

Shadow report to the VII Report of Colombia on the
compliance with the International Covenant on Civil and
Political Rights of the United Nations

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I. STATUS OF CORRECTIONAL SYSTEM

The purpose of this chapter is to present to the Human Rights Committee the violations of *Human Rights* and International Standards and Principles governing the protection of persons in custody in Colombia, as well as the non-observance of the various recommendations issued by the United Nations to improve the country's correctional system.

To this end, three thematic blocks will be analyzed: a) abuse of preventive detention, by means of excessive punitive legislation and violation of reasonable time periods; b) conditions of confinement that violate human dignity: overcrowding, lack of health care, torture and other ill-treatment; c) finally, information will be provided about the ineffectiveness of the government to address these problems.

1 Status of non-compliance with Colombia's obligations

The Colombian state has signed various international treaties for the protection of persons in custody that require it to adopt effective public policies directed at the implementation of a correctional system that respects human rights. However, for decades, the prisons have been characterized as places where prisoners are subject to systematic and widespread violation. For this reason, the Office of the United Nations High Commissioner for Human Rights in Colombia (OACNUDH), during the period 1998–2006, has issued seven (7) recommendations concerning the correctional system that have yet to be observed by the Colombian state.

The principal themes discussed in the recommendations are:

- The adoption of measures to resolve the structural problems related to prisons and the implementation of a rights-based criminal and penitentiary policy (restrictive use of preventive detention).
- Compliance with international standards making possible improvements in the conditions of confinement and guaranteeing the prison population the full enjoyment of rights not affected by the sentence.
- The United Nations exhorts the *government in general to eradicate the corruption in the penitentiary system and prevent the entry of weapons into prisons, so as to reduce the high rates of violence and prevent the dynamic of the armed conflict from being reproduced therein.*

However, the Colombian state is far from having observed these recommendations, a situation that is discussed in what follows:

1.1 Abuse of preventive detention

The abuse of preventive detention and prison sentences has pushed overcrowding to historic levels, around 54.6% for the month of July 2016,¹ exposing the prison population to conditions gravely affecting their dignity and hindering access to basic services, with health care being among the services most affected.

According to figures for July 2016 from custodial facilities administered by the Instituto Nacional Penitenciario y Carcelario (INPEC) in Colombia, there are 120,657 persons in custody, of whom 8,211 are women. In addition, although Law 906 of 2005² prescribes a maximum custodial period of six (6) months of custody in which a person's judicial status must be defined, only 41,956 prisoners (3,712 women³) have been charged; and 63.6% of them have been held beyond the legal limit; 3,019 persons (160 women) have been charged with offences committed prior to the implementation of the new accusatory penal system that came into force in 2005; in addition, 19,354 men and 4,421 women are under preventive house arrest.⁴

¹See official statistics published on INPEC website, <http://www.inpec.gov.co/portal/page/portal/Inpec/Institucion/Estad%EDsticas/Estadisticas/Estad%EDsticas>

² Current Colombian Penal Procedure Code.

³ INPEC does not include other genders in the official statistics on the inmate population.

⁴See official statistics published on INPEC website, <http://www.inpec.gov.co/portal/page/portal/Inpec/Institucion/Estad%EDsticas/Estadisticas/Estad%EDsticas>

More than a decade after the first OACNUDH recommendation, the Colombian state passed Law 1709 of 2014 to reform the correctional code because of the system's structural failings; however, this reform is far from fulfilling the United Nations' recommendations on the use of preventive detention. Although it includes some amendments conducive to the parole system, it does not contemplate alternatives to custodial sentencing, and on the contrary upholds the pattern of excluding certain offences from administrative benefits, thus violating the principles of progressive correctional treatment.

While it is true that the first six months after the passage of the reform with Law 1709 of 2014 exhibited a slight decline in the number of persons remaining in correctional centers, from 111,646 men and 8,977 women in January 2014 to 108,929 men and 8,302 women in June 2014,⁵ this law cannot be considered a measure to deal with overcrowding, as shown by the figures from July 2016.⁶

To this must be added the restrictive decisions of some sentencing judges who, ignorant of the principle of favorability, have kept people in custody who meet the requirements, reviving by means of interpretation standards of exclusion from benefits such as section 26 of Law 1121 and section 199, paragraph 5 of Law 1098, even though these were abolished by paragraph 1 of Law 1709, which expressly provides that these exclusions do not extend to parole.

1.2 Conditions of confinement that violate human dignity

The rights of persons in custody are based, *inter alia*, on the principle of good treatment, which places an absolute prohibition on torture and other cruel, inhuman, and/or degrading treatment or punishment, and the States' role as guarantor, obligating them to give prisoners the vital minimum necessary to live in conditions of dignity. These are the most widespread issues that represent violations of human dignity:

1.2.1 Overcrowding

The overcrowding level has risen to 55%. Prison overpopulation exacerbates the structural weaknesses of the system that hinder the capacity to guarantee those rights not affected by the sentence and that may represent the imposition of unlawful accessory punishment, and even worse the occurrence of cruel, inhuman, and degrading treatment, in Colombian jails and penitentiaries.

Insufficient numbers of prison beds primarily affect financial, physical, and staffing resources, which are insufficient to guarantee prisoners' basic rights, since the intended capacity of correctional centres is in many cases exceeded. Physical space limitations mean that when an inmate presents with symptoms of infectious disease, these quickly spread among those who share the space with him and the situation becomes an epidemic.

Prison overcrowding also makes the system's response to risk or emergency situations ineffective. On 27 January 2014, the Barranquilla model prison, building B, yard 7, with a capacity of 196, housed 716 inmates. That was the day a fire broke out, killing 17 prisoners and burning 62. The Inter-American Commission on Human Rights issued a statement demanding that the national government adopt the measures necessary to prevent this type of tragedy from happening in the prison system.

1.2.2 Health

In the year 2007, given the harsh criticism of inadequate health service delivery by INPEC, Law 1121 was passed, providing that the prison population will be affiliated with the General Health and Social Security System, through the Caja de Previsión Social en Comunicaciones (CAPRECOM), which was then going through a serious financial crisis and recurrent corruption scandals. The deepening health care crisis gave rise to Law 1709 of 2014, which modified the health care model, creating a national health fund in charge of administering the resources.

⁵ Source: INPEC, www.inpec.gov.co/portal/page/portal/Inpec/Institucion/Estad%EDsticas/Estadisticas/Estad%EDsticas

⁶ See official statistics published on INPEC website, <http://www.inpec.gov.co/portal/page/portal/Inpec/Institucion/Estad%EDsticas/Estadisticas/Estad%EDsticas>

This new model was implemented in January 2016. During the first quarter of the year, the situation in all correctional centers was, to say the least, chaotic. Executive Order 2591 of the Ministry of Health provided for the liquidation of CAPRECOM and also ordered CAPRECOM EICE EN LIQUIDACIÓN to continue providing health services to the PPL at the expense of INPEC, with resources from the fund. To this end, an agreement was signed with Fiduprevisora S.A, as the liquidator of CAPRECOM, to guarantee the continuity of intramural and extramural healthcare provision through the network of providers, ignoring the many complaints and analyses of the serious deficiencies of the entity vis-à-vis its responsibility for prison health care.

Due to the predictable difficulties involved in the hiring of CAPRECOM, it is provided that a consortium will take direct charge of contracting with extramural healthcare staff and facilities. According to information supplied by the Unidad de Servicios Penitenciarios (USPEC) for March 2016, the consortium had hired professional staff in the 137 facilities under the responsibility of INPEC, and signed 108 letters of intent with healthcare providers for provision of low-complexity services, 72 for medium-complexity services, and 66 for high-complexity services; and it was reported that 95% of priority personnel (physicians, head nurses, nurses' aides, dentists, oral hygienists, dentists' aides) had been hired.

Notwithstanding the foregoing, which might suggest an ostensible improvement in the situation, the prison population and INPEC itself speak of a different reality, one that was moreover acknowledged with the May 2016 declaration of an emergency situation in the prisons, which went along with an allocation of resources to implement health brigades, although these did not manage to cover all the urgent cases found among the prison population.

The populations of various facilities state that the addition of new entities to the health care provision model has tended to diffuse responsibility, to the point that prisoners now, in order to obtain a modicum of services, have to file constitutional appeals (*acciones de tutela*) against them all.

The prisoners in San Isidro reported that health care has worsened since November 2015, reaching a crisis point where even basic care was not provided by a health professional and the dispensary ran out of medicines. They also said that Caprecom contracted out medical services and they were poorly provided, no referrals were made, no surgeries performed, even basic services were not provided” ... “Now it is the doctors affiliated with INPEC who are providing care and there are not enough of them to cover the inmates' demand for medical care, they treat as many as they can manage, just a few cases; there are not enough doctors so they try to use nurses to cover this shortage, and there are not very many of them either”... The emergencies -- patients have to be bleeding for them to refer them to Popayan hospital”. “From February to date at least two people have died from lack of medical care”.”⁷

In the Cúcuta Penitentiary Complex, in February 2016, a multi-day general prisoners' strike was held, in the face of the total collapse of healthcare since 6 December 2015, where we confirmed a list of 746 unattended medical cases for the whole complex, this being only a sample of the gravity of the situation.⁸ In June of this year, prisoner Cranni Mineruini Villalba died in yard 9 five months after suffering an accident at the same facility. The gravity of the situation was such that for several hours on 8 June 2016, family members and friends of the prisoners peacefully occupied the Cúcuta offices of the Defensoría del Pueblo (Ombudsman's Office).⁹

The health situation in the Picota jail is likewise worrying. This facility lacks adequate and sufficient medications to guarantee the stability of one patient, and the existing devices (EKG, etc.) are obsolete and do not work. There is no resuscitation equipment, the number of doctors is insufficient for the number of inmates, there is no physiotherapist nor

⁷*In this context and while the inmates were holding a peaceful strike, in February 2015, prisoner Javier Arturo Ocampo Jaramillo TD 12946 yard 1, died for lack of medical attention, thereby demonstrating the level of neglect in this respect.*

⁸*In a March 2016 complaint, the San Isidro prisoners stated that “the situation is such that since August 2014, there have been 18 deaths due to medical negligence, and in 34 months there have been 34 deaths, for an average of one a month. We have 164 patients requiring priority specialized care, including 24 HIV-positive; we have 7 patients in terminal phase due to disease that were curable at one point but condemned us to death due to denial of healthcare; we have 50 cases of tuberculosis; we have 8 patients with cancer who, like the others, go untreated.”*

⁹ http://caracol.com.co/emisora/2016/06/08/cucuta/1465411727_776708.html

any clinical lab department. Dental specialists are few and the availability of adequate instruments uncertain. Nor are there supplies to treat psychiatric patients, drug addicts, depressives, and those exhibiting other mental illness, who remain at the mercy of university practitioners lacking sufficient experience to treat these cases.¹⁰

On the morning of Wednesday, 22 June 2016, inmate José Ancízar Trujillo Albadan, identified with TD number 68418, in yard 8 of the Bogotá Penitentiary Complex (COMEB) (formerly the ERON-Picota facility), died of a heart attack. On 30 June, Alexander Morates Pérez died, apparently also due to lack of medical attention.

At the EPAMS-Valledupar high- and medium-security facility, the prisoners report that on 11 April 2016 they learned of the death of prisoner José Eulises Quintero Loaiza from peritonitis.

Eight months after the new health model for the correctional system went into effect, we have observed the following overall difficulties:

- a. Institutional responsibility has become more diffuse.
- b. The system appears to conceive of health strictly from the point of view of assistance, ignoring and thereby failing to address the determinants that directly affect the physical and mental condition of the prison population.
- c. There are still no epidemiological profiles making it possible to design and implement prevention and health promotion programs.
- d. There is no clear emergency response protocol to avert complications resulting from a lack of timely medical attention.
- e. We have observed no plan to consolidate the hospital system so that members of the prison population requiring extramural care can receive expeditious, high-quality treatment.

We foresee that in the future, the hospital system will be overloaded with an additional population, making the situation even more burdensome for persons in custody, and that it will also have negative impacts on a healthcare system that is already failing the low-income population of this country.

The critical situation of lack of medical care in the prison was brought to light in the Constitutional Court's recent judgement on protection of fundamental rights. In 2016's ruling T-12, the court handed down a decision on a San Isidro-Popayán inmate's request. He was seeking the right to assisted dying given "...the precarious conditions of his imprisonment, the seriousness of the illnesses and pains he is suffering from, the frustration of seeing no improvement of his health or life in conditions of dignity and in view of the fact that the organisation sued neglected to provide for his medical needs". Although the high court denied his request, it managed to establish and find evidence that there were serious problems in diagnosing and treating serious illnesses¹¹ and in guaranteeing the right to health.

In July of this year the Ombudsman denounced that of 137 prisons, 91 reported that they do not count on available medical personnel and 71 are without medicine. During at least 8 months, patients with HIV did not receive treatment.

1.2.3 Determinants of the health of the custodial population

The Colombian state has been incapable of resolving structural failings concerning water supply in various correctional centres, the emblematic case being that of the EPAMS-Valledupar high- and medium-security facility. Furthermore, rationing has become generalized, in nearly all second- and third-generation facilities, at levels affecting the vital

¹⁰<http://mncolombia.org/comunicado/en-las-carceles-la-injusticia-y-el-abandono-nos-esta-matando/>

¹¹In its decision, the court indicated: The action for the defence of fundamental rights contains evidence which allow the court to conclude that the claimant (i) has access to medical assessment, (ii) to identify his various illnesses, Nevertheless (iii) there is no assessment apparent from which one could deduce a specific medical procedure to be followed in order to return the claimant to health, particularly one which would allow him to recover from his diverticular disease and urinary incontinence. .. Since this is so, the infringement of Jenner Martín's right to health is obvious, given that he has had no effective diagnosis which covers the aforementioned need. The medical procedures to restore the claimant's health are imperative for him to be able to achieve functional organic normality. On this point it must be made clear that the claimant's right to health cannot be restricted, in spite of the fact that he is incarcerated in the Popayán Penitentiary, because the right to health is inherently linked to his fundamental right to dignity".

minimum and below the standards established by the Constitutional Court via jurisprudence.¹²

At the EPAMS-Valledupar high- and medium-security facility, the prisoners complained in April 2016 that the situation had worsened. According to the management of the facility, water is not arriving in sufficient quantities. It is even more worrying that the already serious obstacles to obtaining drinking water are augmented by collective punishment, meted out in the form of practices such as locking down of cells just as the taps are being opened in the yard.

While it is true that the penitentiary authorities have invested resources in solving the problems plaguing Valledupar, reports from the prison population indicate that there are instances of leaky ceilings and drips in the recently renovated towers, and that the lavatories and sinks are unacceptable, not to mention the inadequate state of the common areas and the lack of places to wash clothes and cooking utensils. There is also a problem of clogging drains, with sewage backup resulting in problems that affect not only the dignity but also the health of the prison population. At the EPAMS-San Isidro high- and medium-security facility,¹³ potable water is available three times a day for a maximum of 30 minutes.

The prisoners complain of problems of dampness causing respiratory and skin infections. Not only are the sanitary facilities insufficient for the number of prisoners, but also they are in terrible condition.

Concerning food, serious problems persist with regard to food preparation. Food is often given uncooked and some ingredients are poor quality or rotting. Food storage, preparation, and distribution do not comply with public health standards.¹⁴

In conclusion, the precarious health status of the prison population persists because of the lack of a health care model guaranteeing the timely and effective provision of service, the insufficient supply of water to meet basic needs and for drinking, and the unsanitary conditions of correctional centers.

2 Patterns of human rights violations affecting personal integrity

On another note, although the State has signed international treaties on the prevention and punishment of torture and other cruel, inhuman, or degrading treatment, non-compliance is a constant in the country's jails and penitentiaries.

Levels of isolation remain high in the Colombian prison system, either as punishment or as a security measure.

Based on the complaints of prisoners at various facilities, we can establish a persistent pattern of human rights violations relating to the personal integrity of persons in custody, which is characterized by the following practices:

- **Abusive use of force.** There is a continuing tendency to use force in situations where it is not required, such as to subdue a prisoner who disobeys an order. Unfortunately, this type of tactic is used with great frequency against prisoners with mental illness or drug addiction. Complaints arising from such situations have been

¹² In decision T-282, the Constitutional Court ordered as follows: “*The necessary number of containers must be provided to allow each person to have 20 litres of water a day to meet his basic needs, 5 litres a day to survive; since they live in a hot climate, they have to be allowed to set aside at least 2 litres for nighttime use.*”

¹³ All the information was gathered from prisoners in interviews with members of the People's Legal Team.

¹⁴ The prisoners at the COMEB (Picota) state that the company SERVIALIMENTAR is defaulting on the contract. They note that: “*1. The food ration does not abide by the food weights stipulated in the contract; the portions served to the inmates are generally cut in half or occasionally made even smaller, and there are situations in which the fruit or dessert is left out. Items removed from the menu become part of an illicit trade from which all personnel along the food supply chain derive personal profit, of course including INPEC officials, who receive large bribes, fostering corruption. 2. The quality of the food is deplorable: the fruit is rotting by the time it arrives; the potatoes are wormy; the chicken is usually undercooked, while the meat gives off a strong odor and has a fibrous texture (not shredded); when heated in the oven a kind of foam exudes from it, indicating according to experts that it is donkey meat. 3. Food (e.g., juices, salads) is not stored at safe temperatures; moreover, perishables are dropped off at storerooms lacking refrigeration and are exposed at length to contaminated air. It is not long before they start to rot.*”

reported in recent months from the Valledupar, San Isidro, Arauca, Palogordo, Cúcuta, Pedregal, and Bellavista facilities.

- ***Abuse of less-lethal weapons.*** Pepper spray and tear gas continue to be used in situations not involving disturbance or disorder or where there is no need to subdue a prisoner. There is continued use of tear gas in cells, a situation causing asphyxiation or respiratory conditions in prisoners, as well as pain and anguish due to the effects of the chemical.
- ***Abuse by guards during operations.*** The prisoners further state that when cell searches are performed, the guards often commit abuses consisting in damaging prisoners' personal objects or spilling water on their clothes or furniture.
- ***Limitations on visiting rights and abuses against families as a form of retaliation.*** At the EPAMS-Valledupar high- and medium-security facility, there have been recurring complaints of visitors being turned away allegedly because of items detected by police dogs, though there are no record-keeping mechanisms for such incidents.

The prisoners of the EPAMS high- and medium-security facilities at Cúcuta, Bellavista, and Arauca complain that their family members (mainly women) are subjected to humiliation through practices such as abusive food inspection, in which permitted food items brought in by visitors are dumped in the garbage. The majority of the visitors are family members of prisoners who have filed demands with control authorities, acted as leaders on the yards, or had difficulties of some kind with the guards.

- ***Collective punishment against the prison population.*** Collective punishment is being applied, including shutting off the water and locking down cells for indeterminate periods that exceed 24 hours in some instances; in the event of altercations involving only two or three prisoners, or in the lead-up to strikes or peaceful disobedience days.
- ***Prolonged isolation in special treatment units (UTE).*** These units, whose existence is denied by the administrations of the various correctional centers, continue to be used as places of punishment or confinement of "high-profile" inmates or those who "cannot get along" with the others.

These units are used for prolonged solitary confinement, containing prisoners who, as a punishment or due to their profile, remain in lockdown 23 hours a day, with only one hour of sunlight. Prisoners at San Isidro state that *"there have been cases where a cell phone or a knife is confiscated and the person is taken to the UTE, they take him off the yard, he is deprived of visiting rights... he is given multiple punishments for a single incident."*¹⁵

- ***Moving inmates to yards where they are isolated from others.*** This has become increasingly common practice at facilities such as the Valledupar and San Isidro EPAMS high- and medium-security facilities. Building 9 at San Isidro has become a punishment yard due to the high levels conflict taking place, as can be seen from the large numbers of inmates wounded or killed.
- ***Uprooting from family and social environments.*** Maintaining family unity, guaranteeing prisoners or detainees that they can have the company of their friends and loved ones, is not a priority of the penitentiary administration. The prison population is located in correctional centres far from their support networks, leading to abandonment and isolation, the impact of which has not been sufficiently studied.

¹⁵ Interview with members of the People's Legal Team.

2.1 Factors inciting torture and other practices in violation of the right to personal integrity

2.1.1 Disincentives to the filing and receipt of complaints

The following are common aspects that discourage the filing of complaints of torture or inhuman or degrading treatment in jails:

- **Discretionary powers and/or diversion of power.** Inmates repeatedly report being afraid of reprisals, and this discourages them from filing such complaints. The most common types of reprisals are as follows:
- **“Prison false positives.”** Prisoners report that there has been a rise in threats or pressure indicating that punishment will be applied through the use of false reports on items allegedly seized during searches.
- **Being moved to another yard or facility.** Prisoners or their family members refrain from complaining or asserting their rights for fear of being moved to a faraway facility, or to a yard where they will be in danger. Such transfers used as a reprisal method against those who protest or complaint of human rights violations continues to occur.

2.1.2 Encouragement of control by caciques¹⁶ and division among prisoners

- Control of yards by the so-called “Plumas” or chief in the majority of facilities has entailed a genuine limitation, since complaints must be approved by them, sometimes with the complicity of the guard.
- Some inmates delegated to human rights committees state that they are reported to the guards, or to the chief or other yard inmates, and that subsequent restrictions are placed on collective rights or the stigma of the “snitch” falls on this person, putting his life and work at risk.

2.2 Impunity mechanisms relating to complaints

- **Penitentiary guard has powers of judicial police.** The assignment of the duties of complaint intake and/or preliminary evidence gathering and safekeeping to prison guards entails a risk of the investigation being biased or ineffective.
- **Lack of an independent complaint mechanism.** There should be a guarantee of the implementation, in all of the country’s correctional centers, of an independent complaint mechanism that does not pass through the sieve of the guards and successfully overcomes the obstacles imposed by the existence of the caciques. The experience with the EPAMS-Valledupar high- and medium-security facility demonstrates that the implementation of such a mechanism produced a significant deterrent effect and that for it to remain effective, the following measures are necessary: institutional capacity building for the ombudsman and the control bodies, constant monitoring of the human rights situation within the facilities, and design and implementation of mechanisms making it possible to overcome the obstacles facing potential complainants.

2.3 Judicial impunity mechanisms

The independent complaint mechanism is of limited scope, for if it is not backed by the decisive action of the Prosecutor’s Office and the Procurator-General (*Procuraduría*) as investigative bodies, it can turn into a fatiguing and

¹⁶ The idea is that a small group of inmates, known as *caciques*, controls transactions and social relations on the yards. Their power is generally imposed by force and the law of silence applies. The guards are accomplices.

ineffective measure. Unfortunately, a high incidence of impunity persists, leading to a repetition of the incidents, since it reinforces the idea that complaining about torture or inhuman and degrading treatment only brings problems down on the victim, who continues to be subjected to the custody and control of his presumptive victimizer.

2.4 Absence of measures to prevent victimization

The lack of follow-up to complaints of human rights violations is augmented by the absence of administrative measures to prevent the prison population from repetitions of such violations. For this reason, we contend that mechanisms such as relocation of guards accused of human rights violations be institutionalized; these employees should be assigned to duties not involving contact with the affected persons while the relevant investigations are in progress.

In addition, victims and their families must be shielded from retaliation, as discussed in the preceding sections.

3 Express acknowledgment and ineffectiveness of internal mechanisms

The critical levels of overcrowding and the structural problems with healthcare provision in the Colombian correctional system undeniably constitute a grave, ongoing, systematic, and widespread violation of the fundamental rights of persons in custody. This fact is acknowledged by the Colombian state through various statements issued by oversight bodies, judicial authorities, and the national government itself.

One consequence of the overcrowding situation has been the handing down of court decisions such as T-388 of 2013 and T-762 of 2015, yet these court orders have yet to be strictly applied, nor have any effective measures been adopted to deal with the systematic and widespread violation of the rights of the persons in custody.

The Government of Colombia's 5 May 2016 declaration of a prison emergency is tantamount to explicit acknowledgment of the humanitarian crisis in the country's correctional centres and the grave attack on the fundamental rights and human dignity of thousands of imprisoned persons that it represents; however, one year later the situation has not changed. This measure had already been adopted in late May 2013 without yielding satisfactory results.

Alongside the high budgetary cost, it has been shown that both the declaration of a prison emergency and the reform of the correctional system proved insufficient to overcome the structural failings of the system. On the contrary, privatization and the expansion of prison beds, constituting the backbone of the measures adopted by the national government, represent an additional threat to the fundamental rights of persons in custody, as demonstrated by the existing situation of services that have been privatized or outsourced, such as healthcare, food services, and telephone service. The inefficiency of these contracts has given rise to multiple reports and investigations, not only of human rights violations against the prison population, but also of excess spending.

Even though this whole situation is amply documented, has been denounced by various media, NGOs, and even members of Congress, and even though numerous court cases have been fought and won in defence of the rights of persons in custody, the authorities Colombian continue to refrain from offering adequate responses to this grave prison crisis. On the contrary, access to the prisons to observe the living conditions of detainees has been limited, internal mechanisms for complaining of human rights violations are manipulated and obstructed by prison authorities, and Colombia continues to argue that it does not need to ratify the Optional Protocol to the United Nations Convention against Torture.

II. WIDESPREAD AND ARBITRARY DETENTION

4 Heightened judicial persecution against the peasant sector

With great concern, we observe that recent years have witnessed an increase in the number of persons judicialized in the context of mass trials against peasant communities located in areas where the guerrillas have been active, with these persons being accused of collaborating with the insurgency. Such trials constitute arbitrary detentions in that they have the following common characteristics:

- ***They are strictly based on statements by deserters from the insurgency.*** During the first presidential term of Álvaro Uribe Vélez, peasants were rounded up in large numbers according to a tactic that has become increasingly common. It is based on the testimony of persons who, after rejoining civil society, receive benefits from the national government and act in conjunction with the armed forces and the police. Their statements are generally vague and imprecise, but serve as a basis for ordering preventive detention.¹⁷ The indicted peasants are accused, without no mention of places or tangible facts, of collaborating with the insurgency, which complicates the defence and hinders the right to a fair trial. Around 20 peasants from departments such as Santander, Norte de Santander, Cesar (Catatumbo region) are in custody further to trials of this sort, and it is estimated that arrest warrants have been issued against some 150 more. The peasants in these regions indicate that the army has patrols of hooded men who apparently single out residents, following which arrest warrants are issued against them. Due to this situation, farmers avoid leaving their farms or move elsewhere.
- ***Violation of due process and principle of legality.*** Although the accusations against the peasants are limited to collaboration with the insurgency, the formal charges are extended to additional offences, such that the prisoners are held responsible for other acts allegedly committed by the guerrillas. On these grounds they are charged with the offence of conspiracy (*concierto para delinquir*) which technically rests with the rebels. This practice violates the principle of *non bis in ídem* or double jeopardy.
- ***Violation of reasonable trial delays.*** By indicting peasants of offences that do not correspond to procedural realities, the terms of the investigation are duplicated and the custodial period is prolonged excessively.
- ***Violation of the presumption of innocence.*** *The majority of peasants in custody are paraded before the media as members of the insurgency, which violates the presumption of innocence. It brings societal condemnation upon them and infringes their right to a fair trial.*

5 Detentions in the context of social protest

As part of the penal logic that criminalizes expressions of protest characteristic of social movements, when mass-scale mobilization takes place, demonstrators are rounded up in large numbers and investigated for violations such as obstruction of public thoroughfares or disruption of public, collective, or official transportation. While the prosecutor's office issued circular 008 on this matter, people continued to be charged and brought to trial for this offence. An

¹⁷ The UN Working Group on Arbitrary Detention, in the report on its October 2008 mission to Colombia, noted: "The Working Group received numerous accounts and reports regarding the lack of equity demonstrated by prosecutors and judges in assessing evidence: the former when requesting precautionary measures and bringing charges, and the latter when formalizing arrests and sentencing. The testimony of a former member of a guerrilla group who has been reintegrated into society or demobilized suffices, with no other evidence, for an arrest warrant to be issued.... Conclusions: ... The Group noted that the prosecutor's office issues a great many arrest warrants without significant objective evidence and based solely on the testimony of former guerrillas who have been demobilized or reintegrated into society and who obtain privileges for their testimony. The targets of these arrests, under warrants that are based on insufficient evidence, are often human rights defenders, community leaders, trade unionists, indigenous people and peasants."

example is the mass arrest at Berlin, on the Cucúta-Bucaramanga highway, where, in the context of the national mobilization (*Minga*) on 3 June 2016, 134 persons were arrested, including 13 minors who were only returned to their families 8 days later, while the adults were released within 24 hours.¹⁸

REPORT ON THE MASS AND INDIVIDUAL ARRESTS OF FARMERS IN NORTH OF SANTANDER AND CESAR (30 August, 2016) – Source: People’s Legal Team Pueblos

1. In January - February 2014, WILSON BECERRA¹⁹ and ALONSO SERRANO²⁰, farmers from the Department of Cesar, currently under arrest, without having been brought to trial before the Valledupar specialized court. They were accused of the crimes of rebellion and conspiracy to commit a crime.

2. MANUEL ANTONIO CARDOZO MOLINA²¹, farmer, 54 years old, captured on 1 August, 2015 in the rural part of Curumaní. Tried for the crime of rebellion. The case is currently in the pre-trial hearing stage before the lower court of the Chiriguaná Circuit and the Prosecutor's Office 46 of the National Anti-Terrorism Directorate (Valledupar branch) Filed under 200016008792201300026.

3. MATILDE UREÑA y OTONIEL CABALLERO²², farmers from the hamlet of El Desengaño; they are a couple. On 17 December, 2015, they were arrested by the Regional Criminal Investigation Department (henceforth known as Sijín) and the National Army in the town of Curumaní. Currently oral proceeding of the trial is about to begin before the lower court of the Chiriguaná Circuit and the Prosecutor's Office 46 of the National Anti-Terrorism Directorate (Valledupar branch).

4. Mass arrest of eight farmers in the village of United States in the Becerril municipality²³, Department of Cesar. They were arrested on 16 June, 2016 by members of Sijín and the National Army Energy and Highways Battalion (henceforth BAEV2) who were operating with four persons who covered their faces and carried weapons. They were tried for the crime of rebellion. The First Criminal Court of the Valledupar circuit and Prosecutor’s Office 47 of the National Anti-Terrorism Directorate (Valledupar branch).

a. LUIS OSCAR GALVIS SANCHEZ, 43, father of six. Member of the United States Board for Communal Action (JAC). When he was arrested, two members of the National Army pointed their guns at one of his daughters, a minor.

b. ERASMO GALVIS SANCHEZ, aged approximately 45, father of six. Arrested at the Nuevo Horizonte farm in the Manantial Alto de Becerril hamlet; associated with the Board for Communal Action (JAC) for that hamlet.

c. WILSON PAREDE AGUILAR, 38, father of 7, all minors. Arrested in the Sokorpa Indian Reserve where members of the Yupka community live. He is a farmer but his wife is Yupka.

d. CRISTO HUMBERTO CALDERON ROZO, 51, father of six, all minors captured in the town of La Paz—Cesar.

e. CRISTO PINEDA CASTILLO, 54, father of 6; associated with the Manantial Alto hamlet JAC. Arrested in this hamlet.

f. UBERNEL DURAN RIOGÓ, 44, father of 3; president of the Alto de Tucuy hamlet JAC, president of the Coffee Workers Committee, works with the MAPP-OEA. (OAS Mission to Support the Peace

¹⁸ <http://www.elespectador.com/noticias/politica/denuncian-detencion-de-121-campesinos-participaban-el-p-articulo-635926>

¹⁹ <http://www.fiscalia.gov.co/colombia/noticias/capturado-guerrillero-que-pertenecia-a-cuadrilla-de-alias-patamala-del-eln/>

²⁰ http://www.radioguatapuri.com/index.php?option=com_k2&view=itemlist&task=date&year=2014&month=2&Itemid=311&limitstart=20

²¹ <http://elpilon.com.co/capturan-guerrillero-del-eln-en-cesar/>

²² <http://www.colombiainforma.info/detienen-y-acusan-de-rebelion-a-integrantes-del-movimiento-campesino-en-el-cesar/>,

<http://elpilon.com.co/campesinos-capturados-por-rebelion-denuncian-persecucion/>

²³ <http://www.radiosantafe.com/2016/06/18/cayo-o-alias-hubnel-principal-testaferro-del-eln-y-otros-7-integrantes-de-la-red-de-apoyo-al-terrorismo/>

Process).

- g. JORGE ENRIQUE MIELES.
- h. WILLIAN PAREDES AGUILAR, 40, father of eight, arrested in the La Palma farm in Becerril.

5 Mass arrest of three farmers from Curumani²⁴ on 14 December, 2016. They were arrested by the National Police in the town of Curumani. The investigation is being carried out by the Second Specialized Prosecutor's Office and will be heard by the Valledupar Sole Special Court. They were beaten when arrested by the National Police and the Sijín, they were presented to the media as members of the guerilla²⁵; they had a grenade and ELN (National Liberation Army) pamphlet planted on them. They are being tried for illegal possession of arms reserved exclusively for military use.

- a. RUBEN DARIO PORTILLA PEINADO, father of four young children
- b. EDISON CASTRO CARRASCAL, as a result of a childhood illness he has problems with his right hand.
- c. JOSE VICENTE RINCON CASTRO, father of to young children.

6. JORDAN GUILLIN LOPEZ 20, and JOHAN LEONARDO ASCANIO BAUTISTA 21 farmers from Haircare municipality in Norte de Santander. Arrested by the Sijín on 7 September, 2015 in Hacarí town. They are members of the JAC of the Siete De Agosto neighbourhood of Hacari. Tried for the crime of rebellion. The Ocaña Regional Third Prosecutor's Office is investigating and the case is being heard by the First Criminal Court of the Ocaña Circuit, filed under 2015-803997.

III PERSECUTION OF HUMAN RIGHTS ADVOCATES

6 Increased violence against human rights advocates

Despite announcements of the imminent signing of an agreement to put an end to the conflict between the Revolutionary Armed Forces of Colombia (FARC) and the national government, the situation of human rights advocates in the country raises serious concerns as to the actual guarantees they enjoy for the exercise of this right.

According to the SOMOS DEFENSORES program, "between January and June 2016, 314 individual aggressions against advocates were recorded. These can be broken down into 232 threats (decrease of 41%), 35 murders (increase of 3%), 21 assaults, 13 arbitrary detentions, 9 cases of arbitrary use of the penal system, 3 thefts of information, and one person disappeared; in conclusion, the figures for threats and assaults decreased but the rest increased.

According to the Information System on Assaults against Human Rights Advocates in Colombia (SIADDHH by its Spanish acronym), the majority of alleged perpetrators (68%) are from paramilitary groups, 22% are unknown, and 10% are state agents (PONAL, FF.MM, C.T.I., etc.). FARC and ELN guerrillas have alleged responsibility in 2 cases. It is important to mention that the proportions of all categories of alleged perpetrators decreased except for state security forces, which increased from 5% in 2015 (19 cases) to 10% in 2016 (32 cases).

Homicides rose by 3% from 34 in 2015 to 35 this year. It must be stated that in many cases of homicide, family members or friends of the advocate(s) are also still being attacked during the same incidents, and are in some cases wounded or killed; this same situation has been detected in yearly analyses conducted over the last four years.

²⁴ <http://elpilon.com.co/tres-capturados-en-curumani-por-paro-armado-del-eln/>

²⁵ http://www.cacicastereo.com/index.php?option=com_k2&view=item&id=3754:tres-presuntos-guerrilleros-del-eln-fueron-capturados-en-curumani&Itemid=561

On average, between January and June 2016, 2 advocates were attacked every day and one was murdered every 5 days. The report also states that of the 314 individual attacks recorded in SIADDHH, the departments with the largest numbers of cases are Bogotá, Valle del Cauca, Cauca, Santander, Antioquia, Atlántico, and Córdoba.”²⁶ Far from there being an improvement in this area, violence against this population is unfortunately increasing. Recently, the assassination of three civil society leaders, members of the Comité de Integración del Macizo Colombiano (CIMA), was reported in the department of Cauca, adding to the grave increase in violence in the region.

The Integration Committee of the Colombian Macizo- CIMA wishes to make public its denunciation: (...) of the critical human rights situation faced by communities, organizations, and social leaders which today terrorises the Macizo region of Colombia and raises the alarm for the social and human rights movements in the department of Cauca. Our organisation CIMA has continually denounced to the Colombian authorities the series of human rights violations which have become part of the victimisation of CIMA, including: the killings of leaders in the region; the ongoing individual and collective threats; the persecution, stigmatization, singling out and individual/collective prosecutions, all of which CIMA has had to endure throughout its history of fighting for a life with dignity, whilst in resistance to legal and illegal mining, drug trafficking and violence. The municipality of Almaguer has been the cradle of our social organisation, driving community peace initiatives and regional development.

However, over the last three years it has become the epicentre of a series of human rights violations against leaders, communities and their territory.

After the murders of social leader ADELINA GÓMEZ GAVIRIA on September 30, 2013; JHON GOMEZ, son of elected councilman in October 2015; IGNACIO MALES NAVIA, social leader and secretary of the Almaguer City Council in November 2015, and the threats against current Mayor ALBEIRO GALINDEZ; plus the majority of the City Council of Almaguer including its President OMAR JIMENEZ BAHOS; and the massive displacement of peasant and indigenous communities and their leaders caused by these events at the end of 2015, the conflict situation of the region has intensified to such levels that at various moments the municipal administration has had to run from the city of Popayan, because of the lack of guarantees.

Just as the municipality had begun to recapture the social, political and administrative confidence of the people under its administration, massacres such as the one that happened on August, 29 2016 have been to take place. On that day, between 8-8.30am, armed men wearing military uniforms with rifles intercepted vehicles on the way to the local marketplace at the Guayabillas site in the district of Llacuanas, municipality of Almaguer. The men ordered passengers to turn off cell phones and they made sure to stop the vehicle that was transporting JOEL MENESES MENESES, CIMA leader from village of La Herradura and community leader of the Almaguer Process of Peasant and Indigenous people - PROCAMINA, who had received several threats; NEREO MENESES GUZMAN, member of PROCAMINA and leader of the Garbanzal village of the same village and ARIEL SOTELO, from the community of La Herradura, who were taken to the site known as Monte Oscuro (Mount Dark), at the border between the municipalities of Bolivar and Almaguer, where they were found killed due to gunshot wounds.

It is important to note that the leaders killed were well-known in the municipality and the region, and had actively participated in various peasant mobilisations for a dignified life in the Macizo region of Colombia, including the recent National Agrarian, Rural, Ethnic and Popular Minga for Buen Vivir, a Structural Agrarian reform and a dignified city, which took place from May 30 to June 12, 2016 at the peasant concentration point in Timbío (Department of Cauca).

²⁶ <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/140-este-es-el-fin>

7 Impunity in cases of violence against human rights advocates

For their part, the judicial authorities have been negligent in investigations of these cases of grave and systematic violence against advocates. Despite the creation of case monitoring committees, within the framework of the National Roundtable on Human Rights Advocates, investigations take place without contextualization and little progress is reported. *“To a partial extent and based on information provided by the prosecutor’s office itself, it can be established that the entity has found more than 95% of assassination cases in its databases and it can be determined that of the over 100 advocates assassinated between 2015 and 2016, 8 of these cases are at the sentencing stage and another 8 are at the trial stage. This, without a doubt, constitutes the biggest progress made by the prosecutor’s office on finding the perpetrators of crimes against advocates and bringing them to justice.”*²⁷

Impunity continues to prevail in various cases of assassination of members of the Congress of the Peoples, as in the case of Carlos Alberto Pedraza Salcedo, a leader of the Congress of the Peoples who disappeared and was subsequently assassinated on 19 January 2015 as he left his home in Bogotá. After 18 months of preliminary investigation and over a year of investigation by Human Rights Office 98 under prosecutor William Wecha, there has been no progress on identifying the perpetrators or elucidating the inconsistencies and delays that took place during the early stages of the investigation.

FACTS

1. On January 19, 2015 at 3:00 pm, Carlos Alberto Pedraza Salcedo left his home situated in the Molinos II neighbourhood of the Rafael Uribe Uribe locality in Bogotá, to attend a meeting in the locality of Teusaquillo which was related to the Agricultural Distribution firm El Zipa of which was the legal representative...
2. On Wednesday January 21, 2015 at 9:00 am, in response to a call from a resident, the lifeless body of Carlos Alberto Pedraza is found by members of the police in an unpopulated area of the village of San Bartolome called "the Marraneras" (The pig sties), 60 kilometres away from Bogotá.
3. On the morning of January 21, 2015 it seems that members of the SIJIN of Gachancipá - Cundinamarca conducted telephone calls to contacts of the Distribution Firm. In the first call they mentioned finding a person matching the physical characteristics of Carlos, who had in his possession several cards of the Distributor. In the second call made to a relative of the victim, they stated that Carlos had suffered a motorcycle accident and needed to locate a member of his family. On the third call they stated that "he was found dead in the pines with a blunt blow to the head".
4. In 2015, the Institute of Legal Medicine at the basic unit of Gachancipá performed a necropsy on the body of Carlos Alberto Pedraza, reporting on the cause of death. The report confirms that the murder occurred through "a gunshot wound causing injury at the level of the skull through a back to forth trajectory ... and carried out with a low speed weapon".

IV. LIMITATION AND PERSECUTION OF SOCIAL PROTEST

Although the Colombian Constitution expressly recognizes freedom of association, freedom of expression, freedom of thought and opinion, and social protest as fundamental rights, the State’s response to popular mobilizations involves a set of practices that violate these rights and render them ineffective.

1. *Stigmatization of social protest.* When days of protest take place, the national, departmental and local government authorities, along with the police and armed forces, hasten to identify alleged infiltration by the insurgency, putting the demonstrators’ safety at risk. This type of statement is used as a justification for a

²⁷ <http://somosdefensores.org/attachments/article/140/este-es-el-fin-informe-semestral-2016.pdf>

military response to the protest.²⁸

2. *War treatment.*²⁹ Despite the civilian nature of the protests occurred in the last half year, the response of the security forces may be characterized as follows:

2.1. *Militarization.* The National Army has had an active presence at civilian demonstrations, yet this is in no way justified as part of its legal and constitutional mandate to defend the nation's territory and national sovereignty. Moreover, while the National Police is clearly a civilian body, it is far from behaving like one in practice, in terms of both the way it handles protests and the types of weapons it carries and uses, which are integral to a military-style response to such manifestations of peaceful civilian resistance.

2.2. *Military intelligence.* Military intelligence elements have been identified at peaceful demonstrations, taking photos and collecting personal information on the participants. How this information is being used and why it is being collected are unknown. This practice intimidates demonstrators.

2.3. *Disproportionate use of the police force.* Intervention by the riot squads (*Escuadrón Móvil Antidisturbios—ESMAD*) occurs in systematic patterns that can be described as follows:

- a. The illegal and arbitrary use of less-lethal weapons, such as direct spraying of demonstrators with tear gas; spraying tear gas within enclosed spaces (homes or businesses), suffocating the inhabitants. Furthermore, weapons are used indiscriminately, in violation of protocols according to which they are to be used only in specific circumstances or where there is a need to control or restore “public order.” Finally, less-lethal weapons are even used against persons not involved in the demonstrations.
- b. The use of unconventional weapons, such as *recalzadas*, or empty tear gas capsules that are refilled and used as projectiles and can cause serious bodily harm or death. Their use is prohibited but evidence indicates that they have been used.
- c. Use of firearms. The police use firearms during protests, aiming and firing them directly at demonstrators, causing death or grave bodily harm.

*In the course of the Agrarian, Peasant, Ethnic and Popular Strike, in the south west of Colombia WILLINGTON QUIBERACAMA NEQIRUCAMA, GERSAIN CERON and MARCO AURELIO DIAZ, three indigenous men, were killed, and a further one hundred peasants and indigenous people were injured by the ESMAD, through the improper use of “non-lethal” weapons or firearms by forces of law and order during the protests.*³⁰

*On June 3 this year MIGUEL ANGEL BARBOSA, a student of Bogota's Universidad Distrital died after receiving a severe blow by the ESMAD during a student protest two months earlier.*³¹

²⁸ “Further to statements by the Minister of Defensa, Luis Carlos Vélez, as to alleged infiltration by the ELN into peasant and indigenous marches in four departments of the country, including Cesar, the Kankuamo governor, Jaime Arias, rejected these statements and contended that the lives of the residents of these communities are being put in danger”:

http://caracol.com.co/emisora/2016/06/02/valledupar/1464881865_137916.html

²⁹ The Governor of Santander announced that peasants would be banned from traveling to prevent the mobilization, and he refers to the peasant mobilization as an “armed strike”: <https://www.youtube.com/watch?v=J9o536rvfII>

“Villamizar stated ‘First of all, it has been decided that mass movement from the towns towards Tibú, Ocaña, or the Cúcuta Metropolitan Area will not be permitted’”: <http://www.rcnradio.com/locales/gobernacion-norte-santander-implementa-medidas-seguridad-possible-paro-campesino/>

³⁰ <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/colombia-asesinatos-intentos-de-asesinatos-ataques-amenazas-y>

³¹ Prensa: <http://www.elespectador.com/noticias/bogota/camaras-el-punto-ciego-muerte-de-miguel-an-gel-barbosa-articulo-635924>

DDHH: <http://www.aliriouribe.com/actos-intimidacion-exequias-mi-guel-an-gel-barbosa-madrid-cund-estudiantes-la-universidad-distrital/>

During the course of the truck driver strike **LUIS ORLANDO SAIZ**³², 19 years old, died after being struck in the face by a gas grenade thrown by a member of the same police anti-riot squadron in Duitama, Boyacá.

On June 11 2016, in the course of a protest by the community of Chiriguana against the closure of their only public hospital, **NAIMEN AGUSTIN LARA**³³, a Colombian citizen of Afro-Colombian descent, was killed by a projectile from a weapon fired by a police officer. In this same case, Wilmer Acosta, Álvaro Ospino, Vicente Rodríguez, Jorge Luis García Mojica, Desiderio Orta, Marisela Misal Lara, Claribel Rollero, Jhon Deibos López Vargas, Jose Triana, Leandry N, Wilfran Masael Moises Villalobos Torres, July Frangel, Yorma Villalobos, Tony Rafael Jimenez Lerma Were attacked with kicks, truncheons and tear gas. Ovidio Arrieta, Andres Alfonso Yance Viloría, Pedro Jose Rodriguez, Wilfran Masael Moises Villalobos Torres, Walfran Dita Mayorga were suffered firearm injuries. And the following suffered disturbances in their homes: Marilyn Martínez, Elda Martínez, Yaneidis Bastidas, Liliana Pallares, Digna Raquel Villalobos.

3. **Judicialization.** *Judicial police officers have been seen at protests collecting information aimed at identifying and individualizing demonstrators for subsequent prosecution. This practice becomes worrisome when it is noted that national legislation (the Civil Security Act and the Penal Code) contemplates a set of offences used to criminalize acts typical of protest in Colombia. Furthermore, the stigmatization and claims of infiltration of social protest by the insurgencies constitutes a warning of future legal proceedings against demonstration participants. In the lead-up to the national day of mobilization known as the “Minga Agraria, Campesina, Étnica y Popular,” the director of prosecutions and civil security (the criminal prosecution entity), Luis González, stated publicly that “we are forming a team composed of various state agencies, with the police and the ministries, for assessment and monitoring of this peaceful social protest.”³⁴*
4. **Threats and intimidation:** Before, during, and after legitimate protests, communities and human rights advocates receive threats, via pamphlets designed to intimidate communities or via calls or emails sent directly to prominent leaders of the protests. Likewise, there are reports of grave cases of aggression and intimidation against witnesses and victims who complain of violence wielded by law enforcement authorities.

***Threats in the course or context of the Agrarian, Peasant, Ethnic and Popular Strike
(Information taken from the information bulletins of the human rights commission)***³⁵

³² Tras la necropsia al cuerpo de Luis Orlando Saiz, la víctima de 31 años que falleció el pasado martes, el dictamen de Medicina Legal fue contundente. "Corresponde a trauma craneoencefálico severo, producido por el impacto de proyectil de alta velocidad lacrimógeno, es decir, por el impacto de una granada de gas lacrimógeno a nivel craneoencefálico", explicó Carlos Eduardo Valdés, director de Medicina Legal. <http://noticias.caracol.tv.com/colombia/quien-responde-por-la-muerte-de-luis-orlando-saiz>

<http://www.elespectador.com/tags/luis-orlando-saiz>

³³ Prensa: <http://www.elespectador.com/noticias/judicial/llevar-cidh-caso-de-lider-afro-habria-sido-asesinado-un-articulo-644840>

DDHH: <http://www.asfcanada.ca/en/news/asfc-manifiesta-su-preocupacion-por-la-situacion-de-riesgo-que-viven-los-habitantes-del-municipio-de-chiriguana-cesar-y-rechaza-la-muerte-del-lider-comunitario-afrodescendiente-neiman-agustin-lara-625>

³⁴<http://www.eltiempo.com/politica/justicia/para-campesino-esta-infiltrado-por-la-guerrilla/16607306>

³⁵<http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/936-boletin-de-derechos-humanos-no-12-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/937-boletin-de-derechos-humanos-no-11-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/927-boletin-nacional-de-derechos-humanos-no-10-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/924-boletin-de-derechos-humanos-no-9-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/920-boletin-de-derechos-humanos-no-8-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/919-boletin-de-derechos-humanos-no-7-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/912-boletin-de-derechos-humanos-no-6-minga-nacional-agraria-campesina-etnica-y-popular.html> / <http://congresodelospueblos.org/ejes-y-sectores-vista/paro-nacional-2016/item/914-boletin-no-5-de-derechos>

May 19. Various leaders of the Regional Indigenous Council of Cauca (CRIC) and of the Association of Indigenous Cabildos of Northern Cauca (ACIN) were threatened, among them Albeiro Camayo, coordinator of the ACIN's indigenous guard, Nelson Lemus, Jhovany Yule, and Luz Eyda Julicue, by a pamphlet from the Aguilas Negras, in which their work was stigmatised and it was stated that they belonged to guerrilla groups; for this a reward of 20 000 000 pesos was offered to whoever killed the leaders mentioned.

May 21 Guillermo Pérez Rangel a leader from Congreso de los Pueblos, was threatened in Cesar department. He received an email in which they made threats against his person and against Congreso de los Pueblos, Marcha Patriótica, trade unionists and human rights defenders.

May 26 Albeiro Camayo, coordinator of the indigenous guard and member of ACIN's human rights team was victim of an attack. The events took place in the department of Cauca on the outskirts of Popayan. Armed men pursued him on two motorcycles and fired at him various times; he emerged from the attack unharmed.

June 2. At Plaza de Montería. The guard of the indigenous population, belonging to the Embera group Katio from alto Sinu that was gathered at Plaza de Montería, in front of the Government of Córdoba, was intercepted during at night whilst they were on watch duty, by a person travelling on a high-cylindered motorbike. They were intimidated and received a verbal threat, that if they did not finish the strike quickly they would finish it themselves, with severe threats against the leaders and other indigenous people who were participating in the strike.

June 3, Valledupar. Via email, Guillermo Perez Rangel, a leader of Congreso de los Pueblos, again received a threat of death or exile.

June 4, In the department of Tolima, towards 3.00pm, indigenous people belonging to the CRIT received a threatening flyer by email, with the logo of the Aguilas Negras - Central Colombian Bloc, in which it was stated that "our group is fully aware of all of the intention to continue blocking roads, hold marches and misinform people just to obstruct good ideologies and development projects in tolina (sic.) and in our fatherland. For this reason the principal leaders of the following organisations are declared military targets: marcha patriotica (sic.), those in the comtie ambiental (sic), those from the Regional Council of Indians of Tolima - crit (sic.), and o.n.i.c. (sic.), cumbre agraria (sic.), congreso de los pueblos (sic.), the beauty that is the mayor of ibague (sic.) and those that insist on leading in the fairy-tale of human rights, with Santos' stupid crappy peace, all you sons of whores are nothing more than farc-ep (sic.) collaborators. You are ordered to cease your activities NOW! No strikes, because we know where you are, our soldiers will make you fall one by one..."

JURIDICAL PROCESS OF THE MEMBERS OF THE CONGRESO DE LOS PUEBLOS

Wednesday morning, July 8th 2015, 13 individuals were detained simultaneously in the city of Bogota in an operation of Fiscalía general de la Nación, in collaboration with the National Police. On his Twitter account, President Juan Manuel Santos announced the capture of 11 individuals pertaining to the ELN, held responsible

humanos-del-nororientecolombiano-y-sur-de-bolivar.html / <http://comosoc.org/Boletin-de-derechos-humanos-No-4> /
<http://www.usofrenteobrero.org/index.php/secretarias/derechos-humanos/4931-boletin-de-derechos-humanos-no-3-minga-nacional-agraria-campesina-etnica-y-popular-tratamiento-de-guerra-a-la-protesta-social> / <http://comosoc.org/Boletin-de-derechos-humanos-no-2> /
<http://congresodelospueblos.org/comunicados-congreso-de-los-pueblos/item/888-boletin-no-1-derechos-humanos-minga-nacional-agraria-campesina-etnica-y-popular.html>

for bombings in Bogota. He congratulated the Colombian Police and the Fiscalía. "They will pay for those attacks", he declared at 5:19 am on July 8th.

To this day, the Fiscalía did not make any declaration that could link the detained member of the Congreso de los pueblos with the explosions that took place on July 2nd in Bogota. Two of the individual detained are accused of having links with the ELN and the 11 others are accused of infractions related to a student protest. The construction of these facts by the Medias is part of a political attempt to persecute and criminalize opponents. It threatens any due process since defenceless individuals are being negated their fundamental rights by the medias, the police and the political authorities.

September 11th 2015, penal judge 44 of Bogotá's tribunals released the detainees after quashing the decision which led to the detention of those individuals. It was concluded that there was no motivation whatsoever for such detention. The judicial officers were reminded that they had to support their conclusions. To this date, there is no progress in the case. However, these youngsters had to leave the country or change their lives completely in order to avoid potential risk to their integrity.

ACTS OF SEXUAL VIOLENCE AGAINST THE WITNESS OF THE HOMICIDE OF NAIMEN AGUSTÍN LARA – CHIRIGUANÁ, CESAR³⁶

(Facts taken from the declaration presented by the Congreso de los Pueblos juridical team)

July 17th 2016, in Boca del Puente, at the entrance of the Municipal Office of La Sierrita in the town of Chiriguaná, an attempt was made on the life of one of family members and witness to the homicide of **NAIMEN AGUSTIN LARA**, perpetrated by the National Police last July 11th in the middle of a protest by the community requesting better health care.

The young **YERALDIN LARA DITTA**, 19 years old, was coming back from her workplace, located at El Cruce. On her way home, she was followed by an unknown man. Worried, she contacted her cousin and told her she was being followed by a stranger. Her family and members of the community went immediately to look for her. Later on, she was found in an isolated spot very close to where **NAIMAN AGUSTIN LARA** was murdered.³⁷

The young woman was found unconscious, wearing only her inner garments. Her pants and her blouse had been torn apart. A nylon stocking was found around her neck, indicating that her assailant tried to asphyxiate her. Her personal items, cell phone, wallet and a gold chain were found close by. She was immediately taken to the municipal hospital where she was seen by a doctor. It was then noticed that she had been severely beaten on the head with what seemed to have been a brick and in the abdomen with a contusing object. Marks had also been found on her neck.

From what Yeraldin could relate to her family, her assailant was a corpulent man who had been holding her at knifepoint. His head was covered and he told her that if she were to declare the death of her uncle, her and her family would die. The nylon stocking and the knife were found on the spot and were placed before the National Police. According to the examination, the possibility of a sexual assault is excluded. Nevertheless, the assault could be considered an act of sexual violence against the young woman.

³⁶ <http://derechodelpueblo.blogspot.com.co/2016/07/atentado-contra-testigo-de-la-muerte.html>

³⁷ <http://www.eltiempo.com/politica/justicia/para-campesino-esta-infiltrado-por-la-guerrilla/16607306>

8 Update

At the time that this report was being finished a wave of killings³⁸ and assassination attempts hit the social organizations:

On August 29th, armed men wearing military uniforms with rifles intercepted vehicles on the way to the local marketplace and stopped the vehicle that was transporting JOEL MENESES MENESES, NEREO MENESES GUZMAN, and ARIEL SOTELO, from the social organization The Committee of Integration in the Colombian Macizo – CIMA- who were taken to the site known as Monte Oscuro, at the border between the municipalities of Bolívar and Almaguer, where they were found killed due to gunshot wounds.³⁹ In the same week, four members of the Awá Indigenous group were shot dead by unidentified gunmen in the Department of Nariño, they were Camilo Roberto Taicús Bisbicús, the leader of the Awá Indigenous reservation (resguardo) of Hojal La Turbia, in Municipality of Tumaco; brothers Luciano Pascal García and Alberto Pascal García, also of the resguardo Hojal La Turbia, who were killed in the Municipality of Llorente; and Diego Alfredo Chirán Nastacuas, a member of the Awá people, who was killed in the Municipality of Barbacoas⁴⁰.

A LEADER OF THE CONGRESO DE LOS PUEBLOS WAS ASSASSINATED IN THE CENTER OF CESAR

In the afternoon of September 11th 2016, the leader NESTOR IVAN MARTINEZ was assassinated. He had been the spokesperson for the negotiations commission - Comisión de Interlocución del Sur de Bolívar y Sur del Cesar CISBCSC - and a member of the Congreso de los Pueblos in the center of Cesar.

Armed men on motorcycles came to the farm belonging to the community leader's brother, located in rural areas around the Sierra. Once there, they tied up the administrator and his wife. When NESTOR IVAN MARTINEZ arrived, they fired two shots into his head. NESTOR IVAN MARTINEZ was also a member of the Community Council of the Afro-Colombian community of the Sierra, El Cruce and CONESICE station in the center of Cesar. He was leading a communal process for the defense of their territories and the environment against mining projects in the region. NESTOR IVAN MARTINEZ had also been leading a day of protest in mid-June against the decision to shut down the public Hospital San Andres of Chiriguana. It is important to emphasize the fact that it was during the days of the protest that the young NEIMAN AGUSTIN LARA was murdered. He had been working within the Community Council of La Sierrita. The community had also been the victim of aggressions and abuses at the hand of the authorities.⁴¹

In the south of Bolívar, according to versions of the community, at 5 in the afternoon on Sunday September 11th, an armed helicopter from the Nueva Granada Battallion performed a troop landing in the Municipality of San Pablo, in the village of Patio Bonito. In the moment of the landing, there was indiscriminate firing of machine guns, and during this indiscriminate firing, the house of Alvaro Rincon was hit. Rincon is affiliated with the community action council, he ended up injured and was later killed by one of the soldiers inside of his own house. According to accounts by the inhabitants of the zone Mr. Rincon was hugging his son and pleading with the soldiers to spare his life. ⁴²

On Tuesday September 13th, Alexander Castro, a labor leader from the USO survived an assassination attempt in the city Barrancabermeja while he was in a meeting with workers. ⁴³

September 14th Mr Ovidio Alrey Bustamente Chaviria was assassinated in his house in the municipality of Puerto Valdivia in Bajo Cauca Región. Mr Chaviria was member of the regional peasant association – ASOSBAC Asociación

³⁸ <https://www.amnesty.org/download/Documents/AMR2348142016ENGLISH.pdf>

³⁹ <http://congresodelospueblos.org/regiones/sur-occidente/item/954-graves-violaciones-generan-alerta-en-el-macizo-colombiano.html>

⁴⁰ <http://www.oidhaco.org/?art=2117&lang=es>

⁴¹ <http://congresodelospueblos.org/comunicados-congreso-de-los-pueblos/item/958-accion-urgente-asesinado-lider-del-congreso-de-los-pueblos-en-el-centro-del-cesar.html>

⁴² <http://www.semana.com/nacion/articulo/defensoria-le-pide-cuentas-al-ejercito-por-muerte-de-campesino-en-el-sur-de-bolivar/493826>

⁴³ <http://congresodelospueblos.org/comunicados-congreso-de-los-pueblos/item/960-repudiamos-el-atentado-contra-alexander-castro-dirigente-de-la-union-sindical-obrera-exigimos-garantias-para-la-lucha-social-y-politica.html>

<http://www.wradio.com.co/noticias/regionales/atentan-contra-la-vida-de-alexander-castro-dirigente-de-la-uso-en-barrancabermeja/20160914/nota/3245717.aspx>

campesina del Bajo Cauca- and on the executive council of the local association (Junta de acción comunal).⁴⁴

September 15th William García Cartagena, a lawyer defending victims in Segovia, a mining area, home to conflicts between small miners and multinationals like Gran Colombia Gold – a Canadian company-was assassinated in Medellín. ⁴⁵ On Friday September 16th Luis Alfonso Salinas Chau a People's Congress leader was last seen at 8pm on Saturday 17th. at the time this report was sent he was still missing.⁴⁶

V. URGENCY OF INTERNATIONAL INTERVENTION

The systematic and widespread violation of the human rights of persons in custody in Colombia, which is fully acknowledged by various governmental, judicial, and oversight authorities, constitutes a grave instance of default on international obligations and makes plain the State's ineffectiveness at protecting the prison population on its territory, who are subjected to conditions of confinement that constitute cruel, inhuman and degrading treatment, constantly endanger life and physical, moral, and psychological integrity, and violate prisoners' human dignity.

For these reasons we ask the Human Rights Committee of the United Nations to issue the following recommendations to the Colombian state:

1. Enact effective laws preventing the abuse of preventive detention and prison sentences and allowing for the release of persons in custody, so as to reduce overcrowding to levels that do not affect human dignity.
2. Implement a disease prevention and healthcare service provision model that guarantees genuine and effective access for the prison population.
3. Establish a mechanism independent of the correctional authorities for the receipt and investigation of complaints filed by prisoners.
4. Strictly abide by the prison-related recommendations of the OACNUDH and the CAT.

On another subject, the judicial persecution of the peasant sector and other sectors organized for the defence of their rights, imposing custodial measures against their members, isolating them from their social and family environment on ephemeral and generic charges, constitutes a worrying indicator of a lack of political guarantees and guarantees of the right to public participation at a time when peace and the post-conflict era are on the agenda.

We therefore ask the Human Rights Committee of the United Nations to issue the following recommendations to the Colombian state:

1. That the criminal prosecution arm of the Colombian state and the superior council of the judiciary issue a circular informing their agents to adjust the application of penal action and custody against members of peasant communities and human rights advocates so that it abides by international and constitutional standards, where the charges against these persons emanate from persons with a personal interest in the proceeding or who receive benefits for their statements and whose versions are vague and/or changing.

Finally, given the grave violations of human rights being committed within a framework of social protest and given the existence of domestic provisions restricting and criminalizing the exercise the right to protest, we ask the Human Rights Committee of the United Nations to issue the following recommendations to the Colombian state:

1. Bring into conformity with international law and Colombia's commitments thereunder those domestic provisions limiting or restricting the exercise of social protest or granting excessive powers to law enforcement bodies to intervene in such contexts.
2. Effectively and expeditiously investigate all human rights violations committed in contexts of social protest.

September 18th 2016

⁴⁴ http://caracol.com.co/emisora/2016/09/16/medellin/1474025353_366771.html

⁴⁵ http://caracol.com.co/emisora/2016/09/15/medellin/1473972408_325001.html

⁴⁶ <http://congresodelospueblos.org/comunicados-congreso-de-los-pueblos/item/961-desaparecido-lider-del-cna-en-el-huila.html>