

Colombia is currently undergoing evaluation by the United Nations committee on compliance with the International Covenant on Economic, Social, and Cultural Rights at a crucial moment in its history. On the one hand, progress is being made on a negotiated political solution to the armed conflict. A final accord was signed with the FARC insurgency, while negotiations continue with the National Liberation Army (ELN). On the other hand, there has been a furtherance of neoliberal policies and a development model centering around privatization, public spending cuts, and a renewed emphasis on raw material extraction for export. All this is reflected in the national government's continued failure to make good on agreements reached with various social sectors, in parallel with increasing mobilization, in particular around the enforcement of rights.

There has also been a recrudescence of repression and criminalization of social protest and a clear reorganization of criminal and neoparamilitary groups outside the major urban centres. These groups never ceased operating but have begun again to engage in systematic campaigns of assassination. Furthermore, there is an ongoing lack of government accountability for thousands of past human rights violations (including the episode of extrajudicial executions known as the "false positives," proven direct ties between the paramilitaries and the military forces, politicians, government officials, etc.). Likewise, significant processes of corruption are on the rise, though they began well before the current administration and have been eating away at the public treasury for years. The result has been a considerable impoverishment of the population, a concentration of wealth, and private appropriation of public funds.

The sale and privatization of public assets such as ISAGEN, the crisis affecting the healthcare system further to the corrupt and privatization-friendly Law 100 of 1993, and a tax reform harmful to the working and middle classes, on whom the lion's share of the tax burden falls, are all too many reminders that the neoliberal thrust and the structural adjustment policies of the 1990s are still in effect and that, given the most recent development plans and economic projections, Colombia's economic and development model has not been and is not being premised on the economic, social, cultural, and environmental rights of peoples.

The economic policy of recent decades has focused on reduced public investment and privatization. In addition, it centres around direct foreign investment, extractivism, and a return to dependency on the primary sector — mainly mining and oil and gas, for which markets remain volatile. One important result has been environmental and social degradation linked to the exacerbation of conflicts over land, to violence caused by legal (national and transnational) economies and illegal ones, and to an economic and fiscal crisis that will ultimately be resolved in favour of big capital and to the detriment of the social and economic rights of the majority of the population. Today, the prospect of peace with social and environmental justice and full guarantees of economic and social rights is threatened by falling oil prices, a rising dollar, measures designed to offer advantages to big investors and capital but nothing for regional populations and communities, economic and tax policies harmful to the working class, and a long-range process of deindustrialization. But the realization of ESC rights does not depend on, nor is it solely determined by, an economic structure shot through with inequality; the closed and exclusive political system, flagrant corruption, the prevalence of family and business privileges and castes in power, and an antidemocratic exercise of administrative, economic, and political power spur are all

contributing to the continual weakening of ESC rights and the persistence of an unequal and unjust society.

We trust that robust recommendations will be issued in response to the reports produced by the social organizations in regard to the continued violation of the economic, social, cultural, and environmental rights of the Colombian people.

## **Content of the report of the Congress of the Peoples to the United Nations Committee on Economic, Social, and Cultural Rights :**

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### **Deterioration of living standards**

Poverty and inequality in Colombia have not been overcome. On the contrary, the official poverty reduction figures indicate that inequity and inequality have increased. According to UNDP, Colombia went from eleventh to eighth on the list of the world's most unequal countries. According to the Economic Commission for Latin America and the Caribbean (ECLAC), government social spending per inhabitant in Colombia (approximately USD \$400) is less than one-fourth the Latin American average (\$1841).

According to the National Quality of Life Survey conducted by DANE in 2015, income was enough to meet basic family needs in only 15% of Colombian households, a figure that fell to 11% in 2016. "For 2016, the percentage of persons classified as poor with respect to the whole national population was 28.0%."

It should be noted that the poverty line definitions used by DANE are highly questionable: "A four-person household is classified as extremely poor if its total income is below \$458,768 (USD \$150). A four-person household is classified as poor if its total income is below \$966,692. If the family lives in a municipal seat, this amount is \$1,064,172." DANE considers those who earn less than 115,000 pesos per month, or USD \$1.25 per day, to live in extreme poverty.

Observing the day-to-day reality of thousands of families that are unable to attain a decent and stable income, the levels of poverty and precarity in the population continue extremely high and are concentrated in rural areas, certain municipal seats (e.g., Riohacha, Valledupar, Quibdó), and specific population groups such as victims, displaced persons, and seniors. In this last group, more than 74% lack pensions<sup>1</sup> or any type of social safety net. Nevertheless, powerful sectors are working with the government to move forward on pension reforms that will ultimately condemn the senior citizens of this country, along with future generations, to extreme poverty. (According to DANE and the Ministry of Health and Welfare, the over-60 population is growing faster than the population as a whole; the elder-child ratio has tripled in recent decades.)<sup>2</sup>

1 <http://www.dinero.com/pais/articulo/abandono-y-depresion-de-los-adultos-mayores-en-colombia-2017/246080>

Similarly, inequality indicators continue to increase, as do wealth concentration, income distribution imbalance, and unequal access to basic services. Added to this, and corroborating the notion that the problem of land is a structural problem in Colombia and a root cause of the war, the Gini coefficient, a measure of land distribution, is among the world's highest at 0.86. It will increase even further if the land policies and laws favoured by the government continue to be put in place.

## **Mobilization and repression of social protest**

Although the Covenant on ESC Rights does not cover repression of social protest, as social movements we consider it essential to establish the relationship between freedom of assembly and protest — or its absence — and a host of economic and political issues: the socioeconomic plight of the population, the government's systematic failure to guarantee the full realization of ESC rights, and the structural incapacity of the prevailing economic and development model to guarantee decent living standards. Precarious living conditions have led to major mobilizations in the last five years, including strikes by farmers, truckers, and miners, as well as the indigenous mobilization known as the “Minga.” There was a teachers' strike in May and June 2017, with the issues including wages but also the generalized decline in the quality of education and school food programs. Meanwhile, the population of Buenaventura conducted a civic strike with basic demands including access to water, housing, health, and education. In both cases, and as has occurred with each mobilization, the national riot squad (ESMAD) used disproportionate force, according to reports received by Amnesty International and/or the IACHR,<sup>3</sup> as well as irregular maneuvers and unconventional weapons.

Social organizations such as the Congress of the Peoples, working as a coalition under the banner of the Agrarian, Peasant, Ethnic and People's Summit, have a negotiating agenda directly related to economic and social rights, including health, education, housing, and land. Further to the mobilizations of 2013 and 2014, the government issued Decree 870 of 8 May 2014 acknowledging the Summit's negotiating demands. Two years later, with no results in sight, the Summit held demonstrations in May 2016 that were brutally repressed. With new instances of the government's willingness to ignore popular demands taking place, various demonstrations have been held so far in 2017 to demand follow-through on Decree 870.

These facts evidence the lack of political will on the part of the Colombian government to resolve the societal problems for which trade unions, workers' associations, and indigenous, Afro-Descendent, peasant, student, and popular organizations have proposed viable solutions. On the contrary, the passage of regressive and repressive new laws such as the Civic Security Act (Law 1453 of 2011) and the new Police Code (Law 1801 of 2016) further restrict the right of assembly and protest and have increased the number of judicializations, thereby worsening the problem of prison overcrowding.

In this context of rising social protest taking alongside the peace process and the further entrenchment of neoliberal model, attacks against social movement leaders and human rights defenders are rising, suggesting that a repressive state policy is being furthered by other means. Be that as it may, the idea of attempting to build peace while such troubling attacks and such persecution of communities and social organizations persist does seem paradoxical. According to the United Nations' annual human rights report, in 2016, 128 persons were assassinated, including 68 affiliated with a political movement such

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2 <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/PS/Envejecimiento-demografico-Colombia-1951-2020.pdf>

3 “CIDH expresa preocupación por el uso de la fuerza en protestas en Colombia,” 13 May 2017; <http://www.oas.org/es/cidh/prensa/comunicados/2017/076.asp>

as Marcha Patriótica and 63 who were leaders of other organizations.

For its part, the “Somos Defensores” (We Are Defenders) program states that “between January and March of 2017, the National Attacks on Human Rights Defenders Information System (SIADDHH) recorded a total of 193 individual incidents affecting defenders. These are broken down into 136 threats, 20 assassinations, 19 physical attacks, 13 arbitrary detentions, and 5 cases of judicialization... From the signing of the peace accords in September 2016 until March 2017, 51 human rights defenders have been assassinated and more than 30 have been victims of attacks against their lives. Among the alleged perpetrators of the 193 incidents recorded by SIADDHH in the first quarter of 2017, paramilitaries are implicated in 129 cases (67%), the public security forces in 14 cases (7%), the guerrillas in 2 cases (0.1%) and unknown actors in 43 cases (22%).”<sup>4</sup> Other reports give higher numbers for assassinations and serious threats.

The national government has failed to responsibly investigate these cases, and impunity has been the outcome in the majority of them. To an even lesser extent has the government sought to work on the root causes that give rise to the ongoing protests: inequality and denial of rights on the one hand, and the progression of criminal and far-right structures, on the other. These organizations derive from the country’s history of paramilitarism and are linked to the same dynamics that sustained and continue to sustain the paramilitary agenda: underground economies, drug trafficking, territorial and political control, plunder, and readying of areas for foreign investment.

## Housing

Under Article 11(1) of the Covenant, the states Parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” However, the housing deficit in Colombia, along with the persistence of forced evictions and the increasing barriers to suitable housing that affect broad sectors of the population, even members of the middle and professional classes, offer constant reminders of the lack of commitment on the part of the government to the full effectiveness of ESC and environmental rights.

### The housing deficit

In Colombia, the state transferred housing responsibilities to the market. With Law 3 of 1991,<sup>5</sup> the private sector, represented by the financial and construction industries, was given leadership on the housing file through the **National System of Social Housing**. For over twenty years, this has been characterized by the allocation of private mortgage funding for home buyers. The failure of this policy has led to a housing deficit for some 3,353,548 persons.<sup>6</sup>

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4 [www.somosdefensores.org](http://www.somosdefensores.org)

5 Among other things, this act created the Social Interest Housing System; established the Family Housing Subsidies, and reformed the Instituto de Crédito Territorial (ICT), a lending agency formerly in charge of helping low-income families become homeowners.

6 DANE, Comprehensive Survey of Households, 2005.

## **Forced evictions**

The housing deficit has increased in the last four years due to forced evictions by local governments in the main cities of the country. These evictions come as part of an effort to consolidate urban renewal-styled development plans as on-the-ground avatars of the globalization of neoliberal cities.

An essential point is that these governments have been delinquent in their application of the social housing and relocation programs that must always go along with urban renewal. In so doing, they have violated the right to housing as well as jeopardizing the lives, physical integrity, and other social rights of the affected families.

Additionally, they have conducted no household censuses, either before or after the forced evictions, and it therefore becomes difficult or impossible to know the names and identifying information of families whose rights were violated. The most prominent cases are discussed below.

### **Medellín:**

- 26 May 2015: Forced eviction of 1500 persons from the Villa Café settlement. Attacks were carried out by ESMAD, with one child seriously wounded. <http://www.elcolombiano.com/antioquia/se-cumplio-desalojo-en-villa-cafe-YF2007625>
- 19 November 2015: Forced eviction of 38 families from the La Oasis settlement in Moravia. <http://www.polodemocratico.net/noticias/titulares/9345-en-medellin-son-desalojadas-mas-de-38-familias-de-sus-viviendas-denuncia-senador-alberto-castilla>. <http://www.rcnradio.com/locales/38-familias-del-asentamiento-el-oasis-de-moravia-seran-desalojadas/>
- 28 March 2017: Forced eviction of families from the Los Ranchitos settlement in the area of La Iguaña. <http://www.eltiempo.com/colombia/medellin/inicio-desalojo-de-19-familias-en-la-iguana-72248>. <http://juntacivicaelpinar.blogspot.com.co/2017/>
- 12 January 2017: Forced eviction of 175 families from the Nueva Jerusalén settlement. More than 20 people were injured and community leaders were detained. <http://www.elspectador.com/noticias/nacional/antioquia/42-heridos-tras-desalojo-del-asentamiento-nueva-jerusal-articulo-675074>

### **Cali:**

- 12 November 2015: Forced eviction of 75 families from the Las Orquídeas settlement. Clash with ESMAD leaves people injured. Reported by Nomadesc. <https://nomadesc.com/1586-2/>
- 18 October 2016: Forced eviction of 400 families from the Venecia and Las Vegas areas in El Jarillón Rio Cauca. Residents injured in clashes with ESMAD. Reported by Jackeline Ariza, community leader. <http://www.bluradio.com/cali/tension-por-desalojos-en-el-jarillon-del-rio-cauca-119808>

### **Bogotá:**

- 24 April 2017: Forced eviction of families from the Bilbao settlement in the locality of Suba. Clashes with ESMAD occurred, as well as a fire that destroyed most of the family's possessions. <http://www.contagioradio.com/bilbaosubadesalojo-articulo-39593/>. [http://caracol.com.co/emisora/2017/04/24/bogota/1493053977\\_747166.html](http://caracol.com.co/emisora/2017/04/24/bogota/1493053977_747166.html)

### **In summary:**

More than 1630 families have been forcibly evicted from their homes in the country's largest cities in the last three years. "Renewal" programs are ongoing, meaning that there will be more eviction orders under the current governments.

It must be emphasized that Colombia refused to obey resolution 2003/17 of the UN Sub-Commission on the Promotion and Protection of Human Rights concerning the prohibition of forced evictions, which "reaffirms that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment." The resolution "strongly urges governments to undertake immediately measures, at all levels, aimed at eliminating the practice of forced evictions by, inter alia, repealing existing plans involving forced evictions as well as any legislation allowing for forced evictions and by adopting and implementing legislation ensuring the right to security of tenure for all residents" and "to protect all persons who are currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups."

In Colombia, by contrast, all forced eviction procedures have involved violations of the physical integrity of persons and adults, and 95% of the evicted families state that they have nowhere else to go — that is to say, that they are now homeless.

### **Labour**

In 2015, 68.1% of the workforce was employed in the informal sector, down from 68.7% in 2014.<sup>7</sup> A study by the Labour Observatory of the Universidad del Rosario published in 2017 presents the figure of 65%.<sup>8</sup> In 2015, 47.1% were earning less than the legal monthly minimum wage. For 2015, the unemployment subsidy covered only 2.3% of unemployed Colombians, or 49,421 individuals.<sup>9</sup>

Out of a total national workforce of slightly over 22 million people, only 4% are unionized, and 75% of unionized employees are in the public sector. That is, of 100 workers, 96 belong to no labour-related organization. New private-sector positions lack job security and collective bargaining; they are concentrated in agribusiness, mining, oil and gas, hydroelectric power plant construction, and housing and infrastructure construction. Unionization rates in these sectors are under 1%. In the large cities, the labour market focuses on telecommunication, financial, and commercial services. These jobs are insecure and ill-defined; a new employee may be asked to deviate significantly from her job description or perform extra tasks without remuneration. Workers in these sectors are condemned to an unendingly renewed job search. Female workers, many of whom are ghettoized into casual employment, are affected by contract and salary deregulation. This casualization of women's work means that poverty has become increasingly feminized.<sup>10</sup> According to the Central Unitaria de los Trabajadores (CUT),<sup>11</sup>

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7 Escuela Nacional Sindical, *Trabajo Decente en América Latina* 2016.

8 The official figure is 49%. Iván Jaramillo of the Universidad del Rosario contends that this methodology ignores labour protection and direct hiring. May 2017. <https://www.elheraldo.co/barranquilla/dia-del-trabajo-65-de-informalidad-y-50-con-el-salario-minimo-355099>

9 Ibid.

10 Instituto Nacional Sindical, 2017.

11 <http://cut.org.co/la-situacion-laboral-de-las-mujeres-entre-lo-invisible-lo-precario-y-lo-desigual/>

one of the country's largest trade union centrals, "the national unemployment rate for year-end 2013 was 8.2%; the rate for women (11.2%) was 5.2 percentage points greater than the rate for men (6.0%). Although women's unemployment figures have been gradually declining,<sup>[1]</sup> they are still well above the national average as well as the Latin American average of 7.9%, whereas the rate for men is 5.6%... According to the available information, only 29% of Colombian women pay into the unemployment fund and only 21.7% pay into the moderate-level mandatory pension fund."

### **Outsourcing: Decree 583<sup>12</sup>**

On 8 April 2016, the Juan Manuel Santos government issued Decree 583 giving free rein to all forms of outsourcing. This is affecting the overall quality of life of workers and the general public.

According to the CUT, "this utterly regressive decree is against the law and violates repeated decisions by the Constitutional Court. Section 63 of Law 1429 of 2010 clearly establishes that the staff required by any public and/or private institution and/or company in order to carry out core functions may not be hired through cooperatives acting as employment agencies or under any other arrangement affecting the constitutional, legal, and benefit rights set out in the applicable labour legislation."

This Decree directly affects the right to unionize as well as ongoing and core activities. It becomes an attack on two fundamental rights — unionization and collective bargaining — that have their basis in ILO Conventions 87 and 98. When there are no direct employees, there is no workforce subject to collective bargaining and hence unions are weakened.

According to the CUT, the text of the decree indicates that in the government's view, it suffices to comply with and give the appearance of respecting individual labour rights; i.e., to pay wages, albeit minimal, and to make the basic payments into the social security system. Such matters as labour contracts, job security, schedules, and working conditions can be ignored.

The Standing Commission on Wage and Labour Policies (CPCPSL) is a tripartite, constitutionally mandated body in which the government, employers, and trade unions negotiate labour-related agreements. This decree was never submitted to the CPCPSL for consultation — or at any rate to the union members of this body — and can be considered unconstitutional on these grounds as well.

In its report to the 106th ILO Conference on the status of labour rights in Colombia, the CUT notes that "the above-mentioned obstacles to labour and trade union freedoms share some common features: persistence over time; inaction or complicity by the state; identification and condemnation by all manner of international bodies, including the ILO supervisory bodies; and repeated failure by the national government to make good on its commitments to improvement... The government says that it does not agree with taking the law into one's own hands, yet unblushingly sets a bad example in that regard, using its executive power to claw back workers' rights. The credibility of this government and the value of the existing consensus-building forums are seriously in doubt."

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12 Instituto Nacional Sindical, 2016.

## The right to health

The crisis in the national health and social security system grows deeper as a result of the structural problems instituted by Law 100/93. Despite the passage of the Statutory Law of 2008, establishing the premise of health as a fundamental right and not a market-governed service, access to health services and the full realization of the right to health continue to be central demands of the Colombian social movement and an immediate necessity for the population.

Law 100/1993 lays down guidelines for the General Social Security System (SGSS), providing for the creation and operation of Health Promotion Companies (EPS). These state-funded entities provide health services as insurers; that is, they pay the public and private hospitals for provision of services to users. These EPS proceeded to create their own healthcare delivery institutions, not only generating a large budget deficit but also saddling the institutions with heavy debts. This situation was caused by the improper use of funds, the majority of them public, as in the case of the Caprecom and Saludcoop corruption scandal;<sup>13</sup> both entities are now in liquidation.

For the EPS, administrative decisions take precedence over medical ones. Many patients have had to resort to the mechanism of guardianship to force the EPS to authorize treatment. The truth is that denial of treatment and prescription drugs, coupled with excessive bureaucracy, are part of a systematic and deliberate attempt by the companies to sabotage the right to health. Contrary to what the national government pretends, neither healthcare coverage nor access has improved. This situation is revealed by the hundreds of thousands of guardianship requests submitted annually to the EPS, the only alternative left to many people in order to obtain quality services. Unfortunately, these applications are often ignored.

As this type of business began to occupy more space in the health sector, social movements, organized users' groups, healthcare workers, and other persons won recognition of health as a fundamental right in 2008.<sup>14</sup> This led to the enactment of Law 1751 of 2015, known as the Statutory Health Act, which regulates the fundamental right to health, among other things. Yet despite these changes, healthcare continues to operate as a business based on systematic denial of services.

Relating this state of affairs to the vital statistics for 2016, according to DANE, 99.1% of births (total births = 641,493) took place in healthcare institutions, 0.8% at home, and 0.1% elsewhere, with 47,442 stillbirths. General infant mortality for the year was 3.2% (6679 cases)<sup>15</sup> and continues to obey social determinants. According to the 2014 health status study (ASIS), there were 58.230 neonatal deaths and 53.7 maternal deaths per 100,000 live births.<sup>16</sup> The highest percentage corresponds to lower-income women and children living in departments with higher rates of multidimensional poverty (Chocó, Vichada, La Guajira, Córdoba, Guania, Vaupés, Putumayo), inhabitants of sparsely populated rural areas, indigenous or Rrom populations, residents of San Basilio de Palenque, and illiterates (nearly 60% of the population), reflecting inequities in access to healthcare. This information corroborates how social determinants of health such as poverty, living standards, ethnicity and rurality have a significant impact on morbidity and mortality rates.

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13 See national news, e.g., <http://www.elspectador.com/noticias/investigacion/saludcoop-fue-y-esta-venir-articulo-602258>

14 With decision T-760 of 2008, health became a fundamental right by virtue of its interrelationship with the fundamental right to life.

15 DANE, Vital Statistics, 2016; <https://www.dane.gov.co/index.php/estadisticas-por-tema/salud/nacimientos-y-defunciones>

16 Ministry of Health and Social Protection, Health Status Report (ASIS) for 2016; <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/ED/PSP/asis-colombia-2016.pdf>



High rates of poverty and the unmet basic needs in certain departments create conditions conducive to high mortality rates. The report notes that 72–80% of malnutrition-related mortality in children under 5 is concentrated in the 50% of the population with the highest percentage of unmet basic needs,<sup>17</sup> higher barriers to services, and lower access to potable water and healthcare. As long as this situation remains unchanged, there can be no genuine or appreciable improvement in these figures.

Mental health is one of the country's big challenges, for it is closely related to civic coexistence and quality of life. In theory, existing mental health policies focus on the treatment, prevention, and early detection of disorders as well as public education about them. However, the application of these policies in practice is generating major concerns.

The environmental health program is another great concern, and here it is important to underscore the controversial use of glyphosate in the aerial fumigation of illicit crops and its deleterious health effects. In 2015, the WHO classified this agROTOXIN as “probably carcinogenic.” The government's official literature does present some indications of adverse human health effects for this chemical, but a greater emphasis is placed on the assertion that there is no dose-response effect: “the risks to sensitive wildlife species and human health from the use of glyphosate for control of coca (and poppy) production in Colombia are insignificant, especially compared with the risks to wildlife species and human beings arising from cocaine (and heroin) production in Colombia.”

Another important determinant of health is access to water. According to DANE figures for 2016, 48% of households use untreated water. This practice causes public health problems and poverty-related diseases having their most severe effects on children.

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<sup>17</sup> DANE, Vital Statistics, 2016; <https://www.dane.gov.co/index.php/estadisticas-por-tema/salud/nacimientos-y-defunciones>

## Health of prisoners in Colombia<sup>18</sup>

### Legal and constitutional framework

Pursuant to the mandate contained in Article 49 of the Political Constitution, Law 1709 of 2014 revised various provisions of Law 65 of 1993, especially those relating to the provision of health services to persons in custody. It created the National Prisoners' Health Fund as a special and independent national account with its own bookkeeping and statistics, without legal personhood. Its funds are derived from the national budget and its purpose is to guarantee healthcare access for the prison population.

It should be recalled that a 1998 decision by the Constitutional Court declared the existence of an unconstitutional de facto situation of overcrowding in the correctional system, laid down guidelines for improvement, and ordered the Colombian state to obey them. Fifteen years later, in decision T388/2013, the Court notes the persistence of overcrowding, insecurity, criminality, and cruel and unusual treatment in prisons, reiterates its declaration of unconstitutionality, and recognizes the existence of a grave and systematic violation of the right to health. This decision also discusses the prison status of women, children born in prison, indigenous people, Afro-Descendants, and the LGBTI population in custody and recognizes them as subjects of special constitutional protection.

Decision T388 declares the existence of a prison crisis and orders the Colombian state to guarantee the dignity and rights of the prison population. It states: "Every person who is or may be in custody is constitutionally entitled to a penal and prison policy that respects his dignity and is designed to concretize the effective enjoyment of his rights. As it stands, the correctional policy violates the constitutionally guaranteed minimal conditions... The State has a constitutional duty to design and implement a written public policy that progressively and sustainably guarantees the effective enjoyment of the service delivery aspects of fundamental rights." In reference to the health status of the custodial population, the Court reiterates their "right to health, to physical and mental integrity, and to live in a clean and hygienic environment" and recognizes "a dual violation of the right to health of persons in custody: they are subjected to conditions that harm their health and then deprived of access to the required health services."

However, what with the government's failure to fulfil its obligations, in 2015 the Court ruled again on the crisis of prisons and penal policy, describing them as "reactive, populist, ill-considered, volatile, incoherent, and subordinated to security policy." It added: "Historically, the administration of the country's prisons has served to perpetuate the massive violation of the fundamental rights of persons in custody, and still interferes with the rehabilitative goals of sentencing." It orders the Congress to "apply the minimum constitutional standard of a penal policy respectful of human rights when proposing, initiating, or processing bills or legislative acts." In decision T762 of 2015, the Court reiterates the unconstitutionality of the status quo and states, "*the fundamental rights of persons in custody without legal protection are not up for debate in a democracy — they must be respected...*" In this measure, the penal policy in general, and the correctional system in particular, must guarantee the *minimum conditions of decent and humane subsistence* to all prisoners, throughout the nation." A punitive populist thrust and an overemphasis on security concerns have led to phenomena of indiscriminate and arbitrary judicialization and imprisonment, not only for common crimes — albeit many of them are committed by people from dispossessed segments of the population — but also on political grounds, as witness the mass detentions that took place under the Alvaro Uribe Velez administration.

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18 Based on reports of the Committee in Solidarity with Political Prisoners (FCSPP), 2017.

In addition to penal policy, the court recognizes overcrowding as a structural problem alongside other causes of mass human rights violations, such as insufficient capacity and coverage of correctional institutions, prison cells falling short of minimum conditions of dignity and subsistence, insufficiency of resources dedicated to funding correctional policy, mass confinement of persons convicted of contempt of authority, and lack of coordination between regional entities and the Ministry of Justice and Law.

The Council of State, in decision 00329 of May 2015, reached similar conclusions: “In light of constitutional jurisprudence, the conditions of overcrowding and indignity under which the majority of persons in the Colombian correctional system are held constitute an unconstitutional state of affairs which must therefore be rectified by the competent authorities, exercising their power to do so in a democracy, within a reasonable period of time, transparently, and with room for public participation.”

## Issues

Decree 1142 of July 2016 created the National Prisoners’ Health Fund as a special and independent national account with its own bookkeeping and statistics, without legal personhood. Its funds are derived from the national budget and its purpose is to guarantee healthcare access for the prison population.

However, delays in the implementation of health service provision to prisoners have led to a total absence of healthcare delivery by USPEC, the body responsible for this function.

Regarding follow-up on specific health-related complaints that we have filed, the responses received from INPEC name the new prison healthcare provision body, USPEC, as the competent authority leaving the underlying problems unaddressed and unsolved.

Verbal reports received by the Committee in Solidarity with Political Prisoners (FCSPP) during prison visits, and other reports received in writing or by telephone indicate that the fate of 80% of medical requests — concerning prescription drugs, doctor visits, referrals to specialists, or travel for purposes of diagnosis and treatment — depend on the individual decision of the prison staff members on duty and the budget allocated to them. It is they who decide whether the patient will be allowed to go to the appointment or not, yet they have no medical training and are unfamiliar with the corresponding procedures.

Many prisoners housed in different institutions have filed guardianship motions to have their fundamental right to health respected, yet court judgments in their favour are rarely enforced.

All this has led to the collapse of healthcare provision for the whole prison population (numbered at 120,000 according to an INPEC census), in violation of their fundamental and constitutional right to health.

It is impossible to put numbers on prison deaths caused by lack of access to health care, since the majority of such deaths are not reported as healthcare-related but rather as homicides, and the corpse is delivered to the family without proper investigation of the cause of death.

Serious diseases such as high blood pressure and diabetes are not under medical observation, causing patients with these health problems to suffer renal deterioration and steady declines in their health.

Another serious health issue is that of prisoners with mental problems caused by drug addiction. We have observed that there is no physical infrastructure, much less trained staff, to handle these persons, who may exhibit frequent episodes of disturbance, in most cases due to the use of psychoactive

substances. INPEC policy amounts to stigmatization of these people, rather than addiction counseling and rehab, when they go into crisis or exhibit personality alterations such as aggressiveness or attacks against other inmates. They are subjected to cruel, degrading, and inhumane treatment such as handcuffing or forced administration of antidepressants without medical supervision. The cycle of drug use continues. There are no psychiatric units, and the only treatment they receive is solitary confinement. Overcrowding and precarious conditions in prisons — relating not only to infrastructure but also to food, sanitation, and basic services — exacerbate public health risks such as foodborne diseases and epidemics.

### **Drinking water supply**

Potable water supply is totally insufficient and often subject to disproportionate shutoffs of up to two days or even longer. Not only is this situation degrading to human health and dignity, but it also renders prison life unbearable. It directly affects the prison routine and order, causing disease outbreaks, foul odours, and pest problems. Moreover, it creates an outrageous situation affecting conjugal visits, since there is no water service in designated rooms on visit days. Families and spouses have to endure the inhumane treatment that is the daily lot of prisoners in these facilities due to the legal incapacity or unwillingness of their administrations to make changes. One of the more serious cases is that of the “Tramacúa” jail in Valledupar, where inmates report only two hours of access to water per day, causing severe problems of cleanliness and hygiene exacerbated by temperatures up to 40°. <sup>19</sup>

### **Rights of peasants in Colombia<sup>20</sup>**

There is no recognition of peasants’ rights in Colombia. Custom and law (both national and international) predicate land access on property rights. The Constitution of 1991 does grant protection to agrarian property, but does so within the sphere of property rights, ignoring those who conceive of land as something different — or rather, something more — than an object to be used, exploited, and disposed of<sup>21</sup>. In addition, this protection only covers landowners; i.e., those who already have legal control over property. For those lacking deeds, the state establishes a duty to progressively seek access to land ownership and ignores existing de facto relationships with the land other than ownership.

Section 64 of the Political Constitution establishes special measures to protect farmworkers. It obligates the state to take measures to promote access to land and other services for farmworkers. This provision, along with section 65, which protects food production, and section 66, concerning farm credit, constitute the core of the specific constitutional protections afforded the peasantry.

The National Agrarian Census reflects a well-known history. Land is extremely concentrated, with the 69.9% of agricultural units under 5 hectares occupying less than 5% of the registered area while the 0.4% of units over 500 hectares occupy 41.1%. Only 6.3% of the rural area is cultivated. Of this, 74.8% corresponds to long-term crops, a figure that has steadily increased since the 1960 census, when it stood at 43.7%. These alarming results are indicative of a deeply exclusive rural development model.<sup>22</sup>

But land concentration is not the only factor negatively affecting the right to a decent life and the economic and social rights of the peasant population in general. Also weighing heavily in the equation

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19 <http://www.elspectador.com/noticias/judicial/internos-de-carcel-tramacua-valledupar-reclaman-salubri-articulo-558801>

20 Based on the arguments presented in support of bill 006 of 2016, authored by Senator Alberto Castilla.

21 See: [http://semillas.org.co/es/revista/reconocimiento-pol-2#\\_ftn5](http://semillas.org.co/es/revista/reconocimiento-pol-2#_ftn5)

22 The census results are available at <http://www.3ercensonalagropecuario.gov.co/>

is land grabbing by individuals and companies as well as plunder and forced displacement. This wealth-concentrating and inequality-generating model has imposed great hardship on peasant, indigenous, and black families, who suffer from high malnutrition rates, lack access to education and healthcare, and are often driven into casual and exploitative labour arrangements. Meanwhile, the extraction of raw materials has social and environmental impacts on the places where they live. All this takes place within a situation of internal armed conflict and paramilitary violence, which inflicts a tremendous toll on Colombia's rural populations.

A draft constitutional reform presented in 2016 that would have granted official recognition to the peasantry as subjects of rights made no headway. Still, organizing efforts and initiatives continue with a view to guaranteeing access to farmland, protecting the peasant and family economy, and enshrining the territorial sovereignty of people who live on the land, and thereby making possible the realization of their economic, social, and cultural rights.

However, every day the government and large-scale agribusiness have been spearheading new initiatives that run counter to peasants' rights and peacebuilding. Currently, the national government is using a fast-track mechanism approved for the implementation of the accords with the FARC to push through a bill titled "Social Governance of Rural Property and Land." It presents the bill as a strategy for formalization of property rights and access to vacant lots across the nation, but in reality the initiative is a frontal attack on peasants' right to their territory, culture, and physical survival. At its core, the bill is designed to favour investment by agribusiness multinationals and national monopolies. Senator Alberto Castilla writes, "Far from guaranteeing progressive access to land for the peasantry and extending the Farm Family Unit as a measure to fight the pervasive poverty, socioeconomic inequality, and exclusion reigning in the Colombian countryside, this lands bill creates a legal framework that reinforces the ZIDRES model of concentration of fallow lands. It grants up to twenty-year concessions in the form of usage or area contracts to big investors, and in so doing utterly ignores the constitutional requirement for the state to grant progressively increasing access to land for farmworkers."

## **Land governance and public consultation<sup>23</sup>**

Public consultation is a civic participation mechanism recognized in the Political Constitution of Colombia, in Article 33 of Law 136 of 1994, in Statutory Laws 134 of 1994 and 1757 of 2015, and in decision T-445/16 by the Constitutional Court. This constitutional mechanism has become an instrument for the defence of land, collective rights, and the economic, social, cultural, and environmental rights of peasant, black, and indigenous communities as well as the urban population, which is dependent on water and food production coming from the countryside.

As noted above, in the framework of an extractivist development model, million of hectares of land and community territories have been ceded for mining, hydroelectric, and petroleum projects, causing irreparable environmental and social harms and producing no economic benefits such as rents and royalties for the country.

However the government has tried to ignore the binding nature of public consultations. It has attacked both the mechanism itself and the statements made in the context of consultations. It has also opposed organizing efforts by communities in defense of water, food, and the material and cultural life of the territories. It has sided with the interests of the private sector and foreign capital. Statements by the high Colombian government flout civil rights and the legal framework. The Minister of Mines, in the

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23 Based on reports of the Environmental Committee of Tolima.

case of the public consultation taking place in Cajamarca-Tolima, has forgotten that the “Colosa Regional” project lacks the environmental licence necessary to operate; without this licence, the company has no acquired rights in Colombia. The social organizations have asked the government to respect the Colombian Constitution, national law, the jurisprudence, and especially the democratic character of the country. They seek recognition for the idea that if the country is truly to achieve peace, then its communities must overcome their conflicts peacefully and without violence.

Also of great concern are the systematic threats that have been made by paramilitary groups against members of local environmental committees and other social organizations who are spearheading public consultation processes and defending the collective right to a healthy environment. Right-to-life guarantees do not exist for those who promote and participate in these democratic and constitutional processes.

Despite the government’s opposition and the unending attacks against communities and social organizations, the people have persisted in their demand to be consulted. The residents of certain municipalities are saying no to mining and petroleum exploitation.

The Ministry of Mining announced that 44 public consultations are planned for June 2017. In the face of clear judgments by the Constitutional Court, the national government continues to question the legal validity of these consultations and, joined by business interests, to present them as obstacles to development.