

**National Lawyers Guild International Committee  
Presentation to the United Nations Decolonization Committee  
Hearings on Puerto Rico  
June 9, 2008**

The National Lawyers Guild was founded in 1937 as an alternative to the American Bar Association, which did not admit people of color. The National Lawyers Guild is the oldest and largest public interest/human rights bar organization in the United States. With headquarters in New York, it has chapters in every state. From its founding in 1937, the National Lawyers Guild has maintained an internationalist perspective, and international work has been a critical focus for the Guild, particularly in this case to international law concerning decolonization. Its International Committee has organized delegations to many countries throughout the world, and Guild members are involved in international organizations, such as the International Association for Democratic Lawyers and the American Association of Jurists. Presently, active subcommittees exist for Cuba, the Middle East, Korea, and the United Nations. Guild members, including myself, have a long history of defending activists in the Puerto Rican independence movement. We are here out of concern that Puerto Rico remains one of the few juridical colonies in the world, some five decades after decolonization has become a peremptory norm of international law.

Colonialism is contrary to international law because it robs peoples and nations of their identity, language, culture, land and natural resources. This crime continues in Puerto Rico today, as both a matter of fact and law. The current United States administration, in its reports from the U.S. President's Task Force on Puerto Rico's Status, virtually acknowledges that Puerto Rico remains a juridical colony, and is evidence of the need for the General Assembly to consider the case of Puerto Rico. The reports reveal that, regardless of what the U.S. said in its 1953 report to the United Nations in order to remove Puerto Rico from the list of non-self-governing territories, Puerto Rico remains a non-self-governing territory, subject to U.S. Congress' plenary authority under the Territory Clause.<sup>1</sup> Under this power, the report says, Congress could even cede Puerto Rico to another nation.<sup>2</sup>

Recent events in Puerto Rico, and in Puerto Rican communities in the United States, also strongly support the need for the General Assembly to consider the case of Puerto Rico. U.S. authorities and their colonial administrators have throughout history criminalized, harassed and repressed the movement for the independence of Puerto Rico, in direct violation of U.S. law and in flagrant violation of international law.<sup>3</sup> In this recent period of a resurgence of such

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<sup>1</sup>Report by the President's Task Force on Puerto Rico's Status, December 2007, at pp. 5-6; Report by the President's Task Force on Puerto Rico's Status, December 2005, at pp. 5-6.

<sup>2</sup>Report by the President's Task Force on Puerto Rico's Status, December 2005, at p. 6.

<sup>3</sup>Matthew Hay Brown, "Puerto Rico Files Show FBI's Zeal; For Decades, Secret U.S. Dossiers Targeted Suspected," *Orlando Sentinel*, November 06, 2003, cited at [http://www.pr-secretfiles.net/news\\_details.html?article=73](http://www.pr-secretfiles.net/news_details.html?article=73), citing then FBI director Freeh as saying that the

repression,<sup>4</sup> the National Lawyers Guild continues to participate in efforts to document and oppose such conduct.

Puerto Rico has a long history of resistance to colonialism, as well as a long history of the accompanying repression which anti-colonial resistance has historically provoked throughout the world. This includes political prisoners serving disproportionate sentences for the offense of engaging in a struggle for independence; the periodic use of grand juries to harass, jail, and attempt to intimidate; and extrajudicial executions of charismatic leaders of the independence movement.

On September 23, 2005, an FBI commando squad assassinated the clandestine leader of the Boricua Popular Army–The Macheteros, Filiberto Ojeda Ríos. He was attacked in his rural home in Puerto Rico, shot and left to bleed to death. The FBI prevented on-the-scene physicians from attending to him, while at the same time airlifting a wounded FBI agent to a hospital. Universal outrage exploded, across all sectors of Puerto Rican society. Since the murder, the U.S. government has refused to cooperate with the legitimate investigation of the Puerto Rico Department of Justice, not only refusing to identify the assassins but lying about and covering up the circumstances of the murder.<sup>5</sup> This coverup was enabled by the intervention of the U.S. trial, appellate and supreme courts.<sup>6</sup>

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agency engaged in “egregious illegal action, maybe criminal action.”

<sup>4</sup>Indeed, a clandestine pro independence organization recently issued a communiqué indicating that it “possesses information indicating that the FBI, with the collaboration of the colonial police, are planning an operation to arrest, kidnap, and in some cases provoke the death of independentista, socialist leaders and activists protecting the rights of the people.” Associated Press, “Macheteros warn of FBI onslaught,” *Primera Hora*, May 27, 2008, [http://www.primerahora.com/noticia/otras/noticias/macheteros\\_advierten\\_sobre\\_embestida\\_del\\_fbi/194506](http://www.primerahora.com/noticia/otras/noticias/macheteros_advierten_sobre_embestida_del_fbi/194506) (translated from the original Spanish).

<sup>5</sup>Members of the National Lawyers Guild formed part of the legal team advising the family of Ojeda Ríos, and another was part of the Puerto Rico Bar Association special commission to investigate the circumstances of his death.

<sup>6</sup>*Commonwealth of Puerto Rico v. United States*, 2006 U.S. Dist. LEXIS 70236 (D.P.R., 2006); *Commonwealth of Puerto Rico v. United States*, 490 F.3d 50 (1<sup>st</sup> Cir. 2007), *cert. denied* 2008 U.S. LEXIS 3026 (2008), finding, *inter alia*, that the Commonwealth of Puerto Rico could not maintain a cause of action, grounded in its sovereign authority under the Constitution, to obtain information from the FBI in an investigation into the whether FBI employees committed criminal conduct when causing the death of a Puerto Rican citizen on Puerto Rican soil.

In August of 2006, the U.S. Department of Justice Office of Inspector General issued a report of its investigation of the death of Filiberto Ojeda Ríos. While acknowledging that the FBI deviated substantially from its own procedures, committed multiple errors in planning and carrying out the operation, and that other available options would have likely resulted in apprehending him without harming or killing him, the report ultimately absolved the FBI of wrongdoing, finding no violation of Justice Department guidelines on deadly force.<sup>7</sup> Public condemnation was quick, and a later report by the Puerto Rico Department of Justice concluded that the FBI agent who fired the fatal shot did *not* shoot in self defense, contrary to what he told the Inspector General of the federal Department of Justice.<sup>8</sup> In the face of this and many other contradictions noted in the federal report, the Puerto Rico Department of Justice nevertheless refused to criminally prosecute any of those responsible for the assassination. The colonial relationship and the domineering presence of the federal court in Puerto Rico loomed large in this decision, which disappointed, but did not necessarily surprise, many.

The Puerto Rico Civil Rights Commission has nevertheless forged ahead with its own investigation. Recent public hearings have aired additional testimony giving the lie to the FBI's version of the murder. The former director of the Institute of Forensic Sciences, who conducted the autopsy, testified that the FBI shot at Ojeda Ríos with the intention of killing him; that the shooter, identified only by the pseudonym "Brian," lied when he said he could see Ojeda armed and aiming at him; that the FBI was not acting in self defense; and that they could have captured Ojeda without deadly force.<sup>9</sup> The local police chief placed the FBI present at the scene hours before the FBI admits to being present.<sup>10</sup> The man who was commander of Police in the area of Mayagüez testified that the FBI created a dangerous situation in maintaining total secrecy in the face of people needing to know what was happening.<sup>11</sup> Even the police superintendent, himself a former FBI agent, leveled criticisms, including that the FBI missed the opportunity to negotiate a

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<sup>7</sup>United States Department of Justice Office of Inspector General, A Review of the September 2005 Shooting Incident Involving the Federal Bureau of Investigations and Filiberto Ojeda Ríos, August 2006.

<sup>8</sup>Informe del Departamento de Justicia de Puerto Rico en torno a los eventos que culminaron en la muerte del Señor Filiberto Ojeda Ríos durante el operativo efectuado por el Negociado Federal de Investigaciones el 23 de septiembre 2005 en Hormigueros, Puerto Rico, April 9, 2008.

<sup>9</sup>Daniel Rivera Vargas, "Rechany confirms that the FBI wanted to kill Ojeda Ríos: Official version of the operation doesn't square," *El Nuevo Día*, May 22, 2008, [http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/rechany\\_afirma\\_que\\_el\\_fbi\\_queria\\_matar\\_a\\_ojeda\\_rios/408269](http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/rechany_afirma_que_el_fbi_queria_matar_a_ojeda_rios/408269) (translated from the original Spanish).

<sup>10</sup>Daniel Rivera Vargas, "Discrepancies about agony and the last burst of fire: City Police Chief said he could have arrested Ojeda without wounding him," *El Nuevo Día*, May 24, 2008, [http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/discrepancias\\_sobre\\_la\\_agonia\\_y\\_la\\_ultima\\_rafaga/409165](http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/discrepancias_sobre_la_agonia_y_la_ultima_rafaga/409165) (translated from the original Spanish).

<sup>11</sup>Daniel Rivera Vargas, "Police criticism of operation against Filiberto Ojeda: Commander dismayed by the way the FBI handled the situation," *El Nuevo Día*, May 23, 2008, [http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/criticas\\_policiacas\\_al\\_operativo\\_contra\\_filiberto\\_ojeda/408783](http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/criticas_policiacas_al_operativo_contra_filiberto_ojeda/408783) (translated from the original Spanish).

surrender, and that the FBI regarded Puerto Rico police as expendable in the operation.<sup>12</sup> Other evidence came from a physician present at the autopsy, who testified that Ojeda's agony was prolonged by slow bleeding.<sup>13</sup>

In February of 2006, the FBI raided the homes and offices of respected independentistas throughout the island and violently assaulted members of the Puerto Rican media who had gathered to cover one of the raids.<sup>14</sup> Activists in Puerto Rico and the U.S. have been stopped, searched and harassed, and the homes and offices of many others in Puerto Rico, including attorneys and movement leaders, have been broken into in events reminiscent of the infamous black bag COINTELPRO jobs,<sup>15</sup> where computers, digital cameras and cell phones are taken, while other valuable items remain untouched. Independentistas are routinely harassed and detained at U.S. borders when they travel internationally.

In December of 2007, the FBI subpoenaed to a federal grand jury in Brooklyn, NY, three young independentistas residing in New York. In May two additional independentistas were subpoenaed to the Brooklyn grand jury: an attorney from Texas, and the owner of a small business from Puerto Rico. The grand jury is a discredited institution based on the inquisitorial Star Chamber, abolished in England and many states because it operates in secret and virtually without judicial supervision. Rather than protect citizens from government abuse, its theoretical justification, it has proved to be an effective instrument for prosecutorial mischief. Given that activists subpoenaed to a grand jury may be jailed for refusing to identify or testify about associates, the U.S. has used the grand jury as a tool for political internment of independence activists,<sup>16</sup> dating back to the 1930's, when Nationalist Party leader Juan Antonio Corretjer was

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<sup>12</sup>Yaisha Vargas, Associated Press, "FBI wanted to use state police as shield," *Primera Hora*, May 22, 2008, [http://www.primerahora.com/noticia/otras/noticias/fbi\\_quiso\\_utilizar\\_a\\_policias\\_estatales\\_de\\_escudo/193220](http://www.primerahora.com/noticia/otras/noticias/fbi_quiso_utilizar_a_policias_estatales_de_escudo/193220) (translated from the original Spanish).

<sup>13</sup>Daniel Rivera Vargas, "Discrepancies about agony and the last burst of fire: City Police Chief said he could have arrested Ojeda without wounding him," *El Nuevo Día*, May 24, 2008, [http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/discrepancias\\_sobre\\_la\\_agonia\\_y\\_la\\_ultima\\_rafaga/409165](http://www.elnuevodia.com/diario/noticia/puertoricohoy/noticias/discrepancias_sobre_la_agonia_y_la_ultima_rafaga/409165) (translated from the original Spanish).

<sup>14</sup>See, e.g., Jesús Dávila, "Searches light a spark in all of Puerto Rico," *El Diario La Prensa*, February 12, 2006; Associated Press, "Many voices denounce FBI operation and treatment of journalists," *Primera Hora*, February 12, 2006.

<sup>15</sup>COINTELPRO was a vast secret government program to neutralize domestic political opposition through "covert action" (political repression carried out secretly or under the guise of legitimate law enforcement), one of whose targets was the Puerto Rican independence movement. See, e.g., <http://www.pr-secretfiles.net/index.html>; Ward Churchill, Jim VanderWall, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Dissent in the United States* (South End Press: Boston, 1990); Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (South End Press: Boston, 1989, 1991). The program purportedly stopped, but the political police never stopped conducting covert operations against dissidents.

<sup>16</sup>Michael Deutsch, "The Improper Use of the Federal Grand Jury: an Instrument for the Internment of Political Activists," 75 *Journal of Criminal Law & Criminology* 1159, Northwestern University, Winter 1984.

jailed for refusing to comply with subpoenas seeking party records. In the 1970's, eleven people were similarly jailed for their non collaboration with federal grand juries, ten in the U.S., and one in Puerto Rico. The 1980's would see eighteen people jailed for non collaboration, twelve in the U.S., and six in Puerto Rico, many of whom were represented by members of the National Lawyers Guild.<sup>17</sup> On June 13, independentistas will appear before a U.S. court in Brooklyn, where their lawyers, many of whom are Guild members, will challenge the legitimacy of yet another round of grand jury subpoenas to independence activists.

In February of 2008, the FBI arrested Avelino González Claudio, an independence fighter they had sought for some 22 years, who they immediately classified as a “terrorist” and extradited to be interred in Connecticut under torturous solitary confinement, accused of participation in expropriating over \$7 million from a Wells Fargo depot for the independence movement. He faces 275 years in prison.

The Puerto Rican people have a strong collective memory. As the wave of repression gathers force with a current resurgence of COINTELPRO-style tactics, so does the strong sentiment that the FBI must leave Puerto Rico. In apparent recognition of its growing unpopularity, the FBI mounted a public relations campaign to try to alter its image, to justify its enormous budget, and its presence on the island. The FBI campaign is designed to leave the impression that their “benevolent” intervention will save Puerto Ricans from their own corrupt, violent society replete with “terrorists,” but in reality its purpose is to continue its long trajectory of criminalizing the independence movement and assuring the continued colonial status of Puerto Rico.

This hyperbolic “anti-terrorist” policy also finds expression in the disproportionate sentencing and imprisonment of those who are giving their all in the name of independence. Carlos Alberto Torres, a Puerto Rican political prisoner held at the federal prison in Pekin, IL, just marked the 28<sup>th</sup> anniversary of his arrest in 1980. Oscar López Rivera just observed the 27<sup>th</sup> anniversary of his arrest. They are among the longest held Puerto Rican political prisoners of the thousands imprisoned for their anti-colonial efforts since the United States occupation of Puerto Rico in 1898.<sup>18</sup> Convicted of seditious conspiracy and related charges, serving sentences of 70 years, they will not be released until 2024 and 2027, respectively, although they were not convicted of harming anyone or taking a life. Again, members of the National Lawyers Guild, including this speaker, have for decades, advocated for their human rights and worked for their release.

In a letter last year to President Bush, seeking their release, Nobel Peace Prize winner The Most Reverend Desmond M. Tutu, wrote:

My request is similar to one your father President Bush Sr. made to the apartheid

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<sup>17</sup>José “Ché” Paralitici, *Sentencia Impuesta: 100 Años de Encarcelamientos por la Independencia de Puerto Rico*,” Ediciones Puerto (San Juan, Puerto Rico: 2004).

<sup>18</sup>For a detailed catalogue of these cases, see: José “Ché” Paralitici, *Sentencia Impuesta: 100 Años de Encarcelamientos por la Independencia de Puerto Rico*,” Ediciones Puerto Histórico (San Juan, Puerto Rico: 2004).

regime, which once controlled my home country. He understood the important role that the release of political prisoners can play in the process of reconciliation. Thus, in 1990 he insisted that before the United States would consider lifting its economic sanctions against South Africa, the apartheid regime would have to release all political prisoners as a gesture of goodwill. Efforts such as those by President Bush Sr. helped achieve the release of my compatriots, such as Nelson Mandela. The similarity does not end there, for Mr. Mandela was sentenced for his commitment to end apartheid rule, and Messrs. López and Torres were sentenced for their commitment to Puerto Rican sovereignty. What is more, Mr. Mandela was held for 27 years, a term the world condemned as excessively punitive. Mr. Torres has served exactly the same number of years, while Mr. López has been incarcerated for 26 years.

In a related irony, just last month, U.S. Congress, “saying it was correcting a long-standing injustice, voted [...] to drop apartheid-era travel restrictions and terrorist designations given Nelson Mandela and other African National Congress” freedom fighters.<sup>19</sup>

As Oscar López and Carlos Alberto Torres continue behind bars, news of the release of other political prisoners splashes the front pages of newspapers throughout the world. To cite just a few examples: Germany released Brigitte Mohnhaupt, a leader of the Red Army Faction, after 24 years in prison. Serving a term of five life sentences plus 15 years, she was convicted of politically motivated kidnappings and murders in the 1970s. France released Philippe Bidart, a leader of the Basque armed independence organization Iparretarrak, after serving nine years of two life sentences plus 20 years for the deaths and injuries of various police. Spain reduced the sentence of ETA [Euskadi Ta Askatasuna] hunger striker Iñaki de Juana Chaos, who, after serving 18 years on his 3,000 year sentence for causing 25 deaths, was serving a sentence of 12 years and 7 months for making terrorist threats in two newspaper articles.

Certainly, basic principles of human rights and international law require the release of Carlos Alberto Torres and Oscar López Rivera as part of any process to resolve the status of Puerto Rico.

The National Lawyers Guild International Committee urges this Committee to adopt a resolution calling for the General Assembly to consider the case of Puerto Rico; and calling on the government of the United States to indicate its commitment to respect Resolution 1514 (XV) by:

\* immediately releasing all Puerto Rican political prisoners currently held, including Carlos Alberto Torres and Oscar López Rivera, who have served more than 27 years in U.S. custody; ceasing all use of the U.S. legal system, including the grand jury, to repress the independence movement; prosecuting or cooperating in the prosecution of those responsible for Ojeda Ríos’ extrajudicial execution; and withdrawing all agents of repression, including the FBI

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<sup>19</sup>Jesse J. Holland, AP, “U.S. House: End terrorist label for Mandela,” *Chicago Tribune*, May 8, 2008, [www.chicagotribune.com/news/nationworld/chi-web-0508-mandelamay09,0,5238558.story](http://www.chicagotribune.com/news/nationworld/chi-web-0508-mandelamay09,0,5238558.story).

and other U.S. intelligence forces and military, and the U.S. District Court;

\* immediately ceasing application of the death penalty in Puerto Rico, given its prohibition in the Constitution of Puerto Rico;

\* returning all lands taken by the United States from the people of Vieques, retaining custody of only contaminated lands, and only until they are returned to the state there were in at taking, and end open-air detonation of bombs as the method of disposal;

\* respecting the will of the people of Puerto Rico to celebrate a constituent assembly, as recommended by the Bar Association of Puerto Rico.

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On behalf of the National Lawyers Guild  
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