk being fired, so they only go through the motions.”⁵⁹

One prosecutor who was taken off a major case involving army officers told Human Rights Watch that her replacement had confessed to her that he intended to shelve the investigation without any serious review of the evidence. He justified this decision by saying: “I have a family to support. I have to save my job.” In another case, a government investigator from outside the Attorney General’s Office told Human Rights Watch that a prosecutor who had been assigned a high-profile human rights case planned to disregard strong evidence of participation of an army officer in the crime.⁶⁰

In his criticisms of the purged justice officials, Osorio has charged them with disloyalty.⁶¹ This charge is troubling when it comes from an attorney general in a justice system that is predicated upon the autonomy of its prosecutors. As one justice official pointed out, a Colombian prosecutor’s first loyalty is supposed to be the law, not the boss.⁶²

Ironically, Human Rights Watch found a widespread perception among the justice officials we interviewed that the attorney general had himself shown considerable disloyalty—both to his subordinates and to the law they were charged with upholding. While fear is not new to the work of justice officials in Colombia, Human Rights Watch found that Osorio’s leadership in his first year had compounded the sense of isolation and vulnerability that plagues justice officials working on human rights cases. These investigators and prosecutors are now discouraged from concluding these cases successfully.

III. THE ROLE OF U.S. ASSISTANCE

In 2000, President Bill Clinton signed a \$1.3 billion aid package for Andean countries engaged in fighting drugs. Most of it was military assistance to Colombia, the beginning of what came to be known as “Plan Colombia,” a dramatic increase in U.S. military funding to that country. In the final package, the U.S. Congress included human rights conditions that require clear and convincing progress by Colombia’s government in several areas: the suspension of members of the security forces credibly alleged to have committed abuses; progress in the prosecution of human rights crimes; and actions to break links between the security forces and paramilitaries and arrest and prosecute known paramilitaries and their leaders.⁶³

Recognizing that Colombia’s ability to meet these human rights conditions would largely depend on the effective functioning of the Human Rights Unit, Congress included \$25 million dollars in aid to support the work of the unit and establish satellite offices throughout the country. This aid was placed under the control of the U.S. Department of Justice, which divided it into two parts: \$7 million to expand the Attorney General’s Human Rights Unit by creating eleven satellite offices outside of Bogotá, and training for prosecutors and investigators; and \$18 million for forensics equipment meant to improve the ability of the Attorney General’s Office to process fingerprint, ballistics, DNA, and digital imaging evidence. An additional \$300,000 went for travel expenses for prosecutors working on human rights cases.⁶⁴

In its 2002 conference report, the U.S. Congress rebuked Justice Department officials for failing to consult with them before spending aid meant to address the Human Rights Unit’s emergency needs on highly sophisticated forensics equipment. This equipment was not compatible with other equipment already used by Colombian police and, as of June 2002, two years after being sent, it was still not in operation.⁶⁵ While arguably

⁵⁹ Human Rights Watch interview with prosecutor, Santafé de Bogotá, June 27, 2002.

⁶⁰ Human Rights Watch interview with government investigator, Santafé de Bogotá, July 3, 2002.

⁶¹ “Soy independiente,” *El Espectador*, October 28, 2001; and Human Rights Watch interview with Attorney General Luis Camilo Osorio, Santafé de Bogotá, July 4, 2002.

⁶² Human Rights Watch interview with prosecutor, Santafé de Bogotá, June 26, 2002.

⁶³ The press often mistakenly reports that the total package to Colombia included \$1.3 billion in assistance. That was the total given to several Andean countries. Of that amount, Colombia received \$860 million, of which three-quarters was spent on military and police assistance. Less than three percent went to the Human Rights Unit. See Congressional Record, June 29, 2000, pp. 5527-5530. The document is available at <http://www.ciponline.org/colombia/confrept.pdf>.

⁶⁴ “SUBJECT: POST COMMENTS ON Human Rights Watch SIXTH DIVISION REPORT ON MILITARY PARAMILITARY TIES,” US Embassy-Bogotá, received by Human Rights Watch on June 24, 2002.

⁶⁵ Human Rights Watch interview with Mary Lee Warren, Deputy Assistant Attorney General,

useful, forensic equipment failed to “address this unit's priority needs of security, mobility and communications equipment for prosecutors, in particular for those prosecutors based in secondary cities and outlying regions,” the U.S. Congress noted.⁶⁶

As of June 2002, all eleven units were established and included prosecutors and investigators in Medellín, Cali, Bucaramanga, Villavicencio, Neiva, Barranquilla, and Cúcuta. The units also received computers, desks, fax machines, radios, and mobile equipment to carry out exhumations.⁶⁷ This equipment has proven useful in investigating important cases, such as Bojayá massacre on May 1, 2002, in which FARC-EP guerrillas launched a gas cylinder bomb that landed on a Catholic church filled with refugees, killing 119 civilians.⁶⁸

Unfortunately, the obstacles facing prosecutors in the Human Rights Unit's satellite offices remain daunting. In a visit to the new satellite office in Medellín (which covers six departments),⁶⁹ prosecutors described a crushing case load, few resources, poor equipment, no travel funds, and constant stress associated with investigating some of Colombia's most dangerous criminals. Even a case as notorious as the Bojayá massacre was difficult for prosecutors to address. International media arrived within twenty-four hours of the attack. Without independent transportation and adequate security, it took prosecutors ten days. As one prosecutor, who requested anonymity noted, “I feel powerless...we have to ask the army to transport us in the helicopter, and if we travel that way, people see us land in the army base and are then afraid to talk to us. In ten days, there is plenty of time to clean up and eliminate evidence.”⁷⁰

U.S. Marshalls are also working with the Attorney General's Office to improve the security given to employees as well as threatened witnesses. During a June 2002 visit to Colombia, Human Rights Watch was told that Colombia was due to receive sixty armored vehicles destined for threatened prosecutors and investigators, particularly those assigned to the new satellite offices. “We are trying to keep the prosecutors on the job,” said Paul Vaky, regional director for Latin America in the Justice Department's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT). “Otherwise, we let the bad guys win.”⁷¹

But keeping these prosecutors on the job may require more than armored cars and forensic equipment. U.S. funding was meant to strengthen human rights prosecutions, now largely blocked by the attorney general. As long as the political will to pursue these cases is absent, no amount of money, training, or equipment will improve the institution's record. Until Colombia's leaders can assure the U.S. government that Colombian prosecutors are autonomous and can pursue promising investigations without fear for their lives or careers, assistance will be largely wasted.

In addition, most of the funding for the satellite offices comes from the United States, and it is unclear whether the attorney general will keep them operating without additional U.S. help.⁷² The State Department has proposed an additional \$10 million for the Human Rights Unit for the FY 2003 budget, pending at this writing.⁷³

Criminal Division, U.S. Department of Justice, Washington, D.C., May 30, 2002.

⁶⁶ Conference report on H.R. 2506, the Foreign Operations Appropriations bill, 2002.

⁶⁷ Human Rights Watch interview with Paul Vaky, regional director for Latin America, Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), U.S. Department of Justice, Washington, D.C., May 30, 2002.

⁶⁸ Human Rights Watch has protested international humanitarian law violations by guerrillas, including the use of gas cylinder bombs. Human Rights Watch, “FARC Must Stop Use of Gas Cylinder Bombs,” May 8, 2002. Our letter to FARC-EP commander Manuel Marulanda is available at <http://www.HumanRightsWatch.org/press/2002/05/colombia0508.pdf>.

⁶⁹ The six departments covered by the Medellín office are Antioquia, Caldas, Chocó, Córdoba, Risaralda, and Sucre.

⁷⁰ Human Rights Watch interview with prosecutor, June 26, 2002.

⁷¹ Human Rights Watch interview with Paul Vaky.

⁷² The Human Rights Unit also receives funding from several European countries, among them Holland and Sweden.

⁷³ The Human Rights Unit received no additional U.S. funds in the FY 2002. International Narcotics and Law Enforcement: FY 2003 Budget Justification, Bureau for International Narcotics and Law Enforcement Affairs, Department of State, May 2002. This document is available at <http://www.state.gov/g/inl/rls/rpt/cbj/fy2003/10559.htm>

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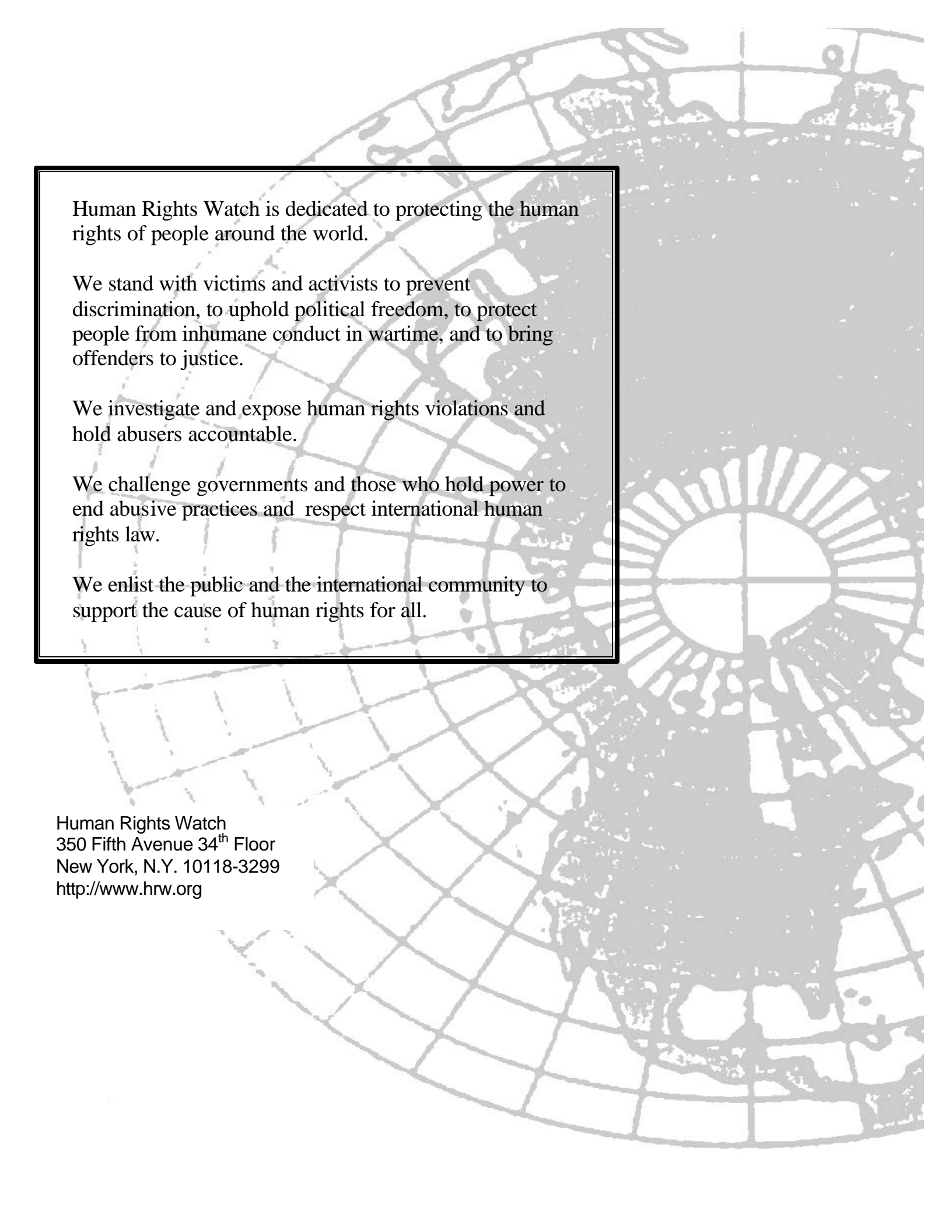
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