

Confronting Impunity: Protect Lawyers and Judicial Independence



INTERNATIONAL CARAVANA DELEGATES 2022

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Delegates of the 7th International delegation of the Caravana of Jurists



The International Caravana of Jurists is the embodiment of the international legal community's concern and solidarity with human rights lawyers and other human rights defenders in Colombia. We will continue to stand alongside our Colombian colleagues, many of whom continue to be at risk, for as long as they ask us to.

**This report is dedicated to all those who struggle for peace, justice and human rights in Colombia.
In recognition and solidarity.**

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GLOSSARY

Campesino: Rural small-scale farmers

Defensoría del Pueblo: Human Rights Ombudsman's Office

Departamento Administrativo de Seguridad (DAS): Administrative Department of Security was a state body in charge of intelligence and counterintelligence.

Escuadrón Móvil Antidisturbios (ESMAD): Mobile Anti-Disturbance Squad, Colombian police anti-riot squad

Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (FARC-EP): largest guerrilla group

Jurisdicción Especial para la Paz (JEP): Special Jurisdiction for Peace, transitional justice tribunal established under Peace Agreement

Tutela: An injunction to protect fundamental constitutional rights when they are being violated or threatened by the action or omission of any public authority

LIST OF ACRONYMS

Acronym	Spanish	English
ASCAMCAT	<i>Asociación Campesina del Catatumbo</i>	Catatumbo Farmers' Association
CAJAR	<i>Colectivo de Abogados José Alvear Restrepo</i>	José Alvear Restrepo Lawyers' Collective
CCALCP	<i>Corporación Colectivo de Abogados Luis Carlos Pérez</i>	Luis Carlos Pérez Lawyers' Collective
CJD	<i>Corporación Justicia y Dignidad</i>	Justice and Dignity Corporation
CPDH	<i>Comité Permanente de Derechos Humanos</i>	Permanent Committee for the Defense of Human Rights
EJP	<i>Equipo Jurídico Pueblos</i>	People's Legal Team
ELN	<i>Ejército de Liberación Nacional</i>	National Liberation Army
ESMAD	<i>Escuadrón Móvil Antidisturbios</i>	Mobile Anti-Disturbance Squad
FARC-EP	<i>Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo</i>	Revolutionary Armed Forces of Colombia – People's Army
FASOL	<i>Fondo de Solidaridad con los Jueces Colombianos</i>	Solidarity Fund for Colombian Judges
FNEB	<i>Fundación Nydia Erika Bautista</i>	Nydia Erika Bautista Foundation
HRD	<i>Defensor@ (s) de derechos humanos</i>	Human rights defender(s)
IACHR	<i>Comisión Inter-Americana de Derechos Humanos (CIDH)</i>	Inter-American Commission on Human Rights
IACtHR	<i>Corte Inter-Americana de Derechos Humanos (Corte-IDH)</i>	Inter-American Court of Human Rights
ICC	<i>Corte Penal Internacional (CPI)</i>	International Criminal Court (ICC)
MOVICE	<i>Movimiento Nacional de Víctimas de Crímenes de Estado</i>	National Movement of Victims of State Crimes
OHCHR or OACNUDH	<i>Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos</i>	Office of the United Nations High Commissioner for Human Rights
PDET	<i>Programas de Desarrollo con Enfoque Territorial</i>	Territorially Focused Development Programmes
PNIS	<i>Programa Nacional Integral de Sustitución de Cultivos Ilícitos</i>	Comprehensive National Program for Substitution of Illicit Crops
UNP	<i>Unidad de Protección Nacional</i>	National Protection Unit

EXECUTIVE SUMMARY

This report documents the findings of the delegation in August 2022 by the VII International Caravana of Jurists to Colombia.

The backdrop to the Caravana was the high murder rate of human rights defenders (HRDs) and social leaders, the alarming increase in territorial violence, and the acceleration of the repression and criminalisation of social protest in recent years. As the delegation commenced, the incoming government of Gustavo Petro was promising to fully implement the 2016 Peace Agreement. Delegates were also aware of concerns about the Duque government's failure to fulfil the Agreement's core commitments.

With this in mind, **the VII Caravana focused on the need for an independent judiciary and the protection of human rights lawyers and defenders, to confront impunity and guarantee access to justice for all.**

Convening first in Bogotá for preliminary meetings with Colombian colleagues, the Caravana delegates travelled to four departments, Bolívar (Cartagena), Norte De Santander (Cúcuta), Santander (Bucaramanga) and Valle Del Cauca (Cali) to meet with lawyers, human rights defenders, civil society organisations, representatives of rural communities, victims and survivors, judges and other justice system operators, and additional state authorities. On their return to the capital, delegates met with representatives of national and international non-governmental organisations, the judiciary and the Special Jurisdiction for Peace (JEP), and state entities such as the Public Prosecutor's Office and the National Protection Unit (UNP).

The realities were even more concerning than expected. The Caravana heard testimonies that confirm the lack of progress in implementing the Peace Agreement over the last four years and point to complex and systemic realities that stand in the way of a just and enduring peace. In particular, the Caravana received accounts that confirm the limited implementation of critical commitments, such as comprehensive rural reform and solving the illicit drugs problem, tackling the sources of attacks on social leaders and communities and providing meaningful security guarantees, and failing to ensure that political participation, in its varied forms, is encouraged, not met with violence or stigmatisation.

Summary of VII Caravana's Observations

The Caravana was perturbed to learn of the persecution of groups attempting to force compliance with the Peace Agreement and the challenges that victims-survivors of historic and recent state violence continue to face in their quest for justice and accountability.

Among the Caravana's other observations:

- Armed conflict, violence and instability continues in marginalised urban centres and rural areas affected by high to critical levels of 'territorial violence' and the associated adverse effects.¹ Efforts to address the sources of this violence have made little to no progress. Indeed, the number of illegal armed actors and their areas of influence have expanded.

¹ OHCHR / OACNUDH, Territorial Violence in Colombia: Recommendations for the New Government (Violencia Territorial en Colombia: Recomendaciones para el Nuevo Gobierno), July 2022, see annex at p. 46 (Territorial Violence Report): [OHCHR Territorial Violence Report](#).

- The number of grave human rights violations is elevated and includes phenomena such as child recruitment and unchecked gender-based violence, particularly in the border area near Cúcuta, and continued high murder rates of social leaders and HRDs.
- Rights advocates and community and social leaders operate at high risk and do not enjoy meaningful security guarantees and protection.
- The land issue is far from resolved; conflict over land restitution and the violent forced displacement and confinement of communities and the targeting of their leaders and members, continues and has intensified.
- There are patterned repressive responses to those who exercise their rights to dissent, associate together, mobilise in protest, and participate in other non-violent expressions of their opposition to dominant economic and political realities.
- The judiciary's independence is threatened on multiple levels and denied or delayed justice and impunity is prevalent. The threats include political interference and co-optation of judicial oversight bodies; severe under-resourcing; contempt for and non-implementation of judicial decisions; high risks, threats and murders of judges and justice operators; along with the lack of meaningful state security guarantees and protection. The State's treatment of alleged judicial misconduct also remains a serious concern. The foregoing has resulted in a tremendous psychological toll on justice system actors.
- The legal profession, particularly, the human rights bar, continues to be imperilled, experiencing various threats and attacks against them personally and in terms of other obstacles that hinder and interfere with their ability to carry out their professional activities. There are grave consequences of this situation for the lawyers themselves in the exercise of their rights, as for their families, their clients and the human rights defence community at large.

Recommitment and comprehensive implementation of Peace Agreement

Of critical importance and integral to achieving a just and lasting peace is a recommitment to the territorial and comprehensive implementation of the Peace Agreement - and the recommendations of the Truth Commission and other bodies.² The Peace Agreement marked a major milestone and provided the general basis for beginning the transition to peace in committing to address the structural causes of the decades-long conflict. Over six years since the Peace Agreement was signed, the Caravana is very dismayed by the lack of progress in implementing the key commitments, along with the continuity and indeed, intensification of the violence, armed conflict and human rights violations.

² Commission for the Clarification of the Truth, Co-existence and Non-Repetition - Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición (CEV), There is Future if there is Hope: Final Report - Findings and Recommendations of the Truth Commission of Colombia (August 2022) (Truth Commission Final Report): <https://www.comisiondelaverdad.co/hallazgos-y-recomendaciones-1>. Additional reports: (1) Territorial Violence Report, Ibid. (2) Coalition, La independencia judicial en Colombia, en riesgo por un régimen autoritario, June 2021 (Colombia en Riesgo Report): <http://corpofasol.org/nadie-por-enci-ma-de-la-justicia/independencia/independencia.pdf>; (3) Inter-American Commission on Human Rights (IACHR), Observations and recommendations: Working visit to Colombia, July 2021 (IACHR Working Visit Report): [IACHR Working Visit Report 2021](#); and (4) IACHR's follow-up report on its recommendations, 25 January 2023 (IACHR Follow-up Report): [IACHR Follow-up Visit Report 2023](#).

This was evident in the accounts of representatives of Indigenous, Afro-Colombian and campesino communities and social organisations in the regions visited. Caravana delegates to Cúcuta learned about the lack of progress in the implementation of comprehensive rural reform and solving the illicit drugs problem; the status of these commitments is that they have stalled and the participation of communities has been downgraded (in terms of territorial development plans, PDETs, and the national illicit crops substitution program, PNIS). Moreover, forced eradication has not only been renewed, it has intensified in recent years. The efforts of social organisations - such as the Catatumbo Association of Campesinos (ASCAMCAT) - to push for implementation of the Agreement have been met with violence and stigmatisation, which renders them even more vulnerable to attack.

The land issue has not been resolved. Caravana delegates to Cúcuta, Bucaramanga and Cartagena heard alarming testimonies about ongoing acts to displace rural inhabitants and deter them from organising to meet their fundamental needs of access to their territories and productive land to sustain their families and meet basic needs. Emblematic examples include the threats to two campesino communities in Cesar department, Pitalito and 20 de Julio, one incident taking place during the Caravana and another in November 2022; and the situation of Afro-Colombian communities trying to ensure access to and protection of the land and water sources of their livelihoods from, for example, the adverse effects of the government's project to reroute the Canal del Dique. The response to their organising activities has been threats and attacks against these communities and their lawyers and HRDs.

Regarding efforts to ensure accountability for historical and recent grave crimes and human rights violations, and protection from ongoing violence by a plethora of illegal armed actors, social leaders, campesino, Indigenous and Afro-Colombian rights defenders remain at elevated risk of attacks and murders. Massacres continue in the regions characterised by high levels of territorial violence. These areas feature both state impunity and also state absence. This combination has proved intractable, and addressing it is the crucial task.

Still 'no respite for human rights lawyers'³... Advocates remain at high risk.

The Caravana is extremely troubled by reports during and after the delegation that threats, attacks and insecurity continue to be the norm for the legal profession, particularly, human rights lawyers, as with human rights defenders more generally. Lawyers still run high risks in carrying out their representation work, whether in border regions and other rural areas of armed conflict, when representing displaced or confined communities and land defenders, or individuals arbitrarily detained and criminalised in the contexts of universities and social protests.

The Caravana's report sets out detailed accounts of individual lawyers and lawyers' collectives in Bogotá and the regions visited. Chapter 3 examines specific cases of lawyers attacked in the course of efforts to represent victims of the repression during the 2021 national strike. Chapter 4.2 sets out additional cases in other contexts: the university, countryside and urban areas, as lawyers attempt to perform their professional duties in cases against powerful state and private actors, in contexts that challenge the dominant political and economic status quo. In all regions visited, Caravana delegates heard testimonies of cases of stigmatisation, judicial set-ups ('montajes judiciales') and criminalisation, and threats and attacks against lawyers (and sometimes, their families), and their clients. The situation for the 'defenders of the defenders' continues to be untenable.

³ Colombia Caravana, Colombia: Seeking justice, building peace and the post-conflict illusion, 2018, p. 21 (2018 Caravana Report): [VI Report of the Caravana](#), citing Colombian human rights lawyer, Jorge Molano.

State failures to implement meaningful security guarantees and protection measures

And yet, the State has not fulfilled its obligations to protect the legal profession and to fulfil its duties under the UN Basic Principles on the Role of Lawyers (Basic Principles). Chapter 4.2 also elaborates the detailed critiques and recommendations of lawyers and HRDs regarding the policies and protection schemes of the National Protection Unit (UNP). The critiques are extensive, and amount to a failure of the system to provide timely, flexible, differentiated, and adequate measures, including in accordance with measures ordered by the Inter-American human rights system. To the contrary, the UNP's policies and protection schemes are critiqued as further endangering the purported beneficiaries, and as constituting another mechanism for surveillance, and to hinder their vital work. Several lawyers and collectives reported that they are not protected but rather exposed to additional dangers. One of the women lawyers' groups based in Baranquilla (ASOCOLEMAD) has shared the UNP's communications in response to serious security incidents, which can only be described as convoluted and time-wasting, if not obstructionist. In the meantime, these and other lawyers continue to be at grave risk.

Moreover, the positions taken by the UNP at the Caravana's meeting in Bogotá do not instil confidence that vital changes will be forthcoming. The Caravana is concerned that in order for protection measures to fulfil their role, meaningful changes in the UNP's restrictive policies must take place and the UNP must be adequately resourced so that it can carry out its mission properly.

Prevention of course is the ultimate answer, which starts with the commitment of sufficient financial, human and technical resources to the judiciary and the Attorney General's Office, and in particular, to units responsible for investigating crimes and human rights violations, to facilitate impartial, independent and effective investigations of human rights violations and crimes in a prompt and impartial manner - and address the impunity that facilitates these crimes.

Structural threats to an independent judiciary and the rule of law

The Caravana was able to confirm numerous of the systemic threats to an autonomous judiciary identified by a coalition of human rights observers.⁴ The threats are varied and include troubling examples of political interference and cooptation of judicial bodies, which featured strongly during the Duque government.

Other problems are the grossly insufficient financial, technical and human resources that threaten the system's independent functioning and deny and delay justice for victims and survivors. The Caravana heard compelling accounts of the system's incapacity to function properly due to the lack of adequate staffing (with particular mention of judges and prosecutors) and staggering workloads. Caravana delegates to Cartagena heard that there are many unfilled prosecutorial positions and inadequate numbers of qualified judges. They also learned that judges have to contend with a 200% increase in their caseloads. Cúcuta delegates spoke to prosecutors with impossible workloads, for example, one charged with addressing several thousands of reported threats and human rights violations.

The issue of weak or ineffective state control mechanisms and inter-institutional coordination was highlighted by the Human Rights Ombudsman staff in Cúcuta. They reported that while staff duly issued 'early warning alerts' ('alertas tempranas') of death threats - part of the Peace Agreement scheme for providing security guarantees - these warnings went unattended by the state entities charged with taking further action, and moreover, there was no sanction for this inaction.

⁴ As elaborated in Colombia en Riesgo Report, supra 2.

Other themes are the ongoing stigmatisation of judges and the contempt for their decisions, through chronic non-implementation. The land restitution judges and magistrates carry a heavy workload that is unsustainable in terms of the number of cases, their complexity, and the further burdensome requirement of conducting oversight of the execution of their decisions.

The VII Caravana has registered the alarming continuation of threats and attacks on justice operators taking various forms, including murder. Delegates were disturbed to hear from judicial branch functionaries of threats and harassment by state security forces, as with accounts of insecurity and violence so extreme, in places like Tibú in Norte de Santander, which saw the murder in June 2021 of Prosecutor Esperanza Navas and the subsequent threats against and displacement of the rest in her office to Cúcuta, such that there is no prosecutorial presence in that high conflict zone. Cartagena delegates spoke with judges about the lack of security and high risk levels, particularly for judges in the land restitution branch; in one reported case, three judges share one vehicle, which is inadequate, and they do not have personal security provisions. As one former Colombian judge observed to the Caravana, **‘it is not normal that the state does not protect judges and justice operators’**, and effective security guarantees and protection must be implemented going forward.

Finally, as with earlier delegations, the Caravana is concerned by evident threats to the impartial investigation and prosecution of complaints of judicial misconduct, whether through disciplinary or criminal channels. Given the continuation of these concerns since earlier Caravanas (for example, in 2012 and 2014), the Caravana calls on the current government to review the cases of judges previously sentenced and currently jailed for alleged misconduct, various of whom the Caravana delegates met in Cartagena and Baranquilla.

The government should also closely examine and remedy the problematic scope and/or application of criminal offences such as *‘prevaricato por acción’* (‘perversion of justice by an act’). One emblematic case is that of former judge Arney Payares, who is serving his criminal sentence. The VII Caravana shares the disquiet expressed by previous Caravana judges’ monitoring visits in 2012 and 2014⁵ regarding the grave threat to the ambit and independence of judges to interpret the law and decide cases. It remains of serious concern and a potential violation of international human rights law commitments - when legal opinions can form the basis of criminal prosecution and removal from office.⁶

Prospects for an enduring peace with justice

The Caravana concludes that Colombia is far from being post-conflict; the conflict and sources of violence evidently continue, and with particular severity in rural and Indigenous territories and Afro-Colombian and campesino communities, but also in cities and marginalised urban settings.

At the same time, the Caravana was inspired by the creative, persistent efforts of Colombians to obtain justice and surmount impunity. Among these, this report describes several examples: (a) the **People’s Tribunal of Siloé**, a grassroots initiative to obtain justice and challenge impunity for repression in the context of the 2021 national strike; (b) **community protection measures** underway in Indigenous and campesino territories to ensure effective protection against

⁵ Colombia Caravana, Judges at Risk: Report of the judge delegates of the of the Colombia Caravana, 2012 (2012 Caravana Judges Report): [2012 Caravana Judges Report](#); and Colombia Caravana, Judges at Risk continued: Report of the judge delegates of the Colombia Caravana, 2015 (2014 Caravana Judges Report): [2014 Caravana Judges Report](#).

⁶ Ibid (2014 Caravana Judges Report), p. 13.

violations of their rights under human rights and international humanitarian law; and (c) **efforts to challenge the ICC’s problematic decision** to close its preliminary examination of Colombia.

There are many obstacles in the path to an enduring peace with justice. The VII Caravana affirms that the challenges for the current government and civil society are numerous and the future is uncertain. It calls on the international community to redouble its accompaniment and support of the efforts and sacrifices of Colombians to bring about the stable and just peace that is so fervently sought.

Calls to Action

Colombia is experiencing a human rights and impunity crisis that will escalate unless concrete steps are taken urgently to address the challenges identified in this report and others cited, particularly with regard to the comprehensive implementation of the Peace Agreement. The Caravana urges Colombia to consider and implement the recommendations of the Truth Commission Report and those contained in the OHCHR’s Territorial Violence Report and the Colombia en Riesgo Report. We also call on the Colombian government to fully implement the UN Basic Principles on the Role of Lawyers, to take steps to ensure adequate and early protection measures for lawyers, human rights defenders, social leaders and their communities, so as to guarantee access to justice and guarantees of non-repetition.



‘Caravanistas’ and Colombian lawyers after final press conference on 26 August 2022

RECOMMENDATIONS

The proposed recommendations of the Truth Commission in the area of justice are intended to improve the State's response to combat impunity, contribute to the dismantling of criminal organisations and the networks that support them, and guarantee access to conflict resolution mechanisms. This is based on the recognition of the importance of justice as a driving force in the reconstruction of public confidence in the State and as a key element in the fight against illegality.⁷

The VII Caravana's recommendations are grounded in the observations of those with whom we met, along with the Peace Agreement, the Truth Commission's Final Report, the OHCHR's report on Territorial Violence, the UN Basic Principles on the Role of Lawyers and other international declarations protecting rights defenders.

The principle underpinning the Caravana's recommendations is the rule of law. In Colombia the obstacles to effective rule of law are threefold: continued violence and lack of security guarantees, weak justice system, and the failure to protect and support human rights lawyers and defenders. These failings need to be addressed to remedy impunity and secure access to justice.

High Level Calls to Action to the Colombian Government

The VII Caravana calls on the Colombian government to:

- Undertake comprehensive and territorial implementation of the Peace Agreement
- Create effective mechanisms to increase the participation of affected communities and social organisations in the design and implementation of Peace Agreement programs
- Implement the Truth Commission Final Report's recommendations in respect of justice, political participation and ending the armed conflict
- Implement the recommendations in the OHCHR's Report on Territorial Violence
- Implement the recommendations in the Colombia en Riesgo Report
- Implement the IACHR Working Visit Report recommendations and follow-up regarding the 2021 social protests
- Operationalise the UN Basic Principles on the Role of Lawyers⁸ and other international protections for human rights and land defenders⁹

⁷ Truth Commission Report, supra 2, p. 830.

⁸ United Nations, Basic Principles on the Role of Lawyers, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (UN Basic Principles on Role of Lawyers): <https://www.refworld.org/docid/3ddb9f034.html>. See also: <https://lawyersforlawyers.org/en/basic-principles/>.

⁹ Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (1999); Escazú Agreement (2021); UN Declaration on the Protection of Human Rights Defenders (1998); and Resolution on the Protection of Women Human Rights Defenders (2013).

The Caravana calls on the Colombian government to implement the UN Basic Principles on the Role of Lawyers: The UN General Assembly endorsed the Basic Principles and has “urged States to respect them and to take them into account within the framework of their national legislation and practice”.

To elaborate, the Caravana makes the following specific recommendations:

1. Security Guarantees and an End to Violence and Armed Conflict

The Truth Commission calls for the consolidation of the rule of law in zones most affected by violence and internal armed conflict, strengthening the presence and capacity of justice entities and control bodies in the territories.¹⁰

Action required:

- **Dismantle the organisations and illegal armed actors** responsible for the hostilities and violence inflicted on civilians and as against environmental and territorial defenders, Indigenous, Afro-Colombian and peasant communities, social leaders and human rights advocates.
- **Effective protection** for judges and other justice operators, those who defend human rights, civilians in areas of high territorial violence, and security guarantees for participants in social and political movements and leaders, ensuring there are independent, effective investigations and prosecutions of human rights violations
- Implement the changes needed to **adequately fund and reform the National Protection Unit (UNP)** so that it provides prompt, responsive, effective, and differentiated protection schemes that fulfil their intended purpose.
- **The provision of free and quality legal assistance** for certain legal actions for their interposition and follow-up, especially when it comes to issues of great complexity that affect fundamental rights, especially in relation to the victims of conflict¹¹
- **Reduce militarisation and replace with a new doctrine prioritising human rights**, which includes the separation of the National Police from the Ministry of Defence¹²
- **Carry out comprehensive rural reform and solve the problem of illicit economies** with a focus on ethnicity and gender, encompassing but not limited to voluntary substitution of illicit crops, land restitution, formalisation of land title, and recognition of the right to productive territory of Indigenous, Afro-Colombian and campesino communities.
- **Consolidate the rule of law in zones most affected by violence and internal armed conflict**, strengthening the presence and capacity of justice entities and state control bodies in the territories.

¹⁰ This entails, *inter alia*, the enlargement of the territorial capacity of the Human Rights Ombudsman and Attorney General, strengthening the independence of state oversight bodies, and consolidating the participation of grassroots organisations.

¹¹ Colombia en Riesgo Report, supra 2, p. 18.

¹² [WOLA/analysis/colombias-truth-commission-final-report-recommendations](https://wola.analysis/colombias-truth-commission-final-report-recommendations).

2. Functional and Fair Justice System

This requires steps to develop the efficacy and capacity of the justice system to redress its overall absence in the countryside, resolve agrarian conflict and land issues, and ensure access to justice. To establish the foundations of a functional, independent judiciary, these changes are required:

- **Adequate financial, human, and technical resources** so that judges and other justice operators have reasonable workloads and dignified working conditions and can deliver justice without undue delay.
- Ensure that state security forces **refrain from engaging in any form of harassment, interference or attack on judicial independence.**
- **Adequate security for and protection of justice operators**, which also requires that the sources of the risk and persecution - and impunity of said attacks - are effectively and impartially investigated and prosecuted. **In short, the State must protect the judiciary.**
- Effectively **address the problem of contempt for judicial decisions** which manifests in public smearing and stigmatisation of judges and their decisions and the failure or refusal of different levels of government to implement judicial decisions.
- **Remove all barriers to effective operation of Special Jurisdiction for Peace (JEP)**, which entails:
 - Increased resources to permit it to respond adequately and swiftly to the large number of victims and improve the implementation of sanctions in areas of high conflict;
 - Ensure proper support from and coordination with other state institutions; and
 - Address the disparate handling of cases as between those involving military perpetrators versus ex-FARC members.
- **Institutional changes so as to resist co-optation and interference** by other branches of government and powerful economic and political actors. This includes **the creation of an independent commission to examine the risk of co-optation and corruption of the Attorney General's Office** and that this office assumes all investigations so that they fall under the jurisdiction of the ordinary justice system.
- **Reform the system for selection of the Attorney General** to guarantee the independence of this position.
- **Impartial and independent mechanisms** should be put in place to **conduct necessary disciplinary and/or criminal investigations into judicial conduct.** The judiciary should be regulated by a non-political judicial appointments and sanctions commission. An objective review of existing cases of sanctioned judges should be conducted.

3. Protection of Human Rights Lawyers and Defenders

To ensure a fair justice system, the Colombian State must protect human rights lawyers and defenders as follows:

- **Recognise and value the key role of human rights lawyers and defenders in upholding human rights and the rule of law.**
- **Issue consistent public statements condemning all attacks against human rights lawyers and defenders** and countering historic stigmatisation.

- **Guarantee that legal professionals can work without fear of false accusations** being levelled against them leading to criminal prosecution or disciplinary proceedings; stigmatisation; intimidation and harassment; unlawful surveillance; theft of sensitive information; arbitrary detention; and mental and physical harm, disappearances, or their murder (or that of their family members).
- **Remove all obstacles that prevent or hinder lawyers from effectively representing their clients** and discharging their professional duties
- **Ensure that crimes alleged against lawyers are investigated impartially and effectively**, completed in a prompt manner, and where appropriate, seeks the prosecution of the perpetrators and intellectual authors.
- **Increase the financial, human and technical resources** available to the Attorney General's Office, **in particular to the units responsible for investigating crimes against human rights defenders** and human rights violations.

Calls to Action to the International Community

- The VII Caravana calls on the international community to undertake its vital role in **closely monitoring the full implementation of the Peace Agreement**, including transitional justice so that it can fulfil its mandate, and ensure that the challenging transition from conflict to a just peace does not result in further violence and human rights violations.
- This monitoring should be backed by **financial resources**, not only through bilateral government support to the Colombian government, but to civil society organisations.
- Provide **support and solidarity to Colombian civil society**, especially at-risk human rights defenders, communities and social leaders, and victims' organisations that seek justice and accountability.
- Support the call for **sufficient funding to ensure an independent, functional judicial system** to end impunity.
- Support the human rights community's petition for the ICC **to reopen the preliminary examination of Colombia.**



Delegates in Bogotá prepare final details for regional visits

INTRODUCTION

Colombian Caravana is a UK-based human rights organisation that has been organising the Caravana delegations since the first Caravana in 2008.¹³ The delegations are coordinated alongside Colombian lawyers' associations with which there is a long history of collaboration, such as Asociación Colombiana de Abogados de Derechos Humanos (ACADEHUM); Colectivo de Abogados José Alvear Restrepo (CAJAR); Corporación Colectivo de Abogados Luis Alberto Carlos Pérez (CCALCP); Colegio de Abogados de Cartagena; Corporación Justicia y Dignidad (CJD); Corporación Agencia Nacional Étnica; Equipo Jurídico Pueblos (EJP); Equipo Jurídico Humanitario 21 N and MOVICE.

The theme of the seventh International Caravana of Jurists (VII Caravana) was the need for judicial independence to combat impunity and guarantee access to justice and dignity for victims and survivors, and for human rights lawyers and defenders to be able to carry out their work in safety and with dignity.

The VII Caravana travelled to Colombia from 20 to 28 August 2022, four years rather than the usual two years since the previous Caravana owing to pandemic-related travel restrictions in 2020. This was also the first Caravana to take place following a complete presidential cycle (2018 to 2022), that of former President Iván Duque, and just weeks after the inauguration of the new government of President Gustavo Petro and Vice-President Francia Márquez on 7 August 2022.

The VII Caravana delegation was composed of 18 legal professionals and human rights experts from Canada, France, Italy, Mexico, the Netherlands, Nicaragua, Spain, Switzerland, Trinidad and Tobago, the United Kingdom and the United States. The VII Caravana was co-organised with the support of the European Bar Federation (FBE); Global Justice Association; the Human Rights Committee of the Law Society of England and Wales, the International Association of Lawyers (UIA-IROL), the International Observatory of Lawyers at Risk (OIAD), Lawyers for Lawyers and Judges for Judges (Netherlands), Lawyers' Rights Watch Canada, Peace Brigades International-Canada (PBI-Canada) and the Swiss-Colombian Group (ASK).

The VII Caravana travelled to the departments of Bolívar (Cartagena), Norte de Santander (Cúcuta), Santander (Bucaramanga) and Valle del Cauca (Cali). The information, conclusions and recommendations in this report are the result of numerous meetings and interviews with human rights lawyers, judges and other judicial branch functionaries, social leaders, civil society groups and non-governmental organisations, victims and their families, community leaders, international organisations, diplomatic missions, and Colombian national and departmental government authorities. The Caravana also relies on various written sources from national and international organisations.

¹³ In 2008, ACADEHUM, a network of Colombian human rights lawyers, invited a diverse mix of lawyers from around the world to visit Colombia. The idea was that by reporting on the killings, threats, and harassment which they were subjected to on a daily basis, the Caravana would provide a form of protection so they could get on with their work.

As the 2022 Caravana began, delegates were conscious that violence and human rights violations were on an upward trajectory. Colombia retains its status as the country with the highest murder rate of human rights defenders in the world.¹⁴ In the first half of 2022 there was an alarming increase in violence, with at least 19 massacres and 22 social leaders killed.¹⁵ This situation, coupled with the State's repression and criminalisation of political participation and social protest in recent years, the threats to judicial independence, and the general regression of the rule of law, has created a serious situation for rights defenders in Colombia.

An independent judiciary, together with a legal profession that is able to carry out its critical functions, is essential to combat impunity and uphold the rule of law. Human rights lawyers must be able to safely discharge their professional duties and guarantee access to justice for victims and survivors. The protection of human rights lawyers and defenders thus remains a priority; their work is crucial to support the transitional justice process and achieve a stable and lasting peace.

Weeks prior to the delegation (in June), the Colombian Truth Commission (Comisión de la Verdad-CEV) had published its critically important report, *There is Future if there is Truth (Hay Futuro si Hay Verdad)*.¹⁶ The Truth Commission sets out its findings and recommendations on eight issues for an agenda to transform the country by ending violence and armed disputes, overcoming the factors that cause its persistence, and rebuilding trust between society and institutions so as to achieve reconciliation and ensure that conflict does not recur.¹⁷

The Peace Agreement signed in 2016 with the FARC-EP quickly became a central focus of the VII Caravana and this report tracks the status of the core agreements.

¹⁴ Departamento Nacional de Planeación: Conpes 4063 de diciembre de 2021, p.11, cited in [2022/02/220223-Co-municado-UE.pdf](#). Global Witness reported in its July 2020 report that over half of all reported killings last year occurred in two countries, Colombia and the Philippines, *Defending Tomorrow: The climate crisis and threats against land and environmental defenders* (July 2020), p. 6 (*Defending Tomorrow Report*): [global.witness/defending-tomorrow-report/](#).

¹⁵ Indepaz, 15 de febrero de 2022, cited in: <http://www.colombiancaravana.org.uk/joint-letter-european-authorities-dialogue-ue-colombia/>.

¹⁶ Truth Commission Final Report, supra 2.

¹⁷ IACHR, press release, "IACHR: Colombian Truth Commission Report Will Support National Reconciliation Process", 12 July 2022: [IACHR/PressReleaseTruthCommReport12July2022](#).

Structure of Report

Chapter 1 reviews the original commitments and the status of each of the Agreement's five substantive sections. We turn in **Chapter 2** to the Colombian countryside, delving deeper into the lack of progress in implementing the vision of comprehensive rural reform and a resolution of the illicit drugs problem, together, the heart of addressing the causes of persistent structural violence and the sequelae. Case studies from the regions visited graphically illustrate these grave territorial realities. **Chapter 3** examines the status of the commitment to political participation without violence, which focused delegates on the State's deeply problematic response to social protests that began in 2019-2020 and picked up in the national strike that enveloped Colombia in 2021. The chapter highlights these realities in urban and rural contexts where violence continued to be the State's most common response to actions that challenge the status quo. In **Chapter 4**, we review the varied threats to judicial independence, which range from insufficient resources and political interference to continued harassment and persecution of judges and other justice operators, each factor having the effect of compromising the autonomy of the judicial branch. The remainder of the report looks at the situation of human rights lawyers and sets out additional obstacles to justice as well as important initiatives to address impunity.

As part of its model of solidarity and professional accompaniment at the international level, the VII Caravana presents in this report findings, conclusions and recommendations regarding the capacity of legal professionals and human rights advocates to carry out their vital work, the defence of human rights, the functioning of the rule of law and access to justice. Our recommendations are guided by international human rights law standards.

Note: The translation into English of Colombian institutions and legal concepts is unofficial, adopted from various sources. There is no single authoritative translation of many of these terms. Additionally, due to the fact that some legal concepts might be confusing or difficult to understand for those who are not familiar with the Colombian legal framework, some additional explanatory footnotes have been added in the English version.



Truth Commission banners in Bogotá

Uneven Implementation of the Peace Agreement: ‘Una paz violenta’

*Aun así, en muchas regiones del país hoy se vive una paz violenta.¹⁸
‘Even so, in many regions of the country today there is a violent peace.’*

A central theme to emerge during the VII Caravana is the lack of comprehensive implementation of the Peace Agreement that was finalised in 2016.¹⁹ This failure was consistently identified as the country’s biggest challenge,²⁰ given its potential to “tackle the roots of historical cycles of violence”²¹ that leave many communities at risk in the intensifying violence and to “build lasting and sustainable peace”²²

Chapter 1 examines the status of the Peace Agreement. We start with the perspectives of the V and VI Caravanas before setting out a contemporary assessment based on written sources and the VII Caravana’s observations.

1.1 Retrospective: Observations of V and VI Caravanas

The V Caravana (2016) took place on the eve of the Peace Agreement. While expectations coalesced around its potential to end the armed conflict,²³ Caravana delegates heard concerns that the demobilisation of FARC combatants would create a power vacuum in the rural areas that the State was unlikely to adequately fill and would quickly be controlled by other illegal armed actors.

The reality in 2018 was found to be far from ‘post-conflict’.²⁴ The VI Caravana Report underscored the worrying proliferation and re-emergence of illegal armed actors. It concluded that the Peace Agreement was precarious, with limited implementation in key areas. Human rights lawyers were found to be at heightened risk for aggressions and intimidation, within the broader context of an escalation of violence against human rights defenders and social and political movements. An acute sense of anxiety and insecurity was expressed about

18 Del Paramilitarismo al Paramilitarismo? Radiografías de una paz violenta en Colombia (August 2022): <https://www.kavilando.org/images/publicaciones/Del-paramilitarismo-al-paramilitarismo-libro-completo-1.pdf>

19 Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (Peace Agreement): [Final Agreement](#).

20 See also: BTI, “Colombia’s Partial Peace and its Discontents” (14 December 2021): [BTI/colombias-partial-peace-and-its-discontents/ \(Discontents Report\)](#).

21 Ibid.

22 Ibid.

23 Colombia Caravana, The search for peace with justice and human rights in Colombia, 2016, p. 3 (2016 Caravana Report): [V Report of the Caravana \(2016\)](#).

24 2018 Caravana Report, supra 3, p. 7.

the incoming Duque administration and its commitment to implementation,²⁵ concerns that proved prescient.

1.2 General Assessments by External Observers

The UN Verification Mission in Colombia recently characterised the implementation of crucial sections of the Peace Agreement as ‘uneven’, “despite their potential to address underlying causes of the conflict and redress historic inequalities”²⁶

According to the Kroc Institute’s 2021 report, implementation faces numerous obstacles.²⁷ The main challenge is the high percentage of minimal and uninitiated levels of implementation, especially those related to comprehensive rural reform and democratic political participation. Certain provisions were previously on an advanced implementation track “but, due to political decisions moved backwards to the minimum level”²⁸

Other assessments describe implementation as “hesitant and selective” and “disputed and weak”²⁹. The central problems are the inadequate budget, the slow pace of process, and the “neglect of central aspects” of the Peace Agreement. The consensus is that the Duque government, having campaigned against it, brought about even more complex and adverse scenarios, having “delayed, under-funded and challenged crucial components” of the Agreement.³⁰ The Washington Office on Latin America (WOLA) summarises its assessment of the violence and deteriorating security conditions as a situation that clearly is not post-conflict.³¹

Given the vital importance of the Peace Agreement to generate a stable peace with justice and human rights, the lack of comprehensive implementation leads the VII Caravana to conclude that prospects for real change in Colombia remain uncertain.

1.3 Section by Section Review of Implementation

We turn to a section-by-section review of the Peace Agreement commitments. Because sections 1 and 4 are inter-connected, we address them sequentially.

25 Ibid, p. 7.

26 UN Security Council, U.N. Verification Mission in Colombia, S/2022/1004, 28 December 2022, para. 8 (UN Verification Mission Report): [Colombia/united-nations-verification-mission-colombia-report-secretary-general-20221004](#)

27 (1) Kroc Institute, Executive Summary: Five Years After the Signing of the Colombian Final Agreement: Reflections from Implementation Monitoring, December 2020 to November 2021 (Kroc Institute Executive Summary): <https://curate.nd.edu/downloads/41687h17b57>; (2) Kroc Institute, Full report: Five Years After the Signing of the Colombian Final Agreement: Reflections from Implementation Monitoring, December 2020 to November 2021 (Kroc Institute 2021 Report): [KrocInstitute2021Report](#). Kroc Institute for International Peace Studies at University of Notre Dame was given a verification and monitoring role in relation to the Peace Agreement’s implementation.

28 Kroc Institute 2021 Report, p. 23.

29 Discontents Report, supra 20.

30 WOLA, A Long way to go: Implementing Colombia’s peace accord after 5 years (23 November 2021) (WOLA Report): [WOLA/a-long-way-to-go/Report](#).

31 Ibid.

Section 1: Comprehensive Reform of the Countryside

Section 1 contains a complex plan for Comprehensive Rural Reform (CRR) to create the structural conditions for well-being and quality of life in rural areas. ‘State absence’ and ‘state impunity’ have combined to send Colombia into repeated brutal spirals of violence, while illegal economies thrive.³² CRR seeks to address two causes of the largely rural conflict and the existing incentives for small producers to return to cultivating illicit crops. The first is the extreme concentration and unequal landholding. The second is the government’s historical neglect of the countryside, one of the most economically unequal regions in Latin America.

Section 1 promises to provide basic services and infrastructure and to address land tenure and formalisation, as the foundations for a legal economy based on viable small-producer livelihoods.

Status:

Groups monitoring the Peace Agreement agree that crucial CRR development programs such as the Development Plans with a Territorial Approach (PDETs) are under-resourced and running behind (in part because the Duque government deviated from PDETs to another mechanism). Envisioned participation of local communities and organisations within PDETs either declined or was downgraded.³³

Other rural reform commitments are also running behind, among them, land formalisation and restitution, and the establishment of campesino land reserves, agrarian special jurisdiction and land funds for those with no or insufficient land.

Continued Violent Conflict Over Access To Land And Resources

Forced displacement of communities by illegal armed actors and violence continues and maintains the internal displacement of individuals and communities based on uncertainty over land ownership and violence (or the threat thereof). This commonly occurs in conjunction with the imposition of powerful socio-political interests that favour megaprojects in extractive industries of mining, oil and gas, as well as monoculture crops like palm oil. See **Chapter 2** for case studies on Pitalito and Canal Del Dique.

Due to intensifying violence and security issues for vulnerable social groups and rural communities, land restitution has ground to a halt or is exceedingly slow and risky.

Caravana Observations: Continued agrarian conflict and violence

As with the VI Caravana in 2018, the VII Caravana heard multiple accounts of structural barriers to peace with justice and human rights, particularly in rural regions, where access to land and to resources is the fulcrum of the continued and intensifying violence and human rights violations.

The Caravana’s fuller observations of the non-implementation of section 1 are set out in **Chapter 2** of this report.

³² Ibid.

³³ Ibid, Kroc Institute 2021 Report, supra 27.

Section 4: Resolving Illicit Drugs Problems and Illicit Economies

Section 4 addresses the **illicit drugs problem** and associated issues of illicit drugs use and organised crime connected to drug trafficking, in a manner that protects human rights, public health and considerations of equity.

Its objective is to help farming communities (approximately 10,000 households)³⁴ to abandon coca crops and integrate into the legal economy. Thus, crop substitution must operate in tandem with the rural reform envisioned in section 1. Forced eradication is established as the last resort for coca cultivators (i.e. for those refusing to participate in the crop substitution regime).

The National Comprehensive Substitution Program (PNIS), at the heart of section 4, includes a voluntary eradication and assistance effort, short-term support payments to cover household basic needs and technical and financial assistance for the transition to legal crops.

Status:

The Duque government stopped signing new individual and collective agreements upon assuming office and the Program was ‘in disarray and underfunded.’³⁵ Delivery of PNIS assistance has been slow and the promised assistance with productive products has fallen far behind.

In many areas, forced eradication is outpacing substitution and has intensified in recent years.

Caravana Observations: Lack of progress with crop substitution

The VII Caravana heard reports of the State’s near complete failure to implement illicit crop substitution and to develop the foundations for environmentally and economically sustainable non-illicit economies that address the needs of the rural majorities.

The Caravana’s fuller observations of the non-implementation of section 4 are set out in **Chapter 2** of this report.

³⁴ WOLA Report, supra 30, p. 45.

³⁵ Ibid, pp. 45-6.

Lack of progress with reducing illicit crops cultivation and illicit economies

- The recent report of the UN Verification Mission in Colombia covering the final quarter of 2022 made these observations about the lack of comprehensive implementation of section 4.
- In 2021, there was a 43% increase in the number of hectares of coca crop cultivation (204,000 hectares).³⁶
- Illicit economies continue to fuel much of the persistent violence in conflict-affected regions.³⁷
- Illicit crops production is concentrated in areas that are poor and with limited state presence (for example, Nariño, Norte de Santander, Putumayo).³⁸
- While there are some indications of progress, the full potential of PNIS has yet to be realised.

Section 2: Political Participation and Citizen Mobilisation without Violence

Section 2 - **Political Participation** - commits to establishing the conditions and comprehensive guarantees for incorporating diverse perspectives within the political climate, one that precludes violence as the response to those taking part in politics. The section encompasses varied forms of political participation: from formal ‘politics’ through political parties (for example), to peaceful protest, and organising as social movements, ethnic groups and peasant communities to articulate alternative visions for the country. The section 2 commitments are intended to expand political participation and make the political culture more democratic, with broader space for opposition and citizen mobilisation.

Status:

The Kroc Institute cites evidence of limited implementation of guarantees for social protest and guarantees to allow organisations and social movements to participate in the democratic process.³⁹ Illustrations of this are found in the State’s continued use of violence in response to social organising and its corresponding lack of commitment to developing conditions for political participation and expression of dissenting perspectives.

³⁶ UN Verification Mission Report, supra 26, para 17.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Kroc Institute Executive Summary, supra 27, p.12.

Other limitations in implementation are evident in the sub-topic of guarantees for civilian gathering, and protest - ‘due in part to failure to develop a clear regulatory system and to follow through on existing protocols for use of force.’⁴⁰

WOLA writes that there is no evidence of greater guarantees for peaceful mobilisation and protest as the Peace Agreement establishes. It points to heavy-handed, at times violent, and rhetorically stigmatising responses by political actors and law enforcement to the 2021 national strike and other social protests, and to critics, which demonstrate a ‘lack of will to create political space for opposition politics (civilian mobilisation and political participation), contrary to spirit and content of Peace Agreement.’ The national strike demonstrates how little political space has opened up.⁴¹

Other indicators of the same trend include continued violence and the lack of protection for social leaders and human rights defenders (HRDs), a topic taken up in relation to section 3 of the Peace Agreement.

Caravana Observations: Restriction and criminalisation of political participation

The VI Caravana registered an acceleration of State efforts to restrict and criminalise social protests through changes to the police code and protocols on protest. Its report details various attacks on social and political organisations.⁴²

The VII Caravana concludes that the Duque government continued and even accelerated the tendency to respond with violence to political participation and civilian mobilisation.

Chapter 3 examines the State’s repressive response to the national strike in 2021, with particular focus on the observations of Caravana delegates in Bucaramanga and Cali, as well as Bogotá.

In the department of Norte de Santander, this repressive tendency has manifested in the exclusion of campesino groups from participation in the formulation of PDET development plans, and the State’s use of violence is evident in the pattern of aggression and stigmatisation of rural leaders and other methods of suppressing opposition by social and political movements. The themes of intimidating responses to the organising efforts of campesinos and other groups in Norte de Santander, Santander, Cesar and other departments are examined in **Chapter 2** of this report.

Section 3: Dismantling Illegal Armed Groups and Security Guarantees for Human Rights Defenders and Social Leaders

Section 3 of the Peace Agreement promises to challenge and dismantle the organisations and illegal armed actors responsible for the infliction of hostilities/violence, including as against environmental and territorial defenders, Indigenous, Afro-Colombian and peasant communities, social leaders and human rights advocates.

⁴⁰ Ibid.

⁴¹ WOLA Report, supra 30, p. 27.

⁴² 2018 Caravana Report, supra 3, pp. 19-20. See for example, ASCAMCAT case at p. 19.

It includes a commitment to:

- **Demobilise and reincorporate 13,000 FARC-EP combatants** into civilian life while protecting them in the process; and
- Implement the **agreement on security guarantees** and various measures to challenge organisations responsible for attacking human rights advocates, social or political movements, and to dismantle **other illegal armed actors, including the successors of paramilitarism.**

Status:

Contrary to the section 3 commitments, armed conflict and violence has continued. The consensus is that the State has failed largely to dismantle illegal armed groups, including criminal and paramilitary groups. Indeed, there has been a proliferation of illegal actors engaged in hostilities and the activities that compound the sources of conflict contemplated in section 3.

There are reports of the continued killing of signatories to the Peace Agreement,⁴³ FARC ex-combatants, and the emergence and operation of FARC dissident groups.

Little progress was made with mechanisms to protect space for social leaders, including through the National Commission on Security Guarantees to design and oversee public and criminal policy to dismantle criminal and illegal armed groups.

Continued and intensifying conflict, violence and human rights violations

The Kroc Institute observes that:⁴⁴

- There was significant territorial expansion by illegal armed groups, in some cases related to illicit economies, and in other cases related to devaluing security and protection bodies established in the Peace Agreement.
- Numerous regions (including several PDET regions) experienced a substantial increase in instances of forced displacement and confinement situations during 2021.⁴⁵
- Illegal armed actors perpetrated targeted killings, massacres, various attacks against social leaders, ex-combatants, ethnic communities and rural populations.⁴⁶

The major sources of the surging violence and insecurity include a new constellation of armed actors and dynamics of violence, owing to disputes between illegal armed groups for control of populations, resources, routes, and also advanced by local actors whose interests are affected by the Peace Agreement implementation and strengthening of local participation. State armed forces remain a source of violence and insecurity for some populations.

⁴³ Indepaz reports that 42 were killed in 2022: <https://indepaz.org.co/lideres-sociales-defensores-de-dd-hh-y-firmantes-de-acuerdo-asesinados-en-2022/>

⁴⁴ Kroc Institute Executive Summary, supra 27, pp. 13-14.

⁴⁵ Ibid, p. 13.

⁴⁶ Discontents Report, supra 20.

The evidence indicates a general failure to provide effective security guarantees. Enduring violence and insecurity is manifest in the following respects:

- Dramatic increase in killings of social leaders and HRDs⁴⁷
- Targeted violence against ex-combatants⁴⁸
- Surge in massacres⁴⁹
- Forced displacement increased sharply⁵⁰
- Surge in confinement or restrictions on mobility of communities, disproportionately affecting Indigenous peoples and Afro-Colombians⁵¹

Caravana Observations: Armed conflict continues

The VI Caravana (2018) observed that the armed conflict continued and there was evidence of an exacerbation of hostilities. Further, the government's commitments under sections 3.4 and 3.6 of the Peace Agreement were not being fulfilled in terms of security guarantees or tackling the problem of criminal armed groups.⁵²

The VII Caravana is alarmed by the increase in the number of illegal armed actors and violence generated by their presence and jockeying for power, along with violative acts by state security forces. This trend is reflected in various reports.⁵³

Increased violence and no security guarantees for social leaders and HRDs

The Caravana heard many accounts consistent with the recorded increase in attacks on human rights defenders (HRDs) and social leaders since 2018, accelerating in 2021 and to date. In the first nine months of 2022, more than 150 HRDs were killed, higher than the number in 2021. The year closed out at 199 deaths, the highest since 2016 and a higher number than killed in 2020 and 2021 (when 182 and 145 people were killed respectively), a figure the Human Rights Ombudsman called “alarming and unprecedented”.⁵⁴

⁴⁷ WOLA Report, supra 30, p.2: Estimates of the number of social leaders murdered in 2020 range from 133 to 310. Indepaz reported 195 murders in 2021: <http://indepaz.org.co/lideres-sociales-y-defensores-de-derechos-humanos-asesinados-en-2021/>. The figure was 189 in 2022: <https://indepaz.org.co/lideres-sociales-defensores-de-dd-hh-y-firmantes-de-acuerdo-asesinados-en-2022/>

⁴⁸ Discontents Report, supra 20: Murders climbed from 77 ex-combatants in 2019 and 64 in 2020 to 152 killed or disappeared in 2021. Indepaz reported that 42 ex-combatants were killed in 2022.

⁴⁹ Defined as 3 or more persons, INDEPAZ reported 91 massacres in 2020; 96 massacres with 338 victims in 2021; 94 massacres with 300 victims in 2022. As of 24 March 2023, there have been 27 massacres with 88 victims. See: <https://indepaz.org.co/informe-de-masacres-en-colombia-durante-el-2020-2021/>

⁵⁰ Discontents Report, supra 20: Both have risen sharply, from 28, 898 victims of forced displacement in 2019; 11, 767 victims in 2020, to 67,557 from January through November 2021. Between January and September 2021, there were 106 displacements with 27,727 victims, the same number as in all of 2020: <https://indepaz.org.co/wp-content/uploads/2021/12/5-an%CC%83os-del-acuerdo-de-paz-1.pdf>

⁵¹ Discontents Report, Ibid: There were a reported 28,983 victims in 2019; 73,789 victims of confinement in 2020 and 51,574 through November 2021. The Territorial Violence Report, supra 1 (para. 47) states that in 2021, there was an increase caused by non-state armed groups and criminal organisations: 73,974 persons were displaced. Further, 57% of the displaced population and 85.5% of the confined population are Indigenous and Afro-Colombian peoples.

⁵² 2018 Caravana Report, supra 3, p. 16.

⁵³ Human Rights Watch, Colombia: Events of 2021 (2022):

<https://www.hrw.org/world-report/2022/country-chapters/colombia>; Territorial Violence Report, supra 1.

⁵⁴ <https://monitor.civicus.org/explore/colombia-four-journalists-killed-second-half-2022/>.

Between January 2020 and December 2021, the OHCHR documented the killing of at least 19 Indigenous authorities, nine of them women, and six Afro-descendant authorities, all men. In the first half of 2022, the office received allegations of killings of eight Indigenous authorities and three Afro-descendant authorities.⁵⁵

Killings and violence against the Nasa Indigenous People

The municipalities of the northern part of the department of Cauca have historically been one of the main scenarios of the armed conflict in Colombia, with severe effects on the communities of the region, in particular the Nasa people, who form the Association of Indigenous Councils of Northern Cauca (ACIN). **According to the ACIN, homicides in the Nasa territory have risen from 16 people in 2016 to 94 in 2020. From 2017 to March 2022, seven incumbent authorities of the Nasa people have been killed, three of them women. There were a further 30 people with some level of leadership in the ACIN, including four traditional doctors. In the first months of 2022, four leaders of the Nasa people were killed**, including an incumbent Thuthenas (zonal authority). This violence affects individual and collective rights, has impacted ACIN and the effective exercise of self-governance, weakening governance and the social fabric of the Nasa people. The disproportionate impact on women, children and adolescents, the gradual and violent modification of the Nasa people's way of life, pressured by economies based on drug trafficking and an extractivist model, reveal the risk to the physical and cultural survival of the Nasa people.⁵⁶

Social leaders and HRDs remain at high risk and unprotected; Colombia is the most dangerous place to be a social leader, HRD or environmental defender:⁵⁷ more than half of the world's murders of HRDs take place in Colombia.

Section 5: Comprehensive System for Truth, Justice, Reparations and Non-recurrence

Section 5 sets out the transitional justice mechanisms and commitments focusing on victims' rights as central to national reconciliation. The Peace Agreement created a comprehensive system of truth, justice, reparation and non-repetition under national law with constitutional status: Sistema Integral de Verdad, Justicia, Reparación y no Repetición. The mechanism is considered to be the first transitional justice system to take a comprehensive approach advocated by transitional justice theory.⁵⁸

This system is made up of three institutions: the Truth Commission (Comisión para el Esclarecimiento de la Verdad la Convivencia y la No Repetición - CEV), the search unit for missing persons (Unidad de Búsqueda de Personas dadas por Desaparecidas en el contexto y en razón del conflicto -armado - UBDP) and the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz - JEP). The institutions are time-limited unless extended by Congress: the CEV for 3 years, the UBDP for 20 years, and the JEP for 15 years.

⁵⁵ Territorial Violence Report, supra 1, para 38.

⁵⁶ Ibid.

⁵⁷ WOLA Report, supra 30, p. 3.

⁵⁸ LSE Justice after war: innovations and challenges of Colombia's Special Jurisdiction for Peace, 3 April 2020 (Justice after War blog): <https://blogs.lse.ac.uk/latamcaribbean/2020/04/03/justice-after-war-innovations-and-challenges-of-colombias-special-jurisdiction-for-peace/>.

Status:

The Truth Commission completed its mission in June 2022⁵⁹ and published the final report of its findings and recommendations on 28 June 2022. The Commission worked in extraordinarily difficult circumstances, including throughout the pandemic, to expose human rights abuses and atrocities committed during Colombia's decades-long armed conflict. The report is the culmination of interviews with nearly 24,000 people, including Colombians exiled abroad. It is estimated that 450,000 people died due to the conflict between 1985 and 2018. Eighty percent of the deaths were civilians with no connection to the conflict. At least 8 million people were forcibly displaced from their land. The Commission made extensive recommendations aimed at ending the armed conflict once and for all.⁶⁰

The UBDP is responsible for the search for missing persons in the context of the armed conflict and its role is to direct and coordinate the location, identification of people who have disappeared and in cases of death to recover, if practicable, their remains. The Unit engaged the participation of civil society by holding meetings with victims, relatives of the disappeared and community organisations with a focus on gender and ethnicity. On 2 February 2023 in Villavicencio, Meta, the UBDP presented its five-year report stating that it had made progress regarding the 104,602 Colombians missing due to the armed conflict.⁶¹

The JEP has the following objectives: securing the victim's right to justice, truth-telling, recognition of responsibility for crimes committed, ensuring reparations to victims and commitment to non-recurrence. The process is designed to facilitate victim participation and is thus focused on restorative not retributive justice. There are two pathways: dialogue and adversarial. Perpetrators who fulfil the requirements of the dialogue process are sentenced to non-prison-based sentences. In the adversarial pathway, perpetrators can be referred to the JEP for trial and, if convicted, receive jail sentences of up to 20 years in prison.⁶² The general consensus is that the JEP⁶³ has made significant progress: the recent UN verification mission reported positively on the work of the JEP which "is working decisively to bring justice for grave crimes committed during the conflict".⁶⁴ However, concerns have been expressed regarding judicial accountability and impartiality.⁶⁵

Caravana Observations: Some progress, challenges and concerns

In addition to these advances, the VII Caravana also heard of challenges and concerns in regard to justice and reparations. The Cúcuta delegates were told of threats and lack of security guarantees for employees working for the Norte de Santander branch of the JEP. Concerns were raised with the delegates to Bucaramanga, Cartagena and Cúcuta about the transitional justice

⁵⁹ <https://www.comisiondelaverdad.co/>.

⁶⁰ <https://www.abcolombia.org.uk/truth-commission-of-colombia-executive-summary/>.

⁶¹ <https://dppa.un.org/en/node/202271>.

⁶² Justice after War blog, supra 58.

⁶³ UN Verification Mission Report, supra 26.

⁶⁴ <https://reliefweb.int/report/colombia/secretary-general-welcomes-colombias-determination-advance-towards-consolidation-peace>.

⁶⁵ <https://www.ejiltalk.org/transitional-injustice-concerns-over-judicial-accountability-at-colombias-special-jurisdiction-for-peace/>.

system, including re-victimisation, underfunding, corruption and delay. These themes in section 5 of the Peace Agreement are explored in more detail in **Chapter 4** of this report.

Reflections on Comprehensive Implementation of the Peace Agreement

The VII Caravana commenced just days after the new government came into office. The Caravana is concerned that the high level of attacks and killings of social leaders and HRDs has continued. Since the change in government, 66 leaders and rights defenders had been killed as of early December 2022.⁶⁶ The UN Verification Mission report for the autumn of 2022 observes that the increase in violence targeting these groups “remained of great concern”, especially in departments prioritised for implementation of the Peace Agreement.⁶⁷

This report thus underlines the critical importance of a renewed commitment by the government to the full and effective implementation of the Peace Agreement and the recommendations set out in the Truth Commission Report issued in June 2022.⁶⁸ A comprehensive approach with follow-through on commitments made in the Peace Agreement as well as those made since the Petro government assumed office is essential to address the structural causes of the continued conflict, the human rights crisis, and the issues that plague access to justice and entrench impunity.

The VII Caravana emphasises that continued international monitoring and accompaniment of Colombia will be vital going forward given the complex and intractable nature of the challenges that lie ahead.



Memorial to the disappeared in EJP office in Bucaramanga

⁶⁶ <https://www.theguardian.com/world/2022/dec/07/colombia-murders-human-rights-defenders-record>.

⁶⁷ UN Verification Mission Report, supra 26, para. 61.

⁶⁸ Truth Commission Final Report, supra 2.

UN Verification Mission Update

In late December 2022, the UN Verification Mission, which tracks progress on the Peace Agreement, reported on the period 27 September 2022 to 26 December 2022.⁶⁹

The report states that the new government had taken steps evidencing its commitment to the implementation of the Agreement. The Petro government introduced new legislation providing a legal framework for the “total peace” policy. Under the leadership of the High Commissioner for Peace, Danilo Rueda, the government moved forward with key elements of its “total peace” policy, such as resuming negotiations with the Ejército de Liberación Nacional (ELN), among others. A first round of negotiations was carried out successfully during the Mission’s reporting period.

Other steps taken included encouraging community participation in the design of the National Development Plan through outreach and dialogue with those affected by the conflict and former FARC-EP members, and the resumption of forums created by the Agreement such as the Commission for Follow-up, Promotion and Verification of the Implementation of the Final Agreement.

The UN Verification Mission, nevertheless reported on the continued presence of high levels of violence and armed actors, particularly in regions where State governance is limited such as Arauca, southern Bolívar, Chocó and Putumayo and expressed its grave concern for the ongoing violence against civilians, social leaders and human rights defenders especially in regions prioritised for the implementation of the Agreement: Cauca, Chocó, Nariño and Valle del Cauca. The Verification Mission Report’s misgivings accord with the findings of the Caravana.

Nonetheless, the change of direction is encouraging: United Nations Secretary-General António Guterres welcomed the efforts of the new government stating “Colombia’s peace process is in a dynamic new phase that deserves strong international support”.



Delegates with EJP team, victims and families

⁶⁹ <https://reliefweb.int/report/colombia/united-nations-verification-mission-colombia-report-secretary-general-s20221004>.

Stalled Progress with Rural Reform and Resolving the Drug Problem

“If 2018 was discouraging, imagine now that we are in 2023,” laments [lawyer and CCALCP President Julia] Figueroa Cortés, “the issue of land has not been resolved, the issue of technical support has not been resolved, differential intervention models do not exist, community participation is not on the agenda.”⁷⁰

This chapter explores the complex realities of the Colombian countryside, specifically, the regions with high levels of “territorial violence” (ranked in severity from high to critical).⁷¹ These regions starkly demonstrate the consequences of the lack of progress in implementing comprehensive rural reform (section 1) together with solving the problem of drugs and illicit economies (section 4).

2.1 Current Context in Regions of Territorial Violence

Key Features of Current Context

A 2021 report cites ‘state absence’ and ‘state impunity’ (weak rule of law) as key causes of the conflict.⁷² This combination has produced an extremely difficult context in certain regions: isolated communities with uncertain land tenure, conflict over access to territory and extractive and monocultural projects, dependent on illicit economies, vulnerable to forced displacement, violence and grave human rights violations, and lacking security guarantees and protection.

Weak rule of law in rural Colombia

The weak rule of law is a cross-cutting theme. It arises in part from the limited effectiveness of state organs of control, including the justice system apparatus (the latter is explored in **Chapter 4.1**).⁷³ The Caravana heard reports from organisations in Bogotá and the regions about weak state organs of control and limited state presence in the regions, the characteristics of which include the significant shortfall in human and technical resources leading to excessive and unsustainable workloads of state functionaries and the lack of effective state policies and coordination between state institutions. (The serious problem of significant security risks for justice system operators

⁷⁰ PBI-Colombia, Julia Figueroa: “Defend the Peace Accords from Inside Catatumbo has become a very high risk”, 07 February 2023 (Defend the Peace Accords): <https://pbicolombia.org/2023/02/07/julia-figueroa-defend-the-peace-accords-from-inside-catatumbo-it-has-become-a-very-high-risk/>

⁷¹ Territorial Violence Report, supra 1, pp. 46-51, Annex states that Cúcuta and Tibú in Norte de Santander are ranked as “very high”, as are other regions visited by the Caravana, such as Cali.

⁷² WOLA Report, supra 30, p. 5.

⁷³ Colombia en Riesgo Report, supra 2, pp. 14-15, 22.

and the lack of security guarantees, as well as grossly inadequate resources for the justice system is taken up in Chapter 4.1 of this report.) These realities are independent of other complaints heard in some regions about corruption and politically biased decision-making by state institutions and justice system operators.

Scope and impact of ‘territorial violence’

The territorial context in much of rural Colombia - as in marginalised urban and semi-urban areas⁷⁴ - is of widespread insecurity and high risk for social leaders, social and political movements, human rights defenders and lawyers. Over the last two years⁷⁵ these regions registered elevated levels of “territorial violence”, the concept advanced in the recent report of the Office of the UN High Commissioner for Human Rights in Colombia (OHCHR or OACNUDH).⁷⁶ This escalation in violence is linked to other indicators like the intensification of human rights violations.⁷⁷ In identifying the territories that are multiply affected by violence, the OHCHR applied a series of indices that capture both the severity of the violence (ranked as ‘high’, ‘very high’ and ‘critical’) and the impact on the inhabitants’ experience of this escalation in violence is then linked to other indicators such as the intensification of human rights violations.

Violence mostly affects people in peripheral territories where there is also a limited state presence and where the rate of multidimensional poverty tends to be higher. These territories are ones with higher concentrations of Indigenous, Afro-Colombian and campesino communities.⁷⁸

One of the contexts that generates the greatest vulnerability for the civilian population is violent territorial disputes between armed groups. It is in this context that the peaks of violence and displacement are concentrated. Populations find themselves caught between two or more groups and suffer the consequences of their armed actions.⁷⁹

Over the last two-year period, the OHCHR documents an expansion of illegal armed groups and criminal organisations in certain territories. It also tracks the phenomena of ‘state abandonment’ (the absence or limited presence of state institutions) and the high levels of poverty.⁸⁰ The violation of the right to an adequate level of life and ‘vida digna’⁸¹ (‘dignified life’), is included within the range of human rights violated in parallel to the many forms of violence; those connected to threats, selected killings, massacres, disappearances, forced displacement and ‘confinements’.

⁷⁴ Cali, for example, is ranked as a zone of high territorial violence in the OHCHR’s Territorial Violence Report, supra 1, p. 46.

⁷⁵ Ibid, para. 6.

⁷⁶ Territorial Violence Report press release issued on 26 July 2022, “Colombia: Urgent government action needed as rising violence in rural areas gravely impacts human rights”, at: <https://www.ohchr.org/en/press-releases/2022/07/colombia-urgent-gove- rnement-action-needed-rising-violence-rural-areas-gravely>

⁷⁷ Territorial Violence Report, supra 1, para. 2: “The OHCHR’s point of departure is the State’s role and responsibility to effectively respond to this violence given its international obligations in terms of the protection of human rights.”

⁷⁸ Ibid, para. 17.

⁷⁹ Ibid, para. 19.

⁸⁰ Ibid, para. 8.

⁸¹ The Inter-American Court’s formulation of ‘vida digna’, the conditions of a dignified life, is developed, inter alia, in Villagrán Morales et al. (“Street Children”) (Guatemala) (2001) (Reparations) Inter-Am Ct HR (Ser C) No. 77. The Truth Commission Report references this requirement in its recommendations (supra 2, p. 630): “Guarantee conditions of well-being and dignified life for the communities in the territories, and build a shared vision of the country that includes the territories that have been historically excluded and a commitment to the future based on respect for life, the different needs and perspectives to overcome the country’s structural inequalities that have been deepened by the conflict, of which the peasant sector and ethnic peoples have been the main victims (emphasis added).”

Regional accounts of high levels of territorial violence

Caravana delegates to Cúcuta and Bucaramanga heard chilling accounts of high and intensifying levels of territorial violence in the surrounding zones. Access by rural communities of Indigenous peoples, Afro-Colombians and campesinos to their territories remains largely unsettled. Many communities are threatened by violent forced displacement. Together with the significant concentration of property ownership in Colombia, there is a strong focus on the development of agricultural mono-cultures such as palm oil, as well as extractive industries in minerals and oil and gas and other megaprojects. Delegates heard about the significant threats and risks for those groups and communities that attempt to access their territories or act to address grave threats to the environment and climate justice, for example, to water and vital ecosystems (for example, the rare and ecologically significant páramos).⁸²

Reports of grave human rights violations

Caravana delegates received reports of grave human rights violations in the zones marked by high levels of territorial violence in northeastern departments, particularly border areas. Delegates to Cúcuta heard accounts of brutalised communities subject to: (a) elevated levels of child recruitment by illegal actors, gender-based violence, femicides, and cross-border trafficking of vulnerable Colombians and Venezuelans; and (b) a notable reduction in social mobility in rural communities in conflictive zones controlled by armed actors exercising territorial control, also described as ‘confinement’ and “social control” through violence and extortion.⁸³ The gravity and fear generated by this situation as expressed by those with whom delegates spoke was palpable.

Humanitarian crisis

The severity of the situation in sub-regions like Catatumbo was also emphasised by researchers at the Universidad Libre in Cúcuta where delegates heard presentations on the scale of the current humanitarian and rights crisis, which features high and growing levels of poverty in a context of extremely unequal landholding patterns.

Deeper Dive Into Comprehensive Rural Reform and Illicit Crop Substitution

Comprehensive rural reform (CRR) and illicit crop substitution (sections 1 and 4 respectively) are thus crucial and interconnected components of the Peace Agreement’s vision to address the main causes of conflict in mostly rural areas.

The objectives of CRR and illicit crop substitution are to reduce dependence on illicit economies and make legal economies viable for poor rural communities through resolving uncertain land tenure; improving security and governance; and addressing the lack of basic infrastructure and services.

82 Páramos are rare and unique ecosystems, vital as a water source and carbon sink, and also considered sacred areas by Indigenous peoples in Latin America. <https://aida-americas.org/en/blog/what-are-p%C3%A1ramos-and-what-can-you-do-protect-them>. Several Colombian human rights lawyers’ collectives have represented organisations and communities challenging threats to páramos, such as extractive projects; for example, CCAL-CP’s has conducted litigation in relation to the Santurban Páramo in Santander that has been threatened by the development of a gold mining project by transnational companies: 2018 Caravana Report, supra 3, p. 25; <https://aida-americas.org/en/protecting-santurban-p-ramo-minings-damages>.

83 Territorial Violence Report, supra 1, pp. 19-21. In 2021, 65,685 persons were victims of confinement: para. 47.

External Assessments of Implementation of Sections 1 and 4

As noted in **Chapter 1**, observers point to the near complete lack of progress in implementing comprehensive rural reform and the failure to implement illicit crops substitution. The crucial territorial PDET programs initiative is running far behind its targets and other major rural reform commitments also lag behind.⁸⁴ The same is true of section 4 commitments.

Land tenure programs are struggling and the voluntary crop substitution initiative has nearly ground to a halt.⁸⁵ At the same time, forced eradication efforts increased and intensified.⁸⁶

The Kroc Institute emphasises the Duque government’s failures to approve laws and regulations to implement commitments for comprehensive rural reform and the substitution of illicit use crops, including laws that specify differential treatment for small growers and creating a special agrarian jurisdiction.

The Institute views the special agrarian jurisdiction⁸⁷ as crucial to increasing and boosting resources for land access and formalisation as this system of judges specialising in resolving agrarian/rural conflicts was intended to move judicial proceedings along swiftly, with special attention to disadvantaged parties in agrarian matters.⁸⁸ WOLA also underscores the failure to implement ethnic and gender approaches in relation to both sections.⁸⁹

2.2 Consequences of Failing the Colombian Countryside

Illustrations of Rural Realities and Failure to Implement Sections 1 and 4

The following case studies elaborate the painful realities, injustices, and human rights violations that characterise much of rural Colombia.

2.2.1 Displacement continues: Pitalito and 20 de Julio communities

An emblematic case that came to a head during the VII Caravana brings together these common themes. The Caravana was extremely concerned to learn of threats to two campesino communities in the Cesar department. One of these, the community of Pitalito, adjacent to the 20 de Julio community, the delegates to Bucaramanga met with on 24 August 2022. In July 2022, the previously displaced campesinos of the Pitalito community decided to act on expectations for the restitution of their lands further to the recent change in government. The community had occupied and cultivated this territory since the 1980s. In 2000 and 2005, the community was forcibly displaced by paramilitary groups and was subsequently evicted in 2010 and 2013

84 WOLA Report, supra 30, p. 7.

85 Ibid, p. 39.

86 Ibid, p. 44.

87 Kroc Institute Executive Summary, supra 27, p. 10.

88 According to the Kroc Institute (Ibid), a special agrarian jurisdiction is crucial for increasing and boosting resources for land access formalisation as a system of judges specialising in resolving agrarian/rural conflicts was. It was intended to increase the speed of judicial proceedings, with special attention to disadvantaged parties.

89 WOLA Report, supra 30, pp. 55-56.

by the ESMAD anti-riot police and the army. Evicted for almost ten years from their territory, the families of the Pitalito community returned on July 6, 2022 because they felt protected by the new presidency.

During the Caravana's meeting with Pitalito community members, representatives shared their concerns about the threat of eviction and their fears for their safety.

On the 26 August 2022 (during the VII Caravana), at around 11 am, the eviction process began, with intimidation efforts by state authorities, starting with the 20 de julio community, the more accessible of the two communities. The legal collective Equipo Jurídico Pueblos reported that approximately 60 soldiers surrounded the 60 or so unarmed families of the 20 de Julio community (most of them victims of the armed conflict), an action designed to intimidate the civilians who feared they were going to be evicted unlawfully without the due presence of the Chimichagua Municipal Police Inspector and the Municipal Personero.⁹⁰ These two officials arrived later and stated that they were there to perform a visual inspection. Neither community had been notified of this inspection, in violation of Article 223 of Law 1801 of 2016 (National Code-Código Nacional de Seguridad y Convivencia Ciudadana) which states that no less than 24 hours' notice must be given. The inspection is a first step in the eviction process.

The request for eviction was submitted by Juan Manuel Fernández de Castro del Castillo, a former Army officer and currently an Army reservist, who is understood to own vast tracts of land in the region and on the Caribbean coast, and extensive palm-oil plantations.⁹¹

The EJP contests the lawfulness of Fernandez de Castro's ownership of the land in Pitalito, as it is located in a Zona de Reserva Forestal, an environmental protection zone that cannot be bought or leased. The Zona de Reserva Forestal land in Pitalito does, however, allow for the kind of small-scale farming undertaken by the local campesino communities, including the Pitalito community. The Caravana understands that the families had tried to buy the land themselves previously, and had been told that they could not do so because the land was classified as a Zona Reserva Forestal. The community reported to delegates that during the 2010 eviction, they discovered that the land had been acquired by Fernandez de Castro.

The Caravana issued an urgent intervention on 28 August 2022 in response to these developments.⁹² As of 7 October 2022, the EJP had succeeded in obtaining a stay in the eviction process, but the Caravana remains extremely concerned for the safety of the two communities and of EJP's lawyers who have also been intimidated in relation to their legal representation work.⁹³

The Caravana notes with concern that the two communities were subjected to further eviction threats and armed attack on 5 November 2022; community members were assaulted and intimidated

by armed men in civilian clothing claiming to be workers of Fernández de Castro. This incident is part of a pattern of attempts to prevent the community from planting their subsistence food crops.⁹⁴

2.2.2 Advocacy efforts to enforce Peace Agreement face push-back

For decades, the sub-region of Catatumbo in Norte de Santander has been an epicentre of sociopolitical violence and armed conflict.⁹⁵ The lack of progress with comprehensive implementation has resulted in serious violations of the rights of affected communities, due in part to the resulting humanitarian and economic crisis and the failure to generate conditions for a dignified life in communities reliant on illicit crop production and lacking other ways to generate viable small-producer livelihoods.⁹⁶ As with other organisations of rural peasant communities, ASCAMCAT, the Association of Campesinos of Catatumbo in Norte de Santander has engaged in organising and advocacy for the full implementation of the Peace Agreement, including through strategic litigation led by their own lawyers as well as the CCALCP lawyers' collective.

Advocacy by ASCAMCAT and CCALCP to enforce comprehensive rural reform

In order to achieve compliance with sections 1, 3.4 and 4 of the Peace Agreement, ASCAMCAT filed a tutela in 2020. The ultimate ruling led to a direction to the Territory Renewal Agency (ART) to perform a detailed evaluation and process for the participation of those directly affected and human rights organisations (CCALCP and ASCAMCAT). The Constitutional Court agreed to review similar cases jointly, opening up the possibility of a substantive decision on the enforcement of compliance with the Peace Agreement.⁹⁷

Lack of Progress with Development Plans with a Territorial Approach (PDET)

As noted in Chapter 1, PDET is a central mechanism to address the lack of access to territories and uncertainty around title to land. The UN Report on Territorial Violence has confirmed the widespread absence of comprehensive implementation of PDET and the failure to address access to and use of land, as well as the unfortunate suspension of land restitution efforts due to deficient security conditions.⁹⁸

Participation in PDET planning downgraded and ASCAMCAT excluded from process

In advocating for advances with PDET, ASCAMCAT was removed from the PDET process by the government after having worked for more than 16 years to establish a campesino land reserve (Zona de Reserva Campesina, ZRC). Caravana delegates were advised that the business sector and international companies were summoned instead to participate in the process and to articulate their vision for the territories. Delegates heard that following the militarisation of these zones, the government allowed foreign companies to participate at the negotiation table.

The participation of rural inhabitants and social organisations is fundamental to implementing sections 1 and 4 of the Peace Accords and excluding them from the PDET negotiation process makes their implementation impossible. However, a tutela filed by ASCAMCAT in 2019 to nullify these actions was denied.

90 Each municipality or special district in Colombia has a local personería, headed by the Municipal Personero, which is responsible for protecting, defending and promoting the human and constitutional rights of the inhabitants to which it provides its services: [What are personerías?](#)

91 <https://www.elespectador.com/colombia-20/conflicto/ordenan-desalojo-de-una-vereda-en-chimichagua-por-lio-de-tierras-con-un-palmicultor-del-cesar/>

92 <http://www.colombiancaravana.org.uk/urgent-action-the-imminent-eviction-of-the-pitalito-community>

93 Coverage of the case of the [Pitalito community](#).

94 Ibid.

95 Defend the Peace Accords, supra 70.

96 Ibid.

97 Corte Constitucional T- 8.097.843 Order of Auto del 13 de septiembre.

98 Territorial Violence Report, supra 1, para. 98.



“In the midst of violence, Catatumbo flourishes” (photo in office of ASCAMCAT, Cúcuta)

The Caravana further observes that the exclusion of ASCAMCAT from the PDET process violates the letter and the spirit of the section 2 Peace Agreement commitment to expanding democratic spaces and political participation.

ASCAMCAT’s struggle to settle long-standing land conflict

To date, despite ASCAMCAT’s longstanding effort to obtain a declaration of a Zona de Reserva Campesina (ZRC or Campesino Reserve of Catatumbo, CRC), it has not been instituted. The same is true of the 2017 judgement⁹⁹ concerning ASCAMCAT’s agreement with the Bari Indigenous people regarding a reconciliation of their respective territorial boundaries, which should have led to the implementation of the CRC.

The ZRC mechanism originated with Law 160 of 1994, a form of territorial planning intended to resolve historical rural problems “such as state abandonment, land grabbing and the armed conflict”.¹⁰⁰ The ZRC permits land use planning for the purposes of promoting the campesino economy, protecting the environment, and preventing land grabbing. In each zone, the communities construct a sustainable development plan that is agreed upon with the authorities; such plans are supposed to prioritise sustainable campesino production methods over monoculture plantations.

⁹⁹ Judgment T-052 of 2017: <https://www.corteconstitucional.gov.co/relatoria/2017/t-052-17.htm>

¹⁰⁰ <https://www.dejusticia.org/la-autoridad-agraria-finalmente-constituye-tres-zonas-de-reserva-campesina-que-iniciaron-tramite-hace-mas-de-diez-anos/>.

Most of the 31 zones requested had not been constituted by August 2022, as with the ZRC promoted by ASCAMCAT.

Lack of Progress with National Comprehensive Program for Substitution of Illicit Crops

Substitution of coca cultivation in the Catatumbo region has not been possible due to continued threats by illegal armed groups and because the State has failed both to address this lack of security and to provide the infrastructure and markets essential to making the substitution of non-illicit crops feasible. Further, the criminalisation of small-scale cultivators (campesinos) and forced eradication continues.

PNIS Pilot Plan in Catatumbo: Failed promises for agricultural production project

Delegates also learned about CCALCP’s representation of 63 nuclear families within the Caño Indio pilot plan, in the villages of Caño Indio, Palmeras Mirador, Chiquinquirá and Progreso 2, municipality of Tibú, Norte de Santander. These four rural communities formed part of the first PNIS pilot plan that began in 2017 with the execution of the substitution agreement. The commitment then was to deliver the short and long-cycle production project within one year.

CCALCP advises that these communities have yet to receive the necessary components to establish alternatives and sustainability (as of March 2023).

Together with the formalisation of land, which also remains unfulfilled, the production project is the most important measure of PNIS, and would guarantee access to alternatives for the generation of income by families who have no other options.

Other Failures to Resolve Illicit Drugs Problem: Forced eradication and increased criminalisation of small-scale cultivators

The Caravana delegates heard from ASCAMCAT and other groups in Norte de Santander that government policies had sharply turned towards the failed policy of forced eradication of illicit crops and delegates heard accounts of the State’s harsher treatment of campesino small-scale cultivators versus large narco-trafficking groups.

Cúcuta delegates were told that there has not been a differential criminal treatment of coca producers according to their level of involvement in coca cultivation, in violation of the Peace Agreement. Indeed, there has been an increase in the imprisonment of campesino coca growers; 25% of those imprisoned are from that group, with criminal convictions for those with a small number of plants more than the legal limit of (19) plants, whereas there has been no parallel judicialisation of large-scale coca cultivators.

Moreover, the Duque government continued the maligned practice of forced eradication of coca crops, that is, aerial spraying with glyphosate and violent manual substitution, in conjunction with threats of incarceration, criminalisation and forced eradication.

Notably, the situation in Norte de Santander remains critical in terms of the lack of access roads, infrastructure, supplies, collection centres, production markets or mechanisms for the commercialisation and dissemination of peasant products. The settled consensus is that addressing these deficits is essential to effecting illicit crops substitution.

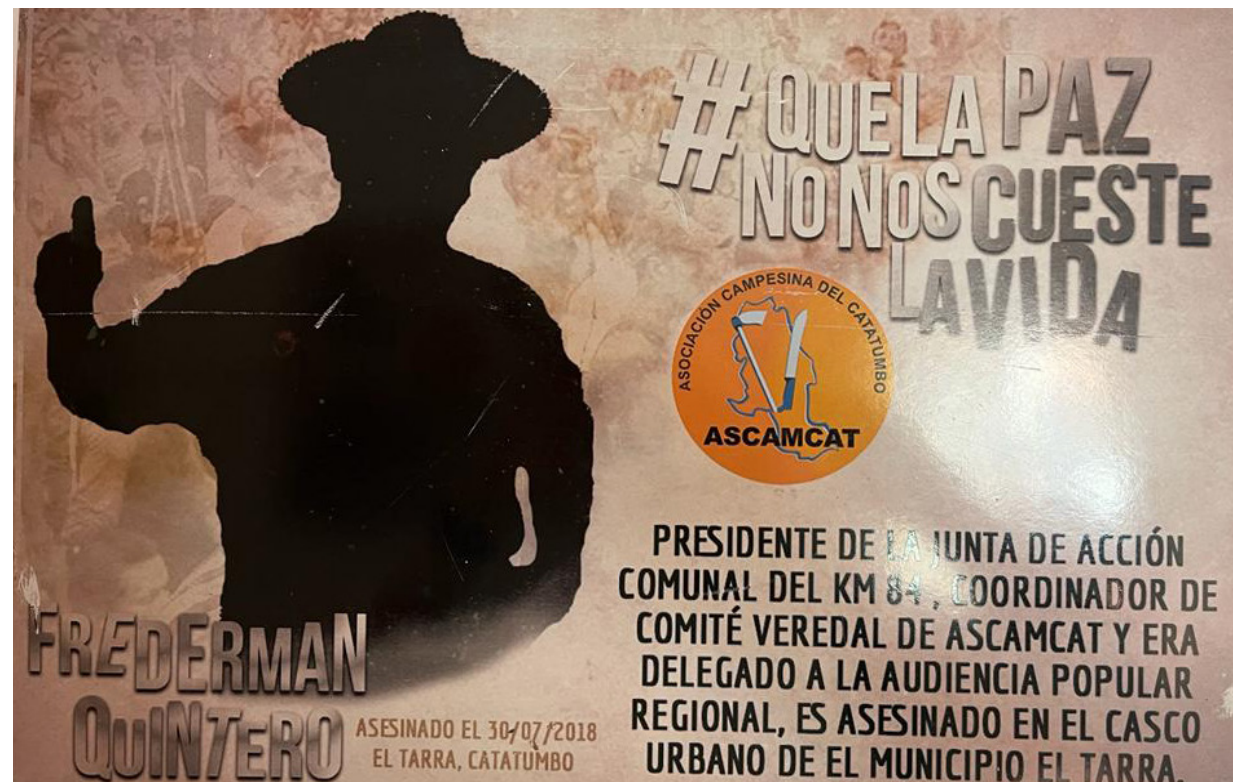
As such, Caravana delegates were advised that no other alternatives to coca leaf plantations have been sought in practice. Moreover, there has been a significant regional expansion in the

palm oil industry. This development is said to be another factor in the forced displacement of peasants. Delegates were told of a scheme whereby one side of the Catatumbo River was sprayed with glyphosate (the area controlled by guerrilla forces) whilst the other side (controlled by the paramilitaries) was sprayed with water. Following the fumigation, only palm oil can be grown on these now-damaged lands for the next 10 years. The campesinos who accessed these territories were offered bank credit but since it takes 5 years to grow palm oil, their lands were subsequently taken over by financial institutions.

Forced eradication continues and intensifies

In 2020, five campesinos in this region died in forced eradication operations at the hands of State security forces, among them, Alejandro Carvajal, on 26 March 2020, whose legal case was handled by the ASCAMCAT legal team. Carvajal was 22 years old and was promoting a crop substitution project to replace coca crops with sugar cane in Sardinata.¹⁰¹

During this and other legal proceedings, ASCAMCAT lawyers, Gustavo Adolfo Quintero Sierra and Marissela Puerta Guzman denounced a campaign of threats, stigmatisation and harassment by public force members to which they have been subject.¹⁰²



“Peace should not cost us our lives.”

101 <https://www.elespectador.com/colombia-20/conflicto/la-condena-contra-el-soldado-que-mato-al-campesino-alejandro-carvajal-en-catatumbo/>.

102 See case study of campaign of harassment of ASCAMCAT’s legal team in Section 4.3 of Chapter 4 (p. 103). During the processing of both cases, the lawyers in charge – Gustavo Quintero and Marissela Puerta – have denounced threats and harassment by members of the public force. The episodes have occurred in different parts of Catatumbo and in recent months. In some of these instances, police officers have referred to Quintero as the “guerrilla lawyer” or the “Catatumbo guerrilla lawyer.” Both lawyers denounce arbitrary police procedures and report that on one occasion the agents drew their firearms to intimidate them.

2.3 Persecution of Social and Political Movements

The organising efforts of ASCAMCAT and other rural based groups to pressure State institutions to implement the Peace Agreement - with particular emphasis on chapters 1 and 4 of the Peace Agreement - have been harshly resisted, met with violence and intimidation.

Case Studies from Catatumbo: Efforts to enforce Peace Agreement attract persecution

2.3.1 Evidence-free stigmatisation of critics and political opponents

Caravana delegates received recent accounts of serious “evidence-free stigmatisation”¹⁰³ of ASCAMCAT by the military and political sectors of political right.

(a) False Accusations Expose Campesino Association to High Risks

- In connection with a humanitarian circle assembled by ASCAMCAT in Catatumbo to prevent a forced coca eradication from happening in October 2021, General Ómar Esteban Sepúlveda Carvajal (commander of the Army’s Second Division) denounced ASCAMCAT and the National Coordinating Committee of Coca, Poppy and Marijuana Growers (Coccam), in the media, as having allegedly kidnapped 180 heavily armed soldiers carrying out an eradication. This was a false accusation. The Commander told the media that the two organisations were “dedicated to the illicit drug trafficking business”.¹⁰⁴ In response to these falsehoods, the banks blocked their accounts on the unfounded suspicion of money laundering. ASCAMCAT filed a complaint and General Sepúlveda reiterated his statement, accusing it of being “dedicated to the illicit drug trafficking business”. Lawyer Gustavo Quintero of ASCAMCAT observed that the accusations of being kidnappers and associated with drug trafficking organisations are extremely serious, and also novel.¹⁰⁵ [A second example of stigmatisation is outlined in **Chapter 3** as it arose in the context of the social protests in May 2021.]

(b) Historical Criminalisation and Judicial Set-up of ASCAMCAT Continues

- One such historical criminalisation case against ASCAMCAT that was filed in 2012 (based on false information gathered by military intelligence in 2007), persists to date. This, despite the pronouncement by the 95th Prosecutor’s Office specialised unit against criminal groups in the group’s favour, in 2020. That this case remains open continues to produce unnecessary uncertainty and extreme anxiety for ASCAMCAT.

2.3.2 Stigmatisation and judicial set-ups of campesino leaders

In the same tenor as the campaign against ASCAMCAT, Bucaramanga delegates learned of a clear pattern of criminalisation of peasant leaders in several rural departments, including the Cesar department (with 37 peasants victims of detention on the basis of false accusations), and Norte de Santander (especially in the zone of Catatumbo) and Arauca.¹⁰⁶ As of 2017, approximately 100 arrest warrants had been issued against inhabitants of Catatumbo.¹⁰⁷ Most of these cases are prosecuted by the National Directorate against Organised Crime. Legal professionals allege that

103 WOLA applies this term to Colombian senior officials’ use of stigmatisation of political opponents and critics: WOLA Report, supra 30, p.26.

104 Ibid, p. 26.

105 Ibid, p. 26.

106 La Paz en Jaque: Informe sobre Situación de Derechos Humanos y Violencia Sindical en Colombia (December 2017), pp. 33-35 (La Paz en Jaque): <https://movimientodevictimas.org/la-paz-en-jaque-informe-sobre-situacion-de-derechos-humanos-y-violencia-sindical-en-colombia-2017/>.

107 Ibid.

Directorate's officials are former Army personnel and that the managers of its judicial processes maintain ongoing contact with military and police forces. The Caravana delegates were told that former insurgents work with the uniformed forces to carry out this pattern of attack, the objective of which is to dismantle these social and political organisations.

Case of Wilson Becerra

One such case is that of Wilson Becerra, a peasant leader who was preventively imprisoned for several years, without having been convicted.

Becerra is from the Tigre community, Cesar department. He and his community were victims of forced displacement and he emerged as a prominent community leader. Delegates to Bucaramanga were informed that Becerra was falsely accused of being part of the ELN insurgency owing to his social and peasant leadership activities. He was charged with rebellion and conspiracy to commit a crime for the purposes of drug trafficking (double jeopardy), and captured by the Police Judicial and Criminal Investigation Section (SIJIN) (and two army agents) on 26 January 2014. Those who know Becerra knew he was not part of an armed group. After being detained on an arrest warrant and spending five months in one prison, he was transferred to a maximum security prison for five months, after which time there was a hearing in the city of Valledupar. Subsequently, he was again placed in a prison, this time the toughest maximum security prison in Colombia (Tramacúa in patio 8), where access to water is very precarious. Becerra has been represented by Equipo Jurídico Pueblos lawyers.

Postscript: On 19 September 2022, the Juzgado Primero Penal del Circuito Especializado de Valledupar decided to terminate the criminal proceedings brought by the Attorney General's Office on grounds that the statute of limitation had expired. Towards the end of March 2023, Becerra was acquitted of all charges.

Elevated Pattern of Judicial Set-ups of Peasant Leaders: Military pressure on prosecutors

The Caravana learned from the EJP about a pattern of judicial set-ups against peasants in regions of territorial violence, with these consistent features:¹⁰⁸

- The most visible figure in the peasant community is prosecuted.
- Pressure from the State itself has led to the acceptance of pre-agreements with the Prosecutor's Office.
- The Prosecutor's Office uses the testimony of former guerrilla fighters who collaborate in exchange for money.
- The Army initiates the processes with military intelligence; they make reports and obtain false testimonies from ex-combatants.
- In the departments of Cesar, Norte de Santander and Santander, the captures of peasants take place on contested lands where there is a presence of extractive industries and the campesino communities are impoverished and falsely labelled as guerrillas.

¹⁰⁸ Ibid.

2.3.3 Canal del Dique: Conflict over access to sustainable livelihoods

The situation surrounding the rerouting of the Canal del Dique illustrates varied dimensions of historic and contemporary conflict over access to land and resources, along with impediments to the capacity of marginalised ethnic and other communities - in this case, the Afro-Colombian communities - to sustain an adequate level of living through cultivation of land and other pursuits such as fishing. At play as well is the failure to protect the fundamental right of these communities to prior consultation and free, prior and informed consent. The other common denominator is the reality of violence and the persecution of those who attempt to challenge the prevailing priorities: community organisations, human rights defenders and lawyers.

The Canal del Dique was constructed by Afro-descendants in the 1600s; the Canal and surrounds have been home to this community since before the Colombian state was born. The area has also seen significant activity by multinational and national enterprises, with adverse effects on the environment, including the bodies of water and the territories that local communities rely on for their livelihood.

In addition, there is a significant history of paramilitary activity and killings in this area over the past decades: the JEP recently confirmed that there

could be as many as 9,000 corpses buried along the 115.5 kilometres that make up the Canal del Dique.¹⁰⁹

In July 2022,¹¹⁰ the JEP issued interim precautionary measures and ordered the government to institute a protocol to protect the remains and avoid revictimisation.¹¹¹ This was followed up by a hearing in October 2022, where the JEP after listening to the authorities and the victims of the armed conflict, ordered the government to design a forensic archaeological protocol and to set up an advisory committee on the search for missing persons in and around the Canal.¹¹²

More recently, a project of the Ministry of Transportation and the National Infrastructure Agency (ANI) to divert the relocation of the Canal presents new concerns for these communities. The project's ostensible purpose is to prevent floods that have occurred historically (every decade) in the area of Cartagena but the water will be rerouted into the Afro-Colombian area around Montes de Maria towards the coastline. Studies have shown that over 30 years the diversion of the floods will diminish the water quality and make up to 90% of the habitation in the diversion area impossible for the communities that make a living through the fisheries or agriculture.



Truth Commission tours Canal del Dique to determine the effects of armed conflict on the territory, water, and cultural practices of Afro-descendant communities: [See link](#)

¹⁰⁹ <https://www.infobae.com/america/colombia/2022/11/08/habria-unos-9-mil-cadaveres-de-desaparecidos-en-el-canal-del-dique-la-procuraduria-pidio-agilizar-la-busqueda/>.

¹¹⁰ <https://www.semana.com/nacion/articulo/jep-ordeno-busqueda-de-desaparecidos-en-el-marco-de-las-obras-en-el-canal-del-dique/202239/>.

¹¹¹ The JEP ordered precautionary measures in respect of the planned infrastructure megaproject - as against the Ministry of Transportation and the National Infrastructure Agency) - in order to protect the remains of those reported missing. "The precautionary measures impose a reality that the country must assume without excuses: megaprojects in areas with a high incidence of forced disappearances have a moral obligation as a step to reaffirm the values of a society: they must include exhaustive processes of investigation and search for possible victims": [habria-unos-9-mil-cadaveres-de-desaparecidos-en-el-canal-del-dique](https://www.rcnradio.com/colombia/caribe/jep-ordeno-al-gobierno-disenar-protocolo-para-busqueda-de-desaparecidos-en-el-canal).

¹¹² <https://www.rcnradio.com/colombia/caribe/jep-ordeno-al-gobierno-disenar-protocolo-para-busqueda-de-desaparecidos-en-el-canal>.

Attacks on Political Participation and the Right to Dissent

3.1 Repression and Stigmatisation of Social Protest During 2021 National Strike

Introduction

Our focus is three-fold: (1) the Colombian government's violent response to the widespread social protests in 2021; (2) the lack of justice for victims and their families; and (3) the harassment and criminalisation of human rights lawyers and defenders in their efforts to advocate for victims and surmount barriers to access to justice.

The VII Caravana delegates heard numerous accounts of the Duque government's militarised repression and criminalisation of the social protests that exploded beginning in late April 2021. The human rights crisis¹¹³ that emerged during the national strike in 2021 is a case study of the Colombian State's historically repressive tendencies and the structural roots of violence that the Petro government will need to confront. The government's response was consistent with the State's historical approach to citizen mobilisation and other expressions of opposition to prevailing realities and visions for the country.

The government's response is also consistent with the failure to implement section 2 (Political Participation) of the Peace Agreement. It is an extreme illustration of the failure to respect and promote a culture of political participation and citizen mobilisation,¹¹⁴ to say nothing of the constitutionally protected right to peaceful protest (under Article 37 of the Constitución Política).

Context for 2021 National Strike

The national strike or social outburst 'estallido social', as it came to be known, was prompted initially by the Duque government's fiscal, social security and health care reform proposals that disadvantaged the middle and lower classes. However, other structural concerns fuelled the social mobilisation:¹¹⁵ high and growing levels of poverty and inequality;¹¹⁶ the rising number of murders of human rights defenders, social leaders, representatives of Indigenous Peoples and

113 Amnesty International, PAIIS and Temblores, Shoots on Sight: Eye Trauma in the Context of the National Strike (Index: AMR 23/5005/2021), 26 November 2021 (Shoots on Sight Report), at p. 20: <https://www.amnesty.org/en/location/americas/south-america/colombia/report-colombia>. During the months of the 2021 National Strike in Colombia, there was a serious human rights crisis, widely documented by non-governmental organisations PAIIS, Temblores and Amnesty International, and other national and international organisations.

114 Section 2 of the Peace Agreement frames "political participation" more broadly than participation in the electoral system and the formal political sphere, or 'politics'. Most accounts the Caravana received concerning violent responses to political participation fell within this broader conception, whether as social protest, or other ways of organising and challenging current realities and promoting alternative visions for Colombia. This idea is encapsulated in the term "citizen mobilisation".

115 IACHR Working Visit Report, supra 2, paras. 2, 10. See also the IACHR Follow-up Report, supra 2, regarding its recommendations.

116 IACHR Working Visit Report, para. 10.

Afro-Colombians, and signatories of the Peace Agreement,¹¹⁷ and the lack of compliance with the Peace Agreement.¹¹⁸

During its working visit to Colombia in June 2021, the IACHR observed that the demonstrations were linked to "structural and historical demands of Colombian society", critical priorities that are also articulated in the Peace Agreement.¹¹⁹ Other themes came into focus, including the government's highly repressive response to the protests itself. Youth and other marginalised sectors expressed their demands for universal access to education and health care and the need for reform of the national police.¹²⁰

Repression of citizens exercising their right to peaceful protest

The consensus amongst international bodies and national and international non-governmental organisations is that the Colombian State engaged in widespread indiscriminate and excessive use of force against those exercising their right to peaceful social protest, the majority doing so peacefully.¹²¹ The government applied its indiscriminate use of force not only against protesters and bystanders,¹²² but those monitoring or recording the protests (journalists), and those rendering medical aid and legal services.¹²³

The consensus is that the government employed a systematic and excessive use of force that did not respect the principles of legality, necessity, proportionality and accountability.¹²⁴

117 Ibid, para. 15. For 2020, human rights groups documented 310 murders of social leaders and human rights defenders and the UN Verification Mission in Colombia confirmed the murder of 73 signatories of the Peace Agreement: para. 15, citing its quarterly report press release (January 2021).

118 Amnesty International, Cali: In the Epicentre of Repression: Human Rights Violations during the 2021 National Strike in Cali, Colombia, p. 5 (Cali: Epicentre Report): [AMRCali2344052021ENGLISH.pdf](https://www.amnesty.org/en/documents/AMRCali2344052021ENGLISH.pdf)

119 IACHR Working Visit Report, supra 2, para. 2.

120 Ibid, para. 23.

121 Shoots on Sight Report, supra 113, p. 45. The Colombian State reported to the IACHR that there were 12,478 protest actions from 28 April to 4 June 2021, of which 89% did not register acts of violence and only 11% involved disturbances or violent actions that purportedly affected citizen coexistence and for which the intervention of the Mobile Anti-Riot Squadron (ESMAD) was called in: IACHR Working Visit Report, supra 2, paras. 25-26.

122 Informe Final: Misión de Observación Internacional por las Garantías de la Protesta Social y Contra la Impunidad en Colombia, 7 October 2021, p. 7 (SOS Mission Report): <https://kavilando.org/images/stories/documentos/Informe-Preliminar-SOS-Colombia.pdf>; <https://kavilando.org/lineas-kavilando/conflicto-social-y-paz/8599-informe-mision-de-observacion-internacional-por-las-garantias-de-la-protesta-social-y-contra-la-impunidad-en-colom>.

123 Ibid, pp. 34-36.

124 Shoots on Sight Report, supra 113, at p. 44. See also OHCHR press release dated 15 December 2021 referencing report (Spanish only): [Colombia must urgently reform how it polices protests to avoid further human rights violations – UN report | OHCHR](https://www.ohchr.org/en/press-releases/2021/12/colombia-must-urgently-reform-how-it-polices-protests-to-avoid-further-human-rights-violations).



Tear gas grenade used by security forces during the social protests in Bucaramanga

In addition to the early deployment of the military to various cities to suppress demonstrations,¹²⁵ the IACHR determined there was patterned excessive use of force (including the use of non-lethal or less lethal weapons used for crowd control)¹²⁶ with the effect (if not the intent) of inflicting death and injury: examples of which include excessive use of expired irritant gases and venom grenade launchers.¹²⁷ Notably, the government failed to condemn the excessive use of force.¹²⁸

As occurred during an earlier round of social protests in 2019-2020, ESMAD conduct was found to qualify as systematic excessive and disproportionate use of force to punish protesters.¹²⁹



Spent bullets

125 Cali: Epicentre Report, supra 118, p. 5.

126 IACHR Working Visit Report, supra 2, para. 46. See also Amnesty International, “Colombia: The IACHR must listen to the voices of victims of human rights violations”, 7 June 2021, available at: <https://www.amnesty.org/en/latest/news/2021/06/colombia-cidh-debe-escuchar-victimas-violaciones-derechos-humanos/> and “Colombia: the authorities must implement the IACHR’s recommendations regarding human rights violations reported in the context of the National Strike”, 7 July 2021, available at: <https://www.amnesty.org/en/latest/news/2021/07/colombia-las-autoridades-deben-cumplir-con-las-recomendaciones-de-la-cidh-en-el-contexto-del-paro-nacional/>.

127 Ibid, para. 50, cited in Shoots on Sight Report, supra 113, pp. 37-8.

128 Shoots on Sight Report, supra 113, p. 18.

129 Ibid, p. 11.

Grave results of State’s repressive response to social protests in 2021

- **Many deaths:**
 - Estimates vary but between 16-18 were murdered during the protests in the Siloé sector¹³⁰ of Cali (26-28 in Cali, as a whole)¹³¹ and one human rights organisation estimated that at least 84 people were killed in the whole of Colombia between 28 April and 30 June 2021.¹³²
- **Many injuries:**
 - By one estimate, 1,790 people injured,¹³³ and disturbingly, there was a clear pattern of infliction of serious disabling injuries¹³⁴ through the use of non-lethal or less lethal weapons, including 103 people (ranging from children to a 32-year old victim) who sustained eye trauma between January and June 2021, and of these, 37 individuals lost all or partial vision.¹³⁵
- **Grave gender-based violence** by police, including various forms of sexual violence: according to one estimate, 28 cases from the end of April to 26 June 2021.¹³⁶
- Alarming levels of **forced disappearances** reported: estimates of around 300 persons.¹³⁷
- **Mass arbitrary detentions**, in the range of 2,005 people from 28 April to 26 June 2021.¹³⁸
- Reports of **threats, attacks and violence against human rights defenders** and organisations throughout the country.¹³⁹

130 El País, “Operación Siloé: El estado colombiano es condenado por un tribunal popular en un fallo simbólico”, El País, 21 February 2023: <https://elpais.com/america-colombia/2023-02-21/operacion-siloe-el-estado-colombiano-es-condenado-por-un-tribunal-popular-en-un-fallo-simbolico.html>.

131 Cali: Epicentre Report, supra 118, pp. 6, 14, 17.

132 Of which, 28 were allegedly attributed to security forces, 7 to armed civilians: reported by Campaña Defender la Libertad: Asunto de Tod@s in Cali: Epicentre Report, Ibid, p. 14.

133 Ibid, p. 14.

134 Shoots on Sight Report, supra 113, chapter 6, which examines the effects of use of force directed at the bodies of protesters.

135 Ibid, pp. 38-40: 12 eye injuries were inflicted by ESMAD units in Oct/Nov 2018 as opposed to 103 such injuries between January and June 2021 (p. 38).

136 Cali: Epicentre Report, supra 118, p. 14: “[B]etween 28 April and 2 June, 491 cases of police violence against women in the context of the demonstrations were recorded. Temblores ONG reported in its bulletin that 28 women had been the victims of sexual violence by the security forces as of 26 June. In a joint report presented to the IACHR, the organisations Caribe Afirmativo, Colombia Diversa and the Fundación GAAT, among other organisations, reported five cases of violence against LGBTIQI+ people who participated in the demonstrations.

137 Ibid, p. 14.

138 Ibid, p. 15.

139 Ibid, p. 15.

International law obligations and a landmark Colombian Supreme Court ruling

In accordance with the international law obligations of states to protect, respect and fulfil the right of all persons to engage in social protest - to participate in public affairs by engaging in opposition, criticism and dissent¹⁴⁰ - Article 37 of the Colombian Constitution (*Constitución Política*) expressly recognises the right to peaceful public protest, the exercise of which is subject only to the State's expressly drafted exceptions.¹⁴¹

A landmark ruling of the Civil Cassation Chamber of Supreme Court of Justice of Colombia in 2020¹⁴² confirmed that the authorities - ESMAD, in particular - committed acts of excessive violence in response to an earlier round of social protests in November and December 2019. The Court reiterated the Colombian State's duty to avert, prevent and punish the systematic, violent and arbitrary interventions of the security forces in demonstrations and protests,¹⁴³ having found there was a nationwide issue of violent, arbitrary and disproportionate intervention during several citizen demonstrations. The Court affirmed that there was – and might continue to be – repeated and constant disproportionate aggression by the security force towards those who protest in a peaceful manner.¹⁴⁴ It ordered, inter alia, the Ombudsman to carry out 'strict, strong and intense control of all the actions of the ESMAD' until it verified that "it is capable of making moderate use of force and of guaranteeing and respecting the rights and freedoms of people who participate or not in protests".¹⁴⁵ In direct violation of the Court's orders, the Duque government's response to the 2021 social protests was to repress and criminalise protest rather than condemn and control the violence by security forces and ensure that the rights of victims were guaranteed.¹⁴⁶

140 Lawyers' Rights Watch Canada, *The Right to Dissent: A guide to international law obligations to respect, protect and fulfil the right of all persons to participate in public affairs by engaging in criticism, opposition and dissent*, 2016: [Right2DissentGuide](#).

141 Article 37: Any group of individuals may gather and demonstrate publicly and peacefully. Only the law may define explicitly those cases in which the exercise of this right may be limited. Official English translation: <https://www.corteconstitucional.gov.co/english/Constitucion%CC%81n%20en%20Ingle%CC%81s.pdf>

142 Supreme Court of Justice, Civilian Cassation Chamber, STC7641-2020, issued 22 September 2020, (Supreme Court Right to Peaceful Protest Judgment) : <https://cortesuprema.gov.co/corte/index.php/2020/09/22/supreme-court-orders-measures-to-guarantee-the-right-to-peaceful-protest>.

143 "conjurar, prevenir y sancionar la intervención sistemática, violenta y arbitraria de la fuerza pública en manifestaciones y protestas", Dejusticia, "Corte Suprema de Justicia protege el derecho a la protesta frente a la violencia policial", 22 September 2020 (Dejusticia Report), available at: <https://www.dejusticia.org/corte-suprema-protege-el-derecho-a-la-protesta/>.

144 Supreme Court Right to Peaceful Protest Judgment, supra 142. As the Centre for Justice and International Law (CEJIL) recently observed, the existence of constitutional and regulatory norms as exists in Colombia, does not assure the effective protection of those rights: CEJIL, *Uso de fuerza en el marco de protestas sociales: aportes prácticos a partir de un análisis comparado de normas nacionales* (2022), p. 16: <https://cejil.org/2022/09/Uso-de-las-fuerzas-en-el-marco-de-las-protestas-sociales.pdf>

145 Dejusticia Report, supra 143.

146 *Shoots on Sight Report*, supra 113, at p. 18.



Delegate examines evidence of gunfire from Cali social protests

Stigmatisation of social protest

The second plank of the Duque government's response was its campaign of stigmatisation of civil society protest, which legitimised and encouraged the excessive use of force by state and non-state agents.¹⁴⁷ Government and media descriptions of citizens who protested legitimately were portrayed as the internal enemy, as terrorists, and temporary obstructions of roads were treated as constituting acts other than peaceful protest.¹⁴⁸

Truth Commission Report Recommendations: Social protest and mobilisation

The Caravana affirms the recommendations of the Truth Commission Final Report regarding social protest and mobilisation, among them:

- In the short term, the prohibition of military intervention in operations to control and contain disturbances arising in situations of protest and social mobilisation;¹⁴⁹ and that public servants refrain from conduct that delegitimises, disqualifies, harasses or stigmatises the work of human rights defenders, members of social movements and social leaders; refrain from making false accusations or accusations that compromise their safety, honour and good name.¹⁵⁰
- In the medium term, reform or elimination of ESMAD.¹⁵¹

147 Ibid, at p. 21.

148 Cali: Epicentre Report, supra 118, p. 45: "no constituye manifestación pacífica, aquella que promueva el empleo de medios para obstaculizar temporal o permanentemente vías o infraestructura", Minister of the Interior, Daniel Palacios, public statement, available at: <https://twitter.com/DanielPalam/status/1405895059556474884?s=20%20>.

149 Truth Commission Final Report, supra 2, p. 816, further to the previously mentioned landmark 2017 ruling 7 Corte Constitucional, Sentencia C-281/17, 3 de mayo de 2017.

150 Ibid, p. 817, para. 22.

151 Ibid, p. 817: "La reforma o eliminación del ESMAD e incorporación de procesos de formación públicos y evaluables para prevenir la estigmatización y criminalización de movimientos y organizaciones sociales. Es necesario, igualmente, garantizar el cumplimiento de los estándares sobre uso de la fuerza por parte de instituciones policiales."

Regional Accounts of Barriers to Political Participation

Cali: Epicentre of the National Strike

Described as the epicentre of the national strike¹⁵² with widespread protests beginning on 28 April 2021, Cali saw many deaths, injuries, violence, and abuses on the basis of gender identity and sexual orientation, by state forces and urban paramilitaries. The city has the second largest Afro-descendant population in Latin America;¹⁵³ it is part of a region hit hard by the internal armed conflict and has received large numbers of individuals from forcibly displaced communities.¹⁵⁴ Amnesty International observes that given the city's "inequality, exclusion and structural racism", it was not surprising that it became the 'epicentre' of demonstrations and that the response was so violent.¹⁵⁵

The protests were long-running and as the demonstrations in Cali continued the protesters created common meeting points named by the demonstrators, the most emblematic being the focal points of "Puerto Resistencia" "Puerto Madera" "Paso del aguante" "Loma de la Dignidad" and the Glorieta in the Siloé neighbourhood (Comuna 20).

The disproportionate use of force became systemic during the months that the social protest lasted, which led to more than 100 victims of ocular violence [12 in Valle del Cauca].¹⁵⁶ Cali delegates met with some members of the 'Colectivo Mocoa'¹⁵⁷ and heard disturbing reports from survivors of irreversible eye trauma caused by excessive State violence. Caravana delegates to Cali listened to testimonies from relatives and victims of the repression, mainly from families belonging to the collective "Memoria Viva Colombia" about the arbitrary killing of countless young people and demonstrators, with shocking facts, such as 15 deaths in the Siloé neighbourhood; the disappearances of people; sexual violence; arbitrary detentions and improper use of force.

Delegates gathered information from lawyers representing victims and their families in the most emblematic cases in the region of Valle del Cauca. The



Indigenous NASA leader and a leader of Colectivo Mocoa met with the Caravana to denounce the violence used against the 2021 social protesters in Cauca

¹⁵² Cali: Epicentre Report, supra 118, p. 5.

¹⁵³ Ibid, p. 6.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid. This is consistent with the IACHR's observation that higher levels of social tension in the context of the 2021 protests were registered in areas where ethnic-racial communities predominate: in Cauca, for example, with the highest percentage of Indigenous people: IACHR Working Visit Report, supra 2, para. 78.

¹⁵⁶ Shoots on Sight Report, supra 113, p. 39.

¹⁵⁷ Colectivo Mocoa or "Movimiento en Resistencia Contra las Agresiones Oculares del Esmad" - Movement in Resistance against the Ocular Aggressions of ESMAD - is campaigning for ESMAD to be dismantled and for non-repetition of their aggressive conduct.



Delegates, Colombian lawyers and leaders met with Archbishop of Cali

delegates also met with Indigenous community leaders, transgender people, the Archbishop and Mayor of Cali, and they attended the second hearing of the 'People's Tribunal of Siloé' as observers:¹⁵⁸ an initiative of the inhabitants of this neighbourhood that was especially hit by police repression, to clarify the circumstances of the death and disappearance of several young demonstrators.

Murder of Daniel Stiven Sánchez and his family's fight for justice: Painful testimonies to Siloé People's Tribunal by Crisol and Paula Sánchez

Dramatic and painful testimonies were heard on 3 May 2022, the first day of the Siloé People's Tribunal. Sisters Crisol and Paula Sánchez denounced, through tears, how their 16-year-old brother, Daniel Stiven Sánchez, who was not participating in the protests, was arbitrarily detained on 28 May 2021 and then murdered by ESMAD security forces. They detailed how his lifeless body was later falsely presented as having died in a commercial warehouse fire.¹⁵⁹ They affirmed that protocols for the post-mortem (removing the body, undertaking the autopsy and returning it to the family) were not followed. The family has since experienced death threats and illegal telephone-tapping, and has been internally displaced several times due to concerns for their safety.¹⁶⁰ Despite the existence of court orders, to date they have not been granted State protection measures.

Given the ineffectiveness of the relevant state institutions, the Sánchez sisters and other relatives have emerged to investigate the facts and determine the truth of the case, but they stressed that the Prosecutor's Office has not listened and until now the most incredible neglect persists.

¹⁵⁸ NOMADESC, "What is the Tribunal of Siloé (video)", <https://www.youtube.com/watch?v=L36r3lkFNo>.

¹⁵⁹ WOLA, "Deepening Rights and Humanitarian Crisis in Colombia", 8 October 2021: <https://www.wola.org/2021/10/deepening-rights-and-humanitarian-crises-in-colombia/>.

¹⁶⁰ Ibid.

“We continue to fight so that there is no impunity. This Tribunal is more transparent than any state body. Wherever we have to go, we will go to demand justice. **They took so much from us, that they took away our fear.** I was ignorant of the reality of my country until death knocked on the doors of my house.”

Crisol Sanchez told the Tribunal hearing, when vindicating the memory of her brother¹⁶¹



Families share with delegates the impact of the repression against their family members during the social protests in Cali



161 <https://www.telesurtv.net/news/colombia-paro-nacional-represion-cali-siloe-tribunal-popular-20220505>.

Protests in Bucaramanga

Bucaramanga delegates heard descriptions from victims about the disproportionate use of police and military force. ESMAD was particularly criticised for physically attacking and assaulting demonstrators using unlawful, violent and indiscriminate tactics to disperse the demonstrations, and horizontally firing expired, and therefore more harmful, tear gas against the demonstrators.

Bucaramanga delegates listened to testimonies that human rights defenders were attacked and stigmatised by police and military forces for their work in covering and verifying the conditions of the demonstrations, and were victims of verbal attacks based on gender in the case of women defenders. This was denounced by members of the human rights law collective Equipo Jurídico Pueblos (EJP), who complained that wearing waistcoats identifying them as human rights defenders during accompaniments, instead of being a protective measure, actually made them the targets of attacks by police officers. The team also reported that police and military agents covered up their identity badges or didn't wear them, making it difficult to identify them, thus allowing abuses to go unpunished.

There were mass arrests and violent detentions of young demonstrators and human rights defenders (visibly identified as such) without providing the

reason for the detention and any grounds or evidence against them. Unlawful arrests were carried out by both police officers and armed civilians. Despite the fact that the procedure of the National Police Code establishes that the transfer to police stations should be exceptional, this became the general rule in the framework of the national strike. It was also common practice to prolong detentions in police stations, exceeding the legal limit of 36 hours to either release detainees or make them available to the Attorney General's Office and in breach of their right to be brought before a judge or released. As a result, detainees were left in a legal vacuum in which the police were no longer competent, and they were held indefinitely, without access to a lawyer or information.

The regional Ombudsman's office in Bucaramanga acknowledged the existence of a structural problem in this regard, stating that there are people who have been detained for a year and a half in temporary detention centres.

Lawyers denounced the constant violations of the right to defence and legal assistance of detainees, facing difficulties in locating detainees, lack of information from the police in detention centres and the impossibility of communicating with their clients.

'Torturous search for justice'¹⁶²

According to the testimony of several lawyers from Cali with whom the Caravana met, the greatest obstacles are found in access to information about detainees in prisons and to justice mechanisms in the processing of criminal investigations. On the prosecution side, in most cases the file has not been disclosed, evidence has not been handed over and the conditions of detention have not been proven.

162 Shoots on Sight Report, supra 113, p. 32.

Judicial False Positives

The Caravana was advised of a clear pattern of “judicial set-ups” (‘montajes judiciales’), also known as ‘judicial false positives’, in relation to the national strike protests. Testimonies pointed to a repeated pattern of judicial persecution; cases based on inflated charges and false evidence, as a means of retaliation against protest participants and a form of deterrence.

Judicial Set-Ups in Bucaramanga

The EJP advised the Caravana delegates that the Attorney General’s Office of Bucaramanga was mounting baseless prosecutions against youth accused of belonging to the Primera Línea(s) or Front Line(s), leading the protests, and committing crimes related to terrorism. EJP lawyers represent several victims of judicial false positives. In detaining protesters, the Attorney General’s Office advanced inflated charges for rebellion, terrorism and vandalism against others. The purpose of these judicial set-ups is to criminalise, stigmatise and suppress legitimate protest.

Case Study: Judicial False Positives of Four Youths Detained in Bucaramanga Protests

The EJP represented four youths detained in the Bucaramanga protests, all subject to judicial false positives. The lawyers summarised the following recurring elements of such cases:

- The role of the media in publicly condemning young people as terrorists without respecting the presumption of innocence. Although cases are often closed due to lack of evidence, or failure to prove criminal conduct, the reputational damage is irreparable due to the strong stigmatisation of the victims.
- Protesters are unlawfully detained without basis or sufficient evidence, and in breach of procedural guarantees.
- Disproportionate, baseless and exaggerated charges by the Attorney General’s Office, accusing participants of serious crimes such as terrorism, violence against public servants, and conspiracy to commit crimes, among others.
- Manipulation of evidence by police, including its Judicial and Criminal Investigation Section (Seccionales de Investigación Judicial y Criminal - SIJIN). False evidence collected includes photographic montages or set-ups, and procurement of false or unidentified witnesses.
- Irregularities in investigations and arbitrary conduct by Prosecutor’s Office: The EJP told the Caravana that they possess a photo album produced by the National Prosecutor’s Office and its investigators containing photographs that were allegedly manipulated in order to suggest to witnesses the person it wishes to incriminate; the images in the photo display are allegedly altered, with the exception of the photo chosen by the witness. The EJP also reported suspected wire-tapping, interception and recording of calls between lawyers and clients, in violation of the right to confidentiality and the principle of equality of arms as a procedural guarantee.
- Obstacles to exercising the right of defence in this type of proceeding include high levels of media and political pressure, particularly given the lack of procedural guarantees to make the right to defence effective.



Delegates with EJP team and trades unionists (in foreground, bullets used by police during the social protests in 2021)

Case Study: Criminalisation of Youth in Bucaramanga

11 young people arrested in Bucaramanga

On 15 June 2022, nine young men and two young women were arrested and charged with the crimes of conspiracy to commit a crime; trafficking, manufacture or transport of narcotics; and the use or throwing of dangerous objects or substances. The Attorney General’s Office argued that these 11 young people were part of the Primera Línea leaders of the protests in Bucaramanga and that this was a criminal organisation dedicated to drug trafficking and the destruction of public property during the 2021 demonstrations.

In a public hearing on 16 June 2022, one youth was remanded in prison – he is being held in a police station in Bucaramanga in overcrowded conditions – and nine others were remanded in home detention. The only ones who were not preventively deprived of their liberty were the two women, although they were prohibited from attending places with a large number of people. The defence team has brought a motion to nullify the petition based on imprecision in the indictment, the merits of which have not been determined by the court.¹⁶³ To date, none of the youth has been convicted and the investigation is ongoing.

The Caravana delegates were advised that the Attorney General’s Office would continue to push the case and prosecute the young people, which sends the message that they are an organised criminal group despite serious questions undermining the evidence in the case.

Human rights lawyers have denounced the contrast between the prosecution and progress of cases in which demonstrators are incriminated, and the lack of investigation and immediate archiving of allegations of abuses committed by police and military agents during the national strike.

¹⁶³ An indictment hearing scheduled for 1 December 2022 - which would have initiated the trial stage - has been rescheduled several times and is currently set for 28 March 2023. The defence objects to the fact that the court hearings have been held behind close doors.

Case Study: Stigmatisation and Criminalisation of University Students, Lawyers and Law Professors in Bucaramanga

In a historical case at the Industrial University of Santander (UIS) in Bucaramanga, former UIS students, lawyers and law professors (part of a research group from the schools of law and political science at UIS known as Quilombo Collective) were targeted by smear campaigns, stigmatisation, baseless investigations and prosecutions, conducted by undercover agents and private surveillance on the university campus.

The infiltration of public universities as a mechanism used by the Colombian state is thus not new; in July 2022, after 10 years, four months and 28 days, the judge in this case (Caso Lebrija)¹⁶⁴ ordered the release of students Cristian Leiva, Xiomara Torres, Érika Aguirre, Alexis Bueno, Diego Alejandro Ortega and Carlos Carrillo, after absolving them and finding that evidence was manufactured by a police agent who infiltrated the UIS and planted explosive devices in an attempt to frame the students for rebellion. In fact, these students were part of a student movement, which at the time of the events had gained significant momentum, carrying out large-scale mobilisations at the national level in support of the public university.¹⁶⁵

Flash forward to 2021-2022, the Caravana was informed of concerns about intelligence reports linking the legitimate activities of university students to violence and the organisation of insurgent groups, labelling them as criminal or terrorist groups. The students and professors who questioned the arbitrary arrests and unlawful detentions of young people during the 2021 national strike have since been targeted by unlawful intelligence gathering and baseless prosecutions.

Quilombo Collective law professors explained that they too had been the subject of judicial false positives mounted by the Police Judicial and Criminal Investigation Section (SIJIN),¹⁶⁶ based on intelligence reports that emerged in the prosecution's evidence in the Primera Línea case. One of them reported receiving WhatsApp messages on his phone from persons he suspects are state intelligence agents pretending to be a family member(s). One message ordered him to stop playing the fool, because he knew who they were, and they knew about the student movement: "Hagase el idiota, usted sabe" ("Play the idiot, you'll see"). The professor reports that his phone makes unusual noises, and hangs up for no reason. Taxi drivers stop him in the street to make comments. His family members report being approached by motorcyclists, who ask them questions about him, "the UIS professor". He explained that his laptop disappeared and was then returned to him, after someone had tried to crack his passwords. His front door was forced and his flat broken into twice, but nothing was visibly removed. The law professors are concerned that they are being targeted by state intelligence units in an attempt to thwart the rule of law and the independent exercise of the legal profession.

Judicial False Positives in Cali

Cali delegates were told that confidence in the judicial system is almost non-existent, mainly due to the power of the regional Human Rights Prosecutor's Office, because of its acceleration of cases against detained demonstrators and its delaying tactics in the investigations into complaints against security forces.

In addition, numerous lawyers in the area have denounced judicial false positive cases, the moniker that emerged in the face of this body's judicial set-ups against their clients.

¹⁶⁴ Caso Lebrija, referenced in La Paz en Jaque, supra 106, at p. 37.

¹⁶⁵ Ibid.

¹⁶⁶ SIJIN Seccionales de Investigación Judicial y Criminal.



Delegates meet with families of political prisoners detained in 2021, Cali

Case Study of Puerto Resistencia: Detention of nine protest leaders

As stated above within the city of Cali, community organisation points called "Resistance Points" were established where demonstrators gathered and set up "community kitchens" to feed anyone who approached. One of these points, "Puerto Resistencia", was set up in the area formerly known as "Puerto Rellena" where the charges by the security forces were constant and intense. The demonstrators from the start of the protests denounced systematic violence by the State.

In June 2022, a week before the presidential elections, eighteen social protestors, known as "la Primera línea", the front line, were arrested, nine Puerto Resistencia demonstrators from Cali and nine from Bucaramanga. "La Primera línea," so called because they were always at the head of the protests, could be identified by their use of shields and helmets,

necessary protection against ESMAD attacks. The arrests have attracted criticism from several quarters as politically motivated.¹⁶⁷ Just before the arrest the Mayor of Cali had negotiated a preliminary agreement with the demonstrators; some of the Cali detainees had taken part in these Town Hall negotiations.¹⁶⁸

The protestors are concerned they will not get a fair trial. Their lawyers have denounced irregularities in the investigations and the lack of concrete evidence against the accused. The prosecutor's office is adamant that the arrests are justified and they have evidence of extremely serious crimes being committed. The nine Puerto Resistencia protestors have been charged with a series of crimes (murder, terrorism, kidnapping, destruction of a motor vehicle and vandalism).¹⁶⁹

¹⁶⁷ El Tiempo, "Abogado asegura que capturados de 'Primera Línea' en Cali son artesanos", 15 June 2022: <https://www.eltiempo.com/colombia/cali/aseguran-que-capturados-de-primera-linea-en-cali-son-artesanos-680417>.

¹⁶⁸ Radio Nacional, "Alcaldía de Cali anuncia proceso de acompañamiento a jóvenes de la Primera Línea encarcelados", 15 September 2022: <https://www.radionacional.co/noticias-colombia/alcaldia-de-cali-anuncia-apoyo-jovenes-de-la-primera-linea-encarcelados>

¹⁶⁹ El País, "La Policía detiene a 18 jóvenes de la primera línea de las protestas en distintas ciudades colombianas", 16 June 2022: [La Policia detiene a 18 jóvenes](https://www.elpais.com/colombia/la-policia-detiene-a-18-jovenes-de-la-primera-linea-de-las-protestas-en-distintas-ciudades-colombianas).

Concerns were also raised that protective custody is being used as a punitive measure. One of the Caravana delegates was told, when visiting one of the Cali detainees in Jamundi prison, that the nine leaders have no criminal convictions. The protestors complain that despite their clean record, home detention was not considered to be an option. The failure to consider home detention coupled with the length of time in detention before trial is, in their view, an abuse of process.



Delegates visited the Puerto Resistencia sculpture in Cali

Politicisation and Stigmatisation of Social Protests Threatens Access to Justice

Case of Sergio Andrés Pastor - 'Alias 19'

Sergio Andrés Pastor is a young man who took on a visible leadership role during the 2021 social protests centred at the TransMilenio station, in Bogotá, 'Portal de Las Américas' renamed 'Portal de La Resistencia', acting as an interlocutor with the authorities and institutions. Andrés Pastor was accused of torture and conspiracy to commit crimes, and subsequently convicted of these crimes. He was identified by state security forces as the alleged leader of the Primeras Líneas at the national level. [Notably, following his detention, the Primeras Líneas continued to operate].

Following Andrés Pastor's arrest, he was transferred to the Tramacúa maximum security prison in Valledupar, Cesar department. According to his lawyers, this prison is the most dangerous in Colombia and has the worst conditions for inmates in terms of overcrowding and the lack of running water and electricity. There were several requests from Andrés Pastor's legal representatives to INPEC (National Penitentiary and Prison Institute) asking for information about his condition, in order to protect his life, which were never answered with a cogent reply.

The case was highly publicised, with some media outlets, such as *Semana* and *Séptimo Día*, claiming that the lawyers were using delaying strategies to slow down the prosecution process and moreover belonged to the same criminal network as their clients - the latter, a violation of the right of lawyers to not be identified with their clients and alleged causes.¹⁷⁰

Andrés Pastor was eventually sentenced to 14 years and seven months in prison by the Fourth Specialised Criminal Court of Bogotá for acts of vandalism, torture and aggression towards law enforcement officers.

The Caravana was advised by Andrés Pastor's legal team (Nydia Erika Bautista Foundation - FNEB) that this was a particularly difficult legal process due to the involvement of a judge who displayed bias from the beginning and issued arbitrary decisions in the course of the proceeding. The FNEB states that the judge was very supportive of the prosecution, and at times did the prosecutor's work, going so far as to correct errors or oversights. At the same time, the FNEB states that the defence team was virtually prevented from questioning the witnesses. It denounces irregularities throughout all of the proceedings and has appealed the sentence to the Criminal Tribunal of Bogotá (recurso de apelación al Tribunal Penal de Bogotá).

This case was the first and most public of the arrests of youth leaders in the 2021 social protests. The lawyers opine that the predominant media and government narrative of violence and vandalism together with the punitive treatment of the protest leaders were used as tools to deflect from the political relevance of the social protests.

The Caravana observes that the exercise of effective legal defence in this type of process within the context of extremely high levels of media and political pressure - where social protest has been consistently stigmatised by the government - is very difficult. It also threatens the universal guarantee to a fair and public hearing by an independent and impartial tribunal and all of the necessary guarantees for the defence of an individual charged with a serious criminal offence.

The Caravana further references the OHCHR's recent statements that the State's use of serious criminal offences, such as conspiracy to commit a crime and terrorism, "are not adequate to punish violent conduct in the context of protests [as] they are excessive and imprecise".¹⁷¹

¹⁷⁰ UN Basic Principles on the Role of Lawyers, supra 8, Principle 18: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

¹⁷¹ Statement of Juliette de Rivero, representative of OHCHR, during a hearing organised by various NGOs regarding protest-related charges: <https://cambiocolombia.com/articulo/poder/nosotros-no-reconocemos-alias-19-como-un-lider-integrante-de-la-primera-linea>.

Case Study of Stigmatisation and Harassment of Catatumbo Peasants Association

Cúcuta delegates met with the Catatumbo Association of Campesinos (ASCAMCAT or Asociación de Campesinos de Catatumbo). ASCAMCAT described an incident on 4 May 2021, when its members were exercising their rights to peaceful social protest in conjunction with other social sectors in the department of Norte de Santander. Members of the national army proceeded to engage in harassment and stigmatisation, suggesting that armed actors were present. Beginning on 7 May 2021, several prominent political actors began making stigmatising statements in the public sphere about this peaceful assembly. Jose Felix Lafaurie, president of the National Federation of Cattlemen and husband of Senator María Fernanda Cabal of the Democratic Centre Party, published falsehoods on his Twitter social media account accusing ASCAMCAT of extorting the government; he included a photograph of one of the ASCAMCAT leaders who was part of the National Strike Committee, thereby defaming her and putting her life at risk.¹⁷² On 1 July 2021, Senator Cabal stated in an interview that this was not a strike but rather a guerrilla takeover.¹⁷³

On May 10, 2021, former president and senator Álvaro Uribe Vélez published on his Twitter account that the purported “coca growers of ASCAMCAT” were blocking the development of the region, asserting that 1500 palm growers cultivating on land previously removed from coca production were going to lose their crops.¹⁷⁴ The suggestion that ASCAMCAT engages in illicit activities is an illustration of the serious nature of the stigmatisation that has taken place and the associated level of security risk for the organisation’s members.

In June 2021, José Felix Lafaurie, who published the photo of the leaders, issued a public correction for his Twitter post.¹⁷⁵ This was followed on 26 May 2022 by a similar retraction on the part of Senator Cabal.

3.2 Grave Conditions in Prisons and Temporary Detention Centers

Extremely problematic prison and detention centre conditions for detainees and other prisoners were reported in three of four regions visited. The historic problem of overcrowding in prisons has been transferred somewhat to temporary detention centres: overpopulation of prisoners has reduced by 30% but this has caused a corresponding increase in detainees held in police stations and in centros de detención temporal (temporary detention centres).

172 Jose Felix Lafaurie, husband of Senator Maria Fernanda Cabal and president of the National Federation of Cattle Ranchers, posted this on his Twitter account: <https://www.radiomacondo.fm/noticias-nacionales/en-norte-de-santander-estigmatizacion-al-movimiento-campesino-pone-en-riesgo-la-vida-de-lideres-lideresas-y-comunidades/>.

173 1 July 2021, Diario Criterio interview of senator and pre-candidate for the Democratic Centre Party.

174 “Catatumbo totally blocked at 4 points. 1,500 palm growers who are going to lose their crops in a territory that we took away from coca. Today ASCAMCAT coca growers are blocking the development of this important region”, 14 May 2021: supra 172.

175 Letter to ASCAMCAT dated 22 June 2021: “I most respectfully respond to your request for rectification of a tweet I published with accurate or erroneous information in May 2021: (1) The tweet in question was removed from my Twitter account. (2) The rectification requested by you has already been published in my Twitter account. (3) From now on, I will refrain from making this type of statement against you.

In March 2022, the Office of the Ombudsman called for necessary measures to ensure that temporary detention centres “comply with a “strict legal destination” and “cease to be used as permanent detention establishments”.¹⁷⁶

In 2022, the Office of the Ombudsman reported a humanitarian crisis in Colombia’s temporary detention centres: “These numbers of overcrowding translate into inadequate spaces for sleeping, eating food, facilitating the spread of diseases due to lack of ventilation, and increases stress among the population deprived of liberty, which translates into constant quarrels and attempts at mutiny, one of the reasons we insist on urgency of comprehensive reform of the penitentiary and prison system,” Carlos Carmargo, Ombudsman.¹⁷⁷

Cali Case Study: Prison conditions for detainees from Puerto Resistencia

One of the Caravana delegates visited the prison in Jamundi where the nine front line Puerto Resistencia protestors are detained in degrading conditions; Jamundí, is a region where the detention capacity exceeds 500%. The young detainees complain of lack of food, extreme overcrowding, water shortages and delays in the provision of medical attention. The Cali Mayor’s office states there is not enough central government funding to expand penal institutions to the extent required. The overcrowding is unlikely to improve in the immediate future.

Detention and prison situation in Bucaramanga

The Regional Ombudsman’s office in Bucaramanga acknowledged the existence of a structural problem in regard to detentions, citing the legal vacuum caused by prolonging detentions in police stations, and stating that there are people who have been detained for a year and a half in temporary detention centres.

The Office advised delegates of serious overcrowding in Bucaramanga’s temporary detention centres, counting 900 detainees in a centre where the effective capacity in dignified conditions is 76 people. The Ombudsman stated that Bucaramanga holds the national record for this problem. Carlos Camargo, the National Human Rights Ombudsman, reported that Bucaramanga North Police Station was holding detainees at 1,300% overcapacity.¹⁷⁸

Caravana delegates to Bucaramanga were also advised of grave conditions in prisons, including sexual violence and transphobic violence, as well as extreme overcrowding and health and sanitary conditions.

Case Study: Prison experience of Ana Maria Melina Gonzalez

Ana Maria Melina Gonzalez, a human rights defender and trans woman advocate for the rights of detainees, including trans and LGBT+ detainees, was imprisoned for 10 years. She recounted the lack of investigation of patterned attacks: cases of sexual violence and sexual assault, the majority of which are committed against gay men and trans women. They are submitted to ‘corrective’ rapes, deliberately targeted and assaulted. Melina reported being told that “they are the problem because of how they dress”. The options facing trans people in prison are limited, but some have been able to construct their identities within their restricted confines.

176 <https://www.infobae.com/en/2022/03/31/ombudsmans-office-requests-urgent-measures-in-the-face-of-humanitarian-crisis-in-temporary-detention-centers/>.

177 Ibid.

178 <https://www.infobae.com/america/colombia/2022/01/19/defensoria-alerta-sobre-el-hacinamiento-de-mas-del-1300-en-centros-de-detencion-en-bucaramanga/>.

She and others have raised serious concerns about health and sanitary conditions, extreme overcrowding and people being held in solitary confinement without direct access to water for two to six months, far in excess of the 60 days of the permitted maximum. Corruption in the prison pharmacies was reported to be rife, prison stores charge extortionate prices, and detainees have difficulties accessing medical treatment and medicines.

3.3 Attacks on Lawyers Representing Social Protest Victims

(a) Harassment of Legal Profession in Bucaramanga

SPOTLIGHT on Equipo Jurídico Pueblos (EJP)



Delegates with the EJP team

Equipo Jurídico Pueblos (EJP), a non-governmental, non-profit organisation composed of lawyers and human rights defenders based in Bucaramanga focuses inter alia on the human rights of persons deprived of liberty and cases involving impunity for crimes committed by state agents. EJP members report that the 24th Sectional Prosecutor's Office and a special prosecutor's office in Bucaramanga are currently conducting criminal investigations against local social and popular organisations, including EJP lawyers. They are accused of promoting "hate speech" against the state, as well as of organising and financing protests and defending people detained during mobilisations. The EJP lawyers have denounced intelligence activities undertaken against them in the framework of these investigations, by undercover agents, the interception of mobile phone communications, and illegal surveillance around their offices.

"We expose ourselves a lot when we denounce police acts and abuses," says one of the EJP lawyers, indicating that they have filed 28 disciplinary complaints about police aggressions against members of the team, without any investigation to date.

EJP Social Communicator Subjected to Aggressions During Social Protests

Maria Fernanda Montiel Murillo, EJP's social communicator and human rights defender was arbitrarily detained on several occasions in 2021 in the context of the social mobilisations, and

was the victim of an attempt at a judicial set-up as well as aggressive and misogynistic attacks. The human rights defender denounced the fact that when she arrived at the police's Centro de Atención Inmediata (Immediate Attention Centre), the media were waiting for her with cameras. After hours of detention, one of the police officers took out his mobile phone and began to record Montiel Murillo by a table where there were marbles and a rubber band that did not belong to her. She also took exception to her treatment when being transferred to the Prosecutor's Office, as she was subjected to misogynist comments from police officers such as "ay mamasita, dame tu número" ('ay mamasita, give me your number') and "hija de puta defensora qué vas a hacer ahora" ('[hija de puta] defender, what are you going to do now').

As further background, during the social protests that took place in 2019 and 2020, considered antecedents to the National Strike in 2021, at 10:20 pm on 5 December 2019, Montiel Murillo and two others (who were social protesters) were approached by a police motorbike. When they arrived at Santander Park, the police asked them for their ID cards and one of them did not present it, as it had been stolen two days earlier. For this reason, the three were taken to the immediate attention centre to complete the identification process, even though at no time did they refuse to be identified and were willing to give their ID numbers. Montiel Murillo was recognised by one of the uniformed officers from the mobilisations that had begun on 21 November and so he told his colleagues to take her and her colleagues to the police station. At the station, she was subjected to cruel and inhuman treatment by the uniformed officers, who did not allow her to sleep or eat or use the bathroom, and left her in an open-air cell all night. Montiel Murillo's EJP human rights defender jacket was confiscated. The three were released the next day. As of the present date, the process is registered as active but in the more than four years since these events occurred, the Prosecutor's Office has not issued a single summons, let alone charged Montiel Murillo or the others, which suggests that there was no punishable conduct, and that the three were arrested for having participated legally in a social protest.

Persecution of EJP Lawyer and Law Professor Leonardo Jaimes Marín

During the 2019 social protests, EJP human rights lawyer and UIS law professor at the Universidad Industrial de Santander (UIS), Leonardo Jaimes Marín, was severely stigmatised by regional media. The lawyer was presented as the person in charge of directing the protesters in Bucaramanga, accused of indoctrinating UIS students to commit acts of vandalism. After filing a tutela action against the media channels, the High Court of Bucaramanga recognised the violation of the lawyer's rights to a good name and honour and ordered them to rectify the accusations made. However, this media stigmatisation placed Jaimes Marín and the EJP in a very vulnerable situation, with Jaimes Marín becoming a target of the police during the 2021 demonstrations and even being physically assaulted.

Jaimes Marín suffered several attacks while providing legal assistance to demonstrators during the national strike. On 1 May 2021, a Major is alleged to have ridiculed, harassed, and threatened EJP lawyer Jaimes Marín while in the San Pio police station, where he was trying to speak with four young people who had been detained by the police, three of them under age. Jaimes Marín was also physically assaulted by at least 10 members of the Fuerza Disponible on 2 May 2021, as he was interviewing a young woman who had been assaulted during the dispersal of a demonstration. Jaimes Marín was thrown to the ground and dragged by uniformed officers who searched his belongings and threw them beside him, at the same time ordering him to leave, ignoring his work as a human rights defender.¹⁷⁹

¹⁷⁹ International Observatory of Lawyers, Day of the Endangered Lawyer 2022, 12th edition – COLOMBIA, p. 17 (DOEL 2022 Report): <https://www.uanet.org/sites/default/files/en-final-report-colombia-def.pdf>

Case Study of EJP Lawyer Johan Sebastián Moreno Castro

Lawyer and human rights defender with Equipo Jurídico Pueblos (EJP), Johan Sebastián Moreno Castro was arbitrarily and violently detained by police officers on 4 May 2021 in the municipality of Piedecuesta while observing a protest. According to witnesses present at the time of the arrest, the officers repeatedly beat Moreno Castro. The lawyer reported physical and psychological ill-treatment, and was pressured to testify that he had attacked the officers before being arrested. On 5 May 2021, following a habeas corpus proceeding, a Specialised Prosecutor ordered his release, finding that the detention had been unlawful because it was unjustified. However, the defence lawyer's file was kept active and referred on to a local prosecutor in Piedecuesta, which raises concerns that this could lead to an attempt to criminalise the lawyer on charges of "attacking authority".¹⁸⁰

(b) Harassment of Legal Profession in Cali

The legal profession in Cali has confronted a series of threats and harassment for representing cases directly or indirectly involving members of the state security forces. The lawyers at the regional level who are currently most at risk are the representatives of the protest-related cases of Puerto Resistencia, Puerto Madera, Paso del Aguante and Siloé.

SPOTLIGHT on Sofía López Mera and Corporación Justicia y Dignidad

The Cali delegates met with Sofía López Mera, one of the coordinators of the Corporación Justicia y Dignidad (CJD, Justice and Dignity Corporation). As she carried out her legal representation work during the national strike, López Mera was a victim of monitoring and harassment, particularly by the national police and armed persons when she attended at the 13th Sectional Prosecutor's Office regarding the murder case of Daniel Stiven Sánchez; López Mera thus had international accompaniment each time she went to the Prosecutor's Office. The CJD also received threats on social networks where it was accused of lying with respect to its dissemination of a video of young people disappearing after entering a white van. As a result of this action, the young people were released.

SPOTLIGHT on NOMADESC and lawyer Lina Peláez

Lina Peláez is a lawyer with the Association for Research and Social Action (NOMADESC),¹⁸¹ a long serving human rights defence organisation that also accompanied national strike victims and carried out the representation and accompaniment of ten victims exercising their right to social protest in the 2019-2021 period. NOMADESC reported to Cali delegates that further to their representation of detainees, it suffered monitoring and surveillance, in addition to intercepted communications prior to the capture of those they represented. Lawyer-client communications with their detainees have been compromised.

On 28 October 2021, NOMADESC determined via security cameras that its headquarters and those of Senator Alexander López (who was providing legal advice regarding the national strike processes in Cali) had been subject to illegal monitoring and interception of the organisation's activities. This occurred just as two members of the GOES (Grupos Operativos Especiales Seguridad) security forces were about to be tried in connection with their conduct during the national strike and while a meeting of relatives of victims of the strike was taking place at

¹⁸⁰ <https://protect-lawyers.org/en/item/johan-sebastian-moreno-castro-3/>. See also *DOEL 2022 Report at pp. 16-17*.

¹⁸¹ <https://pbicolombia.org/accompanied-organisations/nomadesc/>.

NOMADESC and a press conference was underway at the Senator's headquarters.¹⁸²

(c) Harassment of Legal Profession in Cúcuta

SPOTLIGHT on ASCAMCAT Legal Team

Cúcuta delegates learned that during the 38 days of the national strike in 2021, one ASCAMCAT lawyer was confronted by "hooded" men in the evenings because they were accompanying the campesinos in the social protests to intimidate them. There were more than 20 or more incidents against the legal team members of ASCAMCAT. One of them was also followed in the city of Cúcuta by hooded men presumed to be members of the army.

SPOTLIGHT on Permanent Human Rights Committee (CPDH) in Norte de Santander

The Norte de Santander chapter of the Comité Permanente de Derechos Humanos (CPDH) (Permanent Human Rights Committee) provided legal accompaniment of various student leaders who were threatened and persecuted during the national strike, cases for which there was no progress with investigations. Two CDPH staff, lawyers Susanna Castellanos and Cesar Arias, were forced to leave the country owing to their advocacy on behalf of the student movement.

After completing their period of exile in Europe and returning to Cúcuta, CDPH reports that the security situation of Castellanos and Arias, and that of CDPH, is complex. CDPH does not have any protection schemes through the National Protection Unit (UNP), beyond occasional visits by members of the National Police, which they deeply mistrust, given their observation that the main aggressors during the National Strike were the members of the National Police. No progress has been made by the Public Prosecutor's office or the Ombudsman's office with respect to their own cases, and the UNP has categorised the cases as 'low risk', as such, it has offered only security visits by the police, which the organisation has declined.



Delegates with CPDH and CCALCP teams in Cúcuta

¹⁸² PBI-Canada, "NOMADESC says police surveilled meeting with national strike participants victimized by state violence", 04 November 2021:

nomadesc-says-police-surveilled-meeting-with-national-strike-participants-victimized-by-state-violence/.

Threats to the Legal Profession and Independence of the Judiciary

Introduction

According to the Colombia en Riesgo Report, the attacks on judicial independence by President Iván Duque, his government political party are far from being sporadic anomalies; they have explicitly violated the autonomy of the judiciary through serious confrontations that have crippled the capacity of the judicial system.¹⁸³

Part one of this chapter (Section 4.1) reviews **key threats to an independent judiciary**, based on the accounts provided by judges and other “justice operators” - defined as state officials and employees who play a role in the justice systems and perform functions essential to respecting and ensuring the rights to protection and due process¹⁸⁴ - as well as lawyers and human rights defenders. Another important reference point is a report on the independence of the Colombian judiciary published in 2021 by a coalition of human rights organisations (Colombia en Riesgo Report).¹⁸⁵

Part two (Section 4.2) examines the **status of the legal profession** and threats to its independent functioning. We present case studies that illustrate the challenges for human rights lawyers and defenders, along with a summary of critiques and recommendations concerning the protection measures and policies of the National Protection Unit (Unidad Nacional de Protección, UNP). Section 4.2 concludes first by reviewing the far-reaching effects of the persecution for lawyers, their families, clients, and the human rights defence community at large, and then considering the prospects for change.

Section 4.3 explores **additional obstacles to access to justice** as well as responses and **initiatives to address the intractable reality of impunity**:

(a) A grassroots initiative to obtain justice and challenge impunity through the **People’s Tribunal of Siloé**.

(b) The Caravana underscores the importance of **collective protection measures** for lawyers and other groups and the fact that communities have already designed alternative measures to protect themselves, such as the Guardia Indígena and the Guardia Campesina del Catatumbo.

(c) The International Criminal Court’s (ICC’s) jurisdiction over alleged crimes against humanity and war crimes committed in the armed conflict¹⁸⁶ and **challenges to the ICC Prosecutor’s dismissal of the preliminary examination of Colombia in 2021**.

¹⁸³ Colombia en Riesgo Report, supra 2, p. 81.

¹⁸⁴ IACHR, Guarantees for the Independence of Justice Operators: Strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II. Doc. 44, 5 December 2013 (IACHR Independence of Justice Operators), para. 15.

¹⁸⁵ Colombia en Riesgo Report, supra 2, pp. 52-80.

¹⁸⁶ [ICC Colombia Preliminary Examination](#).

(d) The limitation on Colombian judicial authority posed by **investor-state dispute settlement (ISDS) mechanisms** in free-trade agreements and bilateral investment treaties.

4.1 Threats to an Independent Judiciary and Access to Justice

Systemic Impunity

The Inter-American Commission on Human Rights (IACHR) has described the Colombian justice system as imbued with “structural and systemic” impunity,¹⁸⁷ most notably with respect to human rights violations.¹⁸⁸ A 2001 decision of the Inter-American Court of Human Rights (IACtHR) held that the Colombian State’s failure to guarantee access to justice and provide a remedy for victims can be deemed structural impunity when there is an “overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violations [of this] protected right.”¹⁸⁹ In its 2018 report, the U.N. Universal Periodic Review of Colombia stated that the level of impunity for human rights violations exceeds 90%.¹⁹⁰

The VII Caravana’s central focus, delegates heard accounts of the Colombian State’s continued failure to guarantee judicial independence and fulfil the due process standards established by international law.¹⁹¹

On previous delegations, the Caravana has elaborated its concerns about systemic impunity and threats to the guarantee of judicial independence and access to justice. The Caravana issued separate reports by the judges who participated in the III (2012) and IV (2014) Caravanas.¹⁹²

The III Caravana (2012) judges’ monitoring visit highlighted various problems that remain pertinent:

- negative statements by governments and local authorities that undermine the judiciary’s authority and decisions
- non-compliance with judicial decisions
- frequent serious death threats against judges and murders of judges, whereas state protection was either non-existent, inadequate or too costly
- the chilling effect of disciplinary and criminal proceedings related to judges’ decisions
- other difficult circumstances of their work, including heavy backlogs and low salaries¹⁹³

¹⁸⁷ IACHR, Third Report on the Human Rights Situation in Colombia, 26 February 1999, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, at Chapter V at para. 16.

¹⁸⁸ IACHR, Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II Doc.262, 6 December 2019, at paras.9, 89, 168.

¹⁸⁹ IACtHR, Case of Ivcher Bronstein v Peru, Judgment of February 6, 2001, Serie C No 74, para. 186.

¹⁹⁰ UPR of Colombia in 2018 Report on the Human Rights Situation in Colombia 2013-2017.

¹⁹¹ UN Basic Principles on the Independence of the Judiciary, Principle 1 (Basic Principles of Independent Judiciary): “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.” [Independent Judiciary](#).

¹⁹² 2012 Caravana Judges Report, supra 5 and 2014 Caravana Judges Report, supra 5.

¹⁹³ 2012 Judges Report, supra 5, p. 3.

The IV Caravana (2014) judges' report largely reiterated these concerns and underlined the threat to judicial independence owing to the possibility of judges being investigated for their decisions, in effect, because of one's legal opinion.¹⁹⁴ The theme of criminalisation and the application of the criminal charge of 'perversion of justice by an act' - *prevaricato por acción* - to judges featured prominently as well.¹⁹⁵

The V (2016) and VI (2018) Caravana reports addressed obstacles that threaten effective access to justice and the rule of law, touching on threats and attacks on justice operators working on criminal investigations of State actors and illegal armed groups and the perennial lack of adequate protection measures for prosecutors and judges. The large number of unresolved (often uninvestigated) land restitution cases owing to huge backlogs and the heavy workload and lack of resources of judges were themes in the VI Caravana report.

The VII Caravana concludes that not only has the situation of the judicial branch and impunity not improved since 2018, it has worsened:

The scenario is one of a precarious justice system, with little autonomy, subjected not only to external pressure from the government but also to serious problems from within the judicial branch that hinder the judicial function through sustained practices of corruption, clientelism and impunity.¹⁹⁶

Guarantees of an Independent Judiciary and Access to Justice

The judicial independence guarantee obliges States to safeguard the judicial branch both institutionally as well as functionally, in order that it can withstand external pressures. There are two dimensions to this analysis. Pursuant to international standards as well as Colombian constitutional and statutory requirements, **the institutional or systemic dimension demands the appropriate degree of independence from other branches of government.**¹⁹⁷ The second **functional dimension** means that **individual justice operators must have guarantees of independence that allow them to freely discharge their functions** within the institutions of justice in cases that they decide, prosecute and defend.¹⁹⁸

The central concern regarding threats to judicial independence and barriers to access to justice is the affront it represents to the right of all citizens to access justice in a timely way. FASOL (Corporación Fondo de Solidaridad con los Jueces Colombianos -FASOL-) framed it this way to Caravana delegates; the issue is the right of citizenry, not the privilege of judges.

194 2014 Judges Report, supra 5, p. 13.

195 Ibid, at pp. 7-10.

196 Colombia en Riesgo Report, supra 2, at p. 82: "[T]he scenario is one of a precarious justice system with little autonomy in its functioning, subject not only to external pressure from the government but also to serious problems from within the judicial branch."

197 IACHR Independence of Justice Operators, supra 184, paras. 25-26.

198 Ibid, p. 27.

Multiple Threats to Judicial Independence

The Colombia en Riesgo Report¹⁹⁹ outlines multiple problems that threaten judicial independence and access to justice. Many of these are structural and entrenched in nature, that is, they exist and persist by design.

1. Politicisation of the appointment and selection of judges and judicial functionaries
2. Political cooptation of judicial bodies and oversight agencies
3. Bullying and persecution of justice operators and inadequate security guarantees and protection measures
4. Non-compliance with and contempt for judicial decisions
5. Significant under-funding of the judicial branch
6. Obstacles to implementing institutional mandates and efforts to impair their functioning
7. Psychological toll for justice operators
8. During meetings in the regions and Bogotá, Caravana delegates heard numerous direct accounts that align with many of these concerns.

4.1.1 Major Threats to Judicial Independence

#1 Politicisation of judicial appointments

As with the Truth Commission Report,²⁰⁰ the Colombia en Riesgo Report elaborates the previous government's politicisation of the selection, appointment and election of judicial officers, such that merit is overtaken by political considerations (clientelism over meritocracy).²⁰¹ The Report concludes with this recommendation:²⁰²

Meritocracy should be the guiding principle throughout the nation's bureaucratic apparatus, from the highest echelons of power to the broadest bases of the organisational chart. High court magistrates and officials of control, oversight and investigation, should be chosen on the basis of a meritocratic competition of objective and subjective elements in which they show themselves to be the best choice for a country with imminent needs for material justice [...].

199 Colombia en Riesgo Report, supra 2, pp. 52-80.

200 Truth Commission Report, supra 2, pp. 830-831.

201 Colombia en Riesgo Report, supra 2, pp. 65-67.

202 Ibid, p. 76.

#2 Political cooptation of judicial bodies and oversight agencies

The Colombia en Riesgo Report identifies a further problem with institutional design that promotes such interference and extends to the political co-optation of judicial bodies and oversight agencies.²⁰³

The Report sets out evidence of the previous government's effort to control judicial system related institutions, including oversight bodies. It references decisions to place members of the former president's political party, cabinet of ministers or closest friends.²⁰⁴ A prominent example they cite is the 2020 election for the position of the Attorney General (Fiscal General de la Nación).²⁰⁵ The Report also cites government promoted appointments of persons with clear conflicts of interest, going so far as to appoint individuals with criminal proceedings against them for corruption to key positions in the judicial branch and oversight agencies.²⁰⁶

The Colombia en Riesgo Report observes that the current institutional design of the judicial branch has promoted interference and direct involvement in the judicial branch by political actors. This has facilitated the transfer of the corruption and clientelism evident in the Colombian political system to the judicial system, 'increasing citizen distrust of the system and deepening the problem of impunity'.²⁰⁷

#3 Persecution and Intimidation of Justice Operators and Inadequate Protection

We turn to the menacing panorama of the intimidation of judges and other justice operators, whether the source is the State or from related or separate actors.

Historical Persecution and Intimidation of Justice Operators²⁰⁸

Throughout its history, the Caravana has monitored the inadequacy of protection measures and the lack of security guarantees for judges and other justice operators. The VII Caravana concludes that the situation remains critical.

The Colombia en Riesgo Report documents the historical and ongoing realities of harassment and persecution of judges and other justice operators and their exposure to high-risk levels, especially in areas of high territorial violence and owing to the lack of implementation of the Peace Agreement.

The forms of persecution range from stigmatisation, threats, physical attacks and murders, internal displacement or exile, and irregular disciplinary or criminal processes and judicialisation. The objective of these attacks on the judiciary is to influence their processes and decisions.²⁰⁹ The Colombia en Riesgo Report frames this troubling reality as the State's abandonment of justice operators.²¹⁰

203 Ibid, pp. 68-74.

204 Ibid, pp. 52-76.

205 Ibid, pp. 58-62, referring to the appointment of Francisco Barbosa as the Attorney General.

206 Por la defensa de la independencia de la justicia en Colombia: Executive Summary of Colombia en Riesgo Report (Colombia en Riesgo Executive Summary), pp. 5-6: <https://ddhhcolombia.org.co/2021/07/01/informe-independencia-judicial-colombia/>.

207 Colombia en Riesgo Report, supra 2, p. 84.

208 IACHR Independence of Justice Operators, supra 184, para. 29.

209 Colombia en Riesgo Report, supra 2, at pp. 20-26.

210 Colombia en Riesgo Executive Summary, supra 206, at p. 4.

The Report also details the State's failure to provide adequate or any protection measures. At its meeting with the Caravana, the judges' organisation FASOL made the accurate albeit disturbing observation that "it is not normal that the State fails to protect members of the judicial branch". The Caravana concurs.²¹¹



Delegates with President of Sala Especial de Instrucción, Judge Marcos Antonio Rueda Soto, and auxiliary judges Carlos Eduardo Gónima Díaz and Patrick Germain Tissot Obregón (Bogotá)

Historical Data of Persecution

For the period of 1989 to 2019, FASOL records 1,340 public servants of the judicial branch as victims of violent acts;²¹² from 1979 to 2020, there were 1,450 victimisations, 538 of which were threats.²¹³ Between 2006 and 2016, FASOL recorded 480 judicial servants who were victims, among them, 261 threats, 48 physical attacks, 68 violent deaths, and the rest, victims of kidnappings, disappearances, judicialisation, forced displacement, and exile.²¹⁴

Past Caravana reports have featured cases such as that of former Prosecutor, Maria Nancy Ardila Pedraza,²¹⁵ displaced by threats to her and her family from her residence in one municipality to another in Valle del Cauca because of her investigation of networks of corruption. However, the threats did not cease and tragically, two of her brothers were murdered, forcing her to relocate various times.²¹⁶

211 Nor is it compliant with the State's duties as set out in IACHR Independence of Justice Operators, supra 184, para. 147: "It is the duty of each State to protect its justice operators from attack, acts of intimidation, threats and harassment, and that it investigate those who violate their rights and effectively punish them. If States fail to guarantee the safety of their justice operators from every type of external pressure, including reprisals directly aimed at attacking their person and family, exercise of the judicial function may be gravely affected and access to justice thwarted."

212 Colombia en Riesgo Report, supra 2, p. 21.

213 FASOL, Informe La Justicia Tiene Corazón: Afectaciones a la independencia judicial dentro del marco del conflicto armado (2022) ("FASOL Afectaciones Report"), p. 41.

214 Ibid, pp. 41-2.

215 2016 Caravana Report, supra 23, case study 8, p. 13.

216 FASOL Afectaciones Report, supra 213, pp 42-43.

According to the Colombia en Riesgo Report, the situation of intimidation and meddling and attacks on judges due to their labour has only intensified since 2016. In conjunction with the lack of comprehensive implementation of sections 1 and 4 of the Peace Agreement, the historical trend deepened in rural areas.²¹⁷ The Colombia en Riesgo Report states that the government's refusal to move forward with the full implementation of the Peace Agreement and to promote a diversified state presence in all of the country's municipalities **allowed old and new actors in the armed conflict to put the administration of justice and its officials at clear risk in a large part of the national territory.**²¹⁸

The power vacuum left by the demobilisation of FARC was quickly filled by a combination of FARC dissidents, the remaining insurgent groups (ELN and EPL), illegal armed groups, criminal organisations, and other paramilitary actors. These armed actors, by means of threats and various forms of harassment, are said to daily impede the free exercise of justice and reduce it largely to the urban centres of the municipalities.²¹⁹

The Colombia en Riesgo Report emphasises its particular concern about threats and coercion against judicial officials involved in land restitution processes in areas heavily affected by the conflict and openly controlled by groups associated with paramilitarism.²²⁰ The issue of land restitution makes it clear that judges and their officers are at risk and their protection is a matter of urgency.²²¹

The Report concludes that **the most conflictive zones are also less protected by the judicial branch.** In this context, justice operators have inevitably confronted serious forms of meddling and pressure and attacks.²²² FASOL told Caravana delegates that justice operators (with an emphasis on prosecutors) feel 'alone' and under enormous pressure in the regions.

In 2019, three justice operators were killed, 16 were threatened, seven attacked.²²³ From January 2019 to June 2021, there were six homicides; 26 threatened; 12 attacked; three prosecuted; six displaced; one sexually assaulted; and one exiled.²²⁴

Based on the analysis and documentation of FASOL and the Colombia en Riesgo Report, the historical and continuing level of persecution of justice operators is of such magnitude as to establish clear intimidation that inevitably affects their independent functioning.

217 Colombia en Riesgo Executive Summary, supra 199, p. 4.

218 Ibid, p. 4.

219 Colombia en Riesgo Report, supra 2, p. 83.

220 Ibid, p. 83.

221 Meeting with FASOL.

222 Colombia en Riesgo Report, supra 2, p. 22.

223 Ibid, pp. 23-24.

224 Ibid, p. 23.

Caravana delegates to Cúcuta met with representatives of the Cúcuta branch of the judicial branch trade union, ASONAL (National Association of Judicial Branch Functionaries and Employees),²²⁵ and learned of the murder of First Sectional Prosecutor Esperanza Navas. On 9 June 2021, Navas was shot nine times by two men who entered her Tibú residence where she was working from home.²²⁶ She had worked as a prosecutor for eight years. The same day, there were threats against local prosecutors Johan Méndez and Javier Durán, and office assistants César González Rivera and Óscar Ballesteros from the same office as Navas.²²⁷ The latter were then displaced from the Tibú office to Cúcuta, as it was (and remains) too dangerous to continue working there. There is at present no prosecutor office in the municipality of Tibú, which is problematic, given the grave human rights situation in this region.

This egregious attack took place against the backdrop of a long line of attacks, killings and security incidents affecting judicial branch functionaries and ASONAL members in Norte de Santander. Navas' death represented the 27th murder of justice operators in Tibú and the Catatumbo region.²²⁸ The Cúcuta delegation is concerned about the impunity of such attacks as well as the ramifications for access to justice and an independent judiciary and legal profession. Moreover, Navas' murder occurred in a context of an elevated number of femicides in the area; there were 11 women killed in 2021 to the date of her death in Catatumbo.²²⁹

The Caravana delegates to Cúcuta also received reports of threats and the lack of guarantees and protection for justice system employees in their meetings with the Norte de Santander branches of the Human Rights Ombudsman's Office (Defensoria) and the Special Jurisdiction for Peace (JEP). Delegates learned of the extreme security risks run by the staff of these institutions.



Meeting with justice operators at ASONAL Judicial office in Cúcuta against backdrop of photos of murdered justice operators



Prosecutor Esperanza Navas (9 June 2021) and two other victims

225 ASONAL is the trade union that represents judicial branch functionaries, including prosecutors and judges.

226 FASOL Press Release: [Navas](#); Colombia en Riesgo Report, supra 2, p. 25.

227 Colombia en Riesgo Report, Ibid, at pp. 25 and 91-92.

228 FASOL Press Release, supra 226.

229 Ibid.

Ombudsman Office employees spoke of being stigmatised by the military as alleged members or sympathisers of the guerilla. They observed that this generated greater unease for them in meeting with the army than with organised criminal groups. We were also told about a female JEP staff person who dealt with a domestic assault case and was subsequently harassed. Another Defensoria staff person related how the army surveilled her while she attended in her public capacity at the public demonstrations and social protests in 2021. As a corollary, the staff of both institutions told delegates that they receive no protection measures as a preventive measure or in response to specific threatening incidents. Moreover, Ombudsman office staff reported that campesino communities issued in-time risk warnings to them based on having overheard threats uttered against them. The staff said they received and relied upon protection from these communities when travelling to these high-conflict regions.

The Colombia en Riesgo Report refers to the particularly high levels of risk, threats and coercion for administrative and judicial personnel involved in land restitution processes in areas controlled by illegal armed actors, paramilitaries.²³⁰ The OHCHR's (OACNUDH) Territorial Violence Report affirms that in these regions, the situation of justice branch staff in the Personerías²³¹ and Human Rights Ombudsman office staff labour under heavy workloads and responsibilities and situations of high risk. An estimated 25% of Defensoria staff have received threats, some daily.²³²

Case Study: Risks for Justice Operators and Staff in Land Restitution

The risky labour of land restitution judges, municipal judges and judicial investigators was conveyed to the Caravana delegates to Cartagena, including the threats to land restitution claimants and administrative staff, along with the lack of adequate protection schemes.

Extraordinary risk and inadequate protection for judges, magistrates and other justice operators

Magistrate Ada Lallemand Abramuch, of the Superior Court of Cartagena, Land Restitution Chamber (La Sala Civil especializada en Restitución de tierras of the Tribunal Superior de Cartagena) reported that judges like her (those posted within a superior tribunal based in Cartagena) are relatively more protected than judges of first instance, namely, those who go to the regions for work and do field visits and are sometimes seriously threatened.

In her case and similarly situated judges, the greatest danger is going to the field to carry out judicial inspections and hand over properties. In the majority of cases, the land restitution judges have insufficient security schemes, a clear example of which is the insufficient supply of armoured vehicles.

Magistrate Lallemand advises that magistrates and judges dealing with land restitution matters have a level of extraordinary risk assigned by the judicial branch office together with the National Protection Unit, due to their functions. However, Magistrate Lallemand shares an armoured vehicle with two other judge colleagues for work purposes, which creates inevitable coverage challenges in coordinating around their work commitments. She also has no personal security for herself and rarely goes out in public without security; she reports that her pulse elevates when she moves about in public spaces.

230 Colombia en Riesgo Executive Summary, supra 206, p. 4.

231 Que son las personerías: <https://www.infopalante.org/hc/es-co/articles/5227579736343--Qu%C3%A9-son-las-personer%C3%ADas-y-para-qu%C3%A9-sirven->

232 Territorial Violence Report, supra 1, paras. 86-87.

Magistrate Lallemand explained that the process of land restitution for victims of the conflict is carried out through a mixed procedure, since in order to gain access to restitution and formalisation of land that has been forcibly dispossessed and abandoned, one must first go through an administrative process. This is carried out by the Special Administrative Unit for Restitution Management, which issues the certification of registration of the land so that the victim can initiate the judicial stage through the restitution action.

Magistrate Lallemand reported that in the six years of application of the Victims and Land Restitution Law, the process has been marked by murders and threats against claimants, officials, and judicial operators. She shared links to news stories that reflect the security situation, particularly, attacks on land restitution commissions.²³³ The Caravana learned of the May 27, 2021 killing of land claimants, sisters Yadmil and Sandra Milena Cortés Uribe, the official of the Land Restitution Unit (URT- Unidad de Restitución de Tierras) Karen Sulay Garay Soto, and the driver Johan Steven Cogua, as they arrived at the farm La Ilusión, in the village of San Isidro, in Mesetas (Meta). What was supposed to be a process of notifying the property owner of the beginning of the restitution process, ended up being a death sentence for the four of them.²³⁴

Magistrate Lallemand noted that a further adverse consequence of such incidents is that the handling of the case stops, with negative effects on lead time for the case and clarity for the victims.



Delegates with Magistrate Ada Lallemand Abramuch at the Barranquilla prison, visiting detained (former) judges

233 Selection of news stories shared with Caravana: [News1](#); [News2](#); [News3](#).

234 [News4](#); [News5](#); [News6](#); [News7](#).

#4 Non-Compliance and Non-Implementation of Judges' Decisions

Another form of contempt for the judiciary is the widespread non-compliance by national and local governments with judicial decisions, especially those placing limits on presidential authority,²³⁵ along with the active de-legitimation and disrespect of individual judgments and judges. In addition to contributing to the harmful delegitimation and disrespect of the judiciary, both collectively and of individual judges, this of course amounts to delayed or denied justice for claimants and victims.

According to Magistrate Ada Lallemand, many judicial decisions are not implemented. The execution of judgments can see long delays, which also leads to a substantial increase in workload for which there are no resources.

#5 Under-Resourcing the Judicial Branch²³⁶

A problem that threatens the system's basic survival is the State's chronic and significant underfunding of the judicial branch, in terms of technical, material and human resources.²³⁷

The Colombia en Riesgo Report describes the precarity and chronic underfunding of the justice system as a fundamental threat to judicial independence.²³⁸ According to the Report, the lack of budgetary independence is intentional and it weakens judicial independence and necessarily implies limits on judicial sovereignty. In the Coalition's analysis, there has been no political interest in Colombia to construct and maintain a strong judiciary.²³⁹



Backlog of files at Juscado Civil, Cartagena

235 Colombia en Riesgo Report, supra 2, at pp. 31-36-37.

236 This violates Principle 7, UN Basic Principles on the Independent Judiciary, supra 191: "It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions."

237 Colombia en Riesgo Report, supra 2, at pp. 12-19.

238 Ibid, pp. 16-17.

239 Ibid, p. 17.

Dimensions of deficient resources problem

The Caravana heard reports of significant under-resourcing of judicial entities during meetings in Bogotá and all of the regions visited.

Delegates to Cúcuta met with the prosecutor in charge of threats and human rights. He described his work situation; the extremely large number of cases (in the range of several thousand); not having had an assistant for over a year; and the overall lack of material, technical and human resources available to the office. FASOL confirmed that there is a major shortage of prosecutors and support staff, an enormous workload, and significant pressures on prosecutors in many regions.

Cartagena delegates were told of serious deficiencies in the court infrastructure and facilities, for example, physical barriers to access by all, including justice operators themselves. Owing to barriers to physical access in the courtroom, one judge is unable to preside over court owing to her physical disability and accessibility issues.

The judiciary, including Supreme Court judge, Marco Antonio Rueda Soto, reported the lack of resources and training for ICT (information and communications technology) management for uses in the administration of justice.

The judges the Caravana spoke with emphasised the lack of appointment of more judges due to lax processes carried out in different offices, a situation that makes the optimal administration of justice impossible. The lack of resources limits the number of qualified judges, leading to a significant deficit in capacity; at the same time, the number of cases in the Cartagena area has increased by 200%, while the number of judges is stagnant. This weakens judicial independence and impairs the integrity of the system and access to justice, not least because justice is so delayed as to be denied.

Cartagena delegates were also concerned to hear about the grossly insufficient number of prosecutors. The current Public Prosecutor appointed under the previous government by the Attorney General has filled only a small percentage of the 200 vacant positions for prosecutors. The large number of vacant positions is a function of the failure to staff these positions for the last 15 years.

More generally, several judges in Cartagena also framed the limitations on judicial sovereignty as a function of the lack of 'budgetary independence'; the lack of resources affects judicial autonomy and the ability to take decisions independently.

The Colombia en Riesgo Report further emphasises the adverse implications for justice of extremely heavy workloads, an observation emphasised by FASOL as well. The cases are usually complex in nature and address issues that include those arising from dramatic socio-economic circumstances.

Magistrate Lallemand attested to these factors in her description of the weighty caseload that she and others carry. Land restitution judges²⁴⁰ have a large number of cases of a complex nature that require a great deal of capacity. There are also long delays in the execution of judgments which leads to increased workload for which there are no additional resources.

240 Contemplated under Law 1448 of 2011 regarding victims and the restitution of lands (Victims and Land Restitution Law - ley de Víctimas y Restitución de Tierras). Law 1448 is incorporated into the Peace Agreement framework.

In the case of land restitution, the responsibility for ensuring that a judge's verdict is executed lies with the judge/magistrate.²⁴¹ Magistrate Ada Lallemand stated that this requirement of judicial oversight of the implementation of land restitution decisions exacerbates the workload and resources problem. Land restitution judges are obliged to ensure that their orders are complied with prior to the proceedings being closed; this entails verifying that the causes of the threats to the rights of the defendant in the sentence have ceased to exist, and that non-compliance generates financial and disciplinary sanctions for the entities receiving the orders. The Caravana was advised that in the Court of Cartagena alone there are more than 1,000 judgments being followed up. In many cases, the entities are reluctant to comply or have budgetary and/or administrative difficulties that prevent them from executing the order correctly and in a timely manner, with adverse effects for the rights recognised in the judgment.

Magistrate Lallemand further states that the government's position on specific cases of land restitution has affected the ease with which the cases are decided, although these are already extremely challenging cases because it is difficult to determine the land owner. In cases where the territorial displacement is due to economic activities and the government is intent on preventing the land from being returned to the rightful owner, the land restitution judge is not free to decide otherwise and compensation is the only option. Since (as noted) the burden of having to decide compensation lies with land restitution judges or magistrates,²⁴² they must not only issue their compensation decision but ensure that it is executed.

FASOL pointed to the militarisation of the state's response to the social protests in 2021 as having exacerbated these workload trends.

#6 Obstacles and Efforts to Impair the Functioning of Justice Institutions

Aside from the chronic inadequacy of resources, the Colombia en Riesgo Report points to other obstacles that prevent justice operators from fulfilling their institutional mandates: (a) the lack of effective State policies and coordination between state institutions to ensure justice operators can fulfil their mandates; and (b) the State's deliberate efforts to impair the operation of vital institutions administering justice, such as initiatives to "reform" the judicial branch so as to limit judicial autonomy and undermine the Special Jurisdiction for Peace (JEP).²⁴³

Cúcuta delegates learned of one significant area where the lack of inter-institutional coordination and effective state policies prevents judicial institutions from implementing their mandates. The Ombudsman office staff in Cúcuta described their efforts to investigate and issue 'early warning alerts' ("alertas tempranas") of reported threats in the territories.²⁴⁴ Their office had issued many such warnings, but no response by other state agencies to operationalise this important preventive form of mitigation was forthcoming, despite what is contemplated under the Peace Agreement. Moreover, the state entities that failed to carry out their role were never sanctioned.

241 This requirement is pursuant to Article 91 of Victims and Land Restitution Law: "Once the judgment has been enforced, it shall be complied with immediately. In any case, the Judge or Magistrate will maintain the competence to guarantee the effective enjoyment of the rights of the defendant in the process, continuing within the same file the measures of execution of the judgment, applying, as appropriate, Article 335 of the Code of Civil Procedure."

242 Article 72 of Victims and Land Restitution Law.

243 Colombia en Riesgo Report, supra 2, at pp. 35-43.

244 The Peace Agreement provides for the "Sistema de Alertas Tempranas" in section 2.1.2.1 (b), part of the Sistema Integral de Seguridad para el Ejercicio de la Política. See also section 3.4.9 of Peace Agreement.

Special Jurisdiction for Peace (JEP)

The VI Caravana report describes several concerns about the JEP that were reiterated to the VII Caravana. Among these is the differential treatment of armed forces versus those of ex-FARC officials and combatants, with the latter cases proceeding at a much faster rate; concerns about the prioritisation of cases; accessibility for victims to the jurisdiction; and the transfer of cases from ordinary jurisdiction to the JEP.²⁴⁵



Delegates meet with the President of the JEP, Eduardo Cifuentes, in Bogotá



Delegates to Cúcuta meet with CCALCP and the JEP in Norte de Santander

245 2018 Caravana Report, supra 3, pp 12-15.

Summary: Concerns about JEP and Transitional Justice

- The Colombia en Riesgo Report criticises the Duque government’s initiatives to introduce reforms affecting vital institutions, most visibly and seriously, the JEP. On multiple occasions, the government attempted to undermine this institution through legislative efforts to undermine the finality and essential spirit of the institution.²⁴⁶
- Caravana delegates to Bucaramanga, Cartagena and Cúcuta received reports of various challenges to the functioning of the transitional justice system:
 - The insufficiency of budgets and resources for the JEP, along with allegations of corruption of funds earmarked for the transitional justice system
 - Complaints that the JEP did not respond or was slow to respond to victims
 - The impossibility of satisfactorily addressing the large numbers of victims
 - Delayed or slow rate of processing of cases against military perpetrators as compared to those against ex-FARC members, which proceed much more quickly
 - Jurisdiction is contested in connection with cases in ordinary jurisdiction
 - Challenges in the implementation of sanctions in territories where conflict continues
 - Insufficient support of other State institutions for JEP - pointing to the need for respect of the judicial independence of this transitional justice system
- The situation of limbo of cases between the ordinary and transitional justice systems related to their transfer between jurisdictions:
 - Extrajudicial executions and access to justice: these false positives cases are in limbo; victims experience re-victimisation in the JEP process; the JEP lacks capacity.
 - The Prosecutor’s Office has transferred individual cases against the will of victims to keep their cases in ordinary jurisdiction and does not comply with the conditions established in the 2021 cooperation agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia.
- Delegates did hear accounts of JEP’s successes, such as psychologically reparative outcomes:
 - Caravana delegates heard accounts of the progress made in the JEP macro-case addressing false positives cases²⁴⁷ in Norte de Santander. From a reparative perspective, advocates underlined the emotional value for victims of hearing the truth told by the perpetrators in the public proceeding:²⁴⁸ hearing directly from them that their sons were innocent and were not guerrillas killed in combat. The importance of this outcome is clear given that the victims’ families were told for years that these atrocities were not happening.

246 Colombia en Riesgo Executive Summary, supra 199, p. 3.

247 Principios del Auto 025) Auto 025 concerning the military’s extrajudicial killings of 6,402 civilians#, mostly poor young men, falsely passed off as enemy combatants illegitimately presented by state security forces as deaths in combat, between 2002-2008: <https://www.bbc.com/news/world-latin-america-56112386>.

248 JEP, Public hearing (online) re: false positives ;sub-caso Norte de Santander’: <https://www.youtube.com/watch?v=ERLTlefQWFw>.

#7 Psychological Toll for Judges and other Justice Operators

Given the foregoing - the excessive workloads, the nature of the cases commonly addressed, the threats and attacks - there is an enormous psychological toll for judges and other justice operators, along with a lack of institutional support to mitigate this toll.

The Caravana was told repeatedly of the significant psychological toll that affects justice operators, due to excessive workloads, the nature of their cases, and the intimidation and attacks. FASOL reported that the pressures on judges and justice operators are enormous, leading to high levels of stress, causing breakdowns, and suicide attempts.

One report describes the tension and psychological effects described by justice operators from the regions of Norte de Santander and Arauca as a sensation of

“tense calm”.²⁴⁹ Although their activities are carried out in relative normality, the constant presence of armed actors in the regions generates a feeling of tension; they believe they could be targeted by these armed groups at any moment.²⁵⁰ Naturally, this chronic anxiety generates emotional effects on those who deliver justice.

Cartagena Magistrate Ada Lallemand told delegates that the stresses on judges and magistrates are often intense. The content of the cases is complex and intense. However there is too little psychosocial attention and resources to support this dimension of the judiciary’s reality.²⁵¹ The result is that psychological issues and burnout symptoms develop, and judges and other operators leave the work.



Delegates meet with FASOL team (Bogotá)

249 LWBC/FASOL, 26 April 2017, Acompañamiento de ASFC al Fondo de solidaridad con los jueces colombianos a los departamentos de Norte de Santander y Arauca.

250 Ibid.

251 FASOL attempts to partially address this gap by offering psychosocial supports to victims and families of judicial functionaries who have been the objects of different types of violence by legal and illegal armed actors: Afectaciones Report, supra 213, p. 8.

4.1.2 Questionable Judicialisation and Criminalisation of Judges



Delegation to Cartagena visiting judges in prison

In discussing threats to the administration of justice, FASOL raised an issue that has vexed previous Caravanas, the ‘juridification’ or judicialisation and criminalisation of judges: the criminal offence of *prevaricato* and criminal or disciplinary proceedings owing to their decisions.

The 2012 and 2014 judges’ reports addressed the issue of criminal (*prevaricato*) or disciplinary proceedings against judges in relation to their judgments.²⁵²

Article 413 of the Colombian Criminal Code establishes the offence of *prevaricato por acción* - ‘perversion of justice by an act’ - provides that any public officer that issues “a resolution, opinion or concept that is manifestly against the law” will be punished with a minimum of four years and a maximum of 12 years of imprisonment.²⁵³

As the IV Caravana judges monitoring report observes, there is no question that judges should be investigated for disciplinary and criminal misconduct. Corruption within the judiciary cannot be sustained, and corruption and the abuse of power must be appropriately addressed.²⁵⁴

The IV Caravana judges monitoring visit questioned whether the scope and application of a criminal process known as *prevaricato* to (or because of) judges’ decisions was “acceptable as a regular remedy”.²⁵⁵ Aside from cases of clear abuses of power, the IV Caravana judges were concerned that the threat of prosecution (with the potential for long prison sentences, large financial penalties and removal from office) could severely restrict judicial independence. Noting that provisions of this nature exist in other countries, the breadth of the provision was - and remains - a matter of concern. As the judges then observed, how the provision is interpreted and applied is the key variable.

252 2012 Caravana Judges Report, supra 5, p.6; 2014 Caravana Judges Report, supra 5, pp. 7-10, 13.

253 <https://leyes.co/codigo-penal/413.htm>. A previous iteration of Article 413 set out the potential prison term range as three to eight years. Spanish: *Prevaricato por acción*. “El servidor público que profiera resolución, dictamen o concepto manifiestamente contrario a la ley incurrirá en prisión de [...]”

254 2014 Caravana Judges Report, supra 5, at p. 13: “Here we would like to emphasise that we in no way intend to imply that judges should not be investigated for disciplinary, or even criminal, misconduct. There are also reports of corruption within the judiciary. There cannot be any doubt that corruption and abuse of power should be addressed.”

255 2012 Caravana Judges Report, supra 5, pp. 10-11.

The VII Caravana affirms those observations and underscores the confirmation of the Inter-American Commission on Human Rights (IACHR) that in order for the judiciary to operate independently, States must provide guarantees to justice operators to enable them to discharge their functions independently, ‘free of all influence, threats, and interference.’²⁵⁶ The arbitrary removal of judges from office for the decisions they take in exercise of their judicial functions is a violation of Article 8(1) of the American Convention on Human Rights.²⁵⁷

Caravana Meetings with Judges in Cartagena and Barranquilla

The restrictive effect of the *prevaricato* provision - revised since 2014 to increase the potential prison terms to which convicted judges are subject - was observed once again by Cartagena delegates in their meetings with judges in the region.

Given the potential for prosecution, the most concerning dimension of this issue is the judiciary’s lack of interpretive autonomy. FASOL describes this as a “juridification” of the judge’s ambit. The judges reported feeling fearful about crossing the line between ‘drawing over law, and interpretation within the law.’ The Caravana notes that this line-drawing exercise goes to the core of a judge’s work. Indeed, as one Caravana delegate observed, the *sine qua non* condition of being a judge is the ability to interpret where there is reasonable potential to do so.

Judges Convicted of Criminal Offences: Judges prosecuted because of their decisions

The Caravana is concerned by the significant number of jailed judges in Colombia, among them former judges Arney Payares, Fabio Cabarcas Pardo, Edwin Ricardo Volpe, Dilio Donado Manotas and Abelardo Andrade Meriño, all of whom raised concerns with the Cartagena delegates about the legal process that led to their convictions and sentencing. The Caravana plans to monitor their cases.

Case Study 1: Judge Arney Payares

The case of former judge Arney Payares greatly concerns the Caravana, particularly as his case was brought to the attention of the Caravana judges during their monitoring visit in 2012.²⁵⁸

The former judge originally faced 40 disciplinary proceedings and a criminal charge for ‘*prevaricato*’ for orders he justified under international human rights law.²⁵⁹ The orders were further to a *tutela* brought by a group challenging the state body that administers civil servants’ pensions La Caja Nacional de Previsión Social (CANAAL) on the grounds of equality. Payares ruled that pensions should be granted to national level teachers in line with the pensions paid at the territorial level.²⁶⁰ Payares issued a default judgment against CANAAL, which was eventually satisfied by freezing its bank accounts and issuing a warrant for the head of the relevant department. He was removed from his post by the Superior Council of the Judiciary and the disciplinary inquiry into his conduct was launched and he was removed from office.

256 IACHR Independence of Justice Operators, supra 184, para. 6.

257 Ibid, para 187, citing IACtHR, Case of the Supreme Court of Justice (Quintana Coello et al.. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2013. Series C No. 197, para. 155: “The Court deems that [...] when the tenure of judges in office is arbitrarily affected, the right to judicial independence enshrined in Article 8.1 of the American Convention on Human Rights is also affected.”

258 2012 Caravana Judges Report, supra 5, pp. 6-7.

259 Ibid, p. 7.

260 2012 Caravana Judges Report, supra 5, p.7: The Judge entered a default judgment against CANAAL in December 2006. It took four years to enforce the judgment, which was eventually achieved by freezing CANAAL’s bank accounts and issuing an arrest warrant for the head of the relevant department in CANAAL. When the story broke in the news, Judge Payares was removed from his post by El Consejo Superior de la Judicatura, the state launched a disciplinary inquiry into his conduct and he was removed from office.

Instead of appealing his judicial ruling, which was based on the right to equality, the CAJANAL (Caja del Estado), the state body that administers civil servants' pensions, filed a criminal complaint against the judge for prevarication. Payares was sentenced to six years in jail and fined 16 million cordobas, and his house was seized. The Prosecutor's Office allegedly wielded a major influence over the conviction of Payares.

The Caravana delegates to Cartagena were advised that the Prosecutor's theory of this case is that judges are not to interpret rules, even if they conclude that they are discriminatory.

After Payares was dismissed from his position, the judge who replaced him overturned the judgment. At the time of the VII Caravana, Payares was serving a home sentence. He was subsequently jailed which was a concern because of his age and serious illness, however, we recently learned that he is now again serving his sentence at home.

The Caravana understands that Payares' case is pending an extraordinary appeal for review before the Inter-American Court of Human Rights, and the Caravana plans to closely monitor the case.

Case Study 2: Judge Fabio Cabarcas Pardo

The Caravana interviewed former judge Fabio Cabarcas Pardo (Sixth Labour Judge of the Circuit of Cartagena) in the Penitenciaría del Bosque in Barranquilla where he has been serving a sentence of 154 months, for two years, for the crime of peculado por apropiación, embezzlement by appropriation in favour of third party beneficiaries of COLPENSIONES (state pension entity), an action initiated by the Public Prosecutor's Office. Cabarcas Pardo was acquitted of the charge of prevaricato por acción. The former judge maintains the position that no fraud was proven in the pension payment order.

His written challenge to the conviction, based on his disagreement with both the facts and the legal grounds, was not admitted for procedural reasons; it was filed out of time (by two months), and was not sent simultaneously to the defendant. The plaintiff was given three days to remedy the defects, but the application was then declared inadmissible because it did not comply with the clause that the tutela must be exercised within six (6) months after the transgression occurred. His inability as a prisoner to access a computer was not taken into account as a reason for the delay, along with the pandemic-related delay and the illness and hospitalisation of his lawyer.

The Caravana sent a letter in October 2022 to the Ombudsman's Office, requesting a revision of the Court's decision and sentence on the grounds that the limitations generated by COVID-19, and the insurmountable difficulties Cabarcas Pardo faced in exercising his right to defence, were overlooked. The Ombudsman's Office sent the Caravana's request to the Supreme Court, which was denied.

4.1.3 Improper Attacks on Autonomy of Judges in 2020

Improper attacks on ex-magistrate José Luis Barceló Camacho and ex-judge Andrés Fernando Rodríguez Caez²⁶¹

The Caravana references several questionable cases involving judges/magistrates described in the Colombia en Riesgo Report as examples of attacks on those administering justice in 2020: first, the investigation of ex-magistrate José Luis Barceló Camacho of the Sala de Casación Penal de la Corte Suprema de Justicia; and second, the improper interferences that led to the exile of ex-judge Andrés Fernando Rodríguez Caez.

The former judge of the Criminal Cassation Chamber of the Supreme Court of Justice, José Luis Barceló Camacho was summoned in December 2020 to appear before the Comisión de Investigación y Acusación de la Cámara de Representantes del Congreso de la República to provide his version of his actions within the proceedings against former senator Álvaro Uribe Vélez for alleged witness tampering. This summons was a clear violation of Articles 228, 330 and 234 of the Constitution, especially given that the proceedings he ordered were in accordance with the law and further; it violated constitutional jurisprudence that establishes that judges are not subject to control for their legal interpretations - this, by virtue of the protection given to the autonomy

of the judiciary.²⁶² The Coalition indicates that this development is viewed as a particularly worrying attack on the Supreme Court because Centro Democrático Party Congressman Álvaro Hernán Prada was elected in October 2020 by the House of Representatives as a member of the Comisión de Investigación, and it is claimed that he is linked to the alleged witness tampering by Álvaro Uribe Vélez.²⁶³

Former judge Andrés Fernando Rodríguez Caez was forced to flee Colombia. He refused a bribe by ex-senator Eduardo Pulgar that sought to constrain his decision in relation to a corruption case involving Pulgar's friend, Luis Fernando Acosta Osío.²⁶⁴ After testifying before the Supreme Court in the Pulgar case in July 2020, former judge Rodríguez Caez was taken under the witness protection programme, his risk assessed as extraordinary. In September 2020, he was dismissed from the judiciary, one of the 1000s of provisional judges in Colombia, when the judge holding the position reclaimed his office. Upon automatically losing his security scheme, he was left with no other alternative but to flee the country.

Exercise of Judicial Independence Exposes Judge to High-Risks and Persecution

The Chamber of Extraordinary Jurisdiction of the Supreme Court (Corte Suprema de Justicia Sala Especial de Instrucción) has jurisdiction over investigations of crimes alleged against members of the Cámara de Representantes. The Caravana met with Marco Antonio Rueda Soto, Supreme Court Judge of the Sala Especial De Instrucción, who in December 2022, was granted the "Anti-Corruption Champions Award" by the U.S. State Department in recognition of his 40-year judicial career of investigating corruption in public office, the first Colombian ever to be nominated for this award.

Rueda Soto is an example of a Colombian judge who upholds the independence of the judiciary, but such a stance against corruption comes at a great cost. His security has been assessed as high risk: Rueda Soto is protected 24 hours a day, 7 days a week by two bodyguards and has a state-provided bulletproof car.

Rueda Soto explained that the investigation and arrest of the ex-president Álvaro Uribe Vélez on charges of witness tampering and bribery was a particularly difficult time for the Chamber. Following the resignation of Uribe Vélez from the Senate the case has now been transferred to the Attorney General's Office which is thought to be less rigorous than the Supreme Court.

²⁶² Corte Constitucional de Colombia. STC T-238 del 1 de abril de 2011; STC T-450 del 19 de noviembre de 2018.

²⁶³ Colombia en Riesgo Report, supra 2, p. 27.

²⁶⁴ <https://losdanieles.com/daniel-coronell/el-dedo-gordo/>.

²⁶¹ Colombia en Riesgo Report, supra 2, pp. 26-28.

4.2 Threats to Independence of Legal Profession: Human Rights Lawyers at Risk

Summary of Observations of VII Caravana

1. The Colombian State has continued to breach its international law obligations to ensure that lawyers are able to fully and freely perform their legitimate professional duties, to vigorously and effectively represent and defend their clients, without fear and interference, in furtherance of justice and the rule of law.
2. The Caravana could detect no improvement in the situation of high risk levels and interference with the legal profession's free and independent functioning. There were indications that the situation is as bad or worse than in 2018. Lawyers (especially human rights lawyers) continue to confront multiple forms of risks and persecution, including threats, attacks, stigmatisation, criminalisation. This reality is exacerbated by the continued impunity of complaints and attacks as a further threat, raising the risk levels of legal practice.
3. The due guarantees of political inclusion and civilian participation and the security guarantees contained in sections 2 and 3 of the Peace Agreement have not been fulfilled for social and political organisations or movements, social leaders, and human rights advocates and defenders.
4. The UNP's policies and protection schemes display many of the deficiencies recorded by previous Caravanas, with additional details and critiques. Lawyers' associations are faced with the choice of agreeing to whatever measures the UNP will provide or giving up their schemes due to serious concerns. In every region, the Caravana heard critical reports from lawyers and human rights defenders (HRD) about:
 - The lack of adequate or any protection measures for at-risk lawyers and HDR
 - The rigidity of UNP policies that reduce the effectiveness and even add to the risks for recipients
 - Concerns that UNP protection schemes facilitate illegal surveillance and intelligence gathering, thereby perpetuating the persecution and interference with their professional labour and human rights defence work
 - The UNP's failure/refusal to provide collective protection mechanisms for at-risk organisations, teams of people and communities at large
 - The failure to consider beneficiaries' specific needs and circumstances, such as gender, ethnic origin, and diverse context in terms of their cases, causes and territorial realities
5. The persecution and risks of the legal profession have significant implications in addition to those affecting the lawyers themselves. The Caravana emphasises the profound consequences for the lawyers' own rights, for their personal lives and their families; for those they represent (their clients); and for the broader human rights community and the endeavour of human rights defence and reinforcing the rule of law in Colombia.
6. Among the severe challenges in representing clients and facilitating access to justice, human rights lawyers encounter extreme barriers to their clients' effective exercise of the rights of defence and due process. The impediments are varied and include:
 - a. illegal surveillance and interception of their communications with and access to their clients (breaching lawyer-client confidentiality);
 - b. impediments to the lawyers' effective exercise of their rights to freedoms of association, movement (domestically and internationally), and expression;
 - c. barriers to mounting an effective defence such as lack of access to information about charges against clients, and inculpatory and exculpatory evidence; and

- d. significant problems with the State's conduct of criminal investigations as with cases involving alleged misconduct and crimes committed by state actors.

A. State Duties to Protect Lawyers' Advocacy Rights

- International standards establish the key guarantees and safeguards of lawyers' independent professional functioning. **The UN Basic Principles on the Role of Lawyers** (UN Basic Principles)²⁶⁵ are binding and widely accepted.²⁶⁶
- The UN Basic Principles establish the vital role of human rights lawyers for access to justice and the rule of law and oblige States to take all necessary steps and employ effective measures to protect the independence and safety of lawyers and ensure their proper functioning.
- Basic Principle 16 recognises the **fundamental right of all citizens to access representation by lawyers who are able to fully carry out their professional labour**, in order to ensure that citizens can access justice for the protection and defence of their rights.
- Basic Principle 16 provides that States shall ensure that lawyers:
 - are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
 - are able to travel and to consult with their clients freely and without unlawful interference of all types, including threats, interception of communications, arbitrary surveillance and without harassment or reprisal; and
 - shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.
- Basic Principle 17 establishes that State authorities are **obliged to provide adequate safeguards for lawyers whose security is threatened** due to discharging their professional function.
- The UN General Assembly endorsed the UN Basic Principles and has "urged States to respect them and to take them into account within the framework of their national legislation and practice".

B. High-Risk Contexts for Legal Profession

The previous chapter (**Chapter 3**) examined the intimidation and attacks on lawyers in the context of widespread social protests in 2021.

²⁶⁵ UN Basic Principles on Role of Lawyers, supra 8. See also: <https://lawyersforlawyers.org/en/basic-principles/>.

²⁶⁶ The Preamble of the UN Basic Principles, Ibid, states that [these instruments] "should be respected and taken into account by Governments within the framework of their national legislation and practice". The Basic Principles have been referenced by the IACtHR and the European Court of Human Rights (ECtHR) in several rulings. IACtHR judgments include Case of Valle Jaramillo et al. v. Colombia, Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, at footnote 49; and Case of Nogueira de Carvalho et al v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006, Series C No. 161.

The specific context for human rights lawyers in Colombia is that of the general context of Colombian human rights defenders:²⁶⁷ risk-filled and subject to violations of their own rights as they attempt to ensure that their clients can effectively exercise their rights, including fair trial rights and the right to effective judicial remedies.

We turn to this generalised reality of harassment and intimidation of lawyers. The most common contexts of risk are in regions marked by high levels of territorial violence, for example, contexts of forced displacement owing to the presence of armed actors.

The Caravana underscores the heightened risks for lawyers conducting their legal work in the following areas: (a) the rights of Indigenous peoples, Afro-Colombian communities and campesinos; (b) land grabs and efforts at land restitution; (c) environmental defence efforts and resistance to monocultural agricultural enterprises and extractive industries; (d) efforts to enforce the implementation of the Peace Agreement; (e) gross human rights violations and crimes committed by State and other illegal armed actors, including paramilitary and criminal organisations; (f) Special Jurisdiction for Peace (JEP) ‘macro-cases’ (such as Macro Case-03 regarding “false positives”); and (e) the academic (university) context.

Case Study: Litigation and regional realities drive high-risk for CCALCP

CCALCP’s risk levels are high because of the cases it undertakes and key features of its violent regional context.²⁶⁸ Catatumbo is the ‘epicentre of socio-political violence and armed conflict.’²⁶⁹ Representing clients such as the peasant communities of Catatumbo, organisations defending the threatened ecosystem of Páramo Santurbán, and victims of the armed conflict, CCALCP’s litigation focuses on grave human rights violations and crimes against humanity, and commonly, cases involving the acts and omissions of state actors. The litigation work affects powerful socio-economic interests and armed actors involved in illicit economies. Another of CCALCP’s strategic litigation areas is to force compliance with the Peace Agreement, work that has met with intimidation and attacks. In short, CCALCP’s professional labour presents challenges to varied local, national and international economic interests, as well as government authorities, and the many illegal armed actors and criminal organisations that operate in this region.



Delegates to Cúcuta with CCALCP team

²⁶⁷ IACHR, Members of the Jose Alvear Restrepo Lawyers’ Collective, Report No. 57/19 (merits), Case No. 12.380 (4 May 2019) ([CAJAR Merits Report](#)).

²⁶⁸ Territorial Violence Report, Annex: Índice de impacto de violencia (Tibú and San Jose de Cúcuta, Norte de Santander), supra 1, p. 47: “very high”.

²⁶⁹ Defend the Peace Accords, supra 70.

Case Study: The university as a polarised context of aggression and human rights abuse

As with the aggressive patterned attacks against lawyers, law professors and students in the academic context, both historically and in the context of the National Strike [link to chapter 3], EJP lawyers detailed the impact on the Industrial University of Santander (UIS) of the femicides of students Paola Cruz Ariza and Manuela Betancourt in February

2020 at the hands of Paola’s abusive boyfriend. After UIS students went on strike to call attention to women’s safety, and took turns to speak out about acts of sexual violence they had experienced, private security guards employed by the UIS reportedly took photographs of the women, confiscated a protester’s tablet and carried out surveillance of the students.



Universidad Industrial Santander UIS students who were victims of femicide

C. Forms of Persecution and Interference with Professional Labour of Lawyers

The VI Caravana (2018) reported heightened risks for the legal profession and repeated aggressions of various types, within the broader context of the escalation of violence against human rights defenders and social movements. The Caravana interviewed lawyers involved in legal work that exposed them to varied forms of persecution, cases similar to those advanced by the lawyers we met in 2022. During the VI Caravana, the legal community also shared

their acute sense of anxiety and insecurity about the incoming Duque administration. Being a human rights lawyer in Colombia was high risk in 2018²⁷⁰ and this continues to be the case.

In the intervening years, the exercise of the legal profession, particularly for human rights lawyers, remained a high-risk activity.

²⁷⁰ 2018 Caravana Report, supra 3, p. 20.

Murders

Three lawyers were murdered in 2019, as in 2020, including two lawyers involved in land restitution work in their respective regions. In 2021, two lawyers were murdered. These figures do not include the murders of justice operators, including prosecutors,²⁷¹ and it is likely that there is an under-registering of murders.²⁷² The figure for 2022 has not been verified.

Surveillance

Concerted unlawful surveillance operations were conducted by state intelligence agencies between 2019 and 2020 against scores of individuals and human rights organisations that provide legal assistance to opponents of the government. The details of this illegitimate surveillance campaign are set out in a letter published by the Caravana in 2020.²⁷³

Threats, stigmatisation, victimisation and exile

The details of attacks, threats, and acts of intimidation carried out against various lawyers are set out in greater detail in the 2022 Day of the Endangered Lawyer report on Colombia.²⁷⁴



Delegates at CAJAR office

271 DOEL 2022 Report, supra 179, pp 9-10. Lawyers include: Paula Andrea Rosero, Yamile Guerra, Mariano Cuero Ruiz; Pierangelly Hugueth Henríquez, Arquímedes Getulio Centanaro Carriazo, Freddy Agustín González Barragán; Fredman Arturo Herazo Padilla, and Julio Enrique González.

272 Reinaldo Villalba – President of the Jose Alvear Restrepo Lawyers Collective and Vice-President of the International Federation for Human Rights, extract from an OIAD and OMCT webinar available at https://www.youtube.com/watch?v=RG0z4Tx62GM&ab_channel=InternationalObservatoryofLawyersinDanger

273 <http://www.colombiancaravana.org.uk/wp-content/uploads/2020/07/Letter-allegations-of-illegal-surveillance-FINAL.pdf>

274 DOEL 2022 Report, supra 179, pp. 10-20.

D. Emblematic Cases of Threats to Lawyers and Lawyers' Associations

SPOTLIGHT on CAJAR Lawyers Collective²⁷⁵

The Caravana observes with concern that CAJAR's lawyers have continued to experience threats and harassment in the years since the VI Caravana. Several recent examples follow:

Intimidation and Death Threats Against CAJAR Lawyers Continue

- On 26 May 2022, CAJAR lawyer Yessika Hoyos Morales²⁷⁶ received a threatening message on her cell phone, which alluded to her work as the representative for Mr. Alfonso Mora León, father of Mr. Jenner Alfonso Mora Moncaleano, a victim who was killed in the Mondoñedo massacre carried out by members of the Dirección de Investigación Judicial (DIJIN) unit of the National Police. At that time, Mr. Mora León also received a similar threat on his cell phone. The previous day, Hoyos Morales discovered that there had been an illegal entry into her home, during which her personal belongings were interfered with, and her door was left open. This act of intimidation and the threats have been brought to the attention of the Colombian authorities. This is the second time that Ms. Hoyos Morales and Mr. Mora León have received threats during or after hearings concerning the Mondoñedo massacre. On 11 June 2021, two threatening texts were sent to them following the culmination of a series of reserved hearings before the Special Jurisdiction for Peace (JEP) regarding the Mondoñedo massacre.
- Threats against Sebastián Escobar Uribe and Reinaldo Villalba were presented in the Day of the Endangered Lawyer report for 2022, which featured Colombia.
- CAJAR lawyer Sebastián Escobar Uribe, who represents victims of extrajudicial executions and other crimes before the Special Jurisdiction for Peace (JEP), received death threats in February 2021.²⁷⁷
- CAJAR lawyer Reinaldo Villalba has been the subject of pressure, intimidation and death threats over many years, including being arbitrarily detained and declared a military target.²⁷⁸ Since 2018, threats have redoubled as Villalba represents Senator Iván Cepeda in the high-profile case being heard by the Supreme Court of Justice of Colombia against the Colombian Senator and former President Álvaro Uribe Vélez; in 2020 and 2021, Villalba received a number of death threats over social media.²⁷⁹

275 <https://pbicolombia.org/accompanied-organisations/cajar/>

276 <http://www.colombiancaravana.org.uk/wp-content/uploads/2022/07/LetterYessikaFNEB8JulyENFinal-1.pdf>; <https://protect-lawyers.org/en/item/yessika-hoyos-morales-5/>

277 DOEL 2022 Report, supra 179, p.18: <https://www.omct.org/es/recursos/llamamientos-urgentes/colombia-amenazas-de-muerte-contra-el-abogadosebasti%C3%A1n-felipe-escobar-uribe>; PBI-Colombia accompanied CAJAR lawyer Sebastián Escobar Uribe receives death threat (Peace Brigades International-Canada, 8 March 2021), available at <https://pbicanada.org/?s=pbi+accompanied+lawyer+sebastian+escobar+uribe>; Alert – Colombia: Lawyer Sebastián Escobar threatened again in the course of his work (OIAD, 26 Feb. 2021), available at <https://protect-lawyers.org/en/item/sebastian-escobar-uribe-4/>

278 DOEL 2022 Report, supra 179, p. 12.

279 Ibid, p. 12: Reinaldo has been the victim of a campaign of defamation, labelled as a defender of terrorism and an auxiliary of the guerrilla forces.

Inter-American Court of Human Rights hears petition to regarding: persecution of lawyers: CAJAR v. Colombia

In May 2022, the Inter-American Court of Human Rights (IACtHR) convened a hearing of CAJAR's long-standing petition against Colombia.²⁸⁰ The case concerns the Colombian State's role in the repeated succession of threats, surveillance, violence, acts of intimidation and harassment of CAJAR members over many years.²⁸¹

Prior to referring the case to the IACtHR, the Inter-American Commission on Human Rights (Commission or IACHR) affirmed the scope and grave consequences of the persecution of this lawyers' collective; determining that CAJAR members suffered a series of acts of violence, harassment and threats that were by their nature tied to CAJAR's human rights advocacy.²⁸² The Commission determined that the State is responsible under international law, in having adopted measures that created and exacerbated the situation of risk for CAJAR members.²⁸³ It also found that the State's intelligence-gathering operations through agencies such as the now-defunct DAS (Departamento Administrativo de Seguridad) were unlawful and arbitrary, based on illegitimate ends.²⁸⁴ These propositions and others will be tested and judicially determined by the Inter-American Court in what is likely to be an important precedent-setting case for CAJAR and the broader human rights legal community in Colombia.

The Caravana underlines the fact that profiling and surveillance by DAS in the years leading up to 2008 took place in respect of many human rights defenders and lawyers, among them, members of Equipo Jurídico Pueblos (EJP), CCALCP and others.



Delegates with lawyers Reinaldo Villalba (CAJAR), Gloria Silva (EJP) and Alirio Uribe, former CAJAR lawyer, Representative to House of Representatives for Bogotá

280 Petition 12.380 was declared admissible by the Inter-American Commission of Human Rights (IACHR) in 2006: IACHR, Report 55/06, Petition 12.380, Admissibility, Members of the Jose Alvear Restrepo Lawyers' Collective v Colombia, 20 July 2006. In 2019, the IACHR issued its decision on the merits, finding for the Petitioners: CAJAR Merits Report, supra 267.

281 CAJAR Merits Report, Ibid, at para 140. The petition alleges that the State breached its obligations under Articles 4.1, 5.1, 8.1, 11, 13, 16, 19, 22 and 25.1 of the American Convention on Human Rights in connection with the State's obligations under Article 1.1 and its failure to protect CAJAR from the violations of their human rights and to ensure their ability to carry out their professional duties and vigorously represent their clients without fear and interference.

282 Ibid, para. 277.

283 Ibid, para. 292.

284 Ibid, para. 318.

SPOTLIGHT on Equipo Jurídico Pueblos Lawyers Collective (EJP)

The Caravana is very concerned about the security situation of the lawyers collective Equipo Jurídico Pueblos (EJP) and the sustained campaign of stigmatisation through media communications and social media. For example, EJP lawyer and law professor Leonardo Jaimes Marín²⁸⁵ was severely stigmatised during the 2019 and 2020 social protests. He was presented as leading and directing protesters in Bucaramanga and indoctrinating Universidad Industrial de Santander (UIS) students to commit acts of vandalism. The media stigmatisation²⁸⁶ placed him and EJP in a vulnerable situation, making them a target of the police during the 2021 demonstrations, when he was also physically assaulted.

The Caravana is also concerned about possible criminal investigations of EJP lawyers (and other human rights defenders and social organisations) by the 24th Sectional Prosecutor's Office and a specialised prosecutor's unit in Bucaramanga. Prosecutors have said that EJP and others promote "hate speech" against the state and state security forces, as well as convene, finance or participate in blockades and protests, and provide legal assistance representation to persons detained in this context.

The EJP has received information that Jaimes Marín's telephone has been ordered to be tapped following allegations that he was promoting a radical discourse that does not condemn violent protest and using his position at the Industrial University of Santander to indoctrinate students. The EJP advises that it understands the Prosecutor's Office (Fiscalía) is opening a criminal investigation against Jaimes Marín on these grounds, despite him limiting his activities to the defence of human rights and the provision of representation.

The Caravana was also informed that there has been irregular non-court-ordered monitoring of other EJP members.

Further to the stigmatisation campaign in 2019 and 2020 (related to the social protests in those years) by regional media (such as TRO news channel), and statements accusing Jaimes Marín of indoctrination, the Caravana understands that several months later the same photograph used in the TRO coverage of Jaimes Marín was used in intelligence profiling by the Bucaramanga Judiciary and Investigations Police (Seccional de Policía Judicial e Investigación - SIJIN). The EJP has requested appointments with the prosecutors but has received no response.

Case Study: Persecution of EJP lawyers for Pitalito and 20 de Julio Communities - Lawyer Carlos Enrique Maldonado

The interventions of the Equipo Jurídico Pueblos EJP on behalf of the threatened communities of Pitalito and 20 de Julio have led to a stay in the eviction process, whilst concerns for the community's safety persist. The Caravana is also preoccupied by threats against EJP's lawyers after armed men claiming to be sent by the purported landowner Fernandez de Castro arrived at the community to intimidate the community members and threaten them with eviction. The Caravana is extremely concerned that Carlos Enrique Maldonado,²⁸⁷ the EJP lawyer representing the communities of Pitalito and 20 de Julio, has himself become a target in a smear campaign that falsely accuses EJP of having links to the ELN. This attempt to stigmatise and discredit the work of a human rights lawyer puts both his work and his physical safety at risk.



Bucaramanga delegates with representatives of the EJP team and the Pitalito community

285 <https://pbicolombia.org/2017/01/05/leonardo-jaimes-marin/>.

286 <https://www.youtube.com/watch?v=YoCIC1c4TAK>.

287 <https://protect-lawyers.org/item/carlos-enrique-maldonado-2/>.

SPOTLIGHT on Corporación Colectivo de Abogados Luis Carlos Pérez (CCALCP)

The Caravana's 2016 and 2018²⁸⁸ reports referenced multiple serious security incidents over the years involving the CCALCP women lawyers' collective,²⁸⁹ everything from physical aggression and attacks, threats, harassment, surveillance, thefts, defamation, to attacks on CCALCP's office infrastructure. Of equal concern is the complete impunity of these incidents and successive governments' failures to investigate effectively or at all.

In 2018, the Caravana delegation to Cúcuta again registered serious concerns about CCALCP's security, with particular emphasis on reports of smear campaigns and discriminatory gendered treatment of their complaints by authorities. The Caravana noted its preoccupation regarding the adverse effects of this sustained risk situation for the health of CCALCP members and their work. The VI delegation also reported on the linkage between stigmatisation, including criminalisation, judicial set-ups, and CCALCP's role in litigation regarding climate justice, and environmental impacts of extractive projects.

Concerns about the security and safety of CCALCP members continue to be high - elevated even - given the extremely dangerous situation in this region.

Concerns about security and attacks on CCALCP's Cúcuta office – the worst incident occurring in 2017 when its doors and office computers were destroyed – have meant that the CCALCP team's access to this office is restricted.

Security incidents continue. For example, in October 2021 a soldier stigmatised a CCALCP lawyer on social media stating that CCALCP only operates to denounce public forces. The same month, several other incidents took place, including disrespectful and contemptuous comments by a UNP-provided bodyguard driver and surveillance of CCALCP's office in Bucaramanga. A CCALCP staff was also followed from the office which is located in a somewhat isolated area. The person doing the surveillance (a soldier) later lied and said he was a friend of the bodyguards.

Other noteworthy incidents:

- CCALCP's Cúcuta office had its electricity cut off such that staff had to flee to safe spaces.
- In August 2020, after filing legal actions in favour of the Caño Indio community in the Catatumbo region in the department of Norte de Santander - further to the voluntary substitution pilot plan, section 4 of the Peace Agreement - CCALCP President, Julia Figueroa Cortés, received intimidating messages via WhatsApp for filing these actions.
- In April 2022, vehicles with funeral wreaths were parked in front of the CCALCP office and threats were received by staff via WhatsApp.
- CCALCP has been smeared/discredited, for example in relation to litigation and environmental actions related to the defence of the Santurbán Páramo, receiving accusations from authorities and mining companies, who have requested that CCALCP be prosecuted based on the allegation that they defend drug traffickers, not campesinos.
- CCALCP faced accusations after the JEP's pronouncement in December 2021 of the figure

²⁸⁸ 2016 Caravana Report, supra 23, at pp. 12, 14; and 2018 Caravana Report, supra 3, pp. 25, 27.

²⁸⁹ <https://pbicolombia.org/accompanied-organisations/ccalcp/>.

of 6402 'false positives',²⁹⁰ almost three times higher than previous estimates.²⁹¹ CCALCP was accused of being a guerilla group and being financed by the same. The Democratic Centre Party spoke out against CCALCP and it received threatening messages from the military, with negative effects on the mobility of CCALCP team members who were in Catatumbo at the time.

- Divisive tactics have been invoked to cause concerns to members of communities with which CCALCP works, intended to make community members concerned and suspicious about CCALCP's objectives (for example, that its objectives are to denounce, not to secure positive results for people, such as access to basic services).
- The report templates used by the persons assigned by the National Protection Unit have been of great concern, as they continue to record aspects of the private sphere of the protected persons. This has led to protection models where there is an exchange of information with neighbours in the places of residence and work of the women defenders; this led to several security incidents in October and November 2021 in which a resident of the neighbourhood of CCALCP's office in Bucaramanga was identified as the person responsible for the constant surveillance and intimidating behaviour towards the CCALCP women human rights defenders. After CCALCP called the police, the neighbour explained to the police that he was a friend of the bodyguards in charge of Julia Figueroa Cortés' security.

SPOTLIGHT on Rommel Durán Castellanos & Comité de Acción Jurídica Popular (CAJP)

The Comité de Acción Jurídica Popular (CAJP) carries out its legal work in the highly conflictive rural zones of middle and lower Catatumbo (Norte de Santander) and the border with Venezuela, south and central Cesar and South Santander departments. Their legal work addresses the human rights of farmers and community groups.

Lawyer Rommel Durán Castellanos and his colleagues have been targets of illegal intelligence gathering, especially by the police unit SIJIN, which is alleged to be used by the Prosecutor's Office for monitoring and criminalisation, although the reports should have no probative value. For example, Rommel's personal data has been unlawfully gathered.

The Caravana was very concerned to learn of an attempt to link Rommel Durán and CAJP to the National Liberation Army (ELN) on the basis of falsified evidence in a case led by the Attorney General's Special Directorate Against Criminal Organisations (Prosecutor 133 of Bucaramanga (Fiscalía 133 Dirección Especializada Contra Organizaciones Criminales) and the Valledupar Judicial and Criminal Investigative Section of the police (SIJIN). These bodies have launched a case against farmers accused of being members of the ELN. The names of Rommel Durán and two more lawyers appear in all the files, including their names, telephone numbers and identity cards (along with the registrations

²⁹⁰ The name given to the military's extra-judicial killings of civilians (mostly poor young men) and falsely passed off as enemy combatants - *muerzas ilegítimamente para ser presentadas como bajas en combate* - during the years 2002 to 2008.

²⁹¹ <https://www.bbc.com/news/world-latin-america-56112386>.

of the Equipo Jurídico Team (EJP) members as well). They are accused of organising strikes in Tibú. Rommel Durán is concerned that a prosecutor at the Bucaramanga office of the Attorney General is investigating him on trumped-up charges and denying him access to the alleged evidence against him.

Delegates also heard about efforts to induce farmers to implicate Rommel as a member of the National Liberation Army (ELN).

SPOTLIGHT on Sofía López Mera and Corporación Justicia y Dignidad

The Cali delegates met with Sofía López Mera, one of the coordinators of the Justice and Dignity Corporation. She has denounced threats and surveillance as a result of her representation of social and Indigenous leaders in the region. She has denounced an incident whereupon leaving a hearing, a man on a motorbike approached her and pointed a gun at her head, warning her that she should abandon the legal representation of her client. This incident occurred within the context of her legal representation during the gender-based violence case. It was reported to the prosecutor's office and the case is still in the preliminary investigation phase; no suspects have been identified.

SPOTLIGHT on Diana Montilla Moreno (Pasto)

The situation of Diana Montilla Moreno was closely reviewed by the VI (2018) Caravana.²⁹² The VI Caravana emphasised the likelihood that the threats from the paramilitary group (Autodefensas Gaitanistas) and ex-FARC combatants were related to her work (and that of her father and lawyer, Edgar Montilla) on false positive cases.

Once again, the VII Caravana met with Montilla Moreno, one of the few human rights lawyers in Pasto, department of Nariño. For more than 10 years, she has been spokesperson for the organisation MOVICE, Movimiento de Víctimas de Crímenes de Estado (Movement of Victims of State Crimes).²⁹³ Montilla Moreno has been a member of the National Coordination of Displaced Persons - CND-, in charge of the human rights file of the Association of Community Action Boards of Alto Mira.

Montilla Moreno's legal work is varied and includes claims against military authorities for arbitrary and unlawful detentions; she represents victims of state crimes and the prison population, especially political prisoners. She is involved in land restitution claims, among other issues affecting campesino communities. Montilla Moreno has denounced the situation of stigmatisation of the communities and the lawyers who represent them. During 2019, Montilla Moreno was part of the Corporación Jurídica Yira Castro team, in charge of the documentation of cases for the Special Jurisdiction for Peace in the Department of Nariño - JEP.

Context of Montilla Moreno's work

The context in which Montilla Moreno's works is one of constant threats from FARC dissidents. Delegates learned that a hot spot for disappearances is in the vicinity of km86 to km94 of Highway 60 by the Finisterra border, where around 60 people have gone missing. Tumaco is another such

²⁹² 2018 Caravana Report, supra 3, p. 24.

²⁹³ MOVICE is a coalition of human rights organisations founded in 2005, which monitors human rights violations committed by the state in the context of the armed conflict and calls for state agents and paramilitaries to be brought to justice. It works for the rights of victims to have truth, justice, and full reparation: <https://www.frontlinedefenders.org/en/organization/movice>.

area. Montilla Moreno told the Caravana that between May 2022 and August 2022, 13 people had disappeared. She expressed her concern about the Prosecutor's Office's failure to investigate or prosecute the disappearances and said that the Office does not appear to understand the importance of initiating an urgent search mechanism, instead, the burden of proof is placed on the family to prove the disappearance.

Impediments to performing professional labour

Montilla Moreno also shared with Caravana delegates the many barriers to effective legal representation and criminal defence work, such as the failure to provide information and various impediments to meeting with clients. A common scenario begins from the moment the lawyer arrives for an appointment with a client in detention, and the stonewalling begins: "and who told you that he was here" is the frequent response by the police and officials. The police fail to recognise the status of the lawyer, frequently wanting to listen in on interviews, associating the lawyer with their client.

Risks and persecution

Montilla Moreno's advocacy work has generated a situation of significant risk for her and her family that take the forms of written and verbal threats, in person and via phone calls and WhatsApp messages, and theft of information from her work and residence. Each situation was reported to the Attorney General's office and the UNP. Since 2013, she has been the beneficiary of protection measures; her measures have also been periodically re-evaluated.



Sofía López, lawyer and coordinator of Corporación Justicia y Dignidad



Adil Meléndez Márquez, lawyer, Corporación Agencia Nacional Étnica and MOVICE

Alarming series of threats against Diana Montilla Moreno

Several incidents involved members of the FARC-EP dissident group Frente Oliver Sinisterra

- In August 2019: During a meeting with the peasant community of the Alto Mira and Frontera de Tumaco territory, Montilla Moreno was threatened by members of Frente Oliver Sinisterra, and she and the community leaders were forced to terminate the meeting and to renounce a recently approved project for the benefit of the community.
- 2 June 2021, Montilla Moreno reported to the Prosecutor's Office death threats received via WhatsApp directed to her and her family, the source of which was members of the Frente Oliver Sinisterra operating at the time on the Pacific Coast.

Other incidents involved members of the paramilitary illegal armed group Clan del Golfo

- In September 2019, in the village of El Palmar in the municipality of Leiva, Montilla Moreno was carrying out activities with the Patriotic Union (“Unión Patriótica or UP”) political party²⁹⁴ (her father was a political candidate for the party). During the gatherings that day with the community, they were harassed and threatened by armed men belonging to this group.
- On 17 March 2020, Glosman Calderón Gómez, legal representative of the Association of Community Action Boards of Mira, Nulpe, Mataje Rivers (ASOMINUMA) received a phone call from the members of this illegal armed group - warning him that from that day forward, he and five members of the Association, including himself and Montilla Moreno, had been declared military targets and that they would not be spared from attack anywhere in the country, and were prohibited from arriving in municipality of Tumaco -. This threat derived from the information contained in the report presented to the JEP that was put together by Montilla Moreno for the case of Alto Mira and Frontera, which was the basis upon which the JEP granted a recognition order in macro-case 002 for Barbacoas, Ricaurte and Tumaco.²⁹⁵
- During 2021-2022, Montilla Moreno received threats from armed actors in rural territories, some via WhatsApp, making appointments with her in distant places under the pretext of wanting assistance with purported legal situations. On one occasion, while with her daughter, she received a call via WhatsApp and the caller told her that they needed to talk to her and knew where she was and that she was with her daughter.
- In the late afternoon of 23 November 2022, Montilla Moreno was travelling with her two UNP-assigned bodyguards on the road from Tumaco to Pasto. The car was approached at Km102 by three men carrying weapons emerging from a wooded area who stood on the main road pointing their weapons at the vehicle, forcing the driver to stop. The men approached and aggressively told the three to exit the vehicle with their hands up; they searched the bodyguards and stripped them of their weapons and mobile phones. The armed men told them that this vehicle (licence number FOT254) was forbidden from travelling again on this road, and that the next they were seen in the area, they would be killed. The men pointed their rifles at Montilla Moreno and the bodyguards and told them to leave immediately.

294 The Inter-American Court of Human Rights recently issued a judgment finding the Colombian State responsible for the elimination of the Patriotic Union (“Unión Patriótica or UP”) political party, to the detriment of six thousand victims (members), beginning in 1984 and lasting more than twenty years. https://www.corteidh.or.cr/docs/comunicados/cp_09_2023_eng.pdf. The historic events involving the Patriotic Union party have also been the subject of the JEP's Macro Case 06, and the elimination of this political party was an impetus for section 2 of the Peace Agreement concerning political participation: <https://www.jep.gov.co/macrocasos/caso06.html>.

295 [JEP Macro-cases](#).

SPOTLIGHT on Andrea Torres Bautista: Kidnapping, threats, gender-based violence and cyber theft of sensitive information

Human rights lawyer Andrea Torres Bautista is the legal coordinator and deputy director of the Nydia Erika Bautista Foundation (FNEB), an organisation mainly composed of female relatives of victims and engaged in the legal representation of victims of forced disappearances, sexual violence and police abuse in Colombia. She represents victims in cases, both in the ordinary justice system and transitional system, in which the defendants are members of the Colombian armed forces.

On May 21, 2022, Torres Bautista and her husband were victims of an extremely violent attack that included them being kidnapped in a taxi and being robbed.²⁹⁶ The attacks were carried out by four men and involved a kidnapping, physical assaults and the theft of Torres Bautista's belongings. Significantly, the incident took place at a time when Torres Bautista was not accompanied by her UNP escorts as she had exceptionally dismissed them on the date in question. Subsequently, email accounts with confidential information about legal cases, bank cards and the lawyer's Facebook account were hacked and blocked. Following these events, in the early hours of 5 June 2022, a man forcibly entered the Foundation's headquarters and stole highly sensitive information related to the testimonies and legal cases of the victims of forced disappearance and sexual violence,

SPOTLIGHT on Collective Association of Women in Law (ASOCOLEMAD)

The Caravana is concerned about the security of the Collective Association of Women in Law (ASOCOLEMAD) based in Baranquilla. The members of ASOCOLEMAD have been victims of surveillance, harassment and persecution since 2014 due to their professional work in defence of human rights. Among the episodes of risk, the attempted kidnapping and forced disappearance suffered by the son of lawyer and Association

Coordinator, Luz Estella Romero, on 26 December 2019 that led to a period of exile for them both, stands out for its seriousness. After more than two years without knowledge of progress in the

including photographs of the victims and members of the FNEB work team. The stolen information puts at risk more than 400 victims as well as the FNEB team, presenting a serious risk to all.

This incident occurred a few days after the FNEB submitted a report to the Colombian Truth Commission, the latter established under the Peace Agreement.

The Caravana shares the concern of the International Observatory for Lawyers (OIAD) about the lack of progress in the investigation of these incidents by the Prosecutor's office, despite their awareness of the repeated security incidents and systematic attacks against FNEB.²⁹⁷

The FNEB also represents some of the most emblematic cases of criminalisation of social protest, in particular the case of “Alias 19” and other young protesters accused of leading the ‘primeras líneas’ at the national level. The FNEB lawyers denounce the difficulty of practising their profession due to the severe public stigmatisation they themselves suffer from the media, which accuse the lawyers of using delay tactics in legal proceedings, and also improperly identify the lawyers with their clients or their clients' causes as they discharge their functions in order to ensure access to justice.

investigations, the Prosecution has ordered the complaint archived. The filing order presents a lack of motivation and manifest inconsistencies, even making reference to facts that are not related to the object of the complaint. The frustrations extend to the office of the UNP as well. At the present time, despite having reported each risk incident, ASOCOLEMAD continues to suffer persistent risk episodes due to the activities its members undertake. The Caravana has communicated its concerns to Colombian authorities, urging the government to take all necessary measures to guarantee the safety, physical and psychological integrity of the members of ASOCOLEMAD.²⁹⁸

296 <https://protect-lawyers.org/es/item/andrea-torres-bautista-2/>.

297 <http://www.colombiancaravana.org.uk/colombian-caravana-raises-concerns-about-threats-to-colombian-lawyers%E2%82%AC%80%BC/>.

298 <https://protect-lawyers.org/en/colombia-letter-to-colombian-authorities-on-the-risk-situation-of-lawyer-luz-romero-villalba-and-the-association-colemad-2/>.

SPOTLIGHT on Adil José Meléndez Márquez²⁹⁹

Adil José Meléndez Márquez conducts litigation on behalf of peasant communities La Barce and La Rocha and represents human rights victims in the Bolívar department. He represents victims of land grabs and families of individuals killed by paramilitary forces and conducts collective actions against members of the police and armed forces. There are constant threats in these communities and the area of Sucre and the communities of La Barce and La Rocha-Bolívar. Meléndez Márquez has denounced the stigmatisation of these communities and the other lawyers who represent them. The Prosecutor's office has not responded to calls for the investigation of the displacements of these communities from their land due to the activities of companies such as Aguas de Cartagena.

Meléndez Márquez has been the lead lawyer for communities and organisations that challenge the relocation and further development of Canal del Dique in the Cartagena area, work that has been met with threats and other forms of opposition on the part of political and economic actors.

Meléndez Márquez also faces threats and harassment for acting in cases that directly or indirectly affect companies that are exploiting natural resources in the region. An illustration of this is the threat he experienced in August 2022 during the Caravana, when a funeral wreath with his name on it and that of two other human rights defenders was found at one of the individual's homes. The message referred to the three men as "enemies of development" and warned them to save themselves and their families. Such threats not only obstruct Meléndez Márquez's ability to freely carry out his mandate as a lawyer, but hinder the realisation of rights of victims to truth, justice, reparation and non-repetition, which are the pillars on which the Colombian transitional justice system is based.

SPOTLIGHT on criminalisation of lawyers in FONCOLPUERTOS cases

The Cartagena delegates learned of the concerning cases of the criminalisation of five lawyers based in Cartagena. Lawyers Yuli Yancy Palacio, Fernando Marimón Romero, Manuel Belisario Romero Arenas, Eduardo Cantillo Romero and Edmundo Silva Rosado, were the subjects of legal actions brought by Fondo del Puerto (a state entity) for allegedly being agents of the crime of embezzlement in connection with the workers they represented several decades ago. The lawyers were convicted and given prison sentences.

The origins of this case began in 1993 when the lawyers filed successful ordinary labour lawsuits (outside of collective agreement arbitration) on the workers' behalf to challenge the compensation they received following the liquidation of the company Empresa Puertos de Colombia - Terminal Marítimo y Fluvial de Cartagena (successor employer to FONCOLPUERTOS) in the early 1990s.

At the time of the labour litigation, judgments were issued in the first instance proceedings against the employer, which did not file any appeals of the enforceable judgments. Further, the Labour Chamber of the High Court did not initiate a consultation process over the appropriateness of making payments. The Fund (Fondo del Puerto, a state entity) made the payments without appealing or carrying out the consultation, a requirement that was instituted and made a requirement and a responsibility of lawyers at a date after this litigation.

Approximately 10 years later, a specially created "decongestion" tribunal reviewed this case without notifying the workers or their lawyers and brought legal actions for the crime of embezzlement against the former workers and as against their lawyers on the basis of what

²⁹⁹ 2018 Caravana Report, supra 3, pp. 22-23.

is criticised as a regressive procedural law and without the right of defence. Revoking the enforceable judgments, prison sentences of six years (generally three in prison, three under house arrest) and fines that exceeded the sums collected were applied to the lawyers. Most of these convictions are under appeal. The Caravana will be monitoring developments in these cases.

SPOTLIGHT on at-risk lawyers from human rights and civil society organisations

The Caravana is troubled by reports of intimidation and harassment of lawyers employed by human rights and civil society groups, as with the attacks on those organisations.

Campaign of Harassment of ASCAMCAT's Legal Team

Events in 2021-2023: Latest episodes of harassment of ASCAMCAT's legal team

Since 2021, the ASCAMCAT human rights legal team of Gustavo Adolfo Quintero Sierra and Marissela Puerta Guzman have been subjected to a series of incidents of monitoring, harassment and arbitrary procedures. Among their legal cases, Gustavo Quintero and Marissela Puerta have represented victims of extrajudicial executions; criminal proceedings against national political figures who have slandered and stigmatised ASCAMCAT; processes against high-ranking officers of the National Army and members of the National Police; many processes involving human rights violations and breaches of international humanitarian law; and ongoing legal defence work on behalf of communities in the sub-region of Catatumbo.

The most recent series of incidents of harassment and intimidation against ASCAMCAT's human rights defence and legal team commenced in August 2022 and has continued through to February 2023.³⁰⁰ In the first of these events, on 14 August 2022 in the municipality of Chinácota, members of the National Police harassed the team, drawing their firearms on the lawyers and refusing to identify themselves in the presence of their minor child. Later, on September 13, the lawyer was followed to a restaurant in the city of Cúcuta by two armed men. The Caravana is concerned about this campaign of harassment, which continued on the 28 and 29 October 2022 during the third regional meeting of families who subsist on coca crops in Campo 2 Tibú. The police engaged in excesses, searching the belongings of more than 900 people without their consent, taking photographs and videos, and threatening to take action against ASCAMCAT's legal team for their efforts in denouncing the events. Subsequently, an Air Force helicopter dropped leaflets alleging that ASCAMCAT was connected to narco-trafficking.

In the interim up to the date of publication of this report, the two lawyers and their youngest child have been followed by unknown persons carrying weapons, confronting and harassing them, where they have been followed and photographed. Gustavo Quintero and Marissela Puerta and their son have also been harassed by the national police in public places and searched, identifying them as "suspicious persons". They have also been subjected to apparent computer attacks on their personal emails and on the association's emails, from which everything related to human rights is sent.

It should be noted that all these incidents have taken place before or after hearings in cases of extrajudicial executions involving members of the national army. The uniformed personnel with whom these events have taken place always conceal their identity, and the acts always take place in the presence of the minor children of the lawyers mentioned.

³⁰⁰ <https://twitter.com/AscacatOficia/status/1628398095649193990?s=20>. Translation: "We denounce systematic harassment by the @PoliciaColombia and unknown actors to the Ascacat Human Rights Legal Team, we call on @UNPColombia to guarantee the security and protection of Ascacat human rights lawyers @MinInterior."



Delegates with team members from CCALCP and ASCAMCAT

Persecution of Permanent Human Rights Committee (CPDH, Comité Permanente de Derechos Humanos), Norte de Santander

The CPDH has long experienced high levels of threats and risk owing to their vocal stands on issues of national importance. Its lawyers and staff are commonly subject to efforts to criminalise and threaten them. They have commonly been portrayed as lawyers for guerrillas. As a vocal critic of the Santos and Duque governments and an advocate for the implementation of the Peace Agreement, CPDH's risk level continues to be high.

As a historical note illustrating the problems with protection schemes,³⁰¹ the Caravana learned from CPDH of the case of Carlos Bernal, former CPDH President and lawyer, who was killed on 1 April, 2004 despite being under a protection scheme. He was said to be an insurgent.

In 2019, the National Coordinator of CPDH, a lawyer, and the organisation's treasurer, also a lawyer, were the subject of judicial false positives and victims of surveillance and tracking, and both of whom had their computers stolen. In the case of the National Coordinator, the theft occurred at his residence following his visit to Europe to discuss the human rights situation and status of the Peace Agreement implementation in Colombia, with emphasis on the situation of Catatumbo during the Duque presidency. In the CPDH treasurer's case, the events transpired at the Ombudsman's office where she was working as a consultant, after she was appointed as one of three lawyers taking cases before the JEP on the part of the FARC reincorporated population in Norte de Santander. To date, there has been no action taken in response to the complaints, given the lack of evidence to corroborate the incidents and the complaints have been archived. The UNP also determined that the incidents were low risk and referred the CPDH to the National Police.

³⁰¹ <https://www.omct.org/es/recursos/llamamientos-urgentes/colombia-killing-of-lawyer-carlos-bernal>.

E. Critique of UNP Protection Schemes and Policies and Caravana Recommendations

E.1 State Duties to Protect Lawyers

**Guarantees for the functioning of lawyers:
Where the security of lawyers is threatened as a result of
discharging their functions, they shall be adequately safeguarded
by the authorities.**³⁰²

Colombia is legally obligated by international human rights instruments to take all measures necessary to ensure effective protection for lawyers, accountability for perpetrators and accountability for perpetrators of attacks on lawyers.

Multiple instruments impose and confirm these legal duties, among them: the International Convention on Civil and Political Rights (ICCPR), American Convention on Human Rights (ACHR), UN Basic Principles on the Role of Lawyers (Basic Principles, 1990), Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (Geneva Declaration)³⁰³ and the UN Declaration on the Protection of Human Rights Defenders,³⁰⁴ and Resolution on the Protection of Women Human Rights Defenders (2013).³⁰⁵

Principle 7 of the Geneva Declaration is especially salient for Colombia in establishing “enhanced responsibilities” for States to safeguard the security of lawyers and to provide “all necessary measures to

ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation as a consequence of their professional functions or legitimate exercises of human rights”.

The Escazú Agreement (2021),³⁰⁶ a regional agreement ratified by the Colombian Congress in October 2022,³⁰⁷ draws the connection between human rights and environmental defence by imposing obligations on State parties to protect land and environmental human rights defenders and ensure a safe environment.³⁰⁸

The strengthening of this obligation is critical given recent reports of their situation in Colombia.³⁰⁹

As with past Caravana reports, the 2018 Caravana Report contains a comprehensive review of the problems with the UNP protection processes and mechanisms.³¹⁰

All of the concerns cited appear relevant to date.

³⁰² Basic Principle 17, UN Basic Principle of Role of Lawyers, supra 8.

³⁰³ The International Commission of Jurists, Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis: The Geneva Declaration is an instrument adopted by the World Congress of that influential international body of jurists which is dedicated to ensuring respect for international human rights standards through the law.

³⁰⁴ Adopted by the UN General Assembly on March 8th, 1999.

³⁰⁵ Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders: resolution adopted by the General Assembly on 27 of November 2013: <https://digitallibrary.un.org/record/764453?ln=en>; <https://im-defensoras.org/wp-content/uploads/2016/07/RESOL-DE-LA-ASAMBLEA-GRAL-ONU-010616-MED-WEB-2.pdf>

³⁰⁶ Regional Agreement on the Access to Information, Public Participation, and Justice in Environmental Matters in Latin American and the Caribbean (Escazú Agreement): [Escazú Agreement](https://www.unhcr.org/refugees-and-returnees/2021/12/16484848.html).

³⁰⁷ <https://www.reuters.com/article/colombia-environment-idUSKBN2R61D1>.

³⁰⁸ [Cejil/escazu-agreement-reaffirms-importance-of-rights-and-HRDs-fighting-the-climate-emergency/](https://www.cejil.org/es/2021/12/16484848.html).

³⁰⁹ Defending Tomorrow Report, supra 14, at p. 6.

³¹⁰ 2018 Caravana Report, supra 3, pp . 26-29.

E.2 Summary of Critiques of the National Protection Unit (UNP)

Critiques of the UNP

Once again, the VII Caravana heard many concerns and critiques of the National Protection Unit (Unidad Nacional de Protección - UNP), among them:

- Allegations that the UNP carries out **illegal surveillance and control of the work** of human rights lawyers and defenders
- **Undue delays** in granting protection where evidently needed
- A **lack of agility and expeditious procedures** to assess risks and grant protection measures in urgent situations
- Risk assessments are not comprehensive and fail to take into account risks arising from the types of cases undertaken by the lawyer
- **Illegitimate denials of protection measures** - including measures determined by the Inter-American Commission of Human Rights (IACHR) - as well as unilateral reductions and downgrading of IACHR-determined risk assessments
- **Refusal to apply IACHR decisions** on precautionary measures
- Failure to listen to legitimate concerns of protected/at-risk human rights lawyers and defenders
- **Failure to process complaints to the UNP** in a transparent way, or at all
- **Lack of transparency regarding relevant data**, such as the number of protected persons, the number of such persons subsequently attacked³¹¹, and the denial of measures
- **Deficient or inadequate protection measures** and schemes in terms of insufficient provision and appropriateness for the context
- **Rigid conditions and policies** that are problematic in various respects:
 - impeding or obstructing the protected individual's work
 - **undifferentiated** in terms of gender, ethnic group and territorial realities, preferring a 'one-size-fits-all' approach that ignores the particular circumstances of Indigenous peoples, Afro-Colombians, campesinos and rural inhabitants
 - the **option of collective rather than individual protection schemes is not available** to organisations and certain groups and communities, despite the clear benefits and many requests by those needing protection
- Lack of attention to the **effective prevention** of threats and attacks:
 - This extremely grave situation is a function of the State's broader failures to provide effective security guarantees for human rights defence work, by effectively addressing structural sources of violence and of impunity.
 - There is a lack of capacity and inter-institutional coordination amongst relevant State entities to respond effectively to early warning alerts.

311 As an example, the Caravana was told about the murder of Carlos Bernal, former CPDH President and lawyer, killed on 1 April, 2004 despite being under a protection scheme. He was said to be an insurgent. <https://www.omct.org/es/recursos/llamamientos-urgentes/colombia-killing-of-lawyer-carlos-bernal>.

Lack of attention to effective prevention of threats and attacks:

This extremely grave situation for lawyers is a function of the State's broader failures to provide effective security guarantees for human rights defence work, by effectively addressing the structural sources of violence and of impunity. Among other problems, the UNP and other state entities have demonstrated a lack of capacity and inter-institutional coordination to respond effectively to high-risk situations and preventive measures such as early warning alerts.

E.3 Details of Complaints about Protection Measures

The Caravana received multiple accounts of the concerns of human rights lawyers, defenders and social organisations with UNP protection schemes and policies. This is consistent with the analysis of the Washington Office on Latin America describing a tendency under the Duque government for the UNP to be less receptive, more politicised and more criminalised.³¹²



Delegates, Colombian lawyers from CJD and EJP, and families of victims meet with the UNP in Bogotá

1. Illegal monitoring and surveillance

Delegates learned about the following concerns of this nature, confirmed in other sources:³¹³

- a. 'Protective' vehicles are equipped with GPS geo-locators to track the vehicle's movements (with date and time) and its exact location and addresses where it has been
- b. Tracking through cross-referencing with the protected person's mobile phone and with information on whether the phone was on or off and had GPS turned on
- c. The UNP conducts analysis of GoogleMaps that links to the exact location of the protected party
- d. Other devices are installed in vehicles such as an infrared camera and microphones

312 WOLA Report, supra 30.

313 nuevaprensaamerica.com/2022/05/asi-funciona-en-colombia-el-sistema-de-espionaje-instalado-en-UNP-automoviles; diariolalibertad.com/2022/08/02/dispositivos-gps-aumentan-los-peligros; derechos.org/nizkor/colombia/doc/cceeu-pide-garantias-al-estado-para-alberto-yepes-palacio/; nuevaprensaamerica.com/2022/08/exagentes-del-das-ligados-a-la-UNP-fabricaron-informes-ilicitos.

- e. The UNP's official Excel table also includes cross-referencing or remote connection with the protected person's mobile phone, and information on whether the mobile phone is on or off, online, and whether it has activated GPS. Among other concerns, the protected persons do not consent to these breaches of their privacy.
- f. The UNP's use of personnel and ex-police or military officers who formerly worked with the now defunct Departamento Administrativo de Seguridad or Administrative Department of Security (DAS), raises reasonable suspicion that personnel carry out illegal surveillance and interception of communications of human rights lawyers, defenders and others.
- g. Police and former DAS officials conduct risk studies on lawyers and defenders.

2. Rigid policies and processes:

- a. 72-hour requirement that beneficiaries give advance notice of their itineraries is incompatible with the work of human rights lawyers and defenders and other protected persons
- b. Route update: information monitoring of the movements of protected persons by bodyguards is provided to the UNP

3. Measures and policies undifferentiated by gender, community, ethnic group or region

4. Denial of protection measures, reduction or lifting of measures, and downgrading of IACHR risk assessments

E.4 Critiques from Human Rights Lawyers and Defenders in Regions and Bogotá

BUCARAMANGA

Numerous problems with implementation of protection schemes denounced by EJP

- On 6 July 2022, EJP publicly denounced numerous irregularities in the implementation of the protection schemes assigned to human rights lawyers and defenders. It stated its intention to jettison its protection schemes if the denounced conditions did not change.
- The conditions imposed by the UNP generate a lack of confidence, giving rise to strong suspicions that the UNP conducts monitoring and intelligence-gathering work in relation to protected individuals. This is a concern shared by many lawyers and other beneficiaries of protection measures.
- The EJP rejects the UNP requirement that bodyguards/escorts submit reports throughout the duration of their protection duties as well as 'real-time' records of the time and locations of travel outside of their home area.
- The EJP sustains its critique of the UNP's failure to create a collective protection scheme – whereas the scheme only applies to lawyer Leonardo Jaimes Marin.
- The Caravana reiterates concerns it expressed in its communication to the Colombian government dated 9 December 2019 regarding continued reported acts of persecution, surveillance, and stigmatisation of lawyers and other human rights defenders who are members of EJP.³¹⁴

³¹⁴ www.colombiancaravana.org.uk/threats-harassment-leonardo-jaimes-marin-HRDs.

CÚCUTA

CCALCP Women lawyers collective rejects UNP schemes that increase their risks

CCALCP has experienced various problems with the National Protection Unit (UNP)-provided protection measures, such that it jettisoned further protection measures last spring. Examples include the following:

- Bodyguards have refused to respect CCALCP's reasonable requests, thereby heightening their risk levels: for example, they ignored CCALCP's requests to not enter a hotel in Catatumbo while armed.
- CCALCP has concerns about personal connections between bodyguards and those who conduct surveillance of CCALCP members.
- The UNP has provided a bodyguard who was a former DAS agent, highly threatening given the historical surveillance conducted against groups like CCALCP.
- The UNP has in turn shared CCALCP's critical comments/concerns with the bodyguards, which increases CCALCP's vulnerability.
- Finally, all bodyguards are male and the CCALCP team has experienced misogynistic comments, actions and dismissive attitudes from them. CCALCP's requests for a female bodyguard (one who is not in the public forces), and to be able to choose a bodyguard, have not been granted. The UNP schemes are rigid, and in response to these requests, it instead sent two strangers.
- Overall, CCALCP's continued high risk is a partial function of the failure of authorities to investigate the many past security incidents and attacks (impunity).

Comité Permanente de Derechos Humanos (CPDH - Permanent Human Rights Committee), Norte de Santander chapter

- Two CPCH lawyers who were exiled following their involvement in representing persecuted lawyers during the National Strike (and have since returned), and the UNP's assessment of their case as 'low-risk', and its referral of CPDH to the National Police for protection.
- National Coordinator/lawyer: The UNP determined that the incidents referenced at that link were low risk and referred the CPDH to the National Police.

CALI

Delegates received several testimonies from direct beneficiaries of this system of protection schemes in the Cali from Valle Cauca, Cauca and Pasto.

- Eduardo José Muñoz Zúñiga, a NASA Indigenous leader of the community of Paniquita and one of the Indigenous authorities of Valle Del Cauca, travelled to Cali to meet with the Caravana delegation to denounce the disappearance and repression against the Guardia Indígena³¹⁵ in Cauca, and, despite having a security scheme consisting of a person to escort him, the person protecting Muñoz Zúñiga declined to accompany him to Cali over the weekend.

³¹⁵ www.cric-colombia.org/portal/proyecto-politico/defensa-vida-ddhh-cric/guardia-indigena.

- Diana Montilla Moreno has denounced the UNP for opting to hire ex-officers or ex-military personnel involved in investigations of lawyers and others. Her concerns about the protection schemes are in line with other lawyers. At the present time, she has a protection scheme.
- NOMADESC renounces the Colombian government's protection policies because they do not trust or consider that people who have committed crimes in the past can protect them now.
- Sofía López Mera, one of the coordinators of the Justice and Dignity Commission, was assessed as being at high risk and granted precautionary measures by the IACHR on 28 June 2011, however, effective measures have never been put in place to protect her life and integrity, and to guarantee her work as a woman human rights defender.³¹⁶ The UNP's last risk analysis of López Mera was conducted in 2015; she was assessed as being at 'ordinary risk', and the UNP withdrew her travel/transportation allowance and bulletproof vest. Requests that the UNP complete studies of her legal cases and associated risks have not been carried out.

CARTAGENA

- Adil José Meléndez Márquez observes that the UNP has always opted to hire ex-officers or ex-military personnel involved in surveillance and investigations to provide protection services. The VI Caravana chronicled the many issues that have arisen with Meléndez Márquez's protection measures, including decisions to remove vital measures and efforts to restore the same.³¹⁷

BOGOTÁ

Serious concerns about UNP-provided protection schemes for journalists and human rights defenders persist

The Caravana received information about concerns on the part of journalists Claudia Julieta Duque and Julián Martínez and human rights defender Alberto Yepes, represented by CAJAR.

Despite the UNP's position that its devices and technology are not used for surveillance, the contrary view is held by many organisations and individuals with whom the Caravana met. According to various reports, the mechanisms of a surveillance system are installed in the vehicles provided by the UNP:

- The UNP uses technological devices in its vehicles that have the capacity to be used for surveilling the movements and activities of the people they protect
- Such conduct would be similar to what the Administrative Department of Security (DAS) did under former President Uribe
- Details of this system emerged in connection with Colombian journalist Claudia Julieta Duque³¹⁸
 - At the beginning of 2020, she was informed by four different sources within the UNP of an illegal plan, in which her movements were recorded through a GPS device installed in an armoured vehicle used to transport her

³¹⁶ See background: www.lrwc.org/wp-content/uploads/2015/07/Sofia-López-Mera-3-July-2015.-f.pdf. The Caravana references the principle set out in an IACHR report regarding the State's obligations where protection measures issue from an international proceeding: Verdad, justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia, OEA/Ser.L/V/II. Doc.49/13, 31 dic 2013, p. 95, para. 175 (IACHR Truth, Justice and Reparation Report): <https://www.refworld.org/docid/583ed9944.html>.

³¹⁷ 2018 Caravana Report, supra 3, pp. 22-23.

³¹⁸ <https://pbicolombia.org/accompanied-organisations/claudia-julieta-duque/>.

- As part of this illegal scheme, there is a GPS and information exchange with the protected person's cell phone

- Ministry of Foreign Affairs admitted to the IACHR (23 June 2021) that this was true and that UNP monitors movements of all vehicles with a "verification tool"
- Claudia Julieta never had official knowledge of this and she never consented to the tracing of all her movements
- As such, advocates take the position that this constitutes illegal spying – and it breached her security through the very security scheme that was supposed to protect her

BARRANQUILLA

- The Collective Association of Women in Law (ASOCOLEMAD) advances similar concerns to those of the women lawyers collective, CCALCP, critiquing the absence of a gender approach in the UNP's management and programming, noting the predominance of men in the management and personnel of the contracted security companies and the police.
- The Association denounces the development under the former government, whereby protection measures became police measures, primarily.
- The Association has also consistently requested that risk studies be carried out by civilians and not police officers, as happened under the previous government.
- The Association critiques the UNP's failure to take into account the perpetrator or risk generator. In the case of Luz Estrella Romero, it was police officers who kidnapped her son. Yet, the only response offered by the UNP to date, is to institute police patrols around her home.
- Of major note, in this case, is the uncoordinated and ineffective response of the UNP. To this day, it has not yet implemented protection measures for ASOCOLEMAD, instead shuffling their file from one UNP official to another and asking ASOCOLEMAD again for information that has already been provided. In a letter to the UNP dated 10 February 2023, the Association criticises the negligent and uncoordinated action of the UNP in the implementation of protection measures:

As ASOCOLEMAD, we demand that they contact us without further delay and initiate the protection route. And we reiterate that we do not accept police measures because agents of this security force have carried out attacks and threats against us that have not yet been clarified and investigated. We will continue to act until we obtain answers from the national government in terms of due and obligatory protection. And it is your responsibility as part of the State if attacks and threats against ASOCOLEMAD defenders and members of our families to continue, due to your failure to comply with your duty to protect.

- The Collective further observes that, as with the UNP, the Prosecutor’s Office has acted in an uncoordinated manner, sending notifications from three sections of the Office, with different files and an alleged criminal notice that does not correspond to the facts and formal complaints filed by ASOCOLEMAD.
- The Caravana underlines these grave concerns and legitimate critiques and calls on the UNP to respond substantively and promptly to ASOCOLEMAD’s requests.³¹⁹

E.5 UNP’s Responses to Critiques

The UNP representatives provided these responses to the concerns articulated by the Caravana and attending lawyers.

- It lays blame in part on the UNP’s lack of financial and other resources (for example, in the limited provision of vehicles).
- The UNP also defended the critiqued policies on the basis that they are internal administrative procedures and mechanisms of transparency, not surveillance. It rejected surveillance as an objective.
- The UNP stated that because it is not an employer, it contracts for services, explaining that because of its limited budget, contracting is needed in order to have security personnel on staff

The Caravana observes that the answer to the latter issue and other deficits of resources is for the UNP to be provided with a larger, adequate budget.

E.6 Caravana’s Recommendations to UNP

1. Establish an effective government policy of prevention in concert with other relevant state authorities, with emphasis on investigation as the most important and effective component of protection.
2. Ensure relevant state institutions have the capacity to provide an effective coordinated response to early warning alerts.
3. Ensure the UNP has political backing, adequate resources and capacity to carry out accurate and timely risk assessments and provide agile delivery of effective protective measures.³²⁰
4. Provide the appropriate protective measures based on consultation with the beneficiary of such measures.³²¹

³¹⁹ protect-lawyers.org/ltr-2-colombian-authorities-risk-situation-of-luz-romero-villalba-&-ASCOLEMAD.

³²⁰ WOLA Report, supra 30: “Provide resources and political backing for UNP to operate in a more agile and effective manner than at present.”

³²¹ The Colombia State’s failure to implement protective measures and to provide protective measures based on consultation with the beneficiary of such measures is contrary to the clear Inter-American human rights system jurisprudence: IACHR Truth, Justice and Reparation Report, supra 316.

5. Establish a public policy along with adequate resources to ensure that the implementation of measures is managed by state entities rather than third parties from the private sector (and private security companies).
6. Purge the UNP of personnel with previous connections to DAS, as well as ex-police or military or security forces personnel
7. Reassess policies and ensure that UNP policies are flexible and responsive, not rigid or ‘one-size-fits-all’: establish differentiated policies that are attentive to different needs and realities, based on gender, ethnic groups, and specific territorial contexts and needs.
8. Review the conditions of implementation of protection measures, eliminating those that indicate elements of control and surveillance or restriction of the work of protected persons.
9. Address sexist and other discriminatory behaviours and attitudes displayed towards beneficiaries of protection measures.
10. Incorporate collective protection measures for organisations and certain groups and communities rather than individual protection schemes alone; recognise and learn from the alternatives that communities design to protect them, such as Guardia Indigena and Guardia Campesina.
11. Create a new category of protection for groups/families that emerged from the National Strike as rights defenders who require protection.

F. Broader Implications of Persecution for Lawyers, Clients, Human Rights Defence, Rule of Law

The Caravana underscores the very grave implications of the ongoing harassment and persecution of lawyers and legal professionals, not all of which are usually considered.³²² It is less common to address the full range of consequences and parties prejudiced by this situation.³²³

In conjunction with the surveillance and interception of private and professional communications, the threats, physical attacks, displacement and exile, there are serious violations of the rights of lawyers (as individuals), among them, their rights to privacy, free expression, association, and movement. The Caravana is cognisant of the threats and attacks against the lawyers’ family members and close associates, as with the impairment of their fundamental rights and freedoms.

It is critical as well to recognise the emotional and psychological distress that these realities entail. Several lawyers spoke to the Caravana about the effects of this reality, in particular for women lawyers and defenders (for example, ASCOCOLEMAD and CCALCP) who work in highly conflictive and violent contexts, without protection from the Colombian State. We are cognisant of the significant emotional toll that can lead to many defenders giving up their work.

³²² Amicus brief filed by Lawyers without Borders Canada (LWBC) and Lawyers’ Rights Watch Canada (LRWC) in petition of CAJAR v Colombia, heard by the Inter-American Court of Human Rights in May 2022 (CAJAR amicus): https://www.lrwc.org/wp-content/uploads/2022/07/Amicus-Curiae-Case-12.380_30May2022.pdf

³²³ Ibid.

The Caravana further observes the adverse effects on the legal profession's ability to effectively perform their professional labour for clients and those they represent. Of note, is the impairment of the rights of their clients (as victims or accused persons) to adequate legal representation, fair trial rights and effective judicial remedies.

Finally, there are pernicious consequences of this state of affairs for the broader human rights community and the critical challenge of addressing barriers to justice and overcoming impunity in Colombia. The legal profession's ability to conduct their labour freely and in association with others is vital to strengthen the rule of law and enforce the State's duties to respect human rights, prevent human rights violations and punish potential offenders.³²⁴ The Inter-American human rights system has also emphasised the chilling effect that attacks on lawyers have on other human rights defenders and the community at large.³²⁵

G. Prospects for Change for Colombian Legal Profession

The Caravana heard expectations and some optimism expressed in light of the new government, but also more pessimistic assessments and scepticism about prospects for meaningful change in Colombia, both generally, and in terms of their ability to freely perform their professional labour.

The Colombian legal profession's view of prospects for change is not uniform. The Caravana heard varied perspectives from different groups, especially between Bogotá and the regions.

The obstacles to the comprehensive implementation of the Peace Agreement are both complex and entrenched systemic challenges. The current government will need to confront the powerful political and economic elites that have benefited from the socio-political status quo. While some illegal armed actors have opposed the status quo, others engaged in generating conflict have served to advance it, consistent with the state's paramilitary strategy. This will also be true of some of the armed and criminal actors involved in the illicit economies.

The Caravana heard from lawyers in the regions that while some indications of change under the new government are evident, it is essential to be realistic and retain a critical and independent posture. This is also applicable to the international community that continues to accompany and defend the defenders and all those committed to a stable, just and enduring peace in Colombia.

4.3 Additional Justice Challenges, Responses and Initiatives

This final section examines several additional justice challenges and responses to the foregoing realities.

4.3.1 People's Tribunal of Siloé (Tribunal Popular en Siloé)

The Caravana commends an important initiative of Cali human rights organisations and social movements to address the traumatic events of 2021 and advance the struggle against the State's grave violations of human rights and impunity.

³²⁴ Ibid, at p. 28.

³²⁵ IACtHR, Case of Valle Jaramillo et al. v Colombia, Merits, Reparations and Costs. Judgment of 27 November

The People's Tribunal of Siloé was assembled to hear cases against the Colombian State for its patterned massacre and violation of human rights during the legitimate protests that took place in 2021. The People's Tribunal aims to prevent the impunity with which the various entities of the Colombian state, starting with the former Presidency of the Republic, attempted to disguise the brutal repression that cost the lives of at least 16 people in the Siloé sector.³²⁶ This initiative addresses the judicial, police and paramilitary persecution and stigmatisation that occurred, creating even greater vulnerability for participants than existed prior to the protests.

The Tribunal's objectives are to clarify the events that took place and 'vindicate the memory and dignity of the victims, their families, organisations and communities'. The People's Tribunal of Siloé is a form of accompaniment of the different struggles of the neighbourhoods of the area in defence of life.

The People's Tribunal³²⁷ is hearing the following types of cases:

- Crimes against life and personal integrity (homicide, attempted homicide, death threats and personal injury, cruel, inhuman treatment and torture) perpetrated by the security forces and private individuals (a form of "urban paramilitarism")
- Police abuse, arbitrary detentions, illegal deprivation of liberty, damage to the property of others, intimidation
- Violation of the constitutionally protected right to peaceful protest (and under international human rights law), not only through acts of force, but

through the issuance of laws that restrict and criminalise it

- Judicial, police and civil persecution and the phenomenon of urban paramilitarism
- Illegal gathering of information, false accusations and procedural fraud
- Stigmatisation and vulnerability generated by the media
- Control bodies responsible for the protection of human rights that were inoperative
- Impunity and lack of justice for the crimes of which demonstrators have been victims.

On 10 September 2022, Caravana delegates participated virtually as observers of the public hearing of the People's Tribunal of Siloé. On 20 February 2023, the Tribunal issued its first symbolic ruling, finding the previous government responsible for the violence in the neighbourhood, and for having committed human rights violations and crimes against humanity. The ruling is not binding in judicial terms, but "reparative for the victims".³²⁸ They found that among the acts of violence committed by the State during the national strike were 16 homicides, forced disappearance, torture and treatment violence, injuries from firearms, threats, disproportionate use of public force and arbitrary arrests.³²⁹ The impetus for this type of commemorative act is a response to the repeated impunity that exists in respect of state crimes in Colombia, and this is a tool that allows movements and social organisations to be heard by the community.³³⁰ The Caravana will continue to monitor this initiative.

2008, Series C No. 192, at para. 96.

³²⁶ www.telesurtv.net/news/colombia-paro-nacional-represion-cali-siloe-tribunal-popular-20220505.

³²⁷ The Tribunal is composed of academics and international notables as follows: Boaventura de Sousa Santos (Portugal); Pablo Pimentel, Daniel Feierstein, Veronica Giordano and Juan Grabois (Argentina); Jo-Marie Burt (USA, WOLA); Joanne Rappaport (USA); Lidia Tupa Zelaya and Ramon Andrade (Bolivia); Yohanka León del Río (Cuba); Heike Hänsel, Raul Zelik and Darío Azzellini (Germany); Jorge Vicente Paladines Rodríguez (Ecuador). They will be in charge of analysing testimonies and other evidence in their capacity as magistrates. The Tribunal's guarantors are Professor Ramón Grosfoguel of the University of California, USA; Professor Kristina Dietz of the University of Vienna, Austria; Father Javier Giraldo, founder of CINP (Centro de Investigación y Educación Popular Programa por la Paz); former Colombian magistrate Iván Velásquez Gómez; and Monsignor Darío de Jesús Monsalve, Archbishop of Cali.

³²⁸ elpais.com/2023-02-21/operacion-siloe-estado-colombiano-es-condenado-por-tribunal-popular.

³²⁹ cambiocolombia.com/el-tribunal-popular-de-siloe-condena-al-estado-el-significado-del-acto-simbolico.

³³⁰ Ibid.



People's Tribunal of Siloé



Delegation meets with families following the second hearing of the People's Tribunal of Siloé

4.3.2 Collective Protection Initiatives

The VI Caravana report³³¹ references the consensus among human rights defenders, lawyers, local and international organisations that favoured collective protection mechanisms as the most effective means of protecting groups of people, or individuals and their families and extended networks, as well as entire communities.

The topic was raised once again during the VII Caravana in the regional visits and during the meeting with the UNP. The Caravana wishes to amplify the legitimate request of lawyers' associations and other groups and communities for collective protection schemes - thus far, resisted by the UNP. It also recognises that there are alternative protection initiatives that communities have already designed to protect themselves, such as the Guardia Indígena (Indigenous Guard) and the Guardia Campesina (Campesino Guard).³³²

The Indigenous Guards, as the ancestral caretakers of Indigenous peoples, are a form of self-government and special indigenous jurisdiction, rights recognised under international law. The Guards are one of the systems of protection of Indigenous Peoples in Colombia, and have specific tasks to support the Indigenous authorities in territorial control and the application of their own justice, among others. The objective of these guards is the defence and protection of the villages against internal or external situations that could put their survival at risk.³³³

331 2018 Caravana Report, supra 3, pp. 24, 28.

332 For example, the Guardia Campesina del Catatumbo (Peasant Guard) was created in 2013, after the 53-day peasant strike in Catatumbo, with the objectives of protecting the territory and peasant communities from threats of intervention and exploitation, and to defend, disseminate and promote human rights and demand compliance with international humanitarian law. They also develop activities to disseminate human rights through training schools.

333 "In this context, protection is not only related to the physical and material defence of communities. It also implies a safeguard of their own organisational institutions, the immaterial culture of the peoples, the language, mother earth in its maximum expression, community harmony, traditional knowledge, their own medicine, the Greater Right, values and spiritual elements, among others". Examples include Guardias Embera Katío and Embera Dóbida in Chocó, or Guardia Pueblo U'wa, in Boyacá, Casanare, Santander and Norte de Santander: [Guardias Indígenas](#).

Community Self-Protection Measures are strategies used by communities in the face of victimising events by armed groups such as human rights violations, breaches of international humanitarian law (IHL), or any situation that threatens the order and tranquillity of the population. Communities at risk benefit significantly from the implementation of these strategies, as they contribute to the protection of rights, the prevention of forced displacement and retaining their presence in the territories.

4.3.3 International Criminal Court (ICC) Jurisdiction

On 28 October 2021, ICC Prosecutor Khan issued his decision to close the preliminary examination of the situation in Colombia and related requests.³³⁴ The significance of the ICC preliminary examination relates to impunity and victims' rights to truth and justice, in light of the limits of the transitional justice system to address crimes against humanity and other grave crimes that are within the jurisdiction of the ICC, among the concerns expressed to the VII Caravana.

In May 2022, the President of the Pre-Trial Division decided to appoint a Pre-Trial Chamber to review the Prosecutor's decision. The requests of organisations such as CAJAR and the International Federation of Human Rights to intervene in these proceedings have been declined.³³⁵

Various organisations - Lawyers Without Borders Canada and Colombian partner organisations, Corporación Justicia y Dignidad, Corporación Guasimi and Equipo Jurídico Pueblos filed a petition (dated 8 August 2022)³³⁶ requesting the implementation of the decision on the request for review of the ICC Prosecutor's decision to close the preliminary examination of Colombia.³³⁷

4.3.4 Private Arbitration Mechanisms Limit Judicial Authority and Independence

The Caravana is concerned about the limitation on the independence and judicial authority of Colombia's highest courts posed by investor-state dispute settlement (ISDS) mechanisms in 'free-trade' and bilateral investment treaties. This arises when transnational companies challenge the judgments of Colombian courts in private arbitrations. A recent example is the arbitration proceeding initiated in 2021 by companies Glencore and Anglo American against the State of Colombia, which took the position that a 2017 decision of the Constitutional Court of Colombia³³⁸ directly violates the protection afforded them under the Swiss-Colombia bilateral investment treaty.³³⁹ The Constitutional Court's decision favoured the position of Wayúu Indigenous and Afro-descendant communities and the protection of the Bruno River that the expansion of pit mine "La Puente" should not proceed in La Guajira. However, the Constitutional Court's judgment was not relied on by the private tribunal in making its final determination.

334 www.icc-cpi.int/colombia#:preliminary/examination/focussed/on.transfer/population/imprisonment.

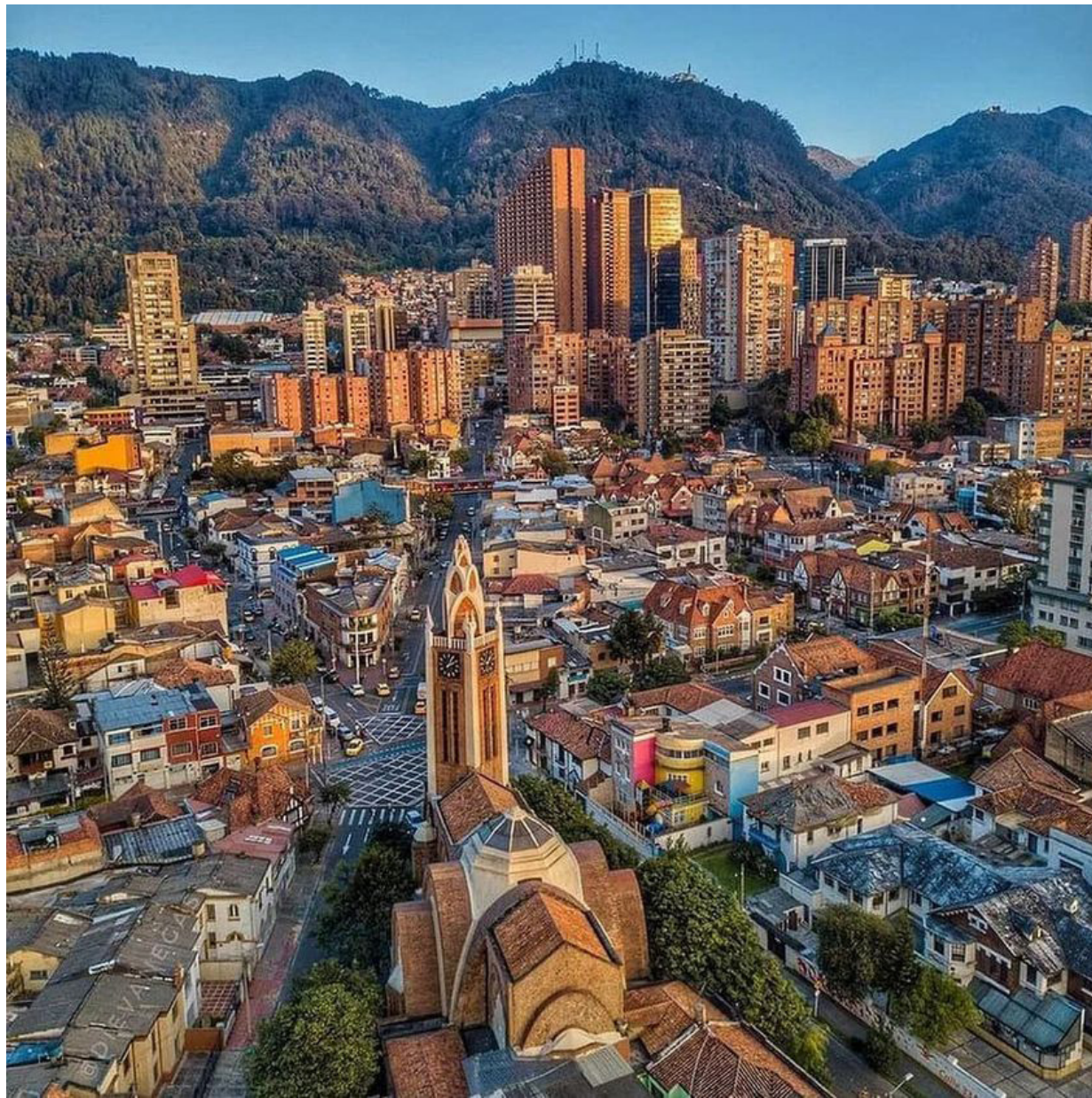
335 <https://www.fidh.org/en/region/americas/colombia/colombia-international-criminal-court-no-investigate-grave-crimes>.

336 Link to LWBC petition concerning the request for review of the ICC Prosecutor's decision.

337 Ibid. A visit of the ICC Prosecutor to Colombia is scheduled for June 2023.

338 Corte Constitucional República de Colombia, Sentencia SU698/17; <https://www.corteconstitucional.gov.co/relatoria/2017/SU698-17.htm>. The decision suspended expansion of the Cerrejón coal mine, Latin America's largest open-pit thermal coal mine, pending the outcome of a review of its social and environmental impacts.

339 This concern is elaborated in an amicus brief filed in respect of the Constitutional Court's review of the implementation of Sentencia SU-698 de 2017, Expediente: T-5.443.609: [amicus-curiae-arroyo-bruno](#).



Bogotá



Caravana press conference on 26 August 2022

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Every effort has been undertaken to ensure findings shared in this report are accurate at the time of publication and where based on reports are stated as such.



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