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LAW ON INTELLIGENCE AND COUNTERINTELLIGENCE
‘Shield’ for intelligence activities and absence of guarantees of non-repetition

The scandal of illegal intelligence activities by the Administrative Department of Security (Departamento Administrativo de Seguridad - DAS) lead to its elimination and to the reform of the Law on intelligence. This document presents an analysis of the new Law and of the measures adopted.

Almost all former DAS employees were transferred to other State institutions – mainly the Attorney General’s Office, the police force and the new National Protection Unit in charge of protecting defenders, trade unionists, journalists, etc. - without investigation of or sanctions for crimes that they may have committed while working in the DAS.

The new Law contains elements which could be obstacles to justice. And the control of intelligence and counter-intelligence activities established in the Law on intelligence and counter-intelligence is extremely weak as the Law attributed these functions primarily to internal control mechanisms.

There is, therefore, an absence of guarantees of non-repetition of the crimes committed by the DAS.

In view of this situation, we ask the European Union, its Member States, Switzerland and Norway, to express their concern about these aspects of the Law on intelligence and to call upon the Colombian authorities to:

- **Investigate, prosecute and sanction the crimes committed by and from the DAS in order to provide guarantees of non-repetition;**
- **Review the Law on intelligence as recommended by the UN High Commissioner for Human Rights (UNHCHR), in order to substantially strengthen and guarantee an adequate control of intelligence activities by the judiciary, as well as public accountability and access to justice.**

The Administrative Department of Security (DAS) was responsible for illegal intelligence activities and attacks against human rights defenders, trade unionists, and the high courts, among others. So the abolition of the DAS, by *Decree 4057 of 2011*, has been welcomed. **There is nevertheless deep concern over the transfer of former DAS officials to other state institutions**, primarily to the Attorney General’s Office and the Technical Investigation Corps (CTI) (3.218 employees out of around 5.000) and also to the police force (317 employees), and the new National Protection Unit - in charge of protecting defenders, trade unionists, journalists, etc. – (601 employees)ⁱ **without investigation of or sanctions** for events that they may have



committed while working in the DAS. Therefore it is feared that those officials who were involved in illegal acts will continue to commit crimes from other key institutions for the administration of justice.

It is also worrying that instead of preventing the repetition of such acts, the **Law on intelligence and counterintelligence**, adopted in June 2011 (Law No. 263/2011 of the Senate, No. 195/2011 of the House of Representatives), includes, on the contrary, provisions which could reinforce impunity for illegal acts committed from within the various agencies responsible for intelligence and counterintelligence activities. Although the law does contain some positive provisions, including an explicit reference to the protection of human rights (article 4) and the creation of systems to purge intelligence information, the law lacks mechanisms for the effective implementation of these provisions, and several of its articles are troubling:

- **The list of competent institutions for carrying out intelligence and counterintelligence activities** (article 3) **is open ended**, which contradicts the principle of legality and makes it difficult to control them.
- **The control of intelligence and counterintelligence activities is very weak**, since the law assigns these functions primarily to **mechanisms for internal control, including systems for purging files**, which do not meet the necessary criteria for independence and impartiality (article 18), and whose reports will be submitted to the Minister of Defence or the President, who do not meet those criteria either.
- **Parliamentary control** (article 19s), which will be carried out by a legal committee to monitor intelligence and counterintelligence activities, **faces several obstacles**: the Commission will produce an annual confidential report (article 22), which does not allow for efficient control and will be forwarded to the President who, as mentioned before, lacks the necessary impartiality and independence; the Commission has no power to sanction beyond passing observation or censorship motions, and these must be with regard to offenses related to the post in question (article 22), therefore crimes will be excluded if they are not directly related to the post, which could include human rights violations; intelligence agencies can cite the right to confidentiality against a request for information from the Commission (article 22 § 1); and the Commission is subject to duty of confidentiality (article 24) that does not allow public oversight of these entities.
- **Judicial control is also limited**: the law exempts officials from the duty to report and the duty to testify (article 39). While the law provides for exceptions to the duty of confidentiality and the exemption of officials to report and testify, for example in the case of the illegal collection of intelligence and counterintelligence (article 33 § 3), the commission by a public servant of a series of serious crimes enumerated by law (article 39) and, in general, of criminal offenses (article 39), it is not clear how these provisions would be implemented. Furthermore, exceptions to the unenforceability of the duty of confidentiality before judicial authorities (article 34), which include jeopardizing national security, leave ample room for interpretation that detract from the effect of this unenforceability. The explicit exclusion of evidentiary value from intelligence reports (article 35) could be beneficial for the prevention of the prosecution of human rights defenders based on intelligence reports – a common practice at present - yet it is feared that this provision may be used to exonerate civil servants responsible for illegal intelligence activities or crimes committed via the illegal use of intelligence information. **All of these elements could constitute obstacles to justice.**



- Finally, the **period for the duty of confidentiality** (30 years, with the possibility of extending it to 45) (article 33) is disproportionate and **affects the right of access to justice and the right of citizens to information**. The law specifies that “the confidentiality mandate does not include journalists or the media” (article 33) which is seen as positive. However, other individuals, and in particular NGOs should also have been excluded from the duty of confidentiality.

Therefore, the new Law on intelligence and counterintelligence **could further consolidate impunity, and does not meet the necessary guarantees of non-repetition** of events such as those that were carried out by the DAS.

As emphasized by the **UNHCHR** in its 2011 annual report, “military intelligence services require public regulations to define and limit their actions. Their internal control mechanisms and public accountability need to be substantially strengthened, particularly in view of the increased allocation of military intelligence service resources (...)”ⁱⁱ.

ⁱ See [Departamento Administrativo de Seguridad, avances del proceso de supresión. As of 31 January 2012, when 89% of former DAS employees had been transferred.](#)

ⁱⁱ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/19/21/Add.3, January 31, 2012

