

2014 Caravana of Lawyers Delegation Cali/Valle del Cauca Report



Caravana delegates and human rights defenders in Cali

List of Caravana Delegates to Cali/Valle del Cauca

Anne-Marie Smit (Netherlands)

Matthew Norwood (U.S.A.)

Charlotte Gill (U.K.)

Piergiuseppe Parisi (Italy)

Harald Wiersema (Netherlands)

Rebecca Chalk (U.K.)

Heather Neun (Canada)

Sarah Smith (U.K.)

Katie de Kauwe (U.K.)

Wout Albers (Netherlands)

Interpreter: James Lupton (U.K.)

I Context for Human Rights Defence and Advocacy

Introduction

Section I of this report outlines the context in which human rights defenders and lawyers work in Cali and the department of Valle del Cauca, and describes some of the individuals, communities and sectors for whom they advocate. While in Cali, the Caravana delegation heard *viva voce* reports from victims of human rights violations and had the opportunity to clarify some of the details of particular cases. The delegates were also provided with documentation in digital form as well as several publications related to these cases and broader issues in Valle del Cauca.

In this section, we endeavour to summarize the major patterns of human rights abuses, by giving an account of the most emblematic cases that were presented. Through this description of the context for the work of human rights defenders and lawyers, we attempt to draw the connections between the obstacles to the conduct of their profession and advocacy, the persecution they face, and the interests they defend in their daily work.

As a preliminary matter, during the first day of presentations by human rights victims, the Cali delegation was divided into two groups, each hearing different accounts. One group relied on the services of our official translator, whereas the other group heard the accounts directly without any language filter.¹

Targeting civilians, extra-judicial killings and false positives

The civilian population in the region of Valle del Cauca is often at risk. Civilians find themselves caught in the ongoing confrontation between the military and other state forces, the guerrilla forces, and the paramilitaries (also referred to as irregular agents of the state).

The actors in the armed conflict have repeatedly shown disregard for the fundamental rules of international humanitarian law and international human rights law. Under the laws of war, participants in the armed conflict are under an obligation to distinguish between combatants and the civilian population, and they must abstain from targeting civilians.² Under international human rights law, the right to life is a fundamental non-derogable and *jus cogens* right, which is to be respected both in times of war and in times of peace.³ In addition to the official armed conflict between state actors and guerrilla forces, it is essential to highlight the evidence of significant levels of broader violence that cannot be attributed to the “armed conflict” proper. Rather, these acts of violence and terror are more accurately described as socio-political violence that is associated with other phenomena, including conflict over access to land and resources.

The Caravana delegates heard the testimonies of a substantial number of violations of this fundamental right to life in Cali and Valle del Cauca. This type of violation can be further subdivided into three categories: targeting civilians; extrajudicial killings; and “false positives”.

¹ As a matter of methodology, this raises in turn two challenges: the reliability of the translation and the level of Spanish language familiarity of delegates. In both cases, elements of the presentations may have been lost. An additional challenge for all delegates was that the conditions for hearing the testimonies were not always ideal, and as a result, the delegates and the translator had difficulty hearing the presentations at times. However, in all respects, the digital material provided was useful for the purpose of validating and cross-referencing our notes.

² Articles 48, 51(1) and 52(2) of Additional Protocol I of the *Geneva Conventions*.

³ Art.3 of the *Universal Declaration of Human Rights*; Art.6 of the *International Covenant on Civil and Political Rights*; Human Rights Committee, Sixteenth Session (1982) General Comment No.6: Art.6 (Right to Life).

Targeting of Civilians

The Caravana was dismayed to hear of apparent violations by the Armed Forces of their obligation to refrain from targeting the civilian population. We heard that on some occasions, such as the case known as the *Massacre of Gargantilla [infra]*, the army claimed it was carrying out military operations against the guerrilla, only to subsequently change its rendition of the facts to blame the guerrilla for the unlawful killings.

Massacre of Gargantilla: Testimony about this massacre was presented by Luz Mary Taquinas Medinas, an Indigenous woman. The massacre took place in the municipality of Toribio, in the village of Tacueyò, Department of Cauca. On 26 March 2011, a gathering of Indigenous people was taking place close to a water reservoir surrounded by plantations of coffee, yucca and bananas. At 2:25 a.m., the Colombian Air Force opened fire and dropped bombs on the gathering. The attack was purportedly aimed at the encampment of the Sixth Front of the FARC. Sixteen people were killed and six were grievously injured in the military operation. None of the participants in the gathering appeared to be a combatant, as they were all wearing civilian clothes, although we heard that the gathering might have been infiltrated by several members of the FARC. Some of the survivors sent text messages to their families, seeking help. Around 5:30 a.m., several relatives of the victims of the attack tried to access the site. However, they were shot at by the police and some of them were killed. A representative of the municipality, with several other villagers, eventually reached the site. They witnessed the dismembered bodies of several individuals and observed that the corpses showed signs of torture. The bodies were kept on the site for more than 20 hours, until they were finally removed and transferred to Cali, on 28 March 2011. The hospital did not release the names of the victims until 30 March. However, some of the injured managed to leave the massacre site and provide accounts of what happened. Ms. Taquinas Medinas learned two days after the bombing, that one of her relatives lost his life in the purported military operation. Various criminal complaints have been addressed to the Fiscalía, but it appears that justice has not been done. In later accounts, the State accused the FARC of having committed the massacre but there are also allegations that the government planted weapons on the site in support of this supposition.

The Caravana heard testimony about the following additional cases. On 10 October 2004, **Yury Danelly Deuza Mosquera** was walking in the neighbourhood of Polverines, patrolled at the time by the Compañía Cordoba of the Third Division of the Third Brigade of the Pichincha Battalion, a division of the Army. She sustained a shot to the back of her head, and subsequently died.

We also heard the account of **Jesus Rivera**, who provided testimony about two instances of the Armed Forces targeting the civilian population. The first attack took place on 19 July 2012 in Vereda Huasano, at the hands of the Brigada Movil No.14 and the special police force, ESMAD. On 9 May 2013, in Corinto, the Army, unprovoked, started to shoot at the area where Jesus lived at the time with his family, forcing them to take shelter in the nearby forest. The Caravana heard compelling testimony about the duration of this attack and the traumatic effects on Jesus' young children.

Unlawful killings of civilians are not only perpetrated by the Armed Forces. Paramilitaries have also contributed significantly to the death toll. An example of this is the case of *Rosa Delgado*, who lost two children at the hands of paramilitary group Battalion Santana.

Extra-judicial Killings

The Caravana delegates were particularly concerned at the reported number of extra-judicial killings in the region. The case of **John Albert Obando Hurtado** [*infra*] is emblematic.

On 13 July 2008, **John Albert Obando Hurtado** was at a party in the Desepaz neighbourhood (District of Aguablanca, Cali), when a fight broke out. The police intervened, pursuing the crowd, which had started to run. Agent Santiago Manjarres Harrison and other police officers shot at John's foot. Unable to move, John was beaten by the police officers and subsequently thrown into the nearby river, where he was shot at repeatedly. He screamed for help as he was drowning, but he was shot again. We were told by Sandra Obando Hurtado, John's sister, that the police were convinced that John knew where a guerrilla member was hiding at the time. John was in fact a friend of this man, but knew nothing about where he was hiding. The week before John's murder, the police had unsuccessfully searched his house, looking for information about this guerrilla member.

Another appalling case of extra-judicial killing is that of **Deisy Coicue's** sister, **Maria Zuleima Coicue** [*infra*].

Deisy Coicue gave testimony about the murder of her sister, **Maria Zuleima Coicue**, during a party she attended with their cousin. Deisy's sister was last seen at around 5 a.m. when an unknown man asked her to dance. At around 6:30 a.m., her cousin started to look for her, and at 9:30 a.m., she was informed that the body of a girl had been found. The body was that of Deisy's sister. The identity of the girl's murderer, Victor Manuel Ariza/Arios (alias Elias Pacho), was later disclosed. According to Deisy, Pacho, who was an active member of the armed forces, had infiltrated the non-fighting support members of the guerrilla in order to spy on them. Deisy's sister owned a shop in the central square where soldiers usually met up to drink, and Deisy's sister is said to have been targeted by Pacho because she had determined that Pacho was an infiltrator and had allegedly passed on this information to the guerrilla.

The above-mentioned cases illustrate the ongoing, unlawful practice of killing individuals who are believed to be associated with the guerrilla, which, if proven, constitutes, *inter alia*, a breach of the fundamental guarantee of due process of law. It is also deeply concerning that amongst the cases of extra-judicial killings, a significant number involve under-age individuals. We were dismayed to learn that Cali has the fourth highest murder rate of young people in the world. As examples, we heard testimony about the deaths of **Rodrigo Vargas Isera**, aged 17, and **Franklin Pérez Muñoz**, aged 17. We were also given a report of the death of **Rubiel Montilla**, a student aged 17, who was murdered at 23:00 on 4 April 2009 by the National Police. That evening, Rubiel had been out with two friends and they were on their way to a club in the neighbourhood of Barrio Ron Colorado on the outskirts of Cali. The three young people were intercepted by a motorized patrol of the police. The son told his friends that he did not have his documents, so they panicked and he ran into the club. His friends hid behind a wall and heard two shots. Rubiel was killed with two shots to the head. The two friends came out with their hands up and identified themselves as professional soldiers based on Tolima. On hearing this, the police allegedly said: "Oh my God, what have we done". The police radioed for back up and detained the two overnight at the police station. Rubiel's father was not permitted by the police to see his son's body, but he managed eventually to get into the club and found his son's body face down with a weapon positioned near his left hand as if he had been fighting. Given that his son was right-handed, it

appeared that the crime scene was staged to make it look like Rubiel had been killed whilst committing a criminal act. The father immediately filed a complaint with Fiscalía 15. We were advised that no progress has been made in the intervening years. The father has been told that the case is under investigation but like many cases, it appears to remain in impunity. In the recounting of this case, we were told that under-reporting rates for crimes are extremely high, due to fear and the fact that the fiscalias and ombudsmen are perceived as favouring murderers and the paramilitaries.

False Positives

In Valle del Cauca region, there appears to have been a systematic practice of the phenomenon referred to as ‘falsos positivos’.⁴ The primary *modus* of these crimes is that civilians who possess inculpatory information, often as witnesses of state misconduct, are framed as members of the guerrilla and become victims of attacks and even murders by state officials. Such is the case of **Frankie Alberto Bolivar**, who witnessed a massacre in Barrio del Bosque in October 1999 carried out by the Colombian Army. Frankie was subsequently threatened, harassed, tortured and publicly accused of being a member of the guerrilla. He was ultimately murdered on 7 May 2010.

The **Massacre of Gargantilla** itself may represent a ‘false positive’ case, as the state claimed that its armed offence was against a guerrilla encampment, having previously planted weapons amongst the dead bodies.

Excessive Use of Public Force

The delegates heard testimony about a case where state authorities, in executing an eviction order, employed excessive force. From the facts of the case, it would seem that the choice to employ four different units to carry out an eviction order against a family composed of two elderly people and a woman, was utterly disproportionate, in addition to the fact that crimes against the physical integrity of the person were perpetrated [*infra*].

Jaqueline Molano Bolaños lived together with her elderly parents in a shared house. To buy the house, she took a loan from Caja Social, which she repaid promptly in instalments. However, she delayed the payment of the last instalment due to financial difficulties. Despite her attempts to renegotiate the debt with the bank, the house was sold to another buyer, and the Civil Court No.28 issued an eviction order, which was carried out on 18 June 2014 at 7 a.m. by the Personeria Municipal, the Policia Nacional, the Escuadron Movil Antidisturbios, and the Grupo de Operaciones Especiales. During the eviction process, several abuses were perpetrated. The agents used tear gas, paintball guns, stun grenades, and they beat Jaqueline’s parents, injuring them, and causing damage to the property. They also stole the sum of 15,000,000 pesos, which Jaqueline had offered to the new buyer of the house in order to get it back, but was refused. The execution of the order was in itself unlawful, since under Colombian law, an eviction order must be executed the day on which it is issued. In this case, the order was to be carried out on the 14th of June, while it was ultimately executed four days later.

⁴ The “false positives” scandal refers to the practice, employed by the military, of murdering civilians and later claiming their affiliation with guerrilla groups so as to inflate the body count in the war against the guerrilla forces. The systematic practice was reinforced by what the International Federation of Human Rights (FIDH) has referred to as a “system of incentives and rewards”. See: FIDH, *The War is Measured in Litres of Blood: false positives, crimes against humanity: those most responsible enjoy impunity*, p. 8:

https://www.fidh.org/IMG/pdf/rapp_colombie_juin_2012_anglais_def.pdf.

Prison Conditions and Unlawful Detention

Prison conditions and political prisoners are a source of major concern in Cali and Valle del Cauca. The delegates heard the testimony of lawyers and advocates from Corporacion Suyana, whose primary focus is to guarantee that state agents comply with the requirements for lawful detention and the basic rights of prisoners, and of political prisoners, in particular. The delegates were able to present some of these concerns to the state entity responsible for prisons in the region, INPEC (Institute of Prisons), as reported on below in Section IV.

One of the most dramatic cases presented was that of **Jenny Estit Patiño** [*infra*].

Jenny Estit Patiño and her husband, Mr. Hector Fabio Echeverry, were detained in 2010, accused of engaging in terrorism. They were apprehended by the police in their house, in the neighbourhood of Silai (Cali). The police entered the residence with weapons targeted on Mr. Echeverry, while verbally abusing Yenny. She was threatened that she would lose her 8-month-old daughter, but her daughter was ultimately left with a relative while Jenny and her husband were taken to Jamundí prison. The police were convinced that through pressure, Jenny would disclose information about her husband's activities. This is unlawful under the Colombian Constitution, since close relatives cannot be forced to testify against another close member of their family. Nonetheless, Yenny was threatened and told that she would die in prison. She was denied a lawyer. The police also told her that the Fiscalía had information about her. She was kept in jail for more than three years. During her incarceration, her daughter became progressively more ill. Yenny presented evidence of the deterioration of her daughter's health to a judge, however, she was refused permission to see her child, as she did not produce a medical certificate, which only the state could issue. She appealed unsuccessfully for compassionate dispensation, to INPEC and the prison directors. On 16 April 2013, Ms. Patiño's daughter died. Ms. Patiño was refused permission to attend her funeral. However, human rights organisations managed to obtain permission to bring her daughter's body into the prison so that her parents could say farewell. On 31 April 2014, Jenny was released, as the Fiscalía had no evidence to keep her imprisoned. Her husband was tried and found guilty, and sentenced to 22 years imprisonment.

Another emblematic case is the mass detention that took place on 17 August 2012, when eleven individuals in the municipality of Caloto, were arbitrarily detained. These individuals were farmers, some members of the Asociacion Campesina de Caloto. Their detention was based on the testimony of three unknown former guerrilla members. However, the latter's identities and the content of their testimonies were never disclosed to the defendants, substantially impairing their due process rights and right to an adequate defence. The three men have since been released but the trials against them are pending. We were told that the Armed Forces are pressuring the judicial authorities in order to obtain a guilty verdict. The delegates heard testimony about the **Caloto case** from **Gerardo Barona**, a human rights defender and member of the Red de Derechos Humanos per el Suroccidente Colombiano 'Francisco Isaias Cifuentes'. Mr. Barona was captured and accused of being a member of the FARC. After four months of detention, he was released on bail, but since then, has suffered continuous death threats and harassment. The Commander of the Police of Valle del Cauca has publicly accused Mr. Barona of being a member of the Sixth Front of the FARC.

The Caravana was told that prisoners' rights are systematically violated in the southwest region of Colombia. In terms of prison conditions, the data provided by the prison authority INPEC was difficult to reconcile: south-western Colombia has 24 prisons with a prison population capacity of

14,414 detainees. However, in May 2014, Marcha Patriótica Valle registered 24,611 prisoners. In other words, it would appear that the level of over-crowding is at 70.7%. The Villahermosa prison in Cali is the fourth most overcrowded prison in Colombia, at a rate of 276.2%. We were also advised that the Jamundí prison, purportedly one of the most advanced prisons in Colombia, is plagued by dramatic water shortages. We heard that detainees are only able to access water twice per day for only 30 minutes. As we elaborate in Section IV, INPEC did not deny this report. Moreover, medical facilities are insufficient to serve the number of potential patients within the prisons. It appears that in the Villahermosa prison, only terminal patients are adequately attended. Finally, we were told that the INPEC personnel are often disrespectful of prisoners, subjecting them to humiliation and other forms of ill-treatment.⁵

The cases of former or current political prisoners raise serious concerns about the administration of justice. One of the most striking cases is that of **Juan Pablo Bedoya Tangurife** [*infra*]. The case of **John Garcia Rodriguez** [*infra*] was also presented.

Juan Pablo Bedoya Tangurife is a professor. He was captured by the police on 13 November 2010, charged with the crime of rebellion and accused of being a member of the FARC. He was sentenced to four years imprisonment to be served at Villahermosa prison. Being a professor, he served his sentence as an instructor in the education area of the prison. Under Colombian prison law he had acquired some benefits that would allow him to apply for parole (with credit for time served), which he did in September 2013. However, parole was denied, due to the judge's mistake in failing to calculate the number of days he had acquired in reduction of his sentence. As a result, he spent 40 days in prison without any legal basis. Since his release, Professor Bedoya has been the target of threats and monitoring. His sister, who used to visit him in prison, received death threats and, despite her complaints to the authorities, had to flee the country. Professor Bedoya reported that the conditions in Villahermosa prison were appalling. Corridors were overcrowded and there were frequent abuses of prisoners at the hands of the prison personnel. Moreover, Mr Bedoya explained that most prisoners' conditions largely depend on payoff. As a result, prisoners who can afford these payoffs will enjoy better prison conditions than the prisoners who cannot.

We heard the testimony of the mother of **Jose Armand Hurtado Carabali**, who is a political prisoner currently detained in the Jamundí prison. Having served a 12-year sentence, he fell within the requirements of Article 64 of the Law No. 599/2000 and Article 30 of the Law No. 1709/2014, thereby being entitled to apply for parole, which he did. However, one of the psychologists evaluating the suitability of detainees for parole was a professional whose relative was involved in the accident for which Jose was sentenced to prison. Jose was denied parole on the ground that his family environment would not benefit his re-socialisation and he would end up committing new crimes. The evident breach of conflict of interest principles by the parole panel is contrary to the Colombian Constitution.

⁵ The data referenced was collected by Marcha Patriótica Valle and Corporacion Suyana in a report provided to the Caravana. See *infra* (Section IV) for information concerning the Caravana's meeting with INPEC (National Prison Institute) and the directors of the prisons of Jamundí and Villahermosa.

John Garcia Rodriguez's case [*infra*] is equally concerning, as it entails the violation of the fundamental rights to equality and non-discrimination, among other rights.

John Garcia Rodriguez is a disabled person. Despite his physical conditions, which force him to use a wheelchair to move, he was the only one in his family providing an income. Since 11 October 2011, he has been detained in the prison of Villahermosa. He was found guilty for illegal possession of weapons and sentenced to six years imprisonment. While in prison, his physical conditions worsened. This included haemorrhoids, progressive loss of sight, and persistent migraines due to a trauma suffered when he fell out of his wheelchair. Nonetheless, he was denied home detention. He shares a cell with six prisoners. The cell is small and dirty, and John is not autonomous, which means that whenever he needs to move, he has to be carried. Despite his good conduct, he has been assigned to the high security area of the prison, because he has no money to pay for his transfer to the lower security area.

Suppression of Dissent: Persecution of Trade Unions, Political Parties

A theme that ran throughout many presentations is the intolerance of the Colombian authorities towards political dissent and dissenting perspectives more generally. Trade unions and political parties that do not belong to the political establishment are frequently the target of violence and persecution by state agents and paramilitaries, and less frequently by the guerrilla. This pattern finds parallels in the rest of Colombia.

Political parties and civil society organisations, like Marcha Patriótica, and groups that advocate for the rights of a variety of sectors, such as indigenous peoples and campesinos, have long been persecuted by the State. The political party, **Union Patriótica** (UP), was founded in 1985 by the Communist Party, the FARC, the ELN, and various social, indigenous, and student leaders, in the framework of the peace negotiations that took place during the administration of Belisario Betancur. The systematic physical extermination of the leadership of the Union Patriótica party, beginning in 1987, is well documented, and is also the subject of a current petition before the Inter-American Commission of Human Rights (IACHR). Estimates of the numbers of UP party members that were killed run into the thousands.⁶ It is widely accepted, that this campaign of persecution and terror against the UP leaders and rank and file members was perpetrated by members of the paramilitaries and the Colombian Armed Forces. Subsequent to the UP's effective removal from the political scene, individuals associated with the party have been targeted and victimised. The case of **Jorge Calderon** is one such emblematic case [*infra*].

⁶ The petition was filed at the IACHR/CIDH on 16 December 1993 by Corporacion Reiniciar. At the time, the petition annexed a list of 1,163 killed, 123 forced disappearances, 43 survivors of attacks and 225 threatened, for the period of January 1985 to December 1993. The petition was admitted by the IACHR on March 12, 1997. From 1999 to 2006, the parties pursued a friendly settlement. However, in June 2005, the petitioners decided to bring this to an end given the continuation of violations and threats (murders, forced disappearances and attempted murders) against surviving UP members during the first term of the Uribe administration. In March 2007, the Corporacion and the Colombian Commission of Jurists presented the allegations on the merits of the case. Additional evidence has been presented, including an individualization and identification of victims, for the period of 1984 to 2006, of which there were 3,136 homicides, 290 attempted homicides, 130 cases of torture, three acts of sexual violence against women, 501 threats, 1601 forced displacements, 234 arbitrary detentions, and 129 meritless proceedings. Source: *Informe del Caso de la Union Patriótica ante CIDH y Memoria de la Búsqueda de la Reparación Integral*, presentado por la Corporacion Reiniciar al V Congreso Nacional de la Union Patriótica, Bogotá DC, 15-17 de noviembre 2013.

Persecution of Human Rights Advocate and Political Activist Jorge Calderon

The Caravana met with Jorge Calderon, trade union activist, human rights defender, and member of the organization, Reiniciar, as well as Union Patriótica. Jorge witnessed the massacre of 40 UP members in 1983 in the village of Segovia, Antioquia. On 28 September 1985, his brother, Dionisio Hernan Calderon, was murdered by a paramilitary commando, known as 'Los Comandos Verdes'. Dionisio was a trade unionist and was running as a mayoral candidate in Buga. At the time, Jorge worked for the University of Valle and was a trade union activist. Since his brother was killed, Mr. Calderon has been the subject of numerous threats against his life, and he has spent several periods in exile. Between 1985 and 1988, he received death threats and was forced to flee the country. The decision to go into exile was due to the last death threat received in 1988, when his whole family was threatened. When he returned to Colombia, he received further threats, because of his insistence that his brother's murder should be investigated, a matter that remains in impunity. Jorge was subsequently forced into exile again in 2002. He returned to Colombia in 2006, but threats have persisted and more recently, intensified. On 9 July 2014, he received an invitation to his own funeral and was told that his "days were numbered". Due to security reasons, he had to flee his hometown of Yumbo and move to Cali, where he was currently residing when he met with the Caravana. Due to security concerns, and was therefore no longer residing in the place where he filed his criminal complaint.

Mr. Calderon described the recent intensification of the activities of extreme right sectors that have connections with state actors, and he emphasized the extent to which the fundamental right to political affiliation has been and continues to be violated in Colombia. He expressed the view that the situation may become more insecure in the post-conflict period, a sentiment expressed by many HRDs.

Amongst the crimes committed against the UP were forced disappearances. The Caravana delegates heard about the following cases. One report was presented concerning two former members of the UP, who disappeared during the second half of the 1990s, while in a market and after having entered a small truck where they were planning to buy some goods. On 15 December 1995, **Manuel Buendia**, the husband of presenter **Marlena Rojas**, disappeared. His dead body was subsequently found at a cement factory in Yumbo. Mr. Buendia had previously assisted another UP member, Jorge Calderon, to leave Colombia, and it is thought that his efforts led to his disappearance and death.⁷

Conflict Related to Labour Rights, Land and Resources

Being a region rich in resources, Valle del Cauca is the centre of multiple economic interests, including agribusiness and the extractive sector. National and multinational companies are prevalent in the region. However, the policies, practices and plans of these companies often conflict with the expressed interests of the local population and civil society organisations. There are allegations that paramilitaries are connected to the forcible displacement of the local

⁷ The delegates were also moved to hear the testimony of Marlena Rojas and her daughter, Zuley Novoa, who later experienced another tragedy in the form of losing their son/brother, Ricardo Novoa Rojas. Ricardo left Colombia for Spain on 24 March 1992, and after several years of contact with his family, has effectively disappeared.

population, in order to acquire more land or resources for companies. The privatisation of state companies has generated further problems, both in terms of the loss of state control of the management of the industrial relations and in the weakening of the contractual protections afforded to employees. Colombia's long held notoriety as a country of extreme hostility towards trade unions and their members, is still evident in the region.

Manuel Trinidad Lopez Caicedo's case [*infra*] is emblematic of the tension between companies and unions. We heard testimony that in some instances, there are indications of interventions by irregular agents, acting unlawfully and seemingly in furtherance of the interests of the companies.

Manuel Trinidad Lopez Caicedo is a trade union leader for SINTRAIME, the national union for railways, transport, and metal workers. Working with the metal workers in steel production and steel related or affiliated transport industries. Mr. Lopez Caicedo provides advice to union members. Three years ago, he was organising workers on the Atlantic Coast because many subcontracted workers did not have direct contracts with the companies and therefore were receiving fewer and inferior labour rights. 3,800 workers were affiliated with the maintenance work union for Drummond; they worked for four different subcontracting companies (Maserten, Tecsolution, Tratecol and Dimantec) who contracted with Drummond. Collective bargaining was unsuccessful and in December 2013, the union initiated a strike amongst all workers at the four companies, which lasted for 36 days. In response to the strike, the four companies were dissolved and formed into one company, Dimantec. A month later, there was a further demonstration where the workers camped out in the entrance to Dimantec. In the early evening of 22 July 2014, Mr. Lopez Caicedo received a series of threatening text messages from an unknown number, including the words 'I will kill you'. On 25 July 2014 at 2 pm he travelled to Cartagena where he received further threats. On 22 August 2014, at 2:40 pm, he received two more texts from the same number. On 12 August 2014, one of his fellow trade union leaders colleagues was attacked, resulting in serious wounds to his face.

The case of **Jaime Mejia** is illustrative of the restrictions imposed on workers' rights. Mr. Mejia works for Cristar, a subsidiary glass company of Owens (of Illinois, U.S.). Since the working conditions in Cristar were very poor, 37 employees joined the trade union, SINTRAIDIT, and presented a modest list of demands to Cristar. The company reacted, accusing the workers of 'masacre laboral' (labour terrorism), and refusing entry to the plant to 30 of the workers. Only seven workers were allowed entry, and only because they were assigned to the state owned warehouses rather than the plant, which meant that Cristar could not prevent them from going to work. However, working conditions are still problematic. Mr. Mejia gave testimony that as one of the seven workers, he works between 14 to 18 hours a day, without breaks. Uniforms are not provided and salaries are excessively low. The case was brought to a hearing in Buga, and after seven successive delays, the judge finally found against Cristar, as being in breach of Articles 25⁸ and 39⁹ of the Colombian Constitution. However, the sentence has not been enforced.

As a locus for the free exchange of ideas, universities have been targeted frequently by the political establishment. Since 1978, the administration of the University of Santiago de Cali, a private institution, was taken over by a new dean, Dr Carlos Andres Perez. The new dean approved new internal regulations that made it essentially illegal to divulge opinions differing from those of the deanship. In the intervening period, 120 professors have had their contracts terminated. We were told that some judges are complicit in upholding these regulations, relying on historic case

⁸ Right to work (including adequate working conditions).

⁹ Freedom of association.

law to subvert the Constitution. The efforts undertaken by the trade unions to establish a dialogue with the governing bodies of the University have been unsuccessful, and some of its members have suffered death threats originating from the paramilitary group Rastrojos.

Forced Displacement

We were concerned to hear that forced displacements continue, especially at the hands of paramilitary groups. In the municipality of Aires, since December 2000, acts of forced displacement have been perpetrated by the paramilitary group, known as Bloque Calima. This has occurred with the complicity of the police, who provided vehicles to the local population to leave the area, while abdicating their role of actively protecting the civilian population. This case was raised by the Permanent Human Rights Committee (Comité de Derechos Humanos) before the government. However, the government has rejected the possibility of paramilitaries being present in the area, although we were told that the evidence of their encampment and presence is to the contrary. More than 800 people have been forced to leave the area. In April 2001, another displacement took place, which left hundreds dead. After 13 years, there has been no progress in obtaining justice.

The Caravana was told that there are strong causal connections between the displacement of local populations and the presence and economic interests of multinational companies. This is evident in the case of ***Jesus Eber Hurtado*** [*infra*].

Jesus Eber Hurtado is a member of the Association of Peasants of the Valle de Cauca. He is also a human rights defender and peasant leader. As a result of the national agrarian strike in 2013, a negotiation progress was initiated and the *Mesa de Concertacion de Acuerdo* was established. Jesus was one of two delegates from Valle del Cauca to attend the negotiations. Subsequently, the two delegates began to be monitored and followed by paramilitaries. Jesus received death threats from the Aguilas Negras Rastrojos. Many participants in the agrarian strike were threatened with death and accused of being members of the FARC. Jesus was accused of being a “land invader” and warned that he should leave the area, or his family would be killed. He was also threatened with dismemberment. Ultimately, he was forced off of his land by motorcyclists who came with the specific purpose of making him abandon his farm. Since then, he has been under continuous threats. He suspects that the reason for his displacement is related to the interest of Anglo-American Gold in Colombia. The location of Jesus’ land is in fact strategic, in terms of access to minerals and water resources necessary to the extraction process.

We were also told that Indigenous communities are particularly vulnerable to forced displacement, especially when they live in areas rich in resources. ***Luis Angel Perdomo Troches***, an indigenous leader from the Pradera reservation, explained to the Caravana that his people’s territories contain a large water reservoir (*parramos*), representing the main water source in the region. International corporations have shown an interest in the parramos, and are promoting the development of a large hydroelectric plant. Works have already started in the neighbouring Indigenous reservation. Various leaders of the community have received threats, originating both from the paramilitaries, whose presence has been re-established in the area, and the armed forces. In addition, the government has granted licences to a Spanish company, Texalia, to build the plant. This was done without prior consultation by the government with the local communities and the affected Indigenous peoples, in particular. These omissions raise the further and

significant issue of the Colombian State's lack of compliance with international human rights law standards of prior consultation and of free, prior and informed consent.

The case of **Luz Mary Garcia Morales** is also emblematic of the manner in which displacement is carried out. Mrs. Garcia's family still lives on the farm, but the threats are ongoing and, despite persistent complaints to the municipal authorities, there has been no resolution of her family's case. Mrs. Garcia alleged that the municipality itself is infiltrated by the paramilitaries.

Luz Mary Garcia Morales was first forcibly displaced, along with her family, in 2002 by the paramilitary force known as Grupo Calima of the Autodefensa Unidad de Colombia. Since 2006, her family lived on a parcel of land known as Paquillo in the municipality of Dagua, Valle del Cauca. The land belonged to Armando Toledo, whose employee was Luis Victoriano Garces Castillo. Mr Toledo assured Mrs. Garcia that they could use the land as they pleased and that they would not have to pay any rent. Mr Castillo also made this representation, claiming that he had his own piece of land. After Mr. Toledo's death in 2012, Mrs. Garcia's family started to suffer aggressions, attacks and threats at the hands of Mr. Castillo and his siblings, with the clear purpose of driving them off of the land. Mrs. Garcia indicated that Mr. Castillo's conduct was permitted to continue, due to the complicity of the police and by their failure to respond to the complaints filed by Mrs. Garcia's family.

Threats and Harassment

The delegates heard testimony from various individuals who have suffered threats, mainly because of their affiliations with particular interests or political leanings.

Jose Geovanny Jojoa Rojas is a former political prisoner. In June 2007 he was seriously injured during a military operation carried out by state forces. After having been hospitalised in Cali on 17 November 2007, he was captured and brought to Santa Monica neighbourhood, where he was kept for some days, until he was sentenced to imprisonment. He was released in 2010, having served his sentence, but due to the lack of medical facilities in the prison, his physical conditions became chronic. Since his release, he has been the target of continuing monitoring by from irregular agents of the state. One day in 2012, he was forced into a car. He was shown evidence of how he and his family had been under surveillance for an extended period. He was also asked questions about various individuals. He subsequently filed a complaint about this incident, but the Fiscalía's sole response was to inform him that the agent who threatened him had been inactive for years. His wife also filed a complaint, as she also received death threats, and the Fiscalía delivered the same response. On another occasion, a biker stopped in front of Mr. Rojas and took his photo. Despite requests to the Fiscalía, no protection measures have been extended to him.

Another striking case is that of **Jorge Calderon**.¹⁰

¹⁰ See pp. 8-9.

Lack of Investigations, Accountability and Redress

A common feature of the cases presented is the almost complete lack of response from state authorities. In most of the cases detailed in this report, victims have sought judicial or administrative redress for the abuses suffered. However, apart from formal steps being taken in some cases, these complaints have remained substantially unanswered. Exacerbating matters even further, recourse to the justice system has sometimes led to further threats and persecution of the claimants. In this respect, we address the Cali Fiscalía's response to our presentation of particular cases, in Section IV below.

In the case of **John Albert Obando Hurtado**,¹¹ the case was brought to the attention of the Fiscalía by his sister, who subsequently became the subject of threats. She advised the Fiscalía of potential witnesses who could testify as to what happened and which agents were responsible for the actions. Evidence, in the form of police bullet casings were located and provided to the Fiscalía. However, progress in the investigation appears unsatisfactory, as witnesses have not been called to provide evidence or to testify.

The case of **Manuel Trinidad Lopez Caicedo**¹² was presented to the Fiscalía in Cali. However, we were advised that there has been no progression or escalation of the issue to the national level. Manuel also filed a request for protection with the National Protection Unit but has received no response.

The same pattern was reported in respect of all of the foregoing cases. In general, the Caravana delegates were extremely concerned about the evident widespread failure of state authorities and entities to act with dispatch and due diligence, in relation to the state's duties to protect, investigate, sanction and provide effective remedies to its citizens.

Meeting with Lawyers, Human Rights Defenders and Justice System Operators

On August 26 and 27, the Caravana delegates met in various fora with human rights lawyers and defenders, judges, prosecutors and ex-judges. Section II reports on the meetings with lawyers and human rights defenders. Section III reports on meetings with judges, ex-judges and prosecutors. Section IV describes our meetings with the office of the Fiscalía in Cali and with INPEC.

¹¹ See p.4.

¹² See p.10.



Delegates meeting with victims

II Lawyers and Human Rights Defenders

The commitment of lawyers and human rights defenders (HRDs) to those they accompany in the effort to access justice, was evident in all of our meetings. In general, the lawyers and HRDs were reluctant to focus on the repression and acts of violence to which they have been subject. At the same time, lawyers and HRDs also spoke about how the pervasive stigmatization and violence against them is a critical pillar in the maintenance of systemic impunity in Colombia. The ability of lawyers to carry out the proper representation of their clients is being seriously impeded in Valle del Cauca as a result of structural deficiencies in the justice system and administration of justice, as well as the stigmatization and attacks that operate to limit their basic functioning as lawyers/HRDs.

The context for lawyers and HRDs was described in part in Section I, where we also outlined the categories of cases they advance as advocates. As a further element in understanding the panorama for lawyers/HRDs, it is essential to appreciate the current and very distinctive conjuncture in the Colombian armed and political conflict. There are significant questions at this juncture, which make it particularly vital that lawyers/HRDs are able to maintain their advocacy functions in emblematic cases.

Another important contextual factor contributing to a high level of concern and insecurity amongst lawyers/HRDs was the impending release of the paramilitaries who demobilized and were sentenced following the Justice and Peace process in 2005. For more remote regions like Valle del Cauca, this concern, along with indications of an intensification of violence by those who oppose the peace process, has exacerbated concerns. For human rights lawyers and defenders operating in the regions, the worry is that if these threats and other criminal acts are not properly investigated on the merits, more insecurity will result -- as happened following the very deficient and partial demobilization.

Armed Conflict and the Broader Socio-Political Conflict

Although Colombians are anxious to see an end to the fifty year long armed conflict, human rights actors are also concerned that the peace process currently underway should not be a mechanism for negotiating high levels of impunity. Several lawyers expressed serious concern about the legal framework for the peace process and transitional justice. This was heightened by the debates over justice system reform and the proposed expansion of military criminal jurisdiction. We heard concerns that the application of the framework for peace will lead to an amnesty for grave human rights violations, including crimes against humanity. There is tremendous anxiety about how any demobilization will play out as part of the peace process, given the evidence of extensive links between paramilitaries, the armed forces and other state actors, including politicians.

Central to the idea that crimes and human rights violations are being committed outside of the armed conflict alone, are the realities of a much broader socio-political conflict; the paramilitary structures that are still intact; and the evidence of their further implication in state entities at all levels of government. Within the framework of international human rights law standards of justice, crimes committed outside of the armed conflict should not be treated the same as those committed within the armed conflict, or dealt with through mechanisms of military justice. They must be advanced separately and to the appropriate point of sanction.

The IAHCR has weighed in on similar questions and in its recent report,¹³ the Commission states that the violence is a product not only of the armed conflict (related to FARC-EP and the ELN), but the lack of a complete and effective demobilisation of the armed paramilitary groups, which continue to operate, as well as the verified links between the paramilitary and the so-called BACRIM (*bandas criminales emergentes* or emergent criminal bands). The latter are not simply a phenomenon of organized crime, as the State maintains.¹⁴ The Commission also states categorically that there cannot be any widespread amnesty and the State cannot renounce its obligation to investigate serious human rights violations. What is required is a serious and detailed clarification of the dynamics, reach, composition and structure of the old “*autodefensas*” or paramilitaries, and the illegal armed groups that have arisen since the partial demobilization of the paramilitary organizations. The Commission also concluded that the serious situation of impunity

¹³ Comisión Interamericana de Derechos Humanos (CIDH/IACHR), *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 (hereafter, “IACHR Report”). Link: <http://www.oas.org/es/cidh/docs/pdfs/Justicia-Verdad-Reparacion-es.pdf>.

¹⁴ Ibid, par. 16.

and the failure to guarantee the rights of victims is a product of the State's failure to carry out this investigative exercise.¹⁵

Irregularities and Structural Problems with Justice System and the Administration of Justice

We address below the specific challenges for particular categories of legal practice, including labour law and prison law. However, an overarching challenge for lawyers is the state of the administration of justice, and what one lawyer, **Hernan Sandoval** [*infra*], described as the State permitting judges and prosecutors to obstruct human rights cases. As an example, we were told that oral hearings are frequent, and are problematic because they effectively mean that the judge and prosecutor have pre-determined the outcome and the defence lawyer does not have the opportunity to present evidence to defend their clients. Mr. Sandoval also spoke about the high levels of nepotism in the justice system, which he believes will be worsened by the proposed reforms to the system.

Impediments to the Practice of Law

Associated with the general weaknesses in the justice system, lawyers confront a series of specific impediments to their ability to freely exercise their functions as lawyers.

These impediments to the practice of the legal profession include the stigmatization and repression, in all its manifestations, as well as specific conduct that restricts or precludes the essential incidents of representing clients, such as solicitor-client confidentiality, privacy of communications and documentation, access to clients, and general confidence in access to judicial proceedings that will function in accordance with the principles of fairness, non-arbitrariness and independence, and integrity. The delegation was very concerned to hear about: incidents of theft of legal work product and sensitive case related information; delay tactics and unreasonable impediments to accessing clients; and the interception of telephone communications.

Repression and Stigmatization of Lawyers and Human Rights Defenders

Repression and persecution of lawyers/HRDs takes the form of threats, physical attacks, attempted forced disappearances, arbitrary detentions, abusive proceedings, stigmatization and general harassment.

As noted below in Section IV, during its meeting with the office of the Fiscalía, the Caravana presented a series of specific cases regarding lawyers and HRDs. Prior to the Caravana's visit to Cali, the Caravana delegates were already aware of the particularly grave situation for lawyers in Valle del Cauca, owing to reportedly higher levels of violence than average in Colombia. We had knowledge of a reported 12 or more lawyers who were killed in the department in 2013 alone.¹⁶

¹⁵ Ibid, par. 18.

¹⁶ The International Caravana of Jurists and the Colombia Caravana UK Lawyers Group has previously raised the alarm about several of these cases in communications with the Colombian government, as have other international organizations. See for example, the joint submission of Lawyers Rights Watch Canada and Lawyers without Borders Canada to the 26th Session of the UN Human Rights: http://www.lrwc.org/ws/wp-content/uploads/2014/05/Online-Copy-Colombia-Failure-to-fulfil-duties.LRWC_.25.May_.2014.pdf. See also the Caravana UK Lawyers Group

The Caravana was also aware of specific cases showing a clear pattern of threats, attacks, stigmatization and harassment of particular human rights lawyers, and we report further on these cases below [*Corporacion Justicia y Dignidad* and *Casa de los Derechos Humanos*, *[infra]*].

The Caravana was pleased to meet with **Alejandro Arenas Arcila**, head of the Colegiatura de Abogados Litigantes de Cali (College of Litigating Lawyers of Cali). Mr. Arenas had been quoted in various press reports on the murders of lawyers in Valle del Cauca, expressing his determination to draw attention to this crisis.¹⁷ During our meeting, Mr. Arenas raised several key issues of concern for the members of his association. The Colegiatura's primary objectives are to bring an end to the stigmatization of human rights and defence lawyers and to vigorously defend against the state's identification of lawyers with their clients as well as with purportedly illegal or "terrorist" elements. Mr. Arenas observed that lawyers who defend citizens are very vulnerable. The last ten years have been particularly difficult for lawyers and lawyers who defend citizens are especially vulnerable. He emphasized that the State does not recognise that a lawyer defends a principle rather than a person and that state authorities place the lawyer in the same bracket as the accused person.

Mr. Arenas attributed the vulnerability of lawyers at least in part to the lack of an independent, obligatory college of lawyers. The Colegiatura is a voluntary association and there is no overarching law society or regulatory organization to which lawyers must belong. Mr. Arenas and others advocate the establishment of an independent obligatory college, for the purposes of enhancing professional standards, and to increase the security and professionalism of the profession. It has been observed by past Caravanas and other international legal organizations¹⁸ that the lack of a unified obligatory and independent body for lawyers adds to the insecurity that lawyers face. For one thing, there is no body that keeps a centralized register of the attacks on and murders of lawyers, of which there have been many.

Stigmatization of Lawyers/HRDs

One of the most serious challenges for lawyers and human rights defenders is the stigmatization of their work and the association of lawyers/HRDs with their clients or with particular causes, like "terrorism". The common theme in our meetings was that lawyers and HRDs who defend vulnerable populations and particular sectors are generally stigmatized as having links with the armed insurgency. This was expressed in different ways. One human rights defender told us that lawyers/HRDs are perceived as "enemies of the state". It was reported by a representative of an Indigenous people, Luis Angel Perdomo, that the lawyers who have tried to assist Indigenous communities, including his own, have been stigmatized and threatened. One human rights and labour lawyer described how certain lawyers are placed on a "red" list. Others spoke of the Fiscalia and other state authorities accusing them of being guerillas.¹⁹

correspondence regarding the death of criminal lawyer Luis Evelio Londono, in Cali on 21 June 2014:

<http://www.colombiancaravana.org.uk/wp-content/uploads/2013/05/LETTER-LUIS-EVELIO-25.07.2014.pdf>.

¹⁷ We were advised that in February 2014, the Colegiatura filed a petition regarding the systematic persecution of lawyers in Valle del Cauca before the Inter-American Commission of Human Rights (IACHR/CIDH).

¹⁸ See for example: Lawyers Without Borders Canada, *From "Legal Warfare" to Peace Without Justice: Access to Justice and Legal Representation for Victims of Human Rights Violations in Colombia*, 15 February 2013, p. 23.

¹⁹ We were ourselves witnesses to this phenomenon during our meeting with INPEC, when one of the INPEC directors asked Caravana members if they also represented guerillas in their legal practices.

In addition to the challenges for human rights lawyers proper, criminal lawyers and labour lawyers are also particular targets of threats and attacks. One lawyer described this targeting for stigmatization as being “marked”. The following sections examine the challenges for lawyers and defenders who defend specific sectors, as well as for HRDs more generally.



Delegates attending meetings with lawyers

Human Rights Lawyers Targeted

The case of the human rights organization, **Corporacion Justicia y Dignidad** (Justice and Dignity Corporation), and the targeting of **Sofia Lopez** and **Alexander Montaña**, is also instructive.

Longstanding Pattern of Persecution of Corporacion Justicia y Dignidad

The Carvana met with lawyers Sofia Lopez and Alexander Montaña of the Corporacion Justicia y Dignidad (CJD) on two occasions, first in Cali and then in Bogota. The CJD is a nongovernmental human rights organization that operates in southwest Colombia, including the department of Valle del Cauca. Their specialties are international humanitarian law and the defence of human rights, with an emphasis on victims of state crime. The Corporacion's team of six human rights lawyers and defenders is focused on juridical strategies to overcome impunity in emblematic cases in the region. The Corporacion represents victims of paramilitaries and the national army, assassinated and exiled trade unionists, displaced communities and those at risk of forced displacement, including indigenous peoples and peasants. Extra-judicial killings are amongst their most grave cases. Beginning prior to its formal establishment in 2010, CJD members have experienced an egregious series of attacks and persecution, reflecting the full range of impediments to the ability to practice their profession as human rights lawyers. The types of attacks range from threats, physical attacks, an attempted forced disappearance, surveillance and monitoring, stigmatization, abusive processes, and the improper identification of the lawyers with their clients or with illegal and armed elements. What follows is a summary of the forms of repression this organization has faced:

- In March 2009, in Cali, lawyers Walter Mondragon and Alexander Montaña were threatened after accompanying the family of a victim killed in 2005 by Army members who were being investigated for this crime. The threats were made just after the victim's remains were returned to the family by the Fiscalía Especializada de la Unidad Nacional de Derechos Humanos and Derecho Internacional Humanitaria.
- In July 2010, a public pronouncement by former government minister Andres Felipe Arias, suggested that the CJD was acting for the FARC in carrying out their human rights work, thus putting the lawyers at further risk.
- On 5 October 2010, after leaving their office, CJD lawyers Alexander Montaña and Sofia Lopez were victims of a frightening series of threats, harassment and physical assaults by four individuals in the centre of Cali. The two were threatened and their human rights work was referenced. One of the individuals brutally struck at the back of Alexander as he warned the lawyer to stay out of things that did not concern him.
- On November 18, 2010 at around 8 pm, Sofia Lopez and Alexander Montaña were followed on two separate occasions by individuals in taxis, causing them significant anxiety.
- The cell phones of the CJD members have been intercepted by the Rivera Police Station in Cali. Even though the Fiscal Coordinator of the Immediate Reaction Unit of the Fiscalía verified the interception of the calls to this police station, the criminal complaint that was filed has not been acted upon to date.
- On 11 April 2011, Alexander Montaña received a threatening text message. A series of threatening texts were sent to cell phones of CJD members later in the month, and on April 14, two threatening calls were made to Alexander and Sofia. The caller to Lopez stated, "we have located you". Later that day, she noticed that two suspicious men on a motorcycle were following her in Santander de Quilichao.

- In 2012, there were other instances in which Sofia Lopez was intercepted and subjected to arbitrary and abusive treatment by the national police, for example, on December 20, 2012, on her way to meet with victims of paramilitaries in Santander de Quilichao. On the same day she was physically threatened by someone purporting to be a paramilitary member.
- During the week of February 4, 2013, when the Corporacion was seeking a criminal investigation for the death of a minor (Norbey Martinez Bonilla, on 28 September 2012 in Caloto-Cauca at the hands of Brigada Movil 14 of the Army), a National Army lieutenant questioned a person in the Corinto Cauca municipality about the location of Alexander Montaña, one of the representatives in this criminal proceeding.
- On 22 March 2013, Alexander Montaña and Sofia Lopez were charged with the crime of insult and slander, as well as stigmatized as defenders of terrorists by the commander of Battallion Number 91 of the National Army. This complaint was in response to them having denounced the extrajudicial killing of Norbey Bonilla.
- On 4 April 2013, a woman approached Sofia Lopez, calling her a “guerilla lawyer” and saying that “guerilla lawyers die here, they kill them here, so be careful.”
- On 12 April 2013, the CJD was informed about a process and order for capture against Sofia Lopez. This information appeared on a list delivered by the Fiscalía, identifying around 60 persons investigated for the crime of rebellion. Some of those who appeared on the list had already been captured and sentenced in the month of June 2012. Others were captured in the month of April 2013. Around this same time, Sofia Lopez experienced a series of incidents of harassment and monitoring in the centre of the municipality of Santander de Quilichao, Cauca.
- At 9 am on 19 April 2013 after Sofia Lopez left the Justice and Peace Unit of the Fiscalía in Popayan, two subjects (one of whom identified himself as being a member of SIJIN (Seccion de Investigacion Criminal de la Policia Nacional) attempted to capture Sofia and put her into a taxi. It was later admitted by SIJIN members that a detention order had been given by the Fiscal quinta especializada of Popayan Martha Liliana Realpe Ceron (Fiscalía Quinta Especializada). Given the preceding threats and harassment on the part of state functionaries and paramilitaries, the CJD considers this was an attempt to disappear Sofia Lopez. The disciplinary investigation of the SIJIN members was archived, and thus far there has been no appropriate penal response to the violations of the lawyer’s rights. On the contrary, Alexander Montaña and Sofia Lopez were denounced for injury and defamation by the Fiscal quinta especializada of Popayan.
- On 29 November 2013, in the municipality of Miranda Cauca, an unknown individual approached a CJD member and declared that they were going to encounter more issues, despite the protective measures.
- At the end of December 2013, two laptops of CJD lawyers were stolen, containing sensitive information on cases and work product. Among the information taken was evidence pointing to criminal responsibility of high officials of the Colombian army in cases of extrajudicial killings in the region.

Labour Rights and Labour Rights Defenders

The Caravana met with several trade union advocates and labour lawyers. Lawyer, academic, and former Ombudsperson (*ex-defensor del pueblo*) for Valle del Cauca, **Hernán Sandoval**,²⁰ has acted as a human rights advocate for political prisoners, workers and trade unions. He is the secretary of the Association of Labour Lawyers in Cali (Asociacion de Abogados Laboralistas de Trabajadores). Mr. Sandoval emphasized the complex nature of the context for private and state lawyers, particularly in Cali. He described the situation for labour lawyers and their clients, as extremely difficult. For the most part, employers and administrations refuse to negotiate with trade unions,

²⁰ See p.16.

and as a result, labour unrest is inevitable. The trade unions and labour lawyers face huge difficulties when trying to defend the interests of workers, and they are often stigmatised as guerrillas and placed on a 'red' list.

Lawyer **Danilo Guarín** of Corporación Suyana described a similar reality. He said that while the situation for lawyers generally was very challenging, it is especially fraught with danger for many labour lawyers, who are the victims of threats, and worse. Their cases are not dealt with adequately and they are accused of being guerrillas by the Fiscalía.

Carlos Lemus, with Departamento DDHH Central Unitaria de Trabajadores (Human Rights Department, Central Unit of Workers or CUT), described the context for labour and trade union activity as one of repression and violence. Protest activities are met with sabotage and repression by the authorities. He noted that the trade union he represents is a frequent subject of collective and individual threats. He spoke of one particular incident, in December 2013, over 100 kilometres outside of Cali on a reservation in Suarez en Cauca, where the indigenous and peasant community had been evicted from their land. There had been a brutal murder of a leader of the FARC, which had made the situation in that region particularly difficult. A gold mine had started to operate in the area and the company operating the mine had invited the local peasants to a public event to discuss the mine. Carlos attended the meeting. After the event, four men on motorcycles approached him and told him not to get involved. When he went to the police station to report the incident, he saw the motorcyclists casually walking around the police station. When his group filed the complaint, they were told quite simply that nothing would happen. The threats continued. He concluded by noting that individuals who try to defend the rights of victims or labour rights in the region are immediately threatened by the paramilitary elements or are themselves subjected to criminal proceedings.

A similar situation was reported by lawyer and economist, **Carlos José Jaime Bergel**, who has represented trade unions for the last fifteen years. Mr. Bergel was unable to present to the Caravana due to work related commitments. However, we were advised that Carlos has received protection measures due to the risk associated with his work, and in particular, in relation to a steel plant case he worked on. More recently, Mr. Bergel received a new spate of threats. On 24 June 2014, he received a threat that stated, 'lawyer, you are a son of a bitch, stop getting involved in other people's business or we will kill you.' He filed a complaint in this case with the Fiscalía, but as of the end of August, there had been no progress in the investigation of the threat, and there is real concern for his safety.

Finally, the Caravana met with lawyer **Alvaro Hernán Bravo Suárez**, also with the Colectivo de Abogados Suyana. Mr. Suárez represents trade unionists and political prisoners, and he spoke about his having been threatened, along with his wife. He noted that judges and prosecutors have accused him and his colleagues of being lawyers of the guerrilla. He represented a public service workers trade union in Guadalajara de Buga, SINTRAEMDES. He described the grave persecution that trade union members have faced in relation to their struggle to expose corruption in the sale of Buga's public water company some years back. The enterprise was sold to highest bidder, in this case, alleged drug traffickers. This was the focus of struggle for years, especially by trade unionists, who saw 13 members fired after they questioned the serious irregularities associated with the privatization (and for which they filed a criminal complaint against the director and others of the

public service company), as well as opposing the privatization itself. Two members and members of the leadership of SINTRAEMDES, Reynaldo Acosta Celemin and Jairo Valbuena, were murdered on 3 October 2000 and 10 October 2001, respectively.

Prisoners Rights and the Defence of Prisoners/Detainees

The challenges for those who represent and advocate for prisoners, especially political prisoners, are significant. The Caravana heard that the stigma associated with this area of advocacy is high. We were told that the Fiscalía is frequently obstructive. Obtaining access to clients is consistently difficult. We were advised that although international human rights organizations are usually permitted to access the prisons, Colombian lawyers/HRDs are frequently denied entry.²¹ Lawyers have to resort to filing *tutelas* in order to obtain access to prisons. Amongst the many obstacles to visiting clients, the process for obtaining authorization is frequently long and delayed. Even with authorization, it was reported that the reasons given by prison officials for denying lawyers the right to speak to their clients were arbitrary, such as it being lunchtime. On occasion, prisoners have been transferred to a different location the night prior to a pre-scheduled meeting. We were told that Villahermosa prison in Cali is almost impossible to gain entrance to, and even when advocates do get in, there are challenges in gaining access to and properly advising their clients. Essentially, INPEC officials we met with confirmed this account of the obstacles for lawyers and others who wish to access the prisons [*Infra*, Section IV].

Lawyers and HRDs reported experiencing aggressive treatment by prison officials and guards. We received a report of a lawyer and his colleagues being attacked by the guards. Lawyers are frequently unable to have private consultations with clients. In addition, lawyers are not permitted to bring materials into prisons and therefore cannot review documentation with clients. The prohibition against bringing equipment and files means that lawyers cannot make written records of their clients' testimonies. Proceedings are all oral as well, which means that lawyers and defenders have difficulties with the record of proceedings. This makes the work of preparing a defence very challenging.

The system presents with particular prejudice towards political prisoners, not only in relation to the problems of access by advocates. The principle of "autonomía penitenciaria" was said to be prejudicial to political prisoners. It was explained that for the category of "judicial political prisoners", there has been an abuse of authority in relation to the laws, and the above-mentioned principle has been applied arbitrarily. Some of these political prisoners have been put into the paramilitary section of prisons, and prison overcrowding has worsened this situation for political prisoners. This issue was also highlighted in relation to judges who may be housed with those they previously convicted.

Similar challenges were reported in relation to clients detained by authorities. We were told that authorities arbitrarily restrict the right of lawyers to meet clients who have been arrested, and they are themselves subject to aggressive treatment when meeting with clients at police stations.

²¹ As we note in Section IV, the Caravana was also denied entry to the prisons, by INPEC itself.

General Panorama for Human Rights Defenders

The Caravana met with a representative HRD, **Milena Olave**, from the organization of MOVICE [National/Movement of Victims of State Crime/Movimiento Nacional de Víctimas de Crímenes de Estado] and CPDH [Permanent Committee of Human Rights/Comite Permanente de Derechos Humanos]. As human rights defenders who deal with victims of state crimes such as torture, extra judicial execution, forced displacement and imprisonment, Ms. Olave emphasized that human rights organisations face serious political persecution. She noted that following the arrival of the paramilitaries to Valle del Cauca in 2000, many human rights defenders have been threatened and some individuals have been murdered, imprisoned or 'disappeared'. MOVICE defends the human rights of people in the Valle del Cauca. There are sub-sections of the organisation that provide support for the AfroCaribbean community, political prisoners, peasants, indigenous peoples, and trade unions. The human rights defenders in all of these organisations suffer from aggression. In March 2008, MOVICE decided to mobilize in order to bring international attention to the victims of state crimes. In the summer of 2010, the persecution intensified against MOVICE and its member organisations.

The Caravana met with human rights defender **Lizeth Lorena Montero Piedrahita**, who works with Red de Derechos Humanos del Sur-Occidente Colombiano "Francisco Isias Cifuentes" (RED-FIC Cauca), a human rights network/organization that assists students, afro-descendents, campesinos that came together for the Marcha Patriótica.²² Ms. Montero stated that most of the organizations that came together for the Marcha Patriótica have been persecuted. In reporting on the situation for the civilian population in the municipalities of Miranda y of Argelia, in southern Valle del Cauca, Ms. Montero described how serious human rights and humanitarian law violations are taking place within a process of increasing militarization of the territories. The irony of this development was not lost on the Caravana, given the current peace process. She stated that this development is part of a "consolidation plan" that includes villages within "strategic zones of recovery of national territory". Ms. Montero described how RED-FIC is observing a concerning level of detentions and criminalization of social protest. She spoke about arbitrary detentions by public forces in Argelia and numerous criminal acts carried out against the civilian population in Miranda by the military.

As witnesses and defenders of the civilian populations, HRDs from groups like RED-FIC were present while human rights violations were committed during the August/September 2013 agrarian and popular strike. RED-FIC and other groups attribute these violations to the Colombian police and army. A review of documentation of this event indicates that there were a total of 26 attacks on human rights defenders during the agrarian strike in the departments of Valle del Cauca, Cauca, and Narino.²³ The delegation also heard from another human rights defender, Rodrigo Vargas of CPDH/Corporacion Suyana, who was detained and later imprisoned due to his involvement with the agrarian strike.

²² Marcha Política is a left-leaning social-political movement that was established in 2012, and it advocates for a negotiated end to the armed conflict, the reparation of its victims, agrarian reform, and improvements in the conditions of life, as well as the greater independence of the country.

²³ The total number of HRDs attacked in Cauca, Narino and Valle del Cauca are 11, 6 and 8, respectively: *Voces del Suroccidente: violaciones e infracciones a los Derechos Humanos cometidas*, p. 86.

The Caravana was disturbed to learn that the human rights centre office in Cali known as *Casa de los Derechos Humanos*¹ was targeted in January 2014; it was broken into and information regarding cases was taken. Since human rights lawyers use this office, it is extremely concerning that files were stolen. In addition, a crack pipe was left in the house to set up the lawyers, as this would have led to the filing of criminal charges had the lawyers not found this and disposed of it in time. The Caravana raised this case with the Fiscalía, and were told that the matter remains under investigation. (*Infra*, Section IV)

Human Rights Defender of Political Prisoners & Former Political Prisoner

The Caravana also met with *Iván Antonio López Castañeda*, a human rights defender and the coordinator of Corporacion Suyana. The focus of his work and the Corporacion is to defend political prisoners, of which there are approximately 10,000 in Colombia. In the course of doing his work, Mr. Lopez has himself been the subject of threats and physical and psychological harassment by State agents, all of which has been denounced before various state entities, including the Fiscalía, the Defensoría del Pueblo and Procuraduría Nacional.

The history of his persecution goes back to 17 October 2002, when Ivan was detained in Cali after leaving the office of SUTEV, the union of professors of Valle del Cauca. At the time, he was involved in organizing a municipal work stoppage in support of various unions engaged in labour struggles, such as campesinos and Indigenous people mobilizing on the Panamerican highway in the south of the country. At 7 pm, Mr. Lopez was taken by armed individuals in a 4-door truck with polarized windows. These individuals were identified as the GAULA of the Army. Ivan was subjected to interrogations, as well as physical assaults and torture. He was hooded while being transported, and at one point, far from the city, he was put into another car where there were other persons. When he was taken to another command for transfer to the municipality of Jamundí, they told him they were also capturing his partner. This attempted capture and disappearance could not be carried out because at the time of capture, he was with a friend who managed to contact the Ombudsman who intervened and was able to obtain the confirmation of the commander of the Cali Batallón that Ivan had been captured.

Ivan is also an ex-political prisoner. He was sentenced to 72 months in prison, initially at Villahermosa in Cali, Valle del Cauca and later at Peñas Blancas (Calarcá, Quindío). He was freed conditionally on August 4, 2010, and ever since has been subject to constant threats and surveillance by state agents. He has filed various complaints. The last attempted capture was on 14 July 2012. On 5 August 2014, following his attendance at the National Victims Forum in Cali, Mr. López was followed for an extensive time period. This incident was also subsequent to Mr. Lopez having made media statements about the historical responsibility of the state in the conflict, and the role played by the former President and now Senator Álvaro Uribe Vélez.

Feeble Protection and Security Guarantees for Lawyers: Grave implications for Justice

As a result of persistent patterns of attacks on the human rights community, along with the State's inadequate response (including the inadequate protection scheme, see below), the Caravana heard about specific cases that lawyers have been forced to abandon, due to threats to their security. We were dismayed to learn that Corporacion Justicia y Dignidad (CJD) lawyers were compelled to drop their representation in several important, emblematic cases involving massacres. This was due to interference by the paramilitaries, as well as the actions of a

prosecutor (Fiscal 55), who labelled them “terrorists” in a public hearing, and thereby compromised their security. This incident occurred in a criminal case and was in response to the lawyers’ invocation of international human rights and humanitarian law norms. Despite there being evidence of the prosecutor’s statement, this case remains in impunity and no disciplinary action has resulted.

Inadequate System of Protection for At-Risk Human Rights Defenders

Consonant with the IACHR’s critical observations about the national protection scheme in Colombia,²⁴ the Caravana delegates received consistent reports about the deficiencies of the scheme. The delegation heard directly about these deficiencies from human rights and labour rights defenders and lawyers at risk and under threat, including reports of delayed or non-responses to requests or applications for protection (as in the cases of Jorge Calderon²⁵ and Carlos Bergel,²⁶ or inadequate protection measures, as well as the more general problem of failing to investigate the facts and complaints that gave rise to the need for protection. Finally, we heard the same critique voiced since the NPU’s establishment, which is the contradiction in having state actors, like the police offering protection, when those same actors are often the ones who perpetrate the repression.

Failure to Guarantee Protection for the Corporacion Justicia y Dignidad

The IACHR ordered the State to provide the necessary protective measures for members of the CJD on 28 June 2011, to protect their human rights and their right to exercise their profession as human rights lawyers.²⁷ The IACHR made its order on the basis of the threats, harassment and monitoring, which had caused them to leave Cali. Another key factor was that authorities knew about their situation of risk but had not provided measures of protection.

The CJD’s request for protective measures from the IACHR followed the Commission’s August 13, 2010 order of protection for their clients: 179 families of El Vergel and El Pedregal de Caloto Cauca. The CJD initially requested protective guarantees by the State so that they could continue to represent the victims, but their request was rejected. The CJD was thus forced to apply for an order from the IACHR.

Following the IACHR’s order, Colombia initially took the position that it was not mandatory and that the State was entitled to undertake its own risk assessment. This position contradicts the clear Inter-American jurisprudence that States are required to implement measures automatically and without any internal processes.²⁸ The obligation is to provide material measures, based on consultation with the beneficiaries and a full understanding of the obstacles to the HRDs doing their work.

The NPU did assess the CJD lawyers at the level of “extraordinary risk”, which is the highest level, and it issued cell phones and bullet-proof vests and special means of transport. However, these measures are effectively of no value, given the circumstance in which the CJD lawyers work. For one thing, the threats have originated in part from officials, like the Fiscal (who accused them

²⁴ IACHR Report, supra note 13 at paras. 24-25.

²⁵ See p. 9.

²⁶ See p. 21.

²⁷ IACHR/CIDH: MC359/10, issued 28 June 2011.

²⁸ IACHR Report, supra note 13 at par. 175.

during a public hearing of being terrorists).²⁹ In addition, the primary form of protection is the undertaking of criminal investigations of these threats and other criminal acts, and this has not happened.

In contrast to the advice we received from the Fiscalía, the cases we reviewed demonstrate that the State has not determined the most ideal protection measures in consultation with the beneficiaries and their representatives, and it has not then monitored the measures to ensure their effectiveness. This violates the strictures established by the IAHRs.³⁰ We also question the extent to which the State has integrated its protection mechanisms with the relevant investigative entities. It appeared to us in our meeting with the Fiscalía that the processes are rather disarticulated. It did not appear that there was an adequate dialogue between the two entities. However, as the Commission has established, this form of integration is critical in order to clarify the sources of risk, as well as to identify and sanction the potential perpetrators. As we heard in our meetings with human rights lawyers and defenders, it is the advancement of investigations that will permit and complement the effectiveness of protection measures, and deactivate the elements that pose a risk to persons covered by protection programmes.³¹



Lawyers Sofia Lopez and Alexander Montaña of Corporacion Justicia y Dignidad

²⁹ This was the Fiscal Octavo Especializado of the Unit against Terrorism, in a criminal matter advanced by the Fiscal Quinta Especializada de Popayan before the Juzgado Segundo Penal del Circuito Especializado.

³⁰ IACHR Report, *supra* note 13, at paras. 26-27.

³¹ *Ibid*, par. 30.

III Judicial Branch: Judges and Prosecutors

Two judges and one lawyer from the Cali Caravana met with several judges, a retired judge and a prosecutor. The judges reported that although threats against their profession have declined in recent years, judges are subject to significant pressure through very public critiques and attacks on their personal and professional reputations. Powerful interests in society use their media connections to widely communicate their negative views of judges' decisions, to create "scandals" around particular judgments. Through this means, they are able to exert pressure on judges. It is a major concern to judges that their reputations will be ruined in this process, and that they are powerless and without defences to counter this reality. We were also made aware of a case where a prosecutor faced significant pressure due to having made decisions that had implications for politically powerful interests.

The judges also spoke about their terms and conditions of work. They noted that logistics and facilities have improved but there is a significant overload of cases. They expressed concern about the wage differential within the judicial hierarchy, which is exacerbated by a differential workload. Another concern is the financial repercussions that judges bear when forced to transfer to another jurisdiction.

The delegation also met with a former municipal criminal judge, **Edgar Zúñiga Hormiga**, who was removed from his post and has been subject to various disciplinary and criminal proceedings. Mr. Zúñiga spoke to the delegation about his situation as well as that of former judge and current prisoner, **Oscar Hurtado Reina**. Mr. Reina has been detained since 30 November 2005 in the Villahermosa prison in Cali. He was a long serving judge who was prosecuted for three counts of "prevaricato por accion y omision"[perversion of the course of justice]. He has completed one sentence and there are 11 more pending. We were told that the Supreme Court of Justice denied him access to the benefits of conditional liberty after serving the requisite portion of his sentence while the trial was underway. The delegation was told that as a sitting judge, Mr. Reina was simply applying the law and the Constitution. It was suggested that his treatment was due to his refusal to uphold mass detentions, false positive cases and arbitrary detentions. The delegation will continue to examine the specifics of this case.

The same is true of the case of Edgar Zúñiga. From what we currently understand, Mr. Zúñiga was charged with and has been investigated in relation to the criminal charge of "prevaricato de accion agravada" (aggravated abuse of authority), in applying "medida de seguridad por domiciliaria" (house arrest). Under the disciplinary process, he has been prohibited from exercising his public duties and discharging his judicial functions. The second disciplinary investigation is still pending. We were told that this second charge carries a 2-year sentence but due to the Prosecutor's request to increase the severity of the sentence from 2 to 4 years, it appears that the Fiscalía is intent on imprisonment.

We were told that the context for the various proceedings against Mr. Zúñiga stems from several cases he handled, beginning in 2007. For example, he ordered that a disciplinary investigation be commenced against an intelligence group of the national police, based on the torture of and injuries caused to a woman with psychiatric issues, and for whom medical certification was issued. The Fiscalía did not initiate this investigation. We were also told that Mr. Zúñiga ordered an

investigation in another case of torture of a detainee during her transfer from Palmira to Cali. A further incident occurred in 2008, when he ordered investigations of members of ESMAD of the national police for the capture and torture of students from Universidad del Valle. In relation to the same incident, he ordered an investigation of the Commander of the Metropolitan Police of Cali then Brigadier General Jesús Antonio Gómez Méndez. The Fiscalía did not investigate, despite the request for transmission of the case to the IACHR. In response, the Police Commander filed a criminal and disciplinary complaint against Edgar. The criminal charge was “prevaricato por accion y omision” and the disciplinary charge was “falla en el servicio”. Edgar was called to the police station, where the Commander denied its responsibility for the above facts. The Commander also disclosed that he was particularly disturbed by the request for intervention by the IACHR. Since these events, Edgar has been accused of freeing guerrillas, and of holding membership in the guerrilla forces himself. He has been subject to numerous death threats.

Mr. Zúñiga also expressed more general criticisms of the judicial system. He spoke of failures by prosecutors to follow proper investigative procedures and due process, and said that he has witnessed illegal prosecutions in the Cali Supreme Court. He alleged that there have been violations of the constitutional provision for double protection of lawyers and judges.

The allegations presented in respect of Mr. Zúñiga and Mr. Reina were not at odds with reports that the Caravana delegates have reviewed from such respected international sources on Colombia, as the UN Human Rights Special Rapporteur on the Independence of Judges and Lawyers. However, the delegates, and the judge delegates in particular, will continue to examine these cases in more detail.

IV Meetings with Colombian Authorities

The Caravana delegates met with two government entities in Cali: the Fiscalía (Public Prosecutor’s office) and INPEC (Instituto Nacional Penitenciario y Carcelario).

Office of the Fiscalía

In our meeting with the Fiscalía, delegates had hoped to meet with Fiscal Dr. Gilberto, but were advised that he was unable to attend. We met instead with Dr. Javier Ernesto Ramirez, Fiscal Seccional, responsible for investigating cases related to human rights defenders (HRDs) and displaced populations returning to their land.

One of the delegation’s primary agenda items was to advance specific cases of concern, both of victims and of human rights lawyers and defenders. The Caravana presented each of the cases listed below. Dr Ramirez indicated that his office was unable to respond to several cases as they fell under the jurisdiction of a different Fiscalía. He was able to respond immediately to certain cases, and also indicated a willingness to respond to our requests for updates.

In the case of Jorge Calderon³² who has been the victim of serious and continuous threats, Dr. Ramirez undertook to give this case immediate attention. He also indicated that an investigation continues in relation to the incident/burglary involving Casa de los Derechos Humanos.³³ Regarding Mr. Calderon’s case, we can report that we are not aware of any action having been

³² See p. 9.

³³ See p. 24.

taken subsequently by the Fiscalía, but the delegates will continue to make inquiries on Mr. Calderon's behalf.

In reference to the threats against and attacks on lawyers Sofia Lopez and Alexander Montaña,³⁴ Dr. Ramirez was aware of their complaints and said there was a detailed investigation being handled by special prosecutors. He indicated that the complaint filed in 2009 had already been archived but subsequent cases remain open. He indicated that there were two complaints, one in 2012 and another more recent. In answer to questions about how decisions to archive cases are taken, we were told there is some independence and autonomy in how Fiscales in different regions advance investigations. Dr. Ramirez explained that although their aim is not to archive cases, investigations frequently develop to the stage where they cannot be advanced any further. He clarified that 'progress' is defined as having one specific named person for threats and attacks against HRDs. Each investigation aims to determine the causes or source of the threats, and various hypotheses are examined before a conclusion is reached as to whether the case should be archived.

He spoke at length about the difficulties of determining the source of threats that are delivered by mobile phones. He described recent efforts to improve the Cali office's technological capacity and expertise. Centralized responsibility invests in him now, as part of creating greater efficiencies. The Fiscalía has also developed specialized teams: a criminal analysis team and a specialist technological team. Implicitly, he accepted that impunity has been a problem and that improvement in investigation methods is vital. However, he did not appear to accept that there were issues of lack of coordination or will to address impunity. He did not deny that additional resources would be helpful. Significantly, he also spoke of the reform that has been widely lauded, in developing new methods of investigation and analysis that place emphasis on context, broadening the focus of investigations so as to better understand the circumstances in which the threats occurred, as opposed to looking at individual instances of threats in isolation and on a case by case basis. In addressing this issue of the origin of threats, he said they were making efforts to improve the investigation techniques as he agreed that this is essential to providing protection to HRDs. It should be noted that Dr. Ramirez was himself transferred to Cali from Medellin as a result of threats to his safety, although we were not provided with the details.

In response to our questions about the seeming lack of responsiveness of the protection system³⁵ to the need for effective protection measures, Dr. Ramirez indicated that any lawyer who is threatened may call on the state for protection measures. At the same time, he went on to say that the safety of lawyers (and the civilian population) is the responsibility of the police. He further stated that the Fiscalía sends all cases of serious threats to the police and the Unidad Nacional de Protección (National Protection Unit/NPU). He admitted that measures may not always operate in the way they should.

In describing how the protection system works, with each case being assessed according to its own circumstances and therefore yielding resulting in the granting of different measures, he stated that everything the NPU does is on request of the Fiscalía. He also insisted that the state always offers alternatives when there are concerns about the protection measures granted. In response

³⁴ See p. 19-20.

³⁵ The system was redesigned in 2011 through Decree 4065, when the new NPU was created. However, many observers have questioned its effectiveness, including the Inter-American Commission on Human Rights.

to questions about how responsive the system was to the concerns of beneficiaries about protection measures, we were told that the practice was that an email would be sent to the Director of the NPU, explaining the situation and asking for immediate action to improve protection. However, Dr. Ramirez was unable to provide an estimate of the average time it would take to effect such changes. When asked whether there should be a task force in Cali regarding repression against lawyers in Valle del Cauca, he indicated that a new unit had been created called the Bloque Vida. Composed of two fiscales, and with more resources and capacity to investigate urgent cases, this unit is intended to examine the most serious crimes, such as killings.

Conclusion

The delegates were seeking to clarify and better understand the nature of the evident obstacles to progress with investigations of threats and attacks on human rights lawyers and defenders. Dr. Ramirez seemed well acquainted with the concerns and issues raised and we appreciated the seriousness with which he treated our concerns. It appeared that he accepted the systemic nature of some of the issues. For example, he spoke about the problematic reality of ‘structures of power’. He emphasized the importance of considering context and patterns in advancing specific cases. He agreed that more resources would be helpful, but did not emphasize this. He said it was important for the staff to think creatively. He also committed to responding to the specific cases we raised.

That said, the Caravana delegates remain concerned that individuals within the justice system, however well-intended, are not sufficiently equipped and institutionally backed to make progress with what the IACHR has described as a central and urgent challenge in Colombia, namely, impunity³⁶ and addressing the serious limits on access to justice for victims of serious human rights and humanitarian law violations. In a context where state actors have been found to be involved in these very crimes, and where prosecutors themselves fear the consequences of pursuing prosecutions, it is difficult to see how these persistent patterns will be effectively addressed.

In its recent report on Colombia, the IACHR outlined a series of factors that underlie the lack of an effective response to a large number of significant cases. Many of these factors ring true in the light of what we heard from victims, defenders and public authorities. Among the most compelling elements are:

- (i) the gap between the current norms, institutional frameworks and effective implementation;³⁷
- (ii) the need for greater coordination and reciprocity between the various entities and frameworks working towards the clarification, investigation and sanction of human rights and humanitarian law infractions;³⁸
- (iii) the failure to advance investigations in a coordinated manner that not only makes the appropriate connections and is aimed at identifying and sanctioning those responsible for human rights violations, but also attempts to dismantle the structures that facilitate their commission;³⁹ and
- (iv) the need to give greater priority to clarifying human rights violations perpetrated by all actors in the conflict, including the so-called BACRIM and paramilitaries.

We were left with little doubt that an essential prerequisite to making progress in the current transitional phase is for the state to comprehensively determine the **nature and operation of illegal armed groups** that have arisen since the demobilization, and **their potential connections**

³⁶ IACHR Report, supra note 13 at par. 31.

³⁷ Ibid, par. 78.

³⁸ Ibid, par.33.

³⁹ Ibid, par. 32.

with certain state authorities.⁴⁰ An investigation approach that fails to address these structural issues of power and that does not place the potential connections between state agents and illegal armed actors at the centre of the analysis,⁴¹ is bound to fail, or to deliver far less than is urgently needed.



Caravana delegates meet with the Public Prosecutor's Office in Cali (Fiscalía)

⁴⁰ Ibid, par. 35.

⁴¹ Ibid, par.79

Cases Presented to the Fiscalía

Victims ¹

1. Jorge Calderon*
2. Ivan Lopez Castañeda
3. Jose Giovanni Jojoa
4. Rubiel Mantilla
5. Jhon Alberto Obando
6. Estudiantes
7. SINTRAIME Union member, Manuel Trinidad Lopez Caicedo
8. Casa de Pereclios Twuanos

Lawyers who have been threatened/harassed/attacked/killed

1. Sofia Lopez
2. Alexander Montaña
3. Walter Mondragon
4. Carlos Jose Jaimes Virgel
5. Eduardo Antonio Almario Martinez
6. Carlos Alberto Nunez
7. Hilda Myriam Lasso Lagarcha*
8. Jorge Ivan Gomez Aurrero
9. Diego Luis Garcia Gonzalez
10. Andres Felipe Parra Ulima
12. Jhony Alberto Balazero Ortiz*
13. Juan Canizales Ocampo
14. Jose Cierley Sanchez Benitez
15. Octavio Avindria Grisales

Note: We were told that the complaints of those who are starred did not fall within the competence of the Cali Fiscalía.

Meeting with INPEC, Sur-Occidente

The delegates met with four officials of INPEC, Sur-Occidente (Instituto Nacional Penitenciario y Carcelario/National Prison Institute). A video of the rehabilitation programme in a therapeutic centre for former drug addicts was shown as well as a video of one of the newer prisons more recently built by INPEC.

Corporacion Suyana showed a video made by the Personeria del Pueblo in 2010 concerning the conditions inside Villahermosa Prison. The Directors of the Jamundi, Buga and Villahermosa prisons all confirmed that prisons are significantly overcrowded, but would not allow that they were as overcrowded as the statistics appear to indicate. The Caravana did not understand INPEC's methodology and we are as yet uncertain as to the basis for their conclusions.

The Directors also acknowledged that there are serious problems with regards to access to water and safe drinking water in Jamundi prison. They provided a multitude of explanations as to why there is a problem with water in this relatively new facility, of which the following are notable:

- Prison built in the last five years or so and water system have not been maintained properly since their construction. Since September 2013 the prison services have been working on water access.
- Vandalism of water supply by inmates.
- Construction of the prison was done without proper attention to the accommodation of remand prisoners, leading to the construction of insufficient facilities, such as cells built without basins.

According to INPEC, the water issues are now being addressed. We were told that monthly meetings are being held regarding this specific situation.

The Caravana asked about problems of access by human rights defenders and lawyers to the prisons. The Directors responded with surprise and explained that several organisations are given access, such as churches and the Red Cross. They also stated that they have many problems to address prior to such visits, such as the fact that prisoners may stage a fight as a way of framing a complaint and in order to obtain some sort of compensation. They suggested that if human rights defenders also visited regularly, then they would have too many problems to address, and there was a risk that other serious problems would be overlooked.

We were told that they have a human rights committee, composed of prisoners, the Ombudsman and district Ombudsman within the prison, and an external regional council with civil servant representation.

We asked for access to Villahermosa and Jamundi prisons, in order to verify accounts and information shared about the conditions and to see the progress reported so far on access to water and other conditions. Initially, the Directors assured us repeatedly that they would allow us access to the prison, but shortly before the end of the meeting, they told us that entry would not be possible after all unless we had completed a form and obtained from Bogota.

In response to concerns about adequate medical care, the Director of Villahermosa Prison explained that they were soon to introduce four body scanners in prisons to diagnose health problems, in place of doctors. The Caravanistas were deeply concerned that a prison director would suggest that equipment that was likely designed to detect smuggled goods had any use as a medical diagnostic tool. On questioning about the suitability of these machines, and the impossibility of relying on their diagnostic capability, the Director retracted her previous comment, and stated that the machines would supplement medical staff, not replace them, and that there would also be a mobile clinic for basic healthcare, travelling weekly to different prisons. Regarding the body scanners, Caravanistas recognised that they could be useful tools to detect smuggled goods but that they likely have little value as a medical diagnostic tool, and could potentially even cause more harm.

The Directors generally recognised that health care was a problem in the prisons but they emphasised it was outside of their direct control.

In response to a question about sexual violence perpetrated by prison guards or employees against inmates, particularly female inmates, we were told that INPEC has begun to ensure that custodial staff in women's prisons and women's prison blocks, are women.



Delegates with Judge Edgar Zuñiga Hormiga and human rights defender Ivan Lopez