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**REPORT TO THE HUMAN RIGHTS COMMITTEE
REGARDING HUMAN RIGHTS' VIOLATION FOR DETAINEES
IN COLOMBIA**

Responding to

The Sixth Periodic Report presented by Colombia

Presented by:

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Justification

Colombia presented the Sixth Periodic Report to the United Nation's Human Rights Committee on December 2008, in order to be discussed at the UNCHR session on July 2010. The report outlined the progress that has been achieved regarding the protection of human rights in the country. However, in relation to the rights of persons deprived of liberty, the information submitted by the Colombian State is incomplete and inaccurate. For this reason, as well as to provide the Committee with an accurate illustration of the situation faced by this group, the Public Interest Law Clinic at Los Andes University in Colombia and the Florida International University in the U.S.A, have developed this Shadow Report for the consideration of the Human Rights Committee at its ninety ninth session.

This Shadow Report seeks to fill the gaps of the state's report, regarding the issue of the human rights of the persons deprived of liberty. The report demonstrates that the situation of this group in Colombia violates international obligations described in the International Covenant on Civil and Political Rights. The arguments that underline the violation of each provision of the Covenant were the result of an extended research, complemented by empirical work, which took over a year to be accomplished and as such, has evidenced a clear idea of the situation faced by them. This research was complemented by a judicious study of international jurisprudence and case-law on the subject at hand as well as precedents applicable to the case.

Those who presented this report

The Public Interest Law Clinic (G-DIP) is part of the Legal Aid Clinic of the Faculty of Law, at Los Andes University. The Clinic focuses its work on three fundamental areas. The first is legislative counsel. In this area, the G-DIP works on drafting legislation that may have a positive impact on traditionally discriminated and vulnerable communities. The second is high-impact litigation. In this area the Clinics designs strategic law suits to positively affect a wide-ranging of sectors of the Colombian society. The last area of work is education rights. This area presents a double objective, the first is to contribute in creating public and informed judgments capable of action in the public sphere, and secondly to allow citizens to have real and effective access to legal tools that allow them to properly defend their own rights.

The Carlos A. Costa Immigration and Human Rights Clinic at Florida International University College of Law intervenes on behalf of vulnerable immigrants of all nationalities in a variety of settings. Student attorneys represent refugees seeking asylum in the United States as a result of political persecution in their countries of origin; Cuban and Haitian nationals seeking relief under country-specific immigration legislation; immigrant workers who have been victims of wage theft; and other vulnerable populations, such as abused spouses and children, unaccompanied minors, and aliens subject to immigration detention. Representation occurs in trials before immigration judges; in non-adversarial agency interviews; in appeals to the Board of Immigration Appeals; and in appeals to the federal courts. In addition, the Clinic has expanded its advocacy to include international human rights work in the countries that have historically been the source of migration to Miami and South Florida, particularly those in Latin American and the Caribbean. This

work includes international fieldwork and investigation; litigation before foreign courts; proceedings before international bodies, such as the Organization of American States; and in litigation in U.S. federal courts on behalf of victims of human rights abuses abroad.

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1 INTRODUCTION

The Colombian State presented the Sixth Periodic Report (hereinafter referred to as “Report”) to the United Nations Human Rights Committee (hereinafter referred to as (HRC) in December 2008. This Report presents the advances achieved regarding the protection of human rights in that country. However, regarding the rights of those persons deprived of liberty, the report presented by the Colombian State is incomplete and erroneous. Therefore, and so that the Committee has an exact version of the situation in which this group of the Colombian population lives, the information presented by the Colombian State must be supplemented.

This document seeks to fill the void found in the Report regarding the human rights of those persons deprived of liberty, placing into evidence the fact that the situation in which this group of the Colombian population lives violates Articles 10, 3, 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR or Covenant). The arguments that support the violation of each one of these articles will be developed in the following manner: first, the content of the ICCPR articles that are violated will be presented; second, the HRC’s interpretation of these articles will be presented based on case law, the Concluding Observations made by State parties and General Comments. Third, the position defended by the Colombian State in its periodic Report will be analyzed in terms of each one of the issues directly related to the abovementioned ICCPR Articles. Finally, we will demonstrate that contrary to the evidence presented in the Report by the Colombian State, the real situation in which those persons deprived of their liberty in Colombian jails and prisons live violates the six ICCPR Articles that will be analyzed in this document.

2 ARTICLE 10: RIGHT TO DIGNIFIED AND RESPECTFUL TREATMENT

(1) Article 10 of the ICCPR establishes that all persons deprived of liberty have the right to dignified and respectful treatment when they are detained in prisons in State parties. Specifically, it establishes the parameters that should be complied with in relation to the segregation of accused persons from convicted ones [10(2)(a)]¹; the segregation of accused juveniles from adults [10(2)(b)] and the reincorporation into society², which should complete the sentence [10(3)].³

(2) The HRC clarifies in paragraph 3 of General Comment 21 that Article 10 of the ICCPR establishes two types of obligations imposed upon State parties regarding persons deprived of liberty. First, there are positive obligations that require States to adopt

¹ Paragraph 8 of General Comment No. 21 states that segregating convicted prisoners from accused ones is necessary to protect the right to the presumption of innocence of the latter, as established in Article 14, paragraph 2 of the Covenant.

² General Comment No. 21: Humane treatment of those persons deprived of liberty, (Art. 10) Human Rights Committee, 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), paragraph 10.

³We must bear in mind that while the provisions of Article 10(1) apply to all persons deprived of liberty, 10(2) and 10(3) establish the segregation and special care of certain categories of people. M. Nowak, U.N. Covenant on Civil and Political Rights: ICCPR Commentary, 2nd edition, N.P. Engel, Kehl, 2005. page 244.

progressive measures and policies, and secondly, there are supplementary obligations, of a negative nature, that require States to abstain from using cruel, inhuman and degrading treatment of prisoners. This means that prisoners shall not be subjected to restrictions or deprivations that go beyond those contained in the imposed sentence, that is, these shall not exceed the suspension of their right to liberty.⁴

(3) State parties shall comply with such obligations and, moreover, they must provide the necessary mechanisms to monitor and assure the effective application of the rules developed to protect the human rights of those persons deprived of liberty⁵. If the State does not indicate in its reports exactly what type of monitoring has been done to guarantee certain minimum conditions of detention according to international guidelines, it will be difficult not to violate Article 10 of the ICCPR.⁶

(4) In General Comment 21, paragraph 4, the HRC states that within the positive obligations, State parties must guarantee the protection of the rights of those detained at all times and without exception; furthermore, it adds that said guarantees cannot depend on the material resources available in the State parties⁷. The HRC establishes this in *Mukong v. Cameroon*⁸, a case in which it was affirmed that State parties --regardless of their level of development-- must comply with the minimum conditions of detention.

(5) In other cases, the HRC recognizes that Article 10(1) is violated when there are inadequate detention conditions, generally characterized by overcrowding, as can be seen in *Saidov v. Tajikistan*⁹; when the conditions of detention violate the dignity of the prisoners and respect for human beings, as seen in *Henry v. Trinidad & Tobago*¹⁰; and the lack of medical attention greatly affects the health of the prisoners, as seen in *Lantsova v. Russian Federation*¹¹ and *Viana v. Uruguay*¹².

(6) Furthermore, Article 10(2) is violated when there is no adequate segregation of accused prisoners and convicted ones as cited by the HRC in *Pinkney v. Canada*¹³, as well as in *Fongum Gorji-Dinka v. Cameroon*¹⁴ and *Yasseen Thomas v. Republic of Guyana*¹⁵.

⁴ General Comment No. 21: Humane treatment of persons deprived of liberty, (Art. 10), Human Rights Committee 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), at paragraph 3.

⁵ General Comment No. 21: Humane treatment of persons deprived of liberty, (Art. 10), Human Rights Committee 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), paragraph 6.

⁶ M. Nowak, U.N. Covenant on Civil and Political Rights: ICCPR Commentary, 2nd edition, N.P. Engel, Kehl, 2005, page 288.

⁷ *Ibid.*, paragraph 4.

⁸ *Mukong v. Cameroon* (458/1991), ICCPR, A/49/40 vol. II (21 July 1994) 171 (ICCPR/C/51/D/458/1991) at paragraphs 9.1-9.4

⁹ ICCPR/C/81/D/964/200120 August 2004, paragraphs 2.9, 2.10, 6.4

¹⁰ ICCPR (752/1997), A/54/40 vol. II (3 November 1998) 238 (ICCPR/C/64/D/752/1997), paragraph 7.4.

¹¹ *Lantsova v. Russian Federation* (763/1997), ICCPR, A/57/40 vol. II (26 March 2002) 96 (ICCPR/C/74/D/763/1997), paragraph 9.1

¹² *Viana v. Uruguay* (110/1981) (R.25/110), ICCPR, A/39/40 (29 March 1984) 169, paragraph 2.7

¹³ *Pinkney v. Canada* (7/27 Oct 1981), paragraph 30.

¹⁴ ICCPR/C/83/D/1134/2002, paragraph 5.3.

¹⁵ ICCPR/C/62/D/676/1996

(7) Finally, as stated in General Comment 21, paragraph 10, sentences should not exclusively constitute punishment for crimes committed, rather they should also seek the reform and social rehabilitation of the prisoner in order to comply with Article 10(3)¹⁶.

2.1 Article 10(1): Conditions of Detention

(8) Article 10(1) of the ICCPR establishes that all persons deprived of liberty shall be treated with the dignity and respect inherent to all human beings. In paragraph 8 of General Comment No. 21, the Committee stressed the importance of the first paragraph of Article 10 in that it should be complied with to the extent that it serves as the basis for interpretation and the substance of the more specific obligations that are contained in Articles 10, 10(2) and 10(3)¹⁷. Said article not only invokes the right to dignity in an abstract manner, but it also affirms that it is directly related to the conditions of detention of any person deprived of liberty by the State party.¹⁸

(9) General Comment 21, paragraph 5¹⁹, states the pertinent United Nations rules that should be used to interpret Article 10(1). According to these texts, the minimum conditions of detention require that the prisons have adequate infrastructure and that prison overcrowding must be eliminated. Furthermore, General Comment 21 also cites the obligations of prisons to maintain a healthy environment and provide efficient health and medical services.

2.1.1 Overcrowding

(10) The Human Rights Committee has been emphatic in establishing that overcrowding is a source of violation of Article 10. According to the General Conclusions as announced to the United States of America, “overcrowding in a prison constitutes a violation of Article 10 of the Covenant.”²⁰ Additionally, the minimum rules for the treatment of prisoners that are useful in interpreting the content of Article 10, establishes the following in rule 9.1: 1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to

¹⁶In the General Conclusions to Belgium, 1998, paragraph 16 states that the essential purpose of imprisonment must concentrate on the reform and social rehabilitation of the convicted prisoners.

¹⁷ Ibid., paragraph 8.

¹⁸ Paragraph 2 of General Comment No. 21, clarifies that the provisions of Article 10(1) apply to those persons in prisons, hospitals, detention camps or other correctional institutions. That is, the protection provided by Article 10(1) shall not be reduced to a field in which the rights of a subject are restricted by a penitentiary authority. General Comment No. 21: Humane treatment of persons deprived of liberty, (Art. 10) Human Rights Committee, 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), paragraph 2.

¹⁹ “Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of all Persons under any form of detention or imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)” General Comment No. 21: Humane treatment of persons deprived of liberty (Art. 10), Human Rights Committee 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), paragraph 5.

²⁰ Concluding Observation, United States 1995, paragraph 266

make an exception to this rule, it is not desirable to have two prisoners in a cell or room. (2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.²¹

(11) In these terms, overcrowding in prisons constitutes both a violation of rule 9.1 and Article 10 of the ICCPR. In *Lantsova v. Russian Federation*, the HRC found that Article 10(1) of the Covenant had been violated due to overcrowding and detention conditions under which petitioner Lantsova was living.²²

(12) This same reasoning was presented by the Committee in *Griffin v. Spain* in which it found that Article 10(1) of the Covenant had been violated,²³ by establishing that the conditions of detention in which the petitioner was kept were deplorable. The same occurred in *Shaw v. Jamaica* in which the HRC concluded that there was a lack of ventilation in the cells and high levels of overcrowding in the prison center in which the petitioner was living, and this constituted a violation of Article 10(1) of the Covenant.²⁴

(13) The HRC used similar arguments to condemn the State of Trinidad & Tobago in *Henry v. Trinidad & Tobago*²⁵. This reasoning has also been used on other occasions by the Committee, mainly in various Concluding Observations such as those corresponding to Estonia²⁶, Spain²⁷, the Dominican Republic²⁸ and Venezuela²⁹. In all these cases, the level of overcrowding has been a common element through which it has been determined that there existed a violation of Article 10(1).

(14) In *Massiotti v. Uruguay*³⁰, the Committee concluded that the conditions of detention that were verified in the case of Carmen Amendola Massiotti during her detention in the women's prison "Ex Escuela Naval Dr. Carlos Nery," violated Article 10(1) of the ICCPR. In this case, the petitioner was imprisoned in a group of three 4m x 5m cells where there were a total of 35 female prisoners, which, for the HRC constituted overcrowding.

²¹ Rule 9.1 Standard Minimum rules for the treatment of prisoners

²² The Committee also took note of the specific information received from the author, in particular, that the prison population was, in fact, five times over the permitted capacity and that the conditions in the Matrosskaya Tishina were inhuman due to bad ventilation, inadequate nutrition and hygiene. The Committee believed that the detention of author's son in the prevailing conditions of that prison at that time constituted a violation of his rights by virtue of Article 10, paragraph 1 of the Covenant. *Lantsova v. Russian Federation* (763/1997), ICCPR, A/57/40 vol. II (26 March 2002) 96 (ICCPR/C/74/D/763/1997), paragraph 9.1.

²³ *Griffin v. Spain*, paragraph 3.1

²⁴ *Shaw v. Jamaica*, paragraph 3.3

²⁵ ICCPR (752/1997), A/54/40 vol. II (3 November 1998) 238 (ICCPR/C/64/D/752/1997), paragraph 7.4.

²⁶ ICCPR, A/51/40 vol. I (1996) 19, paragraphs 117, 118 and 131. In this case the Committee stated its concern for the overcrowded prisons in the State party, and together with other circumstances analyzed, concluded that immediate actions must be taken to guarantee the dignity of all persons deprived of their liberty pursuant to Articles 7 and 10 of the Covenant.

²⁷ ICCPR, A/51/40 vol. I (1996) 24, paragraph 180. In this case, the Committee clearly stated that due to deficient detention conditions, generally those due to overcrowding, there had been a violation of the mandates set forth in Article 10 of the Covenant.

²⁸ ICCPR, A/56/40 vol. I (2001) 54, paragraph 78(14).

²⁹ ICCPR, A/56/40 vol. I (2001) 49, paragraph 77(11).

³⁰ (R.6/25), ICCPR, A/37/40 (26 July 1982) 187, paragraph 11

(15) In view of the fact that the rights to dignity and integrity of prisoners are violated when there is overcrowding, the HRC stated --in its Concluding Observation issued to the United States of America in 1995³¹-- that legislative, investigative and judicial policies on the subject of establishing sentences must take into account that overcrowding in prisons causes a violation of Article 10 of the Covenant. As a result, this condition must be an element that should be taken into consideration in the drafting of public policies in State parties.

(16) Finally, we must bear in mind that the HRC previously has stated its concern for conditions of detention in Colombian prisons. In the Concluding Observation made to Colombia in 1997, the Committee not only noted that the Annual Report lacked empirical information regarding the guarantee and implementation of human rights in the Covenant. Furthermore, the conditions of detention seriously violated Article 10, characterized mainly by high levels of overcrowding and absence of policies aimed at solving the problem.³²

2.1.1.1 Response from the State Regarding the Problem of Overcrowding

(17) In paragraph 350 to 352 of the Report, the Colombian State describes a prison construction and refurbishing plan aimed at the reduction of prison overcrowding through the construction of additional capacity for 24,887 inmates that should have been ready in 2008. This plan is two-fold: first, it focuses on modification, adjustment and equipping of existing prisons that would generate capacity for an additional 3,287 inmates. The second consists of building and equipping of 11 new prisons with a total capacity for 21,600 inmates. In its Report, the State says that ten of the 11 new penitentiaries were built in 2007. Regarding this, the Colombian State says:

“...with the expansion of inmate capacity during the period subject to observation, we managed to revert the growing trend of overcrowding that began in 2002 and reached its highest level --37.2%-- in 2004. According to INPEC statistics, overcrowding had decreased to 21.0% by December 2007.”³³

2.1.1.2 Empirical Data on Overcrowding

2.1.1.2.1 Error in the Report from the Colombian State: level of overcrowding

(18) The information presented by the Colombian State regarding the level of overcrowding is incomplete and incorrect. The situation in Colombian prisons has not improved in the last decade. On the contrary, at present this situation is extremely serious given that overcrowding has reached an historical level of 41.7% as seen with a capacity

³¹ United States of America, ICCPR, A/50/40 vol. I (1995) 52, paragraph 299.

³² Concluding Observation. Colombia. 1997, paragraph 26.

³³ ICCPR/C/COL/6, paragraph 352.

deficit for 22,000 inmates³⁴. This constitutes a constant, massive and repeated violation of prisoners' rights.

2.1.1.2.2 Error in the Report from the Colombian State: no reduction in the rate of overcrowding

(19) It is uncertain whether the rate of overcrowding which reached 37.2% in 2004 -according to the Colombian State³⁵-- has been "reverted." In 1998, Colombia's Constitutional Court acknowledged that levels of [prison] overpopulation had reached 40% by the end of the 1990s. Given this statement, it is not only incorrect but also impossible for the 2004 levels of overcrowding to be the highest in history. The outlook of overcrowding in 1998 was not very different from what it is today.

(20) Despite the fact that the Colombian State maintains that once the new prisons are completed, the levels of overcrowding will be reduced to -2.7%³⁶, we must note that such an affirmation does not take into account that in Colombia there is a problem between administrative action which seeks to improve the prison situation and a penal policy promoted by the government aimed at increasing the length of sentences and the excessive use of preventative detention. Moreover, the rate of prison overcrowding has gone up from 17.2% in 2007 to 25.5% in 2008, and up to 35.8% in July 2009³⁷, reaching 41.7% in March 2010³⁸.

The following Charts 1, 2 and 3 facilitate an understanding of the evolution of penitentiary and prison capacity in Colombia as well as the quantitative variation of prison populations and levels of overcrowding in the last 20 years.

³⁴ Ministry of the Interior and Justice. Penitentiary Policy and Imprisonment. From imprisonment to effective social rehabilitation. In the Forum held at the Universidad de los Andes "Unconstitutional state of affairs in Colombian prisons. Balance and effects of sentence T-15 of 1998] (March 12, 2010)

³⁵ ICCPR/C/COL/6, paragraph 352

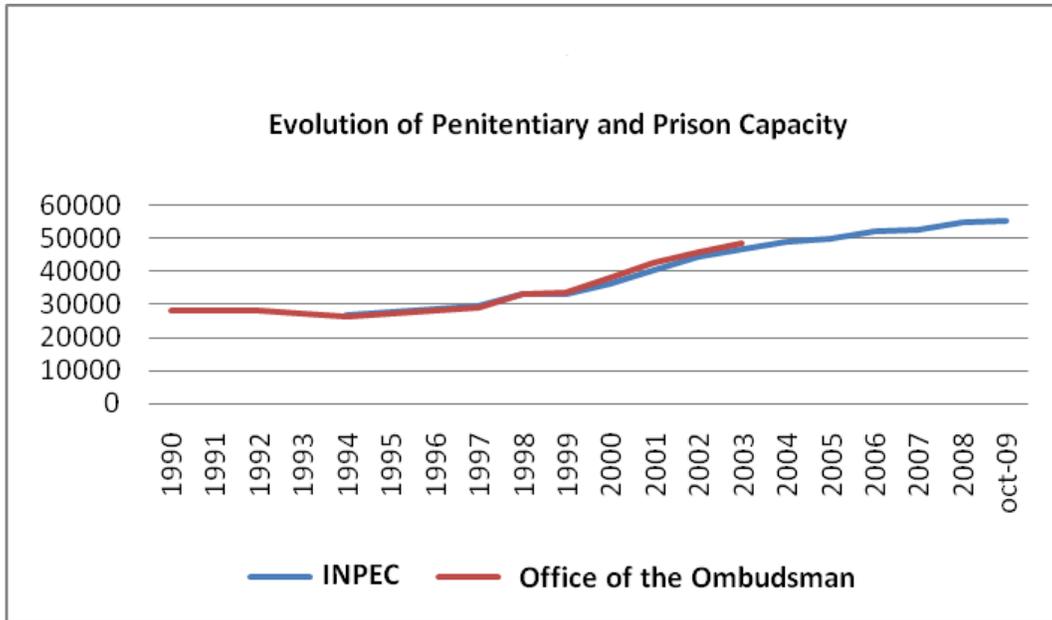
³⁶ Document CONPES 3575 of 2009.

³⁷ INPEC. Response to the Right of Petition filed by Mr. Manuel Alejandro Iturralde Sánchez, Coordinator of the Journal of Prisons from the Los Andes Law School, Población discriminada por sexo, situación jurídica, por departamentos y regiones [Discrimination in prisons based on sex, legal status, geographical departments and regions] (July de 2009).

³⁸ Ministry of the Interior and Justice. Penitentiary Policy and Imprisonment. From imprisonment to effective social rehabilitation. In the Forum held at the Universidad de los Andes "Unconstitutional state of affairs in Colombian prisons. Balance and effects of sentence T-15 of 1998] (March 12, 2010)

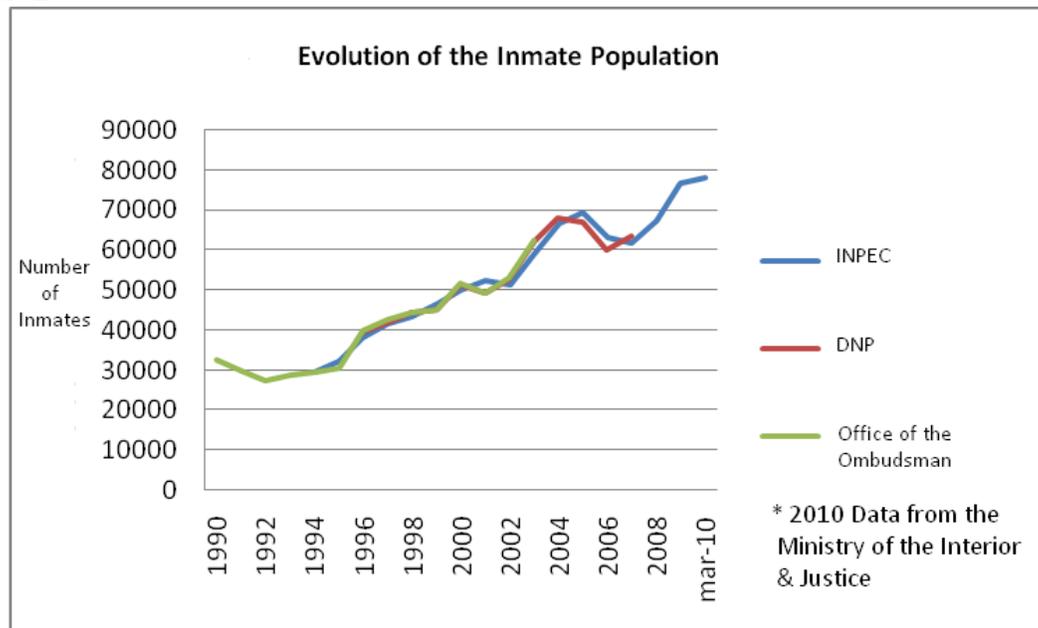
⁴¹ Document CONPES 3575 of 2009.

Chart 1.



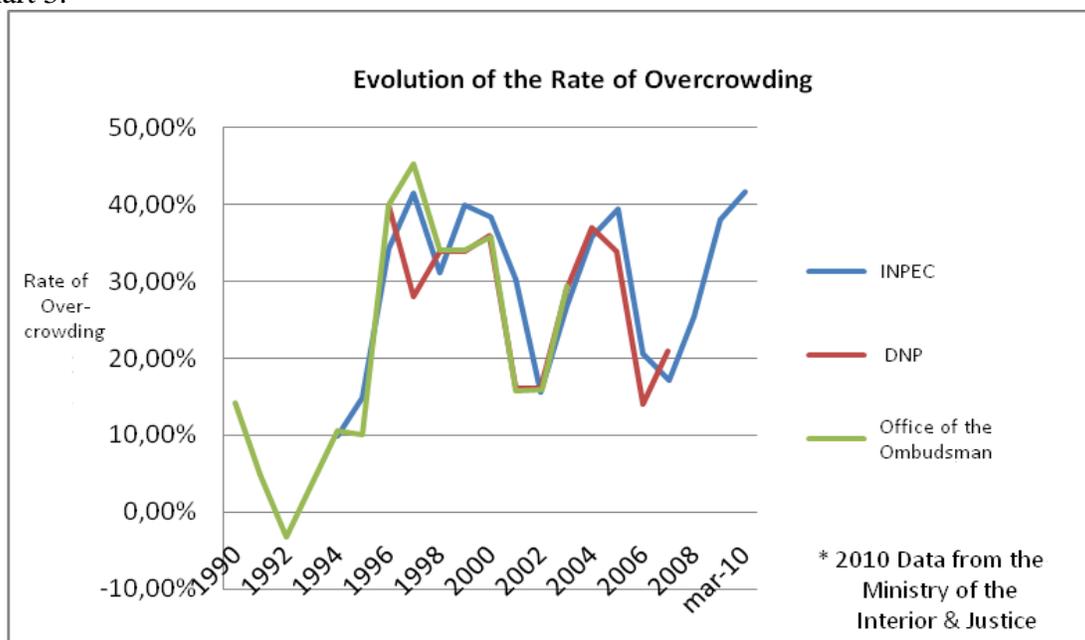
Source: Prepared with information from INPEC and the Office of the Ombudsman

Chart 2.



Source: Prepared with information from the INPEC, the DNP, the Office of the Ombudsman and the Ministry of the Interior and Justice

Chart 3.



Source: Prepared with information from the INPEC, the DNP, the Office of the Ombudsman and the Ministry of the Interior and Justice

(21) The completion of new prisons will still be insufficient since the inmate population increased by 70.4 %³⁹ between 1998 and 2009. When the number of existing inmates capacity is added to the number of new inmates, the total is 79,373, which will cover the population on March 12, 2010 which had increased to 78,030 inmates⁴⁰. However, this solution continues to generate concern, because it will be an inefficient remedy given that the prison population is sharply increasing. One must not forget that in just a few months, between October 2008 and July 2009, the inmate population increased from 67,338 to 74.718⁴¹. Bear in mind that the number of inmates rose to 78,030 in March

³⁹ Information obtained from the following sources: INPEC: figures attached to the Response to the right to petition presented by Manuel Iturralde to INPEC on October 31, 2008 and Población interna en establecimientos de reclusión discriminada por sexo, situación jurídica, por departamentos y regiones, [Discrimination in prisons based on sex, legal status, geographical departments and regions.] July 2009; General Office of the Comptroller of the Republic: Office of the Comptroller Delegated to the Division of Defense, Justice and Safety. Office of Sectorial Studies. Penitentiary and Prison Policy in Colombia. Marcela Pérez Ochica and Juan Alejandro Morales Sierra; Office of the Ombudsmen: Análisis sobre el actual hacinamiento carcelario y penitenciario en Colombia [Analysis on current overcrowding in prisons and penitentiaries], 2003. En: http://www.defensoria.org.co/pdf/informes/informe_97.pdf; Attorney General's Office: El sistema de prisiones colombiano opera bajo niveles de presión crecientes; los derechos humanos de las personas privadas de libertad en riesgo [The system of Colombian prisons operates under growing pressure; human rights of persons deprived of liberty at risk]. November 10, 2004. Taken from: <http://www.procuraduria.gov.co/descargas/publicaciones/hacinamientooficial.pdf>

⁴⁰ Ceballos, Miguel. Presentation of the Deputy Minister of the Interior and Justice in the Forum held at the Universidad de los Andes "Unconstitutional state of affairs in Colombian prisons. Balance and effects of sentence T-15 of 1998] (March 12, 2010) This information is supported by figures included in the Response to the right of petition presented by Juan Sebastián Alejandro Perilla Granados, reference no. 7110-OPL-0129.

⁴¹ INPEC. Figures attached to the Response to the right of petition presented by Manuel Iturralde on October 31, 2008 and Población discriminada por sexo, situación jurídica, por departamentos y regiones [Discrimination in prisons based on sex, legal status, geographical departments and regions] (July de 2009).

2010, as previously indicated. It is evident then that providing new inmate capacity is an insufficient response to the general problem of the penitentiary and prison system which requires more than the mere construction of new prison centers.

(22) Considering that prison overpopulation has spiraled, generating new and greater capacity will not resolve the problem of overcrowding in prisons if the current penal policy favors preventative detention as the main measure of ensuring security, increased length of sentences and incarceration as the almost exclusive form of punishment.⁴² For example, with the introduction of Law 890 of 2004, which increased the minimum and maximum sentences for all crimes, there was an increase of nearly 4,000 accused persons and nearly 5,000 convicted persons. Another of the reasons why both the number of accused persons and convicted persons has risen so dramatically is that with the implementation of Law 1142 of 2007, the sentence for certain crimes was increased, while the number of individuals receiving house arrest was restricted. According to the Centro de Estudios de Justicia de las Américas [Center for Studies on Justice in the Americas] (CEJA), at the end of 2007, “the number of detentions increased almost 10 times (from 4.74% to 38.65%), in terms of persons incarcerated.”⁴³ This interpretation has been supported in Colombia by such organizations as Corporación Excelencia en la Justicia [Corporation for Excellence in Justice]⁴⁴. Therefore, as long as the Colombian State prefers a repressive policy instead of a preventative one, there is no hope for overcrowding rates to decrease, and much less remain low.

2.1.1.2.3 Error in the Report from the Colombian State: new prison capacity figures

(23) The Colombian State indicated that by December 2008 there would be a new capacity for 24,887 inmates. However, this statement is incorrect for reasons that will be discussed herein. First of all, the actual new inmate capacity is 24,331 and not 24,887. The previous assertion is based on CONPES 3575 of 2009, in which an estimated incapacity of

⁴² We must point out that the Constitutional Court recently issued Press Release No. 11 on February 22, 2010 in which it stated that it will make a decision regarding creating a referendum about handing down life sentences to those convicted of raping a minor. This is relevant because the impact of this rule, in the event that it is declared constitutional, has not been taken into account in calculating the increase of prison populations and the respective overcrowding. What is important is that this sentence has never been part of the Colombian Judicial Code, and the Committee itself, after studying the fourth periodic report from the Italian State in 1998, stated its approval saying that the elimination of the life sentence in favor of a definitive maximum sentence [for these offenders] was a positive move. Italy, ICCPR, A/53/40 vol. I (1998) 50, paragraph 332.

⁴³ Centro de Estudios de Justicia de las Américas – CEJA. *Prisión Preventiva y Reforma Procesal en América Latina. Evaluación y Perspectivas*. [Preventative Prison and Procedural Reform in Latin America. Evaluation and Perspectives] Santiago de Chile, 2008, p. 235.

⁴⁴ This organization stated the “one of the causes for the increase in overcrowding in the last year was the implementation of Law 1142 of 2007, which, among other things, does not allow benefits or substitute sentences to persons who have been convicted of crimes of fraud or premeditated acts within the previous 5 years and also increases the sentences for some types of criminal conduct according to the Criminal Code.”. Corporación Excelencia en la Justicia, *Evolución de la Situación Carcelaria en Colombia*, taken from: http://www.cej.org.co/index.php?option=com_content&view=article&id=824:evolucion-de-la-situacion-carcelaria-en-colombia&catid=56:justiciometro&Itemid=116

3,131 had been created through the remodeling of 12 prisons and not 3,287 as the State had said. Furthermore, it was projected that 11 prisons would be built to provide an inmate capacity of 21,200 and not 21,600 as the Colombian government had said. Second, the total new inmate capacity to be delivered included the construction of a new prison in Cartagena that will not be completed⁴⁵. Therefore, the total new inmate capacity under construction is less than originally proposed.

2.1.1.2.4 Error in the Report from the Colombian State: failure to comply with the modification, adjustment and equipping plan and the construction of 11 new centers.

(24) Contrary to that stated by the Colombian State in its Report, the inmate capacity that was to be completed will not be available in the period in which the government had planned for. The prison modification, adjustment and equipping plan was not completed. For example, instead of finishing it in May 2007, it was completed in 2008. The same occurred with the construction and equipping of 11 new prisons that still has not been completed.⁴⁶ Since this additional capacity will not be delivered in time due to the growth trends in prison population, it is highly possible that once delivered, they will not be sufficient to house the prison population at that time.⁴⁷

(25) Despite the fact that the government had set dates for completion and operation of all the new penitentiaries no later than August 2010,⁴⁸ the new time tables show that the month for completing the job was never specified, and there is no mention whatsoever regarding the date when all penitentiaries will be in full operation.⁴⁹ This is serious because a completed prison is not worth anything if all the furnishings necessary to house the prisoners are non-existent and if the prisoners have not yet been transferred. According to

⁴⁵ Clara Inés Vásquez, Office of the Comptroller of the Republic. In the Forum held at the Universidad de los Andes “Unconstitutional state of affairs in Colombian prisons. Balance and effects of sentence T-15 of 1998] (March 12, 2010) The project at the Mujeres de Cartagena complex that would have the capacity for 1,600 prisoners (1,400 accused and convicted men and a small prison for women with 200 cells) was cancelled due to the fact that the land acquired for its construction was not adequate. The estimated budget by consultants contracted by FONADE to complete pre-investment studies exceeded the initial projected cost by \$43,000 million. The Project was replaced by the construction of a building for 250 women on lands belonging to the current La Temera en Cartagena jail.

⁴⁶ According to the press release issued by the Fondo Financiero de Proyectos de Desarrollo [Financial Fund for Development Projects] FONADE in August 2009, the establishments in Cúcuta, Puerto Triunfo and Yopal, are scheduled for completion in the first six months of 2009; those in Acacías, Florencia, Ibagué and Jamundí in the second half of 2009; and those in Bogotá, Cartagena, Guaduas and Medellín in the first six months of 2010. However, only the establishments in Yopal and Cúcuta were finished and delivered in January 2010 (not in 2009) and none have begun operating.

⁴⁷ According to the statement issued by Clara Inés Vásquez of the Office of the Comptroller of the Republic at the Forum held at the Universidad de los Andes “Unconstitutional state of affairs in Colombian prisons. Balance and effects of sentence T-15 of 1998] (March 12, 2010), If the start-up date (most of them began construction in 2007) and the percentage of physical progress that each should have are compared, one can see that construction is, on the average, 10 months behind schedule. In addition, the overruns generated as a result of the delays reached \$92,000 million in 2009.

⁴⁸ CONPES 3575 from 2009.

⁴⁹ Fondo Financiero de Proyectos de Desarrollo (FONADE). Press Release, August 2009. Taken from: <http://www.fonade.gov.co/eContent/Library/Attach/BOLETIN%20DE%20PRENSA%20AVANCE.pdf>. Also in: Conpes 3575 from 2009.

the Office of the Comptroller of the Republic, the construction of the 10 new penitentiaries is 5 to 16 months behind schedule.⁵⁰ This shows that none of the scheduled plans to increase the capacity of the nation's prisons have been completed, and therefore, the information contained in the Report from the Colombian State is incorrect.

2.1.1.2.5 Error in the Report from the Colombian State: new prison capacity figures do not comply with international standards

(26) As the fifth observation to the Report presented by the Colombian State, we will demonstrate that the new prisons do not comply with the conditions established in Article 10(1). According to the Office of the Comptroller of the Republic,⁵¹ the cells of the 10 new prisons, which form part of the government's construction and staffing plan, measure 3.2m x 3m and will house four prisoners, that is, each prisoner will have a habitable space measuring 2.4m². This situation violates the Standard Minimum Rules for the Treatment of Prisoners (UN, 1957), regarding places used to house prisoners which establishes that: "Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room. 2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution."⁵²

(27) Through the construction of 10 prisons that form part of the prison construction and staffing plan, the government seeks to reduce overcrowding in the country. This fact seems contradictory and questionable given that having had the opportunity to upgrade the new prisons to the minimum standards internationally recognized, individual cells have not been designed so that the space needed for each prisoner does not violate Article 10 (1). As the HRC has recognized in other cases, a space that measures 2m² is not admissible under the ICCPR, and although the area per cell of the new prisons in Colombia is better, the difference of just 4cm² for new penitentiaries should not be understood to be an acceptable measurement.⁵³

(28) Keeping in mind the level of overcrowding in current prisons is 41.7%, that governmental bodies such as the Office of the Comptroller and the Ombudsman have expressed their concerns over the massive violation of prisoner rights that this situation has

⁵⁰ Presentation by the Office of the Comptroller of the Republic (Delegated Comptroller's Office for the Division of Defense, Justice and Security. Penitentiary and Prison Policy in Colombia.) In the Forum held at the Universidad de los Andes "Unconstitutional state of affairs in Colombian prisons. Balance and effects of sentence T-15 of 1998] (March 12, 2010)

⁵¹ Office of the Comptroller of the Republic (Office of the Comptroller Delegated to the Division of Defense, Justice and Security). Penitentiary and Prison Policy in Colombia. In the Forum held at the Universidad de los Andes, Unconstitutional state of affairs in in Colombian prisons. Balance and effects of sentence T-153 of 1998] (March 12, 2010).

⁵² Standard Minimum Rules for the Treatment of Prisoners, adopted by the First Congress of the United Nations on Crime Prevention and the Treatment of Prisoners. Resolution 663C (XXIV) of 31/VII/1957 and 2076 (LXII) of 13/V/1977, Geneva, Switzerland, paragraph 9.1

⁵³ Saidov v. Tajikistan, paragraphs 2.9 to 2.10.

created; that the Colombian Constitutional Court has repeatedly made statements regarding this same issue and that the Colombian State has not presented any distinctly alternative solutions other than the construction of new prisons, it is possible to reasonably conclude that the Colombian State violates Article 10 (1) of the ICCPR.

2.1.2 Health, sanitary and hygienic conditions

(29) On several opportunities the HRC has pointed out that Article 10(1) of the ICCPR is violated when conditions of detention do not comply with hygienic standards, when they are unhealthy or make access to health services difficult for the prisoners. For example, in the Concluding Observations to the Republic of Moldova (2002), the Committee stated:

The Committee is profoundly concerned over the prevailing conditions in the detention centers of the State Party, in particular, by its lack of compliance of international rules (as the State Party has recognized), including the guarantees established in Articles 7 and 10 of the Covenant. The Committee expresses its particular concern for the prevalence of illness such as tuberculosis, which is the direct result of the prison conditions. The State Party is reminded of its obligation to guarantee the health and lives of all persons deprived of liberty. Putting the health and lives of those detained as a result of the propagation of contagious diseases and insufficient [medical] attention is a violation of Article 10 of the Covenant and it may also violate Articles 9 and 6.⁵⁴

(30) In this case, the HRC recommended the State of Moldova to take immediate action to insure that the conditions in its detention centers complied with the standards set forth in Articles 6, 7 and 10 of the ICCPR, including the prevention of the propagation of illnesses and adequate medical treatment to those persons who had contracted illnesses be it in prison or before their detention.⁵⁵

(31) With regards to health service coverage, the HRC emphasized, in the Concluding Observations made to India in 1997⁵⁶ and to the Republic of Congo in 2000,⁵⁷ that all prisoners have the right to adequate medical care. The Committee also stated that during custody, accused or convicted individuals should receive medical examinations.⁵⁸ The Committee presented a similar concept in 2000 when it stated that if appropriate medical attention is not guaranteed, this constitutes an inhuman condition of detention.⁵⁹

⁵⁴ Republic of Moldova, ICCPR, A/57/40 vol. I (2002) 76, paragraph 84(9).

⁵⁵ Ibidem

⁵⁶ India, ICCPR, A/52/40 vol. I (1997) 67, paragraphs [sic.].

⁵⁷ Congo, ICCPR, A/55/40 vol. I (2000) 43, paragraph 282.

⁵⁸ Venezuela, ICCPR, A/48/40 vol. I (1993) 61, paragraph 310.

⁵⁹ In the following cases and Concluding observations, the HRC has stated that the lack of health providers and/or lack of guarantee of a healthy environment violates Article 10(1) of the Covenant: Concluding Observations of the Human Rights Committee, Greece, U.N. Doc. ICCPR/CO/83/GRC (2005); Concluding Observations of the Human Rights Committee, Dominican Republic, U.N. Doc. ICCPR/CO/71/DOM (2001); Dennis Lobban v. Jamaica, Communication No. 797/1998, U.N. Doc. ICCPR/C/80/D/797/1998 (2004); Mongolia, ICCPR, A/55/40 vol. I (2000) 49, paragraph 332

(32) Therefore, upon evaluation of the conditions of detention in the State of Georgia in 1997, the Committee found that unhealthy conditions and lack of medical care had resulted in a high rate of infectious diseases, which violated Article 10 of the Covenant.⁶⁰ Subsequently in 2000, the Committee stated that unsanitary conditions in prisons, the lack of water and healthy food, together with precarious medical attention -- that could cause the propagation of diseases-- constituted a violation of Article 10 since it was included in the category of improper conditions of detention.⁶¹ In *Viana v. Uruguay*⁶², the Committee recognized that in refusing Mr. Antonio Viana Acosta medical attention for 4555 days, Uruguay had violated Article 10(1) of the Covenant, among others.⁶³

2.1.2.1 Responses from the Colombian State on prisoner access to health care and sanitation services and hygiene conditions in prisons

(33) In its Report, the Colombian State considers the issuing of Law 1122 of 2007, which modified the General System of Social Security in Health, as a step forward given that it provides this service to the prisoner population. Regarding this subject, case law from the Constitutional Court states that deficient detention conditions in Colombian prisons violates the rights of prisoners, including the right to health.

2.1.2.2 Empirical Data on Health

(34) Until 2007, health service for the prison population was the responsibility of the Instituto Nacional Penitenciario y Carcelario (INPEC) [National Institute of Penitentiaries and Prisons],⁶⁴ and [these services] were provided by 276 health facilities located in different establishments throughout the country. However, according to a report presented by the Office of the Comptroller of the Republic, none of the health facilities were certified by a competent health authority, and the majority of the facilities had precarious medical attention for the inmates.⁶⁵ As a result, in 2006, the INPEC initiated an authorization process for providing adequate medical service in its facilities. However, the results were not positive, because only 10 of the 276 health facilities were authorized by December 2007.⁶⁶ According to the audits carried out by the Office of the Comptroller in 2006 in six departments⁶⁷ in the country, several deficiencies in health services were

⁶⁰ Georgia, ICCPR, A/52/40 vol. I (1997) 40, paragraph 243

⁶¹ Guyana, ICCPR, A/55/40 vol. I (2000) 53, paragraphs 369, 371 and 372.

⁶² *Viana v. Uruguay* (110/1981) (R.25/110), ICCPR, A/39/40 (29 March 1984) 169, paragraph 2.7.

⁶³ Although there is no evidence regarding the intentionality of omitting to provide medical attention in the abovementioned cases, the principle of violation of rights is maintained: not having received medical attention.

⁶⁴ This institution, attached to the Ministry of the Interior and Justice, is in charge of managing the national penitentiary and prison system with the objective of guaranteeing the compliance of the prison sentence, preventative detention, security, social attention and penitentiary treatment of the prison population under the framework of respect for human rights.

⁶⁵ Office of the Comptroller of the Republic. (Office of the Comptroller Delegated to the Division of Defense, Justice and Security) Penitentiary and Prison Policy. Evaluation of social rehabilitation and measures implemented against overcrowding. (Bogotá, 2008.)

⁶⁶ *Ibidem*.

⁶⁷ In line with the principle of policy centralization and administrative decentralization, the public administration is divided into two levels: national administration and sectional and local administration. The

encountered. Among these deficiencies are the lack of opportunity to provide services, difficulty processing medical orders with specialists; pending surgeries, not performing medical examinations when inmates enter some establishments; lack of sanitary infrastructure; expired medications; and in general, the lack of clear and expedited procedures to guarantee adequate medical attention.⁶⁸

(35) In order to find more structural solutions to this situation, and in response to several sentences from the Constitutional Court,⁶⁹ in 2007, Congress enacted Law 1122, which orders that persons deprived of liberty be covered by the subsidized health system. This reveals the inefficiency of the Colombian State to protect the health of detained persons, because it was only until 2007 that measures were taken to solve a problem that the Constitutional Court had denounced in 1998.

(36) Currently Caprecom is the entity that should be in charge of providing health services to prisoners. However, the connection between the old health care system and the new one has been deficient. The entities that provided health care under the old system no longer provide it saying that it is no longer their responsibility. Therefore, Caprecom is the only entity that provides health services to this population group. However, this entity still does not cover 100% [of the prison] population, leaving a sector of that population without this service.⁷⁰

(37) According to INPEC figures, in February 2009, only “24% of prisoners reported having some type of medical social security.”⁷¹ There is no information available to know if said coverage is assumed by the State or by private entities (with resources from the prisoners). The aforementioned indicates that health services coverage for persons deprived of their liberty, under the responsibility of the Colombian State, could be a lesser percentage than indicated, but at any rate, it is very low.

(38) The dramatic situation in providing health services is reflected in the fact that according to a 2009 press report at least 700 inmates at prisons in Quindío (one of

latter is regulated in Title XI of the Political Constitution under the title of Territorial Organization, which is divided by departments, regions, municipalities, provinces, districts and others. The departments are the territorial bodies that have the following duties, according to Article 289 of the Constitution, “manage sectional issues; plan and promote economic and social development within its territory; carry out administrative duties, coordinate and supplement the municipal action; serve as intermediary between the nation and the municipalities and provide the services determined by the Constitution and the laws.” In: Libardo Rodríguez R., *Derecho Administrativo General y Colombiano*, [General and Colombian Administrative Law] Fourteenth edition Temis, Bogotá –Colombia (2005), paragraph 144.

⁶⁸ Office of the Comptroller of the Republic. (Office of the Comptroller Delegated to the Division of Defense, Justice and Security) Penitentiary and Prison Policy. Evaluation of social rehabilitation and measures implemented against overcrowding. (Bogotá, 2008.)

⁶⁹ Some of the most important sentences are T-153/98, T-606 and T-607 of 1998 of the Constitutional Court.

⁷⁰ Interview to Alfredo Castillo, Official of the Office of the Ombudsmen Delegated to Criminal Penitentiary Policy in Bogotá. (October 5, 2009)

⁷¹ INPEC. Response to the Right to Petition filed by Manuel Alejandro Iturralde Sánchez, Coordinator of the Journal of Prisons of the Law School at the Universidad de Los Andes. (February 24, 2009).

Colombia's departments), had not received medical care for at least three months.⁷² Something similar occurred in the prison in Acacías, Meta, in which, according to the personero (Municipal Authority⁷³), in September 2009 the prisoners had gone more or less four months without adequate medical attention.⁷⁴

2.1.2.2.1 Propagation of illnesses caused by unhealthy detention conditions

(39) In addition to the clear violation of Article 10(1) by the Colombian State, there are two additional problems related to the right to health that violate human dignity protected under Article 10 of the Covenant: the propagation of illnesses caused by unhealthy detention conditions and the absence of official information regarding this situation.

(40) In 2001, the Office of the High Commissioner of the United Nations for Human Rights visited several prisons in the country. The United Nations Mission was able to witness extreme situations of overcrowding, the improvisation of places to sleep, including between bathroom toilets, hanging from the ceiling --as occurred in the Girardot Police Station. In other cases, cells were flooded and fecal contamination was found in food --as occurred in the Valledupar Prison in September 2001.⁷⁵ The Mission also verified deficiencies in health matters such as the lack of toilets, irregular water supply as well as poor quality water used for human consumption. These elements affected the majority of the prisons and penitentiaries throughout the country. Consequently, the most serious, according to the High Commissioner was “the frequent lack of medical attention and adequate Responses on behalf of INPEC officials regarding the numerous and basic complaints of serious health deficiencies in the establishments under their responsibility.”⁷⁶

(41) The situation described by the United Nations Mission in 2001 has ongoing for a long time. Deficiencies in hygiene-health conditions and infrastructure, aggravated by overcrowding in the prisons are extremely worrisome, since they generate “the development of infectious-contagious diseases such as tuberculosis, leprosy, chicken pox, hepatitis A, hepatitis B, HIV, syphilis, gonorrhea and other sexually transmitted diseases as

⁷²Caracol. INPEC must solve health problems in jails in Quindío, Caracol, (February 19, 2009.) In: http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1050:inpec-debera-solucionar-problemas-de-salud-en-carceles-del-quindio&Itemid=168

⁷³ According to Article 169, Law 136 of 1994, “The municipal or district authorities must fulfill the duties of ombudsman with respect to the safeguarding and promotion of human rights, protection of public interests and monitoring of the conducts of public officials.”

⁷⁴ Journal El Tiempo, Polémica por precarias condiciones de salubridad en cárceles del Meta [Debate on the precarious sanitary conditions in Meta's prisons], El Tiempo, National News (September 7, 2009).

⁷⁵ Office in Colombia of the High Commission of the United Nations for Human Rights, Prisons in Colombia: A state of unconstitutional things and flagrant violations of human rights. International Human Rights Mission and Prison Situation, Bogotá, D.C., Colombia (October 31, 2001), In: http://www.unifr.ch/ddp1/derechopenal/temas/t_20080528_20.pdf

⁷⁶ Ibid.

well as infestations from plague-carrying vectors (fleas, lice, mosquitoes, rodents among others).”⁷⁷

(42) For example, in the Bellavista Prison, located in the city of Medellín, a number of worrisome cases of tuberculosis were reported. According to information presented in the *El Mundo de Medellín* newspaper, in 2004 at least 40 cases were confirmed through samples of the population, taken in just two of the 15 prison yards.⁷⁸ The testing was canceled by prison administrators because the director thought that the results would be “a time bomb that would damage the prison’s good image in the country.”⁷⁹ This stance, defended by a public official, is really questionable because it hinders control over the level of compliance of minimal conditions that the prisons must have. In early 2005, there was a nearly apocalyptic scene at the Bellavista. “It is necessary to say that there are plagues -- cockroaches and rats-- that have almost reached biblical proportions that are fumigated every so often just to keep down the rapid growth.”⁸⁰ The lack of control over diseases has resulted in dramatic increases as seen with illnesses such as AIDS: 121 people were reported to have contracted the disease in 2004 while 242 people had contracted it in 2008. This is a 100% increase over a period of four years.⁸¹

(43) The spread of diseases is equally serious among the female population. The Report from the Colombian State mentions the text, *Mujeres y Prisión en Colombia* [Women and Prisons in Colombia] published by the Office of the Attorney General in 2007, as administrative progress from the perspective of gender. It is doubtful whether this document can be considered progress by the Colombian government for two reasons: in the first place, the report from the Office of the Attorney General fairly states that the situation of this group of persons is inadmissible due to the constant violation of their rights; in the second place, the Office of the Attorney General is not part of the executive branch, rather it is an autonomous control organization and, therefore, its report cannot be considered as governmental progress.

(44) Moreover, the Office of the Attorney General said that in 2007 there was: i) a lack of adequate infrastructure for the particular necessities of the female population (lack of privacy in bathrooms, space to place clothing and toiletries); ii) an absence of measures to prevent problems inside the prisons (to avoid drug use, for example, repressive measures were implemented that do little to help this population that really needs psychological and

⁷⁷ Attorney General Delegated for Prevention on Human Rights and Ethnic Issues. Group of Penitentiary and Prison Issues. The Attorney General of the Nation speaks out on the right to health care for persons deprived of liberty. 2004. In:

<http://www.procuraduria.gov.co/descargas/publicaciones/saludoficial.pdf>

⁷⁸ Adriana Gaviria, “Salud: una catástrofe en Bellavista” [Health: a catastrophe in Bellavista], *El Mundo* newspaper, (January 23, 2005). In: Office of the Attorney General Delegated for Criminal and Penitentiary Policy. Office of the Ombudsman. Report on health services in penitentiaries and prisons in Colombia, (2005)

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Diario El Tiempo*, La salud en las cárceles [Health in prisons] Editorial Section -Opinión. (June 24, 2008)

medical help); and iii) management of visitation that violates the right of the prisoners' families.⁸²

(45) Additionally, access to health services for the female population is deficient. As the Office of the Attorney General has seen, there are deficiencies in medical attention for female prisoners that do not comply with the requirements and special attention that they need. For example, there are inadequate medical services during pregnancy and postpartum. There are neither programs directed towards preventing diseases particular to the female population (breast and uterine cancer, among others), nor programs to control fertility. Furthermore, there is insufficient food and drinking water, which increases the risks to prisoner health.⁸³

(46) The frequent use of Tutelas⁸⁴ also represents a deficiency in health services for both men and women in custody. The increase in the number of Tutelas brought, demanding the protection of the right to health services has been significant since 2005, as seen in Chart 4. Between 2002 (in which some 63 guardianships demanded the protection of the right to health care for prisoners) and 2008 (in which there were 1044 guardians), the increase in these judicial actions is more than 1500%.

Chart 4.

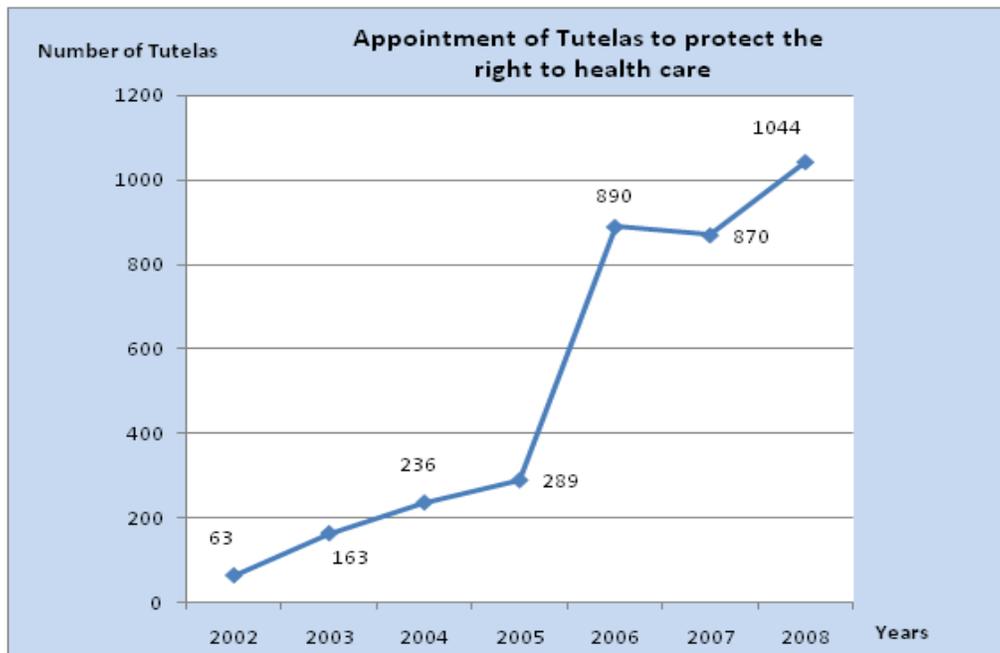


Chart prepared based on data from the Office of the Ombudsman

⁸² Office of the Attorney General, *Mujeres y prisión en Colombia: análisis desde una perspectiva de derechos humanos y género* [Women and prisons in Colombia: analysis from the perspective of human rights and gender]. (October 2006)

⁸³ Ibid.

⁸⁴ According to Article 86 of the Constitution of 1991, a petition for guardianship is the mechanism through which all people can present a claim to the judges for the immediate protection of their fundamental constitutional rights when these rights are violated or threatened by the action or omission of any public official or particular elements in cases established by law.

2.1.2.2.2 Lack of information

(47) As indicated in the report from the Office of the Ombudsman, in 2005 there were no “consolidated indicators to evaluate the actual cost and quality of health care provided to those persons deprived of liberty. However, numerous indications allow one to conclude that the process of outsourcing implemented by INPEC to attend to the health needs of the prison populations is far from overcoming the flaws that led the Constitutional Court to declare matters related to health, medical attention and the supply of medications to inmates in prisons throughout the country as unconstitutional. Moreover, the list of violations of prisoners’ right to health care persists.”⁸⁵ In other words, the great majority of official information on the prison situation, with the exception of the issue of infrastructure, is confusing, fragmented and out of date. This indicates an attitude of negligence by the Colombian State that has the obligation to guarantee the right to health care and improve the detention conditions for inmates.

2.2 Article 10(2): Separation of the Prisoner Population

2.2.1 4.1 Article 10(2)(a): Separation of accused and convicted inmates

(48) General Comment 21⁸⁶ of the HRC develops the content of paragraph a) of Article 10(2), which states that the accused inmates should be separated from the convicted ones and that said segregation maintains the protection of the right to the presumption of innocence that is also contained in Article 14(2) of the Covenant. General Comment 21 establishes that States Parties are obligated to indicate how the separation of accused and convicted inmates is carried out as well as the incarceration regime applicable to each group.

(49) The abovementioned was ratified in *Pinkney v. Canada*, in which the Committee maintained that not separating accused inmates from the convicted ones implied a violation of Article 10(2)(a) of the Covenant. This obligation, as the Committee states, may only be avoided under exceptional circumstances:

The Committee considers that the requirement established in Article 10(2)(a) of the Covenant that provides for: “the segregation, save in exceptional circumstances, of accused persons from convicted ones,” implies that prisoners should be held in different places (but not necessarily in separate buildings). The Committee would not consider the provisions described by the State Party according to which convicted persons act as food servers and be in charge of cleaning the prison as incompatible with Article 10(2)(a), as long as contact between the two groups of prisoners is strictly limited as to comply with said missions.⁸⁷

⁸⁵ Carlos Augusto Lozano, ¿Un garantismo hostil? [A Hostile Guarantee?], Advisor to the Office in Colombia of the United Nations High Commissioner on Human Rights. In: Office of the Ombudsman Delegated to Criminal Policy and Prisons. Report on health services in penitentiaries and prisons in Colombia, (2005).

⁸⁶ General Observation No. 21: Humane treatment of persons deprived of liberty, (Art. 10), Human Rights Committee, 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), at paragraph. 9.

⁸⁷ *Pinkney v. Canada* (7/27 Oct 1981), paragraph 30

(50) In the case of Mr. Pinkney, the Committee found that such contact was not limited but frequent and therefore that yes, there was a violation of Article 10(2)(a). Equally, in *Fongum Gorji-Dinka v. Cameroon*,⁸⁸ the Committee maintained that Article 10(2)(a) had been violated because, in spite of the fact that Mr. Fongum had not been convicted, he was detained in the same cell with 20 persons convicted of murder. In this case, the State of Cameroon could not prove that placing convicted persons with accused ones constituted an exceptional situation.

2.2.1.1 Responses from the State regarding the subject of separation of accused and convicted inmates

(51) The Sixth Report presented by the Colombian State does not include any information that indicated progress on this subject and limits itself to pointing out some pronouncements from the Constitutional Court regarding this situation. The State Report also fails to present progress achieved regarding the detention of former members of law enforcement agencies in special establishments.⁸⁹

2.2.1.2 Lack of empirical information regarding the separation of accused and convicted inmates

(52) The lack of information provided by the Colombian State regarding the separation of inmates reflects problems that should be considered. On one hand, it is obvious that there is no harmonious collaboration or exchange of information between the INPEC, the organization responsible for the administration and operation of the prisons at a national level, and the territorial authorities responsible for the administration and operation of prisons at the departmental and municipal level. On the other hand, the INPEC does not adequately comply with the duty of inspecting and monitoring prisons by territorial entities, a job that is legally their responsibility.⁹⁰

(53) The lack of available official information indicates that “while the number of accused inmates rose from 20,326 in 2000 to 23,195 in 2008, the number of convicted prisoners rose from 29,490 in 2000 to 44,144 in 2008, which seems to indicate that the capacity in penitentiaries should have increased at a greater rate than the prisons”⁹¹ (See

⁸⁸ ICCPR/C/83/D/1134/2002, paragraph 5.3

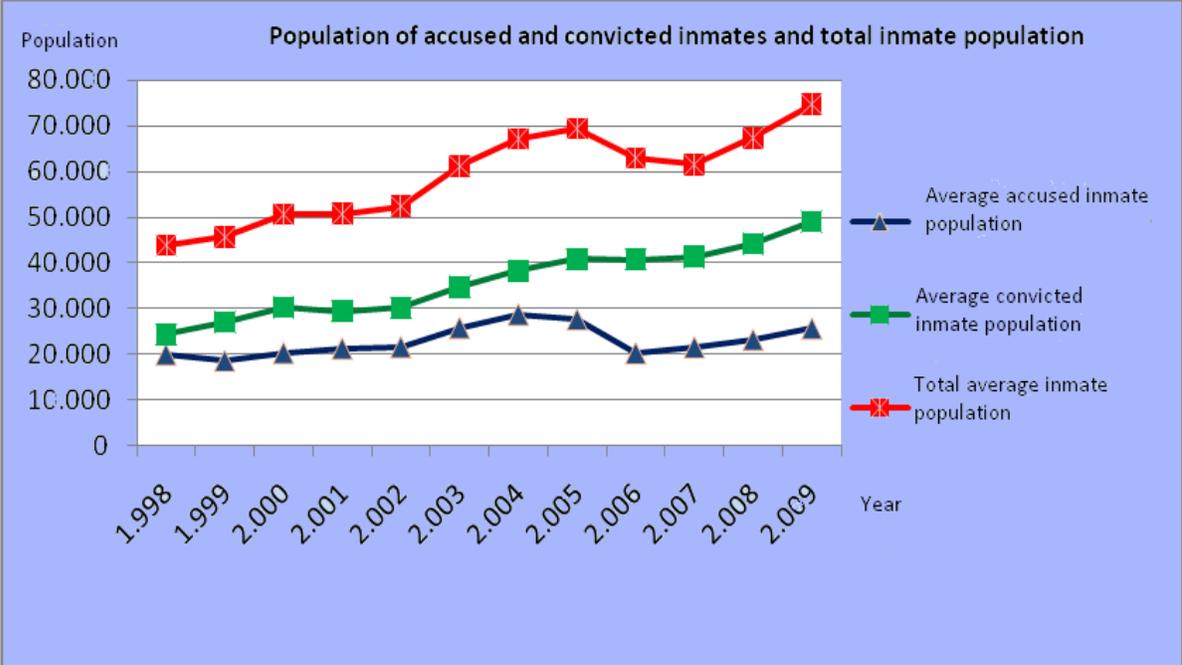
⁸⁹ The Committee must be reminded that the Constitutional Court, in sentence T-153 of 1998, ordered the separation of accused and convicted inmates within a period of no more than four years as of the date of sentencing. It also ordered the compliance of the obligation to detain [former] members of law enforcement agencies Force in special establishments within a period of no more than three months after the date of sentencing. This is due to the fact that the same Court stated that in prisons and penitentiaries there is an indiscriminate detention of accused and convicted inmates. The Court also found that the Colombian State grossly violated the obligation to detain former military members in special establishments. Regarding the former military members, this constitutes a violation to the right to life and personal integrity, and regarding the accused inmates, this constitutes a clear violation of the right to the presumption of innocence.

⁹⁰ The INPEC is responsible for the administration and operation of the national prisons, that is, of those controlled by the central government, and has the duty of controlling and monitoring the prisons of territorial entities, that is, those controlled by municipalities and departments.

⁹¹ Information obtained from the following sources: INPEC: figures attached to the response to the right of petition filed by Manuel Iturralde to INPEC on October 31, 2008; and *Población interna en establecimientos de reclusión discriminada por sexo, situación jurídica, por departamentos y regiones* [Inmate population in

Chart 5). The State’s response in the Report presented to the Committee must agree with this information so that the capacity in the penitentiaries (that house convicted prisoners) grows at a rate greater than that of prisons (that house accused inmates). However, the fact that there is currently no effective separation between convicted and accused inmates seems to be the main cause for the lack of state information regarding this matter.

Chart 5. Population of accused and convicted inmates and total inmate population



Source: Prepared with information from INPEC, DNP, the Offices of the Attorney General, Ombudsman and Comptroller⁹²

(54) One can conclude, given the available information, that the Colombian State currently violates paragraph a) of number 2 of Article 10 of the Covenant, every time there is a lack of concrete and complete information on this material, and every time there is a lack of evidence in official media denoting that the accused inmates are not separated from convicted prisoners. Therefore, according to that stated thus far, there is a violation of Article 10 of the ICCPR.

2.2.2 Article 10(2)(b): separation of juveniles from adults

(55) Regarding Article 10(2)(b), in General Comment No. 21,⁹³ the Committee states that the obligation to provide information relative to the incarceration regime

detention centers discriminated by sex, legal status, by departments and regions], (July 2009); Marcela Pérez Ochica & Juan Alejandro Morales Sierra, *La Política Penitenciaria y Carcelaria en Colombia* [Penitentiary and Prison Policies in Colombia], Office of General Comptroller of the Republic, Delegated Comptrollership for the Defense, Justice and Security Sectors. Directorate for Sectorial Studies. DNP. *Boletín Dirección de Justicia y Seguridad*, Justice Figures. Penal Jurisdiction 1996–2007. (Bogotá, 2008.) Taken from: http://www.dnp.gov.co/PortalWeb/Portals/0/archivos/documentos/DJS/DJS_Cifras/20_01_09_cifras_justicia.pdf

⁹² Ibid

applicable to accused and convicted juveniles is the responsibility of the State Parties, that is, it is imperative,⁹⁴ and that it is the [State party's] obligation to specify the measures adopted to implement said provision. General Comment 21 does not establish when a person is considered a minor, and on the contrary, the same provision authorizes legislators of each country to establish the age limits.⁹⁵ However, both Article 6(5) of the ICCPR and the HRC interpretation in paragraph 13 of General Comment 21 point out that under no circumstances can it be lower than 18 years old when dealing with criminal infractions, as occurs in the Colombian State.

(56) Along the same lines, international case law has been emphatic in stating that housing juvenile prisoners and adult prisoners together is a violation of Article 10(2)(b), and there is no valid exception for lack of compliance. For example, in *D. Thomas v. Jamaica* (1998),⁹⁶ the Committee believed that the State Party had failed to comply with the obligations of the Covenant by housing juvenile prisoners and adult prisoners in the same place.

2.2.2.1 Responses from the Colombian State regarding the separation of adults and juveniles

(57) The Report from the Colombian State states that “the creation of Law 1098 of 2006, for which the Infant and Adolescent Code was issued, foresees --in the chapter related to Criminal Responsibility, Article 162-- compliance with sentences depriving [juveniles] of liberty in specialized centers and always separated from adults.”

2.2.2.2 Empirical data

(58) Although the Report from the Colombian State considers that the enactment of Law 1098 of 2006 is a step forward, in practice there are no concrete mechanisms that guarantee the compliance of this legal mandate.

(59) Furthermore, despite the fact that juveniles complete sentences in prisons especially assigned to them, from the time of arrest they remain detained for up to 36 hours (and in some cases longer) in places where the prison population is not differentiated by age. In fact, given the overcrowding in the penitentiary system, time and time again there are cases in which juveniles are forced to remain in these temporary detention centers for prolonged periods of time while [waiting to be] assigned a space in the juvenile detention center.

(60) Based on the previous arguments, we may state that given the governmental obligation to separate convicted and accused inmates and juveniles from adults, the

⁹³ General Observation No. 21: Inhuman treatment of persons deprived of liberty (Art. 10), Human Rights Committee, 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), paragraph 13.

⁹⁴ Minimum rules from the United Nations for the administration of justice to juveniles (1987) (Rules of Beijing)

⁹⁵ Ibid

⁹⁶ *D. Thomas v. Jamaica* (800/1998), of the Covenant, A/54/40 vol. II (8 April 1999) 276 (ICCPR/C/65/D/800/1998)

Colombian State has not provided any proof regarding significant advances since 1997. Therefore, the Honorable Committee is hereby requested to declare that the Colombian State has violated sections a) and b) of Article 10(2) of the ICCPR.

2.3 Article 10(3): Reincorporation of convicts into society

(61) Article 10(3) of the ICCPR establishes that the purpose of the penitentiary regime is reform and the reincorporation of persons deprived of liberty into society. Regarding the development of this article, in General Comment No. 21, the HRC states that “No penitentiary system should be aimed solely at punishment; it should essentially seek the reformation and social rehabilitation of the prisoner.”⁹⁷ Therefore, the Committee has recognized reincorporation into society as the last phase of the sentence in the final conclusions of the reports presented by the State Parties as in the case of Belgium⁹⁸ or other cases such as *Kelly v. Jamaica*⁹⁹ and *Sextus v. Trinidad and Tobago*.¹⁰⁰ In these pronouncements in particular, the Committee has stated the importance of implementing educational and training programs in penitentiaries.

(62) Although General Comment No. 21 does not establish precise mechanisms to comply with the reincorporation of convicts into society as an element of the sentence, in paragraph 10 of said Comment, the HRC has stated that it is important for each State to specify in their own reports what type of practices have been implemented and how they have complied with this goal. Reincorporation into society as an element of the sentence was recognized by Resolution 43/173 of December 9, 1998, by the UN General Assembly. This resolution establishes the set of principles to protect all persons subjected to some form of detention or prison (particularly principles 19 and 24). Case law has also been developed through supranational courts such as the Inter-American Court of Human Rights¹⁰¹ and the European Court of Human Rights.¹⁰²

⁹⁷ General Comment No. 21: Inhuman treatment of persons deprived of liberty, (Art. 10), Human Rights Committee, 44th session, U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), paragraph 10.

⁹⁸ In this decision the Committee, in addition to just stating the contents of the reincorporation into society program, emphasized that there must be placed on the need to provide measures such as community service to achieve such an end. Concluding Observations to Belgium, 1999, paragraph 16, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/197/34/PDF/G9819734.pdf?OpenElement>

⁹⁹ (253/1987), ICCPR, A/46/40 (8 April 1991) 241 (ICCPR/C/41/D/253/1987)

¹⁰⁰ ICCPR, A/56/40 vol. II (July 16, 2001)

¹⁰¹ E.g., the case of *Montero Aranguren and Tibi vs Ecuador*.

¹⁰² See e.g., Colombian Constitutional Court, Sentences: C-010-00 MP: Alejandro Martínez Caballero, T-1319-01 MP: Rodrigo Uprimny Yepes, C-067-03 MP: Marco Gerardo Monroy Cabra, and C-200-02 MP: Alvaro Tafur Galvis. In these pronouncements the Court establishes that pursuant to the international treaties on human rights ratified by Colombia, we cannot doubt that the case law of the international bodies in charge of interpreting these treaties constitutes a hermeneutic criterion relevant to determining the meaning of constitutional rules on fundamental rights.

On the national level, the reincorporating of convicts into society as an element of the sentence is established in Articles 9, 142 and 143 of the Penitentiary Code,¹⁰² in Article 4 of the Criminal Code,¹⁰² and has been developed in the pronouncements of the Constitutional Court: “The duty or re-educating and reincorporating convicts into society must be understood to be an institutional obligation and [convicts] must be offered all reasonable means to develop their personalities, and hindering this development must be prohibited. The existing overlapping between dignity, humanity in completing a sentence and a person’s autonomy, all relate to the duty [of the system] to reincorporate a convict into society as the final stage of the sentence and makes complete sense.” See E.J., Colombian Constitutional Court, Sentences: T-009 of 1993, M.P. [Magistrado

(63) Based on the abovementioned international provisions, we can infer the obligation of the Party States of the Covenant to provide the necessary means and conditions to assure the reincorporation of the convict into society as an element of the sentence within the national penitentiary and prison system. This should be particularly guaranteed in such areas as education, training and employment, recreational spaces, cultural expression, medical care and family.

2.3.1 Response from the Colombian State regarding the issue of the reincorporation into society as an element of the sentence

(64) The Report from the Colombian State does not include any allusion to public policies aimed at the development of programs whose purpose is to guarantee reincorporation into society as an element of the sentence although paragraph 10 of General Comment 21 states that “the Committee wants to receive detailed information about the operation of the penitentiary system from the State Party.”

2.3.2 Empirical information regarding reincorporation into society

2.3.2.1 Education

(65) From a quantitative point of view, the Colombian prison system does not have enough educational programs. In 2009 only 31 of the 143 national prisons had implemented a specific educational model designed to reform convicts.¹⁰³ Although there are educational programs inside prisons, these do not cover the entire inmate population that could benefit from them. This can be proven in the INPEC Administrative Report of 2008. For example, in the establishments that form part of the Regional Central Office,¹⁰⁴ of the 16,467 inmates, the programs only “assisted 1,636 illiterate inmates; 3,600 inmates were in the elementary program; 3,521 inmates were in high school; 206 interns were taking higher education distance-learning courses; and 643 inmates were scheduled to validate and/or take the State ICFES exam.”¹⁰⁵ At the Western Regional Office, of 11,757 inmates, only 2,070 received formal education and in the Northern Regional Office, only 34% of the inmate population had access to these kinds of services.¹⁰⁶

Ponente = Justice issuing the Opinion of the Court], Eduardo Cifuentes Muñoz, C-565 of 1993 M.P. Hernando Herrera Vergara, C-261 of 1996. M.P. Alejandro Martínez Caballero, C-430 of 1996. M.P. Carlos Gaviria Díaz, C- 144 of 1997 M.P. Alejandro Martínez Caballero, T-153 of 1998 M.P. Eduardo Cifuentes Muñoz, C-592 of 1998 M.P. Fabio Morón Díaz, T-718 of 1999 M.P. José Gregorio Hernández Galindo, C-1112 of 2000. M.P. Carlos Gaviria Díaz, C-806 of 2002 M.P. Clara Inés Vargas Hernández, T-462 of 2009 M.P. Mauricio González Cuervo, T-1291 of 2000, MP. José Gregorio Hernández.

¹⁰³ Catherine Rodríguez, Economist at the Universidad de los Andes, Educación en las Cárceles, La silla Vacía [Education in prisons, the empty seat]. (May 31, 2009). In:<http://www.lasillavacia.com/elblogueo/blogoeconomia/educacion-en-las-c-rceles>

¹⁰⁴ For adequate administration, the INPEC grouped the prisons into zones according to location. Therefore, today there are a total of 5 zones: the Central Regional Office, the Northern Regional Office, the Eastern Regional Office, the Western Regional Office and the Regional Office of Viejo Caldas.

¹⁰⁵ INPEC Administrative Report 2008, in: http://www.inpec.gov.co/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=1350171.PDF

¹⁰⁶ Ibid. There are no exact figures regarding other zones. If it is alleged that educational programs have been implemented in these zones, the Administrative Report does not reflect their efficiency. EASTERN

(66) From a quantitative point of view, different facts show that the educational programs at Colombian detention centers are not adequate. According to the same INPEC officials, one of the main problems “seems to be a lack of teaching staff trained for this job. The situation is so precarious that in some cases the inmates themselves take on the role of teacher.”¹⁰⁷ On the other hand, state oversight organizations have denounced the lack of these programs. According to the Office of the Ombudsman, these only work as mechanisms to reduce the duration of the incarceration sentence. They are not perceived by the majority of the inmates as true learning and training tools. This causes the educational workshops to lack specific objectives and, as such, do not transmit the necessary personal habits and technical skills to guarantee future reincorporation into society.¹⁰⁸

2.3.2.2 *Occupational training and employment*

(67) From a quantitative perspective, the percentage of inmates that participate in occupational training programs or actually have a job is not satisfactory. Regarding occupational training, according to the INPEC 2008 Administrative Report, in the Central Regional Office, out of a total of 16,467 inmates, 12,707 participated in occupational training programs. With respect to occupational employment of persons deprived of liberty --according to this same report-- the percentage of inmates with employment reached only 31.06% in the Western Regional Office. Therefore, the educational and employment programs offered by the Colombian State to the inmate population did not cover any significant number of the inmates; and the most troubling aspect is that this situation tends to worsen. (See Table 1)

REGIONAL OFFICE. There are no exact figures. NORTHEASTERN REGIONAL OFFICE. There are no figures [for] Viejo Caldas.

¹⁰⁷ Catherine Rodríguez, Economist at the Universidad de los Andes, Educación en las Cárceles, La Silla Vacía [Education in prisons, the empty seat]. (May 31, 2009). In: <http://www.lasillavacia.com/elblogueo/blogoeconomia/educacion-en-las-c-rceles>

¹⁰⁸ Office of the Ombudsman. Analysis on current overcrowding in prisons and penitentiaries (2003), paragraph 5. In: http://www.defensoria.org.co/pdf/informes/informe_97.pdf.

Table 1. Participation of the inmate population in reincorporation into society programs

REGION	2007		2008	
	Study	Work	Study	Work
Central	67%	34,70%	29%	23%
Western	51%	31,50%	23%	16%
North	58%	25,00%	29%	21%
Eastern	45%	39,40%	20%	22%
Northeastern	54%	25,20%	28%	25%
Viejo Caldas	56%	42,70%	28%	26%
General Totals	58%	33,60%	27%	22%

Source: INPEC

(68) From a qualitative perspective, the occupational training and employment of inmates does not reflect satisfactory levels. Regarding this subject, the Office of the Comptroller states that there are several weaknesses in these programs such as: “the lack of regional administration to promote them; administrative disorganization; lack of registries and monitoring that prevents relevant decision making in regards to the development of productive projects and schools for occupational training.”¹⁰⁹

(69) The Office of the Comptroller also states that, on one hand, the methodologies designed for the development of these types of projects has not taken into account the knowledge and skills of the inmates, and on the other hand, that the inequality in access to these services to the inmates generates inequality in the treatment provided to this population.

(70) Despite the fact that the Progressive System that was adopted in Colombia requires the authorities to identify the inmates’ profile and needs so that the projects created are adequate for their reincorporation into society.¹¹⁰ In the Colombian system, there is no

¹⁰⁹ Marcela Pérez Ochica and Juan Alejandro Morales Sierra, *La Política Penitenciaria y Carcelaria en Colombia* [Penitentiary Policy and Prisons in Colombia], Office of the Comptroller, (Comptroller Delegated to the Division of Defense, Justice and Security, Office of Sectorial Studies.) *La Política Penitenciaria y Carcelaria en Colombia* [Penitentiary Policy and Prisons in Colombia].

¹¹⁰ Therefore, “during the first phase of the penitentiary treatment, the Council on Evaluation and Treatment (CET) must evaluate and classify the inmate with social psychological and legal criteria, with the goal of indicating the kind of treatment required and issue recommendations regarding the type of establishment where the sentence should be completed. It also seeks to establish the degree of commitment on behalf of the inmate with the process and his willingness to begin treatment.” Marcela Pérez Ochica and Juan Alejandro Morales Sierra. *La Política Penitenciaria y Carcelaria en Colombia* [Penitentiary Policy and Prisons], Office of the Comptroller. Comptroller Delegated to the Division of Defense, Justice and Security, Office of Sectorial Studies.

clarification on this subject. This verifies the information from INPEC, according to which in February 2008, 12,800 inmates had not been classified (33%).¹¹¹ Therefore, according to what INPEC has recognized, “policies, coverage, monitoring mechanisms and control over the programs to reincorporate inmates into society have not been efficient.”¹¹² Due to the abovementioned, it is very difficult to correct existing deficiencies regarding anticipated programs to reincorporate convicts into society in the penitentiary and prison system in the country.

(71) Finally, the Office of the Comptroller states that overcrowding hinders the establishment of these programs because there is not enough space or equipment for their implementation.

2.3.2.3 *Recreation, culture and sports*

(72) The 2007 INPEC Administrative Report state that events such as the Penitentiary and Prison Games; contests such as Stories and Poetry; Painting and Sculpture; and projects such as “Caja Viajera” [Traveling Box] and “Maleta de Películas” [Movie Suitcase] (that foster the reading and analysis of film material), were held. The abovementioned 2008 Administrative Report only mentions the Stories and Poetry and Painting and Sculpture contests, apparently and indication that the other activities never took place. Consequently, it is valid to say that the measures established to promote recreation, culture and sports has had no continuity.

(73) Based on the information presented so far, we may conclude that the Colombian prison and jail system cannot provide the means required to ensure that sentences meet the goal of reform and social rehabilitation, and that constitutes a violation of article 10, paragraph 3 of the ICCPR.

2.4 *Conclusions*

(74) Sufficient factual elements have been presented in this part of the report to evidence the Colombian State’s violation of each of the clauses of Article 10 of the ICCPR. We have shown that Colombian prisoners’ right to integrity is being violated by the crowded conditions (40.7%) in which they are forced to live (Article 10[1]). We have also stated that there is insufficient segregation between convicted and accused inmates, which violates the right of the accused to physical safety and the presumption of innocence (Article 10[2][a]). In this regard, we have demonstrated that there is not sufficient segregation between juvenile detainees and adults and that the juveniles frequently spend long periods of detention with adults, which violates the terms of Article 10(2)(b) and 10(3). Finally, we have established that due to the structural problems of the Colombian prison and jail system, such as the high level of overcrowding and the lack of appropriate

¹¹¹ Ibid

¹¹² INPEC, Information on plans for improvement. Report presented to the Office of the Comptroller (2007). In: <http://www.inpec.gov.co/portal/page/portal/INPEC%20CONTENIDO/INPEC%20INSTITUCION/INPEC%20HOY-PRESUPUESTO-PLANES/INPEC%20HOY PLAN%20MEJORAMIENTO/avanceplanmejoramiento2008.xls>

public policies, the goal of reform and social rehabilitation is not met or is met insufficiently, which is a violation of Article 10(3).

(75) In addition to the above, pursuant to paragraph 6 of General Comment No. 21, the Reports of the State Parties must give detailed information about domestic legislation and administrative matters that deal with the rights set forth under Article 10(1) of the Covenant. Therefore, with reference to the lack of information provided previously about overcrowding and the omission of official information provided with regard to the provision of health services, we must understand that there is a violation of Article 10(1) of the Covenant.

3 ARTICLE THREE: RIGHT TO EQUALITY BETWEEN MEN AND WOMEN

(76) Article 3 of the International Covenant on Civil and Political Rights states that, “The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”¹¹³ Pursuant to General Comment No. 28 of the HRC, in order to comply with this mandate, the State Parties must comply with three conditions: i) men and women must be separated; ii) guards in women’s jails and prisons must be women only, and iii) the State Parties must guarantee access to health and medical treatment that meets the particular needs of both sexes.¹¹⁴

(77) These conditions have been likewise defended by other international organizations. On one hand, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly stated the need for separating men and women deprived of their liberty. In the Conclusive Comments that that Committee made to the State of Bangladesh in 1997, for example, it underlined the importance of the State’s having special prisons for women because otherwise their safety and dignity would be violated.¹¹⁵ On the other hand, the United Nations Economic and Social Council, in its additional clarification of the Minimum Rules for the Treatment of Prisoners (1957), Part I, paragraph 23(1) and 26(1)(b), requires that State Parties guarantee access to health and medical treatment in accordance with the specific needs of the female population. In particular, it states that in order to meet the needs of pregnant women in pre-natal and post-partum stages, States must provide special facilities that provide a healthy and hygienic environment.

¹¹³ International Covenant for Civil and Political Rights

¹¹⁴ ICCPR. General Comment 28 (sixty-eighth session) In: Article 3. A/55/40 vol. I (2000)

¹¹⁵ CEDAW. Conclusive Comments to the State of Bangladesh. In: A/52/38/Rev.1 part II, paragraph 443 (1997)

3.1 Response of the State regarding equality between men and women deprived of their liberty

(78) The Report presented by the Colombian State shows no progress in protection of the equality to which, according to article 3 of the ICCPR, women deprived of their liberty are entitled. The only section in which the subject is mentioned is paragraph 368 of the Report, referring to a document produced by the Office of the Attorney General of the Nation,¹¹⁶ which makes a diagnosis of the situation of women in jails. However, this document cannot be considered effective progress by the Colombian State in satisfying the right to equality of women deprived of their liberty. The document is actually a denunciation of the human rights violations to which women in Colombian jails are subjected.¹¹⁷

3.2 Empirical data on equality between men and women deprived of their liberty

(79) The seriously deficient nature of the State's response is even more evident in analyzing the specific situation experienced by women in Colombian prisons. There are two specific intersecting problems. The first is the absence of certainty with regard to full and effective separation between men and women deprived of their liberty. The second, the absence of medical services that take into account the particular needs of the female population. Both facts, present today in Colombian prisons, violate article 3 of the Covenant.

3.2.1 Lack of material separation between men and women

(80) INPEC's Planning Office notes that there are a total of 4,851 women deprived of their liberty in the prisons and jails managed by this agency.¹¹⁸ Of that total, 1,802, or 37.14 %, are held in penitentiary establishments in which men are also held. The information provided by the Colombian State does not allow us to conclude whether at least for that 37.14%, there are female pavilions that are clearly separated from the male pavilions and whether the women's penitentiary facilities are able to answer satisfactorily to their special needs, for example, gynecology and obstetrics medical care. That is, there is no information about whether these jails contain a group of cells and common areas, such as bathrooms, recreation areas, infirmaries, that are devoted exclusively to the female population.¹¹⁹

¹¹⁶ Office of the Attorney General delegated preventatively for human rights and ethnic affairs, group of penitentiary and jail affairs. Technical and financial support from the United Nations Development Fund for Women, UNIFEM, Women and Prison in Colombia: analysis from a human rights and gender perspective. Taken from: [www.procuraduria.gov.co/.../rendicion200septimo/balancesocial\(28-01-08\).pdf](http://www.procuraduria.gov.co/.../rendicion200septimo/balancesocial(28-01-08).pdf) (2006)

¹¹⁷ The main activity of the Office of the Attorney General is to take preventative action to ensure that public servants correctly exercise the duties with which they are charged by the Constitution and the laws.

¹¹⁸ Instituto Nacional Penitenciario y Carcelario [National Institute of Prisons and Jails] (INPEC), Oficina de Planeación [Planning Office]. Inmate population in prison establishments discriminated against by sex. Taken from: http://www.INPEC.gov.co/portal/page/portal/INPEC_DISENIO, March 20 (2010).

¹¹⁹ Part I, paragraph 8(a) of the Minimum Rules for the Treatment of Prisoners (1957)

(81) It is also important to note that the requirement of Article 3 of the ICCPR, on the separation of men and women deprived of their liberty, does not appear to be met sufficiently in the jails that the Colombian State is now in the process of building. The Office of the Comptroller General of the Republic¹²⁰ has stated that “penitentiary and jail policy lacks a gender perspective [because there still persists] construction of women’s pavilions in facilities designed for men.”¹²¹ These new jails do not provide, for example, spaces for childcare centers or nurseries, nor areas appropriate for gynecological or obstetrical exams.¹²²

(82) The female population problem is aggravated by the level of overcrowding at the women-only prisons. There are now nine national women’s prisons that have space for 2,246 inmates. Taking the total number of women inmates, and subtracting the percentage that are held in mixed prisons, we have today 3,049 women deprived of their liberty who are held in exclusively women’s facilities. This yields an alarming overcrowding figure of 135.75%,¹²³ a figure that significantly exceeds the overall overcrowding rates for the system, proving that the conditions of women are even more difficult than those of men in Colombian penitentiary establishments.

3.2.2 Absence of differentiated medical services

(83) The situation does not improve on the analysis of the second intersecting problem, that is, the absence of medical services that take into account the particular needs of the female prison population. The Office of the Attorney General notes --in the same document cited by the State in paragraph 368 of its Report-- that women prisoners in Colombia do not have complete access to adequate medical services.¹²⁴ As noted previously, the Office of the Attorney General stated that adequate medical services are not offered in Colombia during the pregnancy and postpartum periods and that there are no programs aimed at preventing illnesses that target the female population. This situation is further aggravated by the deficient supply of drinking water and adequate nutrition for this same population.¹²⁵

¹²⁰ The Office of the Comptroller General of the Republic (CGR) is the State’s highest tax authority. As such, its mission is to ensure proper use of public goods and resources and to contribute to the modernization of the State through ongoing improvements in the various public agencies.

¹²¹ Office of the Comptroller General of the Nation, Comptrollership Delegated for the Defense, Justice and Security Sector. State Forum on the unconstitutional state of affairs in Colombian prisons, Sentence T-153 of 1998, prison and jail policy in Colombia. (2010)

¹²² Interview with Alfredo Castillo, Official of the Office of the Public Defender Delegated for Criminal Prison Policy. October 5, 2009

¹²³ Instituto Nacional Penitenciario y Carcelario [National Institute of Prisons and Jails] (INPEC), Oficina de Planeación [Planning Office]. Population in prison establishments discriminated against by sex. Taken from: http://www.INPEC.gov.co/portal/page/portal/INPEC_DISEÑO, March 20 (2010).

¹²⁴ Office of the Attorney General delegated preventatively for human rights and ethnic affairs, group of penitentiary and jail affairs. Technical and financial support from the United Nations Development Fund for Women, UNIFEM

¹²⁵ Regional Delegate for Criminal and Prison Policy and Public Defense for Atlántico, Norte de Santander, Meta, Valle del Cauca, Nariño and Antioquia. The Human Rights of Women Deprived of their Liberty in Colombia. Taken from: http://www.defensoria.org.co/pdf/informes/informe_111.pdf and Office of the Attorney General Delegate for Prevention in the Area of Human Rights and Ethnic Affairs. Group on Prison and Jail Affairs. The Attorney General of the National speaks on the degree of compliance with the right to

3.3 Conclusions

(83) The empirical evidence presented shows a reality that does not adhere to the obligations of the Covenant. In the first place, with regard to the separation of men and women in Colombian penitentiary establishments, it was shown that there is no clear evidence that mixed penitentiaries have, in practice, the material separation required by the Committee. In addition, the percentage of overcrowding in women's prisons triples the percentage of the system as a whole, which is evidence of an alarming situation that aggravates the prison conditions for the female population. Finally, with regard to health and medical treatment available to women, a series of deficiencies and shortages were noted that are unacceptable in light of the Covenant. There is no doubt, therefore, that the abovementioned facts constitute a violation of article three of the ICCPR.

4 ARTICLE SIX: THE RIGHT TO LIFE

(84) Article 6 of the ICCPR protects the right to life. The first clause of that article is particularly relevant for this Shadow Report. It states, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

(85) The Human Rights Committee in General Comment 6 notes that the State Parties must adopt the necessary measures, not only to prevent deaths that may be caused by individuals [criminal acts] but also to prevent the deprivation of life by State officials.¹²⁶ This general obligation, according to the HRC, is violated when health care for prisoners is poor or when the specific obligation to protect and provide security for detainees is violated.

(86) That same General Comment 6 implies that life cannot be interpreted in the restrictive sense only, that is, as a person's mere biological survival. It must also be understood as the right to live with dignity.¹²⁷ In that Comment, the Committee also specified that, in order to have decent living conditions, it is fundamental to be able to count on basic health service. In the case of persons deprived of their liberty, the Committee adds that providing this basic health service is an obligation that is inherent to the State Parties.¹²⁸

(87) The HRC has also declared itself to be against noncompliance with the state's obligation to protect and provide security to detainees. In its General Conclusions to the Dominican Republic in 2001, after the Committee confirmed that there could be a large number of deaths of prisoners in that State's custody, the Committee stated that violent

health of individuals deprived of their liberty. Taken from: <http://www.procuraduria.gov.co/descargas/publicaciones/saludoficial.pdf>. (2004)

¹²⁶ ICCPR. General Comment 6 (sixteenth session) Article 6. A/37/40 Paragraph 1-7, Paragraph 3. (1982).

¹²⁷ ICCPR. General Comment 6 (sixteenth session) Article 6. A/37/40 Paragraph 1-7 paragraph 5 (1982).

¹²⁸ ICCPR. General Comment 6 (sixteenth session) Article 6. A/37/40 Paragraph 1-7 paragraph 5 (1982).

deaths in prisons are the responsibility of State authorities for failing to take the measures needed to prevent them.¹²⁹

4.1 Response of the State on the Right to Life

(88) With regard to the obligation to protect prisoners' dignity of life, there was only one reference in the Report presented by Colombia. Paragraph 339 of the Report highlights the entry into force of Law 1122 of 2007, which brings the prison population into the general public health system.

4.2 Empirical data on the right to life of persons deprived of their liberty in Colombia

(89) In Colombia there has been noncompliance with two of the obligations identified by the Committee in relation to protection of the right to life of prisoners. The first relates to the provision of basic health services and the second to protection of the prisoners' safety. Both are obligations that, in the case of prisoners, fall to the State.

4.2.1 Deficient provision of health care services

(90) There is no doubt that the enactment of Law 1122 of 2007 constitutes progress in protecting the rights of individuals deprived of their liberty. However, it is also important to note that implementation of this law has been singularly deficient. The agencies that provided this service under the previous system now allege that it is no longer their responsibility. Meanwhile, Caprecom, the agency charged with providing that service today, has been unable to do so adequately and universally. The result has been that a large part of the prison population has remained without any type of effective medical care.¹³⁰

(91) In recent statements, the service company Caprecom has noted that it has been unable to provide adequate health services because there are 28,000 prisoners in the Colombian penitentiary system --that is, 35.25% of the prison population-- who have no identification.¹³¹ According to Caprecom, this makes it impossible to individualize the prisoners so that they can be provided with the health services to which they are entitled. The provider company also accuses INPEC of the failures that prevent identification of the individuals deprived of their liberty in Colombia.

(92) The apparent problem in providing health services, whether it is the responsibility of INPEC or of the provider company, violates the obligation that, according to the ICCPR, the Colombian state has to guarantee that the prisoners in its custody have dignity of life. Two additional facts confirm this statement: the first is the large number of

¹²⁹ ICCPR. Conclusive Comments to the Dominican Republic. In: A/56/40 vol. I. Paragraph 8. (2001)

¹³⁰ Interview with Alfredo Castillo, Official of the Office of Public Defense Delegated for Criminal Prison Policy. October 5, 2009

¹³¹ "Crece polémica por presos sin identificar en cárceles colombianas"[Controversy Grows over Unidentified Prisoners in Colombian Jails]. *El Tiempo*, Colombia
http://www.eltiempo.com/colombia/justicia/crece-polemica-por-presos-sin-identificar-en-carceles-colombianas_7627748-1. Last consulted on April 21, 2010.

petitions for guardianship filed by prisoners in recent years to protect their rights to health, and the second, the unjustified delay in provision of these services.

(93) As was evidenced in the section referring to Article 10 of the Covenant (see Table 4), between 2002 and 2008 the number of petitions for guardianship has increased by more than 1500%, which is alarming. With regard to the unjustified delay in the provision of services, it is only necessary to reexamine the cases set forth previously, which show that in entire jails no health services have been provided for periods of more than four months.¹³²

4.2.2 Deficient protection of prisoners

(94) The second obligation with which the Colombian state fails to comply in relation to Article 6 of the ICCPR refers to the lack of protection of prisoners. The article's obligation includes two mandates. The first, that the State must foresee and monitor any danger that a detained person might face from the very moment in which the material deprivation of liberty occurs until the moment when he or she is returned to society; and the second, that the State must abstain from any conduct that might endanger or jeopardize the life of the prisoners.¹³³

(96) Judicial information available as well as reports published in the Colombian press both confirm that the first mandate is not met. However, with regard to compliance or not with the second, there is no information. With regard to the first mandate, there is overwhelming judicial information that shows the violation. There are four sentences handed down in the last 12 years by the highest court of Colombia's administrative court system that convict the State of being responsible for the death of individuals deprived of their liberty.¹³⁴ The media have also reported cases of violent deaths within the penitentiary establishments. To mention just a few examples, there are the cases of John Jairo García Conde, who died in 1995, the day after he entered the Cárcel Modelo de Bucaramanga jail¹³⁵; Víctor Hernández, who died on February 28, 1997¹³⁶; Javier Mauricio Montoya, murdered on April 7, 2009¹³⁷; and Daney Mora Aguirre, who died on February 22, 2010.¹³⁸

¹³² Polémica por precarias condiciones de salubridad en cárceles del Meta [Controversy on precarious sanitary conditions in Meta's prisons]. DIARIO EL TIEMPO, Sección Nación. Septiembre de 2009. Taken from: http://www.eltiempo.com/colombia/llano/polemica-por-precarias-condiciones-de-salubridad-en-carceles-del-meta_6040649-1

¹³³ ICCPR. General Comment 6 (sixteenth session) Article 6. A/37/40 Paragraph 1-7

¹³⁴ Ruling of June 24, 1998, Council of State. Ruling of May 24, 2001, Council of State, Filing number: 19001-23-31-000-1993-2819-01(12819). Ruling of November 11, 2002, Council of State, Filing number: 05001-23-24-000-1993-0288-01). Ruling of May 3, 2007, Council of State, Filing number: 25000-23-26-000-1997-05080-01(21511)

¹³⁵ "Multan al Inpec por muerte de un recluso," [INPEC Fined for Inmate Death] *El Espectador*, August 21, 2008.

¹³⁶ "Destruída Cárcel De Valledupar", [Valledupar Jail Destroyed] *El Tiempo*, February 28, 1997.

¹³⁷ RCN Radio. "Por desinformación, Inpec trata de ponerle brazalete a interno muerto en Barranquilla." [Because of misinformation, INPEC tries to put a security bracelet on a dead inmate in Barranquilla], No date. At: <http://www.rcnradio.com/noticias/locales/17-03-10/por-desinformaci-n-inpec-trata-de-ponerle-brazalete-interno-muerto-en-barr>.

¹³⁸ *SEMANA* magazine. "Un muerto y 19 heridos deja enfrentamiento en cárcel de Cali" [Cali Jail Clash Leaves One Dead, 19 Injured]. February 22, 2010

All these deaths have been the result of riots --which occur very frequently in Colombian penitentiary establishments. This situation is evidence that State authorities are incapable of guaranteeing security within the jails or of protecting the prisoners' right to life.

4.3 Conclusions

(96) The empirical evidence set forth in the foregoing section leads to the conclusion that the Colombian State is failing to comply with the first clause of Article 6 of the ICCPR. The violation of this Article occurs, first, because the Colombian State has not managed to provide its prisoners with adequate health services and, therefore, has a negative impact on their right to a life of dignity, and second, because there are documented cases and convictions by national courts against the Colombian State that prove its inefficiency in protecting the lives and the safety of its prisoners.

5 ARTICLE SEVEN. GUARANTEE AGAINST SUBJECTION TO TORTURE, AND CRUEL, INHUMAN OR DEGRADING TREATMENT

(97) Article 7 of the ICCPR guarantees that individuals will not be subjected to torture or cruel, inhuman or degrading treatment. The article affirms that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."¹³⁹

(98) The definition of torture that has been accepted internationally, although it comes from an international instrument that is not binding on the HRC, is the one that appears in Article 1 of the Convention Against Torture.¹⁴⁰ And cruel, inhuman or degrading treatment refers to "...all forms of imposition of intense suffering that cannot be classified as torture for lack of one of its essential elements."¹⁴¹ Likewise, the HRC has also provided elements to characterize cruel, inhuman and degrading treatment, holding that:

(99) "What constitutes inhuman or degrading treatment falling within the meaning of Article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim. Furthermore, the level or severity of the particular punishment or treatment involved appears to be an element in determining whether the treatment rises to the level of actions prohibited by Article 7."¹⁴² This definition is particularly important in analyzing the case of persons deprived of their liberty in Colombia.

¹³⁹ ICCPR. Article 7

¹⁴⁰ "Article 1: "For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

¹⁴¹ M. Nowak, U.N. Covenant on Civil and Political Rights: ICCPR Commentary, 2nd edition, N.P. Engel, Kehl, 2005. Page 163

¹⁴² ICCPR. Vuolanne v. Finland (265/87)

(100) The HRC has expressed itself with regard to this article in General Comments 7 and 20, the latter being the current doctrine. In this General Comment, the Committee raises six elements that are essential for the case under study in this shadow report. The first states that the purpose of the prohibition against torture or cruel or inhuman treatment is to protect the dignity and the physical and mental integrity of the individual.¹⁴³ The second is that the prohibition in Article 7 is absolute, that is, no limitation may be validly imposed by the State, even under extraordinary circumstances or by order of a superior officer or public authority.¹⁴⁴ The third is that the article imposes a positive obligation on all State Parties to take legislative and other measures to guarantee the dignity and physical and mental integrity of the individual.¹⁴⁵ In the fourth place, the Committee has established that the difference between torture and cruel and inhuman treatment is in the severity of the treatment and the purpose pursued by the perpetrators.¹⁴⁶ In the fifth place, the Committee has stated that the obligations referring to torture and ill treatment are indivisible, interdependent and interrelated.¹⁴⁷ Finally, the Committee has emphasized that the State Parties have an obligation to compile information so that compliance or noncompliance with Article 7 in prisons can be determined.¹⁴⁸

(101) The HRC has also established a direct relationship between Article 10 and Article 7 of the Covenant in the case of persons deprived of their liberty. In the words of the Committee, “treatment that violates Article 7 will probably be a violation of Article 10 if the victim is a detainee,”¹⁴⁹ because the Committee has understood that these are complementary obligations.¹⁵⁰ Thus, in the case of persons deprived of their liberty, a violation of Article 7 will lead to a violation of Article 10 because the prohibition against ill treatment¹⁵¹ will imply a negative impact on the dignity and conditions of detention of a prisoner. This connection will be of vital importance since many of the events that are narrated in the empirical part of this section of the shadow report could have been presented as violations of Article 10 but, because of their severity, can also be classified as violations of Article 7.

(102) The Committee has commonly classified as cruel and inhuman treatment cases of individuals deprived of their liberty being subjected to prolonged isolation¹⁵²; being deprived of communication¹⁵³; overcrowding¹⁵⁴; and the deficient provision of health

¹⁴³ ICCPR. General Comment No. 20. In: HRI/GEN/1/Rev.7 at 173 (1992)

¹⁴⁴ ICCPR. General Comment No. 20. In: HRI/GEN/1/Rev.7 at 173 (1992)

¹⁴⁵ ICCPR. General Comment No. 20. In: HRI/GEN/1/Rev.7 at 173 (1992)

¹⁴⁶ ICCPR. General Comment No. 20. In: HRI/GEN/1/Rev.7 at 173 (1992)

¹⁴⁷ ICCPR. General Comment No. 20. In: HRI/GEN/1/Rev.7 at 173 (1992)

¹⁴⁸ Conclusive Comments, Czech Republic and General Comment 21

¹⁴⁹ Griffin v. Spain (493/92)CCPR/C/53/D/493/1992

¹⁵⁰ ICCPR. General Comment No. 21. In: HRI/GEN/1/Rev.7 at 176 (1992)

¹⁵¹ “Ill treatment” should be understood to mean cruel, inhuman and degrading punishment or treatment.

¹⁵² On this subject, review: ICCPR. Kang v. Republic of Korea, Communication No. 878/1999

¹⁵³ On this subject, review: ICCPR. Víctor Alfredo Polay Campos, author’s husband v. Peru, Communication No 577/1994, U.N. Doc. CCPR (9 January 1998)

¹⁵⁴ Shaw v. Jamaica, Communication No. 704/1996, U.N. Doc. ICCPR/C/62/D/704/1996 (4 June 1998). Griffin v. Spain (493/92) ICCPR/C/53/D/493/1992. Concluding Observations of the Human Rights Committee, Paraguay, U.N. Doc. ICCPR/C/PRY/CO/2 (2006)

services, together with health conditions that are cause for concern.¹⁵⁵ The latter two are relevant to the case of Colombia.

5.1 Response of the State on the guarantee against subjection to torture or cruel, inhuman or degrading treatment

(103) With regard to the two latter problems identified by the Committee, that is, overcrowding and the deficient provision of health services, added to poor sanitary conditions, there are specific references in the Report presented by the State of Colombia. On one hand, the Report recognizes that the overcrowding in which individuals deprived of their liberty in Colombia is a serious problem, and it lists the measures it has identified to confront that problem. As was noted in the analysis of article 10, paragraphs 350 through 352 of the Report set forth the prison refurbishment and construction plan aimed at creating 3,287 spaces through the redesign of existing prisons and the creation of 21,600 new spaces through the building of 10 new penitentiary and prison establishments. On the other hand, in paragraph 342 of the Report, the Colombian State acknowledges the deficiencies in the provision of health services and the violation of this right with regard to some prisoners. However, the State also notes, in paragraph 339 of the Report, progress in the laws in this regard. In this section, the States notes that law 1152 of 2007, which brings prisoners into the general public health system, went into effect. This progress was studied in the areas of that document that analyze violations and Articles 10 and 6 of the ICCPR.

5.2 Empirical data on the guarantee against subjection to torture or cruel, inhuman or degrading treatment

(104) The information set forth in the Report of the State in some areas is not true and in others presents obsolete data that occlude the serious situation of prisoners in Colombia. First of all, the 10 new penitentiary and prison establishments did not begin functioning in 2007, as the Colombian State declared. Only one of those penitentiaries has been completed to date. The national government plans to complete the rest of those prisons in the next few months.¹⁵⁶ Second, the overcrowding figure presented by the government as of December 2007 was 21.0%, which was not the most up-to-date figure at the date of delivery of the Report. According to state figures, overcrowding was 30.7% in October 2008 and the current overcrowding index in Colombia is 41.7%.¹⁵⁷ In other words, the outdated information that the Colombian State presented prevented the Committee from seeing the serious situation of overcrowding in which individuals deprived of their liberty in Colombia are living. Third, with regard to the deficient health care services, the

¹⁵⁵ In this regard, see: ICCPR. Cases. Simpson v. Jamaica (695/1996), ICCPR, A/57/40 vol. II (31 October 2001) 67 (ICCPR/C/73/D/695/1996) at 2.1, 2.5-2.7, 3.2, 4.6, 7.2, 8 and 9. Vasilakis v. Uruguay (80/1980) (R.20/80), ICCPR, A/38/40 (31 March 1983) 173 en. 2.6, 2.7, 9.3, 10.4 and 11. Shaw v. Jamaica (704/1996), ICCPR, A/53/40 vol. II (April 2, 1998) 164 (ICCPR/C/62/D/704/1996) in 7.1 and 7.2.

¹⁵⁶ Comptrollership Delegated for the Defense, Justice and Security Sector. Prison and jail policy in Colombia. And Ministry of the Interior and Justice. Prison and Jail Policy: from imprisonment to effective reincorporation into society. At the Forum held at the University of the Andes, Unconstitutional state of affairs in Colombian Prisons. Sentence T-153/98. March 12, 2010.

¹⁵⁷ Ministry of the Interior and Justice. Prison and Jail Policy: from imprisonment to effective reincorporation into society. At the Forum held at the University of the Andes, Unconstitutional state of affairs in Colombian Prisons. Sentence T-153/98. March 12, 2010

government mentions a law that has not yet been completely implemented and when its implementation has been attempted, serious problems have arisen because of the lack of identification and individualization of prisoners in Colombia.¹⁵⁸

(105) The true situation of prisoners in Colombia, which is omitted from the State Report, violates Article 7. It must also be noted that the information that the national government has about the penitentiary system in its charge is very meager, fragmented and unclear and is not systematized. The HRC, in 1997, had already expressed its concern about the insufficient information that the national Government of Colombia had about the prison situation of the country. In the words of the Committee: “The report submitted by the State party lacks sufficient information on the practical situation of enjoyment of human rights by the population and on implementation of the provisions of the Covenant and the relevant national legislation.”¹⁵⁹

5.2.1 Overcrowding

(106) In Colombia, the penitentiary system has very high, chronic overcrowding. This phenomenon, already described above, is in itself a violation of the rights of the prisoners. This situation renders impossible peaceful coexistence among prisoners and requires them to bear with living conditions that violate their dignity. The conditions that must be borne by prisoners in penitentiary establishments with overcrowding indices on the order of 40%, on average, can be illustrated with the words of the Judge issuing the Opinion of the Court in sentence T-153 of 1998 -a sentence that showed the systematic and alarming violation of fundamental rights in the jails of Colombia-. Former Justice-Magistrate Eduardo Cifuentes stated recently that, “during judicial inspections carried out of many jails in 1998, we had to suspend those activities during nighttime hours as it was impossible to walk without stepping on the heads of prisoners who were lying on the floor.”¹⁶⁰ At that time, the overcrowding index was 40%, a slightly lower index than the one today in the Colombian penitentiary system.

(107) Reports by the agencies that monitor and defend basic rights about the conditions that prisoners have to bear and in which they have to live, in addition to and aggravated by the abovementioned overcrowding in the Colombian prison system, have been constant. The Office of the Comptroller General of the Republic of Colombia has stated that, in penitentiaries such as Picota or Jamundi, for example, “sunlight does not shine directly on the prisoners for even a limited time.”¹⁶¹ It must be borne in mind that this fact has been recognized by the HRC as a violation of prisoners’ dignity.¹⁶²

¹⁵⁸ For further information review Article 10, section 2.1.2 and section 2.1.2.2, paragraph (35), (36), (37), (38) and Article 6, section 4.2.1, paragraph (91) y (92).

¹⁵⁹ Conclusive Comments of the Human Rights Committee, Colombia. United Nations Doc. ICCPR/C/79/Add.76 (1997). Paragraph 26

¹⁶⁰ Eduardo Cifuentes Muñoz, former Justice-Magistrate of the Constitutional Court and Judge Issuing the Opinion of the Court in sentence T-153/98, and Miguel Ceballos, Deputy Justice Minister. *Supra Forum*. footnote 10

¹⁶¹ Office of the Comptroller General of the Republic. *Supra Forum* (2010)

¹⁶² ICCPR. Cases. *Simpson v. Jamaica* (695/1996), ICCPR, A/57/40 vol. II (31 October 2001) 67 (ICCPR/C/73/D/695/1996) at 2.1, 2.5-2.7, 3.2, 4.6, 7.2, 8 and 9. *Vasilakis v. Uruguay* (80/1980) (R.20/80),

(108) The problem of overcrowding in Colombian jails has also been reported by international institutions and foreign governments. The Office of the High Commissioner of the United Nations for Human Rights and the State Department of the United States have warned that Colombian prisoners suffer ill treatment by prison guards, the result of overcrowding and the excessive use of force. Although they have received specific reports of ill treatment of prisoners in the Valledupar jail,¹⁶³ these entities note that the problem appears to intersect the entire Colombian penitentiary system.¹⁶⁴ In fact, the conditions in which prisoners in Colombia live were taken into consideration recently by the European Human Rights Tribunal to deny extradition of a person who had been requested by the Colombian authorities to serve a prison sentence imposed by country's courts. According to the European Tribunal, the prisoner ran a high risk of receiving ill treatment during his detention because of poor conditions and abuse by prison guards.¹⁶⁵

5.2.2 Deficient provision of health care services/sanitary conditions

(109) With regard to the problem of deficient provision of health services and the sanitary conditions of the prisons, that the Committee has also recognized in specific situations can be considered ill treatment, there is likewise empirical information that is cause for concern. As has already been reviewed in the section of this document referring to Article six, the company that provides health care services is Caprecom. This company has not been able to achieve complete coverage of the system because, according to it, INPEC has no identification of 28,000 prisoners, or 35.25% of the inmates.¹⁶⁶ In this regard the largest-circulation newspaper in the country has said, "Government sources themselves...also stated that 'there are 28,000 yet to be identified, a fact they consider to be a State problem and a serious one when it comes to providing them with health services: an identification card with complete information is required for such access and that had not been accomplished.'"¹⁶⁷ This fact is truly alarming bearing in mind that the Colombian State's lack of control over the penitentiary system is so widespread that it cannot even identify a significant percentage of the prisoners in its jails.

(110) Added to this problem is that of the quality of health care services, when they can be provided¹⁶⁸. According to information provided to the Office of the Comptroller General of the Republic by some prisoners' representatives, the provision of health care

ICCPR, A/38/40 (31 March 1983) 173 at 2.6, 2.7, 9.3, 10.4 and 11. Shaw v. Jamaica (704/1996), ICCPR, A/53/40 vol. II (2 April 1998) 164 (ICCPR/C/62/D/704/1996) at 7.1 and 7.2

¹⁶³ Annual Report of the High Commissioner for Human Rights in Colombia, at A/HRC/10/32

¹⁶⁴ 2008 Country Reports on Human Rights Practices - Colombia. Department of State. United States of America

¹⁶⁵ Case of Klein v. Russia. Application No. 24268/08. European Court of Human Rights. First Section

¹⁶⁶ "INPEC does not know the identity of 28,000 prisoners in its custody." Monday, April 19, 2010. http://www.eltiempo.com/colombia/justicia/el-inpec-desconoce-la-identidad-de-28000-%20presos-bajo-su-custodia_7621228-1. Last consulted on April 22, 2010.

¹⁶⁷ "Crece polémica por presos sin identificar en cárceles colombianas"[Controversy Grows over Unidentified Prisoners in Colombian Jails]. *El Tiempo*, Colombia

http://www.eltiempo.com/colombia/justicia/crece-polemica-por-presos-sin-identificar-en-carceles-colombianas_7627748-1. Last consulted on April 21, 2010.

¹⁶⁸ For further information review Article 10 section 2.1.2 paragraph (38).

services is deficient because of a lack of staff and delays in appointments.¹⁶⁹ Likewise, and as was noted with regard to Article 3 of the Covenant,¹⁷⁰ nor does the female population have differentiated care based on the fact that its medical needs are different in some areas.

(111) With regard to the sanitary conditions in Colombian penitentiaries, there is also information that is cause for concern. At the national level, the Office of the Comptroller General of the Republic has warned of the deficient sanitary conditions in the prisons stating that their infrastructure is obsolete¹⁷¹ and cannot meet the current needs of the system¹⁷²; for example, there are serious problems with the water supply¹⁷³ and with the lack of hygiene in common areas.¹⁷⁴

(112) Finally, the prison system's deficient infrastructure, which has been reported at the national level, brings with it problems in controlling infectious-contagious diseases and plagues. In 2004, the Office of the Attorney General of the Nation denounced this situation saying that, given the inadequate sanitary conditions, the prisons have become breeding grounds for "the development of infectious-contagious diseases such as tuberculosis, leprosy, measles, Hepatitis A, Hepatitis B, HIV, syphilis, gonorrhea and other sexually transmitted diseases, as well as infestations of plague vectors (fleas, lice, mosquitoes and rodents, among others)."¹⁷⁵

5.3 Conclusions

(113) In conclusion, from the analysis of the situation in Colombian' jails, we can affirm that i) the problem of overcrowding is critical; ii) health care services are deficient; iii) sanitary and disease-control problems are evident and serious; iv) there are infrastructure problems that give rise to problems of access to light and basic utilities. Taken as a whole, all of these deficiencies in the prison system must be characterized as cruel, inhuman and degrading treatment that the Colombian State imposes on prisoners in its custody. The treatment received by prisoners in Colombian jails, in the conditions that have been evidenced, cause them intense and severe physical and mental suffering that is a violation of their human dignity and such rights as the right to life, to health and to physical and psychological integrity. As a result, the HRC must recognize that the Colombian State is violating Article 7 of the ICCPR.

¹⁶⁹ Office of the Comptroller General of the Republic. Office of Sectorial Studies. "Prison and jail policy in Colombia" 2010

¹⁷⁰ For further information review Article 10, section 2.1.2.2.1, paragraph (45) and Article 3, section 3.2.2, paragraph (83).

¹⁷¹ Office of the Comptroller General of the Republic. *Supra Forum* (2010)

¹⁷² For further information review Article 10, section 2.1.2.2, paragraph (34).

¹⁷³ Office of the Comptroller Report. Delegate for Criminal and Penitentiary Policy and Regional Office of the Public Defender for Atlántico, Norte de Santander, Meta, Valle del Cauca, Nariño and Antioquia. *The Human Rights of Women Deprived of their Liberty in Colombia*. In: http://www.defensoria.org.co/pdf/informes/informe_111.pdf

¹⁷⁴ Office of the Comptroller General of the Republic. *Supra Forum* (2010)

¹⁷⁵ Office of the Attorney General Delegate for Prevention in Human Rights Matters and Ethnic Affairs. Group for Prison and Jail Matters. *The Attorney General of the Nation warns about the degree of health rights of individuals deprived of their liberty, 2004*. In: <http://www.procuraduria.gov.co/descargas/publicaciones/saludoficial.pdf>

5.4 Specific and general intent to violate the rights set forth in the ICCPR

(114) The HRC has recognized the need for specific intent in cases in which individual claims against a State are reviewed pursuant to Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.¹⁷⁶ This requirement, however, does not apply to its Conclusive Comments to the State Parties, which is the subject of discussion in this document. The provisions of Article 2 of the Optional Protocol, from which that requirement arises, are not applicable on this occasion.

(115) Now then, if it should be necessary, there is empirical evidence to show that the Colombian State is violating the Covenant intentionally. There is such a serious omission by the State of Colombia with regard to the rights of prisoners that it is evident that it is the result of a decision not to act, that is, not to remedy the conditions that give rise to violations of the ICCPR, which in fact qualifies as intentional in terms of the Optional Protocol.

(116) As was recognized in Colombia 12 years ago --through a ruling by the highest court, the Constitutional Court--¹⁷⁷ the conditions in which prisoners lived violated their rights systematically and massively, as has already been described herein, and that these conditions violated their right to dignity and has caused the prisoners intense suffering. Furthermore, numerous statements have been published over the years by supervisory entities of the Colombian State and international institutions warning of the terrible conditions in which the prison population lives.¹⁷⁸ The State, therefore, despite being fully advised that the conditions of detention of its prisoners caused them extreme suffering and violated their human rights, did not act effectively to remedy those conditions. The omission in this case must be understood as de facto authorization for this cruel treatment to continue in the Colombian penitentiary system. Therefore, in the case of Colombia there is a clear intention to violate the dignity of detained individuals.

¹⁷⁶ Michael Jensen v. Australia, Communication No. 762/1997, U. N. Doc. ICCPR/C/71/D/726/1997 (2001).
Womah Mukong v. Cameroon, Communication No. 458/1991, U.N. Doc. ICCPR/C/51/D/458/1991 (1994)

¹⁷⁷ See sentence T 153 of 1998, handed down by the Constitutional Court of Colombia

¹⁷⁸ For example: 1. Office of the Attorney General Delegate for Prevention in Human Rights Matters and Ethnic Affairs. Group for Prison and Jail Matters. The Attorney General of the Nation warns about the degree of health rights of individuals deprived of their liberty, 2004. In:

<http://www.procuraduria.gov.co/descargas/publicaciones/saludoficial.pdf> 2. Office of the Comptroller Report. Regional Delegate for Criminal and Prison Policy and Public Defense for Atlántico, Norte de Santander, Meta, Valle del Cauca, Nariño and Antioquia. The Human Rights of Women Deprived of their Liberty in Colombia. Taken from:

http://www.defensoria.org.co/pdf/informes/informe_111.pdf; and Office of the Attorney General Delegate for Prevention in the Area of Human Rights and Ethnic Affairs. Group on Prison and Jail Affairs. The Attorney General of the National speaks on the degree of compliance with the right to health of individuals deprived of their liberty. Taken from:

<http://www.procuraduria.gov.co/descargas/publicaciones/saludoficial.pdf>. (2004) 3. Office in Colombia of the United Nations High Commissioner for Human Rights, Detention Centers in Colombia: an unconstitutional state of affairs and one of flagrant violation of human rights. International Human Rights and Prison Situation Mission, Bogota, D.C., Colombia (October 31, 2001), in: http://www.unifr.ch/ddp1/derechopenal/temas/t_20080528_20.pdf 4. Adriana Gaviria, "Salud: una catástrofe en Bellavista" [Health: A Catastrophe in Bellavista"], *El Mundo*, (January 23, 2005). In: Office of the Attorney General Delegate for Criminal Penitentiary Policy, Office of the Public Defender. Report on the provision of health services in prisons and jails in Colombia (2005)

6 ARTICLE 9. RIGHT TO LIBERTY AND PERSONAL SAFETY

(117) Article 9 has five paragraphs that collectively refer to the right to liberty and personal safety. For the purposes of this Shadow Report, it is pertinent to analyze only paragraph three of this article. This paragraph states: “9.3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”

(118) In General Comment No. 8, the HRC states that this point is derived from two obligations. First, “any person arrested or detained has to be brought “promptly” before a judge or other officer authorized by law to exercise judicial powers.”¹⁷⁹ In this context, “promptly is understood as “delays must not exceed a few days.”¹⁸⁰ Anything contrary to this, according to the HRC, would be violating the presumption of innocence.¹⁸¹ Secondly, preventative detention should be the exception, not the rule. In the Committee’s own words, preventative detention should be used “for reasons of public security, it must be controlled by these same provisions i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (paragraph 1); information of the reasons must be given (paragraph 2) and court oversight of the detention must be available (paragraph 4) as well as compensation in the case of a breach (paragraph 5).”¹⁸²

(119) The HRC has identified two specific situations that violate these two obligations that are derived from the third paragraph of Article 9. One violation is an unreasonably extensive period of time from the moment the person is arrested to the moment that person is convicted or acquitted. There is no uniform standard to establish when said period of time is unreasonably long, but reviewing case history, one can state that the HRC considers that more than six months [of detention] is excessive.¹⁸³ The second violation is that of the State Party establishing the preventative detention center as a general rule.¹⁸⁴

¹⁷⁹ ICCPR General Comment 8 (Sixteenth session, 1982): Article 9: Right to Liberty and Security of Persons, A/37/40 95, paragraphs 1-4. (1982)

¹⁸⁰ ICCPR General Comment 8 (Sixteenth session, 1982): Article 9: Right to Liberty and Security of Persons, A/37/40 95, paragraph 4. (1982)

¹⁸¹ ICCPR, Belgium A/54/40 vol. I 26 at paragraph 84. (1999); Argentina, ICCPR, A/50/40 vol. I 35 at paragraph 163 (1995); Ecuador, ICCPR, A/53/40 vol. I 43, paragraphs 286 and 287. (1998)

¹⁸² ICCPR General Comment 8 Article 9: Right to Liberty and Security of Persons, A/37/40 (1982) 95, paragraph. 4, (Sixteenth session, 1982).

¹⁸³ In regards to what constitutes a reasonable time, there is no concrete measure or fixed time that defines this. An extension of six months has been seen negatively by the Committees. In the Concluding Observations made to Slovenia, the ICCPR concluded that the period of detention prior to trial, which could be extended to up to six months under certain circumstances, does not comply with the requirements of Articles 9 and 14 of the Covenant. ICCPR, Slovenia A/49/40 vol. I 56 at paragraphs 343 and 350. (1994)

¹⁸⁴ The Committee has stated its nonconformity with countries that use preventative detention as a general rule. See: ICCPR, Ukraine A/57/40 vol. I, 32 at paragraph. 74(17) (2002); Italy, ICCPR, A/53/40 vol. I 50 at paragraphs. 342, 343 and 345. (1998).

6.1 Response from the State on the right to liberty and personal safety

(120) In its Report, the Colombian State does not refer to the average period of time that elapses between the arrest and trial of detained persons, or the regulation and application of preventative detention in the Colombian judicial system.

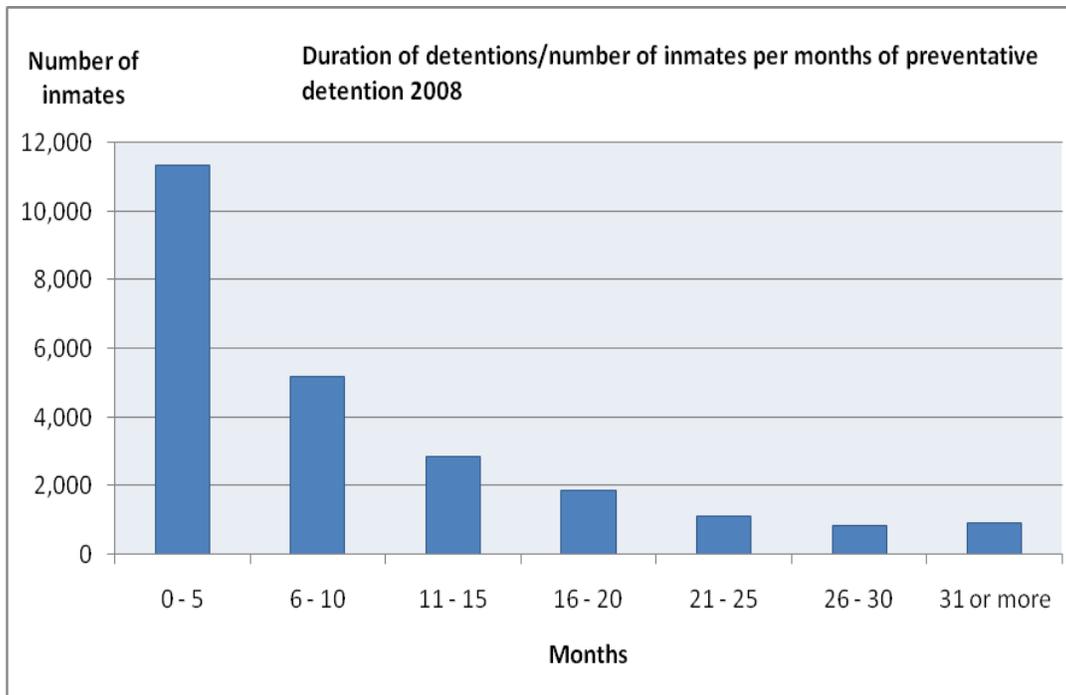
6.2 Empirical data on the right to liberty and personal safety

(121) In regards to the two situations identified by the HRC in relation to paragraph three of Article 9, that is, the period of time between arrest and prosecution and preventative detention, there is relevant empirical data for this Shadow Report.

6.2.1 Reasonable period of time between arrest and sentencing or acquittal

(122) Regarding the time that the individuals are detained between the moment of arrest and sentencing, there is some worrisome information. According to the most current figures from INPEC on this matter, we note that of the 24,054 suspects detained in prisons at the end of 2008, only 11,325 have spent less than six months in prison, while 12,729, that is, 53% of the suspect population has spent more than six months in prison waiting their sentencing and 31% of the accused persons have spent more than one year awaiting sentencing (See Chart 6).

Chart 6.



Source: National Penitentiary and Prison Institute, INPEC

(123) In its Concluding Observations to Slovenia, the HRC said that the periods of detention prior to trial, which were six months for certain inmates, violated Article 9 of the ICCPR. In the case of Colombia this is clear, therefore, that periods of detention lasting

more than one year, which an average of 31% of the population has to wait, result in violations of this same article.

6.2.2 Preventative detention as a general rule

(124) The available figures also show that in Colombia preventative detention operates as a general rule and not as an exception. The cause of this situation is directly related to the laws that have been enacted over the last few years, that is, on criminal policy in the Colombian State. In 2007, Law 1142 of 2007 went into effect; in its Article 28, the minimum standards for the imposition of preventative detention were reduced. As a sufficient requirement for the imposition of this measure, said article defines the severity and method of carrying out the punishable behavior, which unleashed the preventative detention measures.¹⁸⁵ To summarize, Law 890 of 2004 increased the minimum and maximum [detentions] for all of the sentences, which in turn increased the number of crimes for which preventative detention may be imposed as a means of protection.

(125) Some concrete figures illustrate the increase in the inmate population, particularly that of accused persons which lead to new legislative measures. According to information from the Office of the Attorney General, the percentage of times in which preventative detention was imposed, with respect to the total number of criminal proceedings, rose from 4.74% to 38.65% in a lapse of just two months (June – July 2007), a period subsequent to the issuance of the abovementioned rule. INPEC statistics show an increase of 23.07% in the number of accused persons between 2007 and 2009, thus reflecting the increase in accused persons who were being held in preventative detention.¹⁸⁶

6.3 Conclusions

(126) To conclude the analysis of this article, we must state that in Colombia the period of time between arrest and trial date, i.e., the period [of preventative detention] is double that which the Committee on other occasions has considered a violation of the obligation to process criminal cases in a reasonable period of time. Therefore, 51% of the inmate population in Colombia has to wait up to six months from the time of arrest to the time of sentencing --a period of time that the Committee considers a violation to Article 9 of the Covenant. In addition, two rule changes in the Colombian judicial system have converted preventative detention into a rule. Given the previous information, one can say that the Colombian State lacks compliance to Article 9 of the Covenant.

¹⁸⁵ Center for Studies on Justice in the Americas – CEJA. Prisión Preventiva y Reforma Procesal en América Latina. Evaluación y Perspectiva [Preventative Detention and Procedural Reform in Latin America. Evaluation and Perspective., 2008.

¹⁸⁶ M. Hartmann: “La Detención Preventiva y la Reforma Procesal en Colombia” [Preventative Detention and Procedural Reform in Colombia], in “Prisión Preventiva y Reforma Procesal en América Latina, Evaluación y Perspectivas” [Preventative Detention and Procedural Reform in Latin America, Evaluation and Perspectives] 2009.

7 ARTICLE 14: RIGHT TO PRESUMPTION OF INNOCENCE

(127) The purpose of Article 14 of the ICCPR is to monitor the adequate administration of justice. As far as this Shadow Report is concerned, the second paragraph of this article establishes that: “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

(128) In General Comment No. 32 which substitutes No. 13, the HRC states that this not only deals with protection as an abstract of the presumption of innocence, rather as a real guarantee not to be treated as a convicted person, until there is a judicial sentencing.¹⁸⁷ Regarding General Comment No. 21, the Committee has been emphatic in stating that if a penitentiary system does not separate convicted and accused inmates it is violating the principle of the presumption of innocence. According to the Committee [Article 10, paragraph 2]:

“Accused inmates shall be segregated from convicted inmates, save in exceptional circumstances. Such segregation is required in order to emphasize their status as persons who have not been convicted and who at the same time enjoy the right to be presumed innocent as stated in Article 14, paragraph 2 of the Covenant.”^{188,}

(129) Furthermore, the HRC has pointed out that this article has been violated when preventative detention is used indiscriminately and when it lasts for more than six months.¹⁸⁹

(130) In the same General Comment No. 21, the HRC creates a special obligation for State Parties related to the abovementioned separation, “States parties should indicate how the separation of accused persons from convicted persons is effected and explain how the treatment of accused persons differs from that of convicted persons.”¹⁹⁰ This obligation is particularly relevant in the case of Colombia.

7.1 *Response from the State on the right to the presumption of innocence*

(131) In the Report presented by the Colombian State, in relation to Article 14, emphasis is made on the establishment the Accusatory Criminal System in the country as a model that guarantees, in the best way possible, the right to due process and the principles

¹⁸⁷ ICCPR. General Comment. No. 32. (sesión 19). Article 14. (2007. Paragraph 30.

¹⁸⁸ ICCPR. General Comment No 21. (Session 44). Treatment of persons deprived of liberty. Paragraph 9.

¹⁸⁹ This type of reasoning can be seen in: ICCPR Concluding Observations to Luxembourg. In: A/48/40 vol. I (1993) 30 at paragraphs 133, 142 and 144. ICCPR. Concluding Observations to Uruguay. In: A/48/40 vol. I (1993) 102 at paragraph 504, ICCPR. Concluding Observations to Cyprus, In: A/49/40 vol. I (1994) 53 at paragraph 327, ICCPR. Concluding Observations to Argentina. In: A/50/40 vol. I (1995) 35 at paragraphs 157 and 163, ICCPR. Concluding Observations to Peru. En: A/51/40 vol. I (1996) 48 at paragraphs 357 and 359, ICCPR. Concluding Observations to France. In: A/52/40 vol. I (1997) 62 at paragraph 404, ICCPR. Concluding Observations to Uruguay. In: A/53/40 vol. I (1998) 38 at paragraph 242, ICCPR. Concluding Observations to Ecuador. In: A/53/40 vol. I (1998) 43 at paragraph 286, ICCPR. Concluding Observations to Morocco. In: ICCPR, A/55/40 vol. I (2000) 24 at paragraph 111, ICCPR. Concluding Observations to Kuwait. In: A/55/40 vol. I (2000) 65 at paragraphs 468, 469, 487 and 488, and others.

¹⁹⁰ PIDCS. General Comment No. 21. (Session 44). Treatment of persons deprived of liberty. Number 9

upon which it is based. However, in paragraph 344, the State considers that progress was achieved with respect to the protection of Article 10 when Sentence T-153 of 1998 acknowledged that “the right to the presumption of innocence is violated when accused persons are mixed with convicted ones.”¹⁹¹

7.2 Empirical data on the right to the presumption of innocence

(132) The situation in Colombia regarding the separation of accused persons from convicted ones is confusing, and the State has omitted the information about whether this obligation is currently being complied.”¹⁹² This position from the State constitutes in and of itself a violation of the specific obligation defined under paragraph nine of General Comment No. 21. However, the State must indicate the methods of separating the accused and convicted inmates and likewise describe the differences between the regimes that are applied to each in its Report to the Committee.

(133) According to the few figures presented by INPEC, by December 2009, in each one of the prisons in the country with the exception of three of them,¹⁹³ there were both accused persons and convicted ones, and both groups were living in the same establishments in all the INPEC regional offices in Colombian territory. This fact is a clear violation of the principle of presumption of innocence.

(134) The concern about not separating convicted and accused inmates has also been expressed for years by international institutions. The High Commissioner of the United Nations Human Rights Committee stated that:

“The information officially provided by INPEC does not consider the number of detained persons in police stations and other provisional detention centers (DIJIN, SIJIN, DAS and CTI) or those [persons] detained in municipal jails around the country [...]. It is evident that INPEC has concealed information regarding the number of persons detained in the abovementioned police stations, despite the fact that this information is related to accused and convicted inmates.”¹⁹⁴

(135) Regarding the absence of certainty about the real separation between accused and convicted inmates, we can assume that due to judicial congestion and the lack of an efficient judicial system, preventative detentions prior to trial on many occasions leads to detention periods longer than six months. This argument was presented and justified above when the violation of Article 9 of the Covenant was analyzed. However, this fact also

¹⁹¹ Report from the State of Colombia Presented to the United Nations Committee on Human Rights. Paragraph 344.

¹⁹² Response from INPEC to the Right of Petition with reference 7103-APE-002441 in that which states that “this type of information is only provided to competent authorities when required.”

¹⁹³ Garagoa, minimum security penitentiary, Tierralta, minimum security penitentiary and prison – Justice and Peace and Zapatoaca minimum security penitentiary and prison, these only housed convicted persons in December 2009.

¹⁹⁴ United Nations High Commissioner for Human Rights, Colombia Office, Informe: Centros de reclusión en Colombia: un estado de cosas inconstitucional y de flagrante violación de derechos humanos [Report: Detention Centers in Colombia: a state of unconstitutional things and flagrant violation of human rights] International Mission on Human Rights and Prison Situation. Bogota, 2001.

implies a violation of the principle of the presumption of innocence. After a reasonable period of preventative detention goes beyond six months, actions must be taken so that the individual can recover his/her liberty or, in essence, [the State] would be imposing an anticipated sentence prior to trial.

7.3 *Conclusions*

(136) The empirical data presented in relation to this article has proven that the State of Colombia has not complied with the obligation to inform the Committee about the separation of accused and convicted inmates. This obligation is derived from the general obligation of Articles 10 and 14, that is, treating accused inmates distinctly different from convicted inmates so that the principle of the presumption of innocence is not violated. Furthermore, in Colombia there is a criminal policy that applies preventative detention as a general rule, a fact that also violates the Covenant.