



Alternative Report on the Sixth Periodic Report before the United Nations Committee against Torture

Colombian Coalition against Torture

Bogotá, March 2023

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Glossary

CRPD	Convention on the Rights of Persons with Disabilities
ICBF	Colombian Institute for Family Welfare
CIDTP	Cruel, Inhuman or Degrading Treatment or Punishment
PARD	Administrative Process to Restore Rights
ERON	National Level Correctional Facility
CDT	Transitory Detention Center
PDL	Person(s) Deprived of Liberty
CIDTP	Cruel, Inhuman, or Degrading Treatment or Punishment

Introduction

During the 2015 to 2022 period, Colombia continued to fail to comply with its international obligations under the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, as well as not complying with recommendations made by the CAT in its latest assessment.

In Colombia, systematic patterns persist in the crime of torture and CIDTP against vulnerable sectors and populations including children and adolescents, persons with disabilities, persons deprived of their liberty, human rights defenders, the elderly, women, and the LGBTIQ+ population. Torture is used by both illegal armed actors and the state to constrain, silence, and stigmatize the exercising of different rights. The invisibility of acts of torture and CIDTP persists when they are committed concomitantly with other related crimes and violations. The levels of impunity and lack of reparations to victims continue to be alarming, while underreporting and a lack of state tools for monitoring this crime are of particular concern.

During this period there were three circumstances that made the fight against torture in the country more precarious. First, confinement caused by the COVID-19 pandemic created new scenarios for the commission of the crime of torture or CIDTP. The pandemic also intensified the commission of this crime in previously identified scenarios, such as facilities where persons deprived of liberty are held.

Second, acts of torture and CIDTP were committed as a mechanism to prevent the exercising of the right to protest during the social demonstrations that took place in the country and that were disproportionately repressed by state agents.

Third, non-compliance with the Final Peace Agreement and territorial disputes between different actors in the armed conflict have led to an increase in human rights violations. This situation has meant that the patterns of torture identified in the previous report continue to occur, especially against women and girls who are victims of sexual violence.

As such, the civil society organizations that form part of the Colombian Coalition Against Torture (CCCT),¹ together with Corporación Sisma Mujer, the Programa de Acción por la Igualdad y la Inclusión Social (PAIIS-Program of Action for Equality and Social Inclusion) at the Universidad de los Andes, and the Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado

¹ The Colombian Coalition Against Torture (CCCT) is a group of human rights organizations that has promoted actions before national and international bodies for the prevention and denunciation of and awareness-raising about torture and cruel, inhuman, and degrading treatment in Colombia since 2003. The coalition consists of the Asociación de Familiares de Detenidos- Desaparecidos (ASFADDES- Association of Relatives of the Detained-Disappeared), Centro de Atención Psicosocial (CAPS- Center for Psychosocial Attention), the Colectivo de Abogados José Alvear Restrepo (CAJAR- José Alvear Restrepo Lawyers Collective), the Comisión Colombiana de Juristas (CCJ- Colombian Commission of Jurists), Corporación REINICIAR, Corporación Vínculos, the Fundación Comité de Solidaridad con Presos Políticos (FCSPP- Committee for Solidarity with Political Prisoners Foundation), and the World Organisation Against Torture (OMCT).

en Colombia (COALICO-Coalition Against the Involvement of Children and Youth in the Armed Conflict in Colombia), present the following report to the CAT. The report describes the situation of torture and CIDTP in Colombia during the last seven years and the recommendations for which there has not been compliance.

It is important to note that this report is presented during a significant change that is occurring in Colombia. After four years of an administration that was regressive in terms of human rights and opposed the Peace Agreement signed in 2016, which led to resurgent violence including torture and CIDTP (as part of and beyond the armed conflict), a new administration took office in August 2022 and important changes in terms of human rights and peace were announced. One of the first outcomes of this change was the presentation of a bill that sought to ratify the Optional Protocol to the Convention Against Torture (OPCAT) before the Congress of the Republic on 7 February 2023. For the organizations authoring this report, this represents progress towards a fulfillment of the recommendations issued by the CAT. To date, Colombia is one of the few countries in Latin America that has not yet ratified this instrument. Previous administrations justified their decision not to ratify it by referring to the existence of a strong institutional framework to prevent torture.

Despite this important initiative, which was the fruit of the efforts and advocacy actions carried out by the Colombian Coalition against Torture (CCCT) for decades to denounce the persistence of this crime in our country and demand the ratification of this instrument, Colombia's work is still far from over in terms of compliance with numerous recommendations on torture.

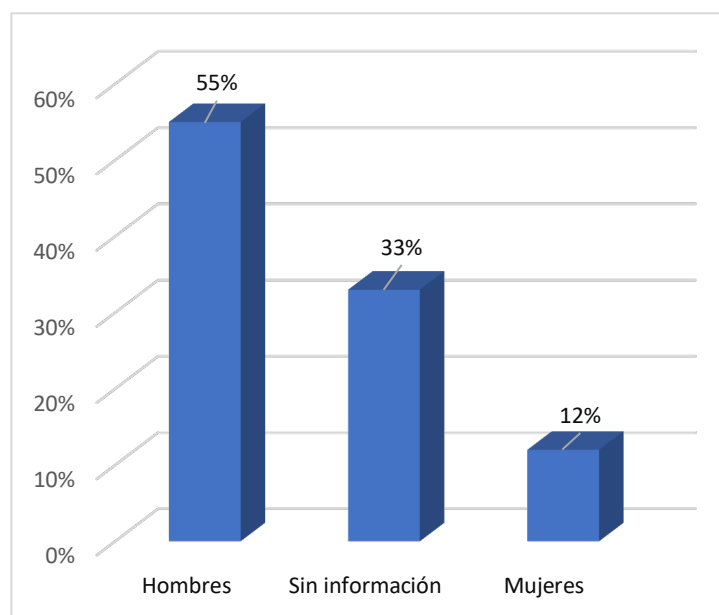
For the CCCT and the other organizations that have prepared this report, we are currently experiencing a historical moment to make structural changes and take truly effective measures to stop torture, mistreatment, and cruel, inhuman, or degrading treatment in Colombia. We also have an opportunity to settle the country's outstanding debt to victims of this crime. Along with this report, we have requested the most rigorous review possible from the Committee to identify the normative, institutional, and behavioral changes required to generate real transformations in the fight against torture in Colombia. This review should lead to specific, demanding, complex, complete, and measurable recommendations that serve as effective guidelines in the design of programs and policies for an administration that is willing to undertake major changes in this area.

1. Overview of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in Colombia (CAT, Arts. 1, 2, 4)

Between 1 January 2015 and 30 June 2022, a total of 495 torture cases were documented in Colombia, with 12% committed against women and 55% against men. In 33% of the cases, the

gender of the victims is unknown and, in at least 12 cases, children or adolescents under 15 years of age were identified as the victims.²

Figure 1. Gender of Torture Victims between January 2015 and June 2022



Source: CCJ Sociopolitical Violence Database

Torture encompassed most of the national territory during this period, affecting 28 regional entities, 27 departments, and the Capital District. The highest levels of torture were concentrated in the departments of Cauca (with 68 cases), Norte de Santander (50), [the city of] Bogotá (46), Antioquia (42), and Valle del Cauca (37). These cases of torture are not isolated from other serious human rights violations in the country, as torture worsened in regions that have historically experienced the effects of the armed conflict and where the majority of the population identify as a member of vulnerable sectors such as the peasant, Afro-Colombian, and Indigenous populations.

During this same period, the Early Warning System (SAT or Sistema de Alertas Tempranas) issued several alerts showing the structural and imminent risk faced by the civilian population in the context of the armed conflict. This risk is configured by dynamics of violence caused by territorial disputes between different armed groups present in the territory. These include the ELN, EPL, paramilitary groups, state actors, dissident factions from the former FARC-EP, as well as others. This type of risk is compounded by the proliferation of gangs that act as urban cells and support for organized armed groups.³

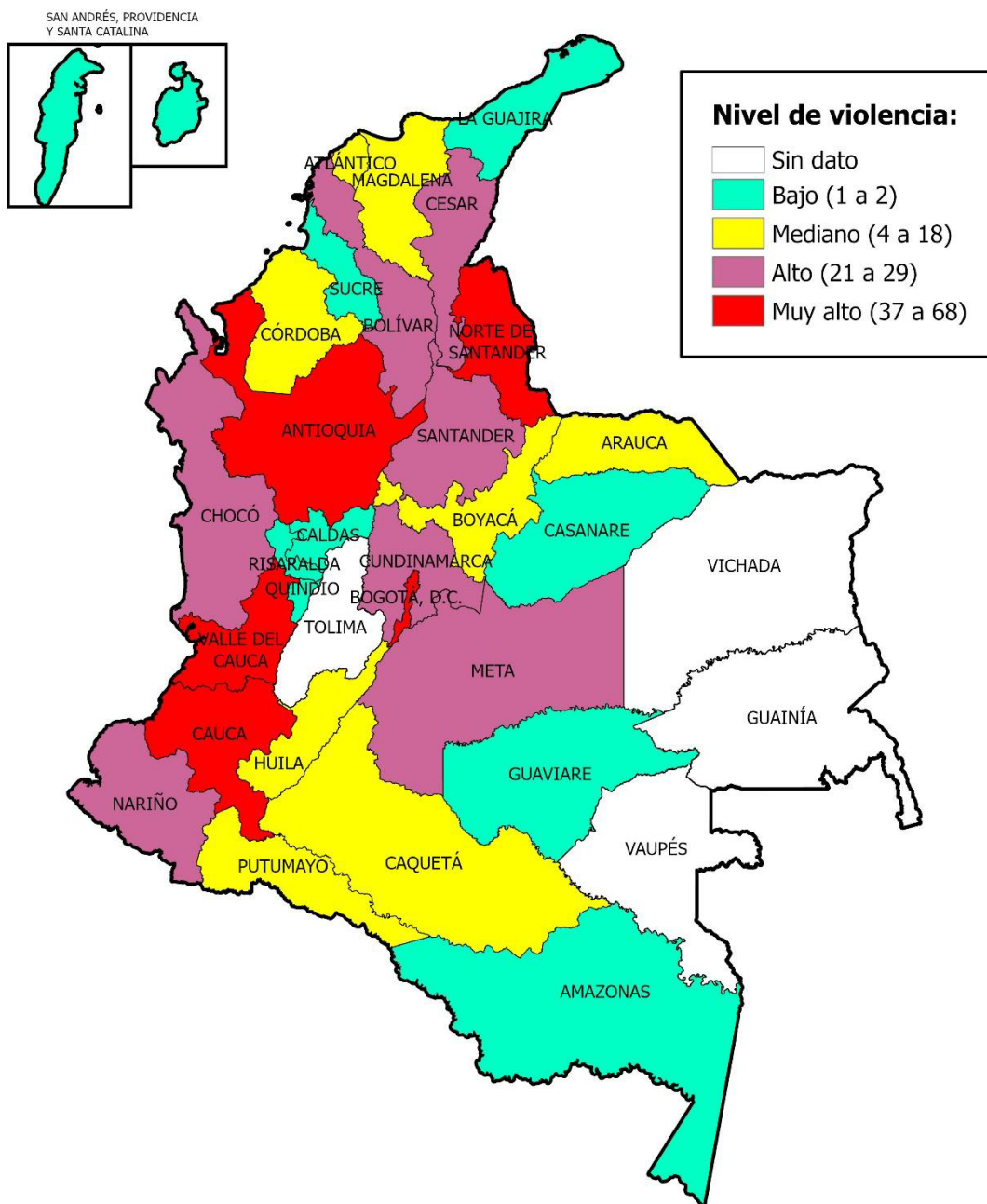
² Information systematized and analyzed by the Comisión Colombiana de Juristas. Source: Noche y Niebla Journal issues: 52, 54, 56, 58, 60, 62, 64, and 65. Available at: https://www.nocheyniebla.org/?page_id=399

³ National Ombuds Office: 2022. Early Warning System (SAT). Warnings 001 and 009 of 2022. Available at: <https://alertastempranas.defensoria.gov.co/?orden=&criterioBusqueda=cauca&anioBusqueda=2022>.

The presence of gangs specifically exposes children and adolescents to being pulled into organized armed groups. The illegal recruitment of children and adolescents by armed actors violates several of the legal rights of children including their rights to freedom, health, food, education, and the right to grow up in a healthy environment free of torture and cruel, inhuman, and degrading treatment or punishment.

It is important to emphasize that in Colombia, torture and related violations have historically been conceived as corporal and psychological, as well as techniques involving domination and social control. Torture has the purpose of generating fear and anxiety to send an exemplary message to the rest of society.

Map 1. Departmental Map of Torture Cases from 2015 to June 2022



Source: CCJ Sociopolitical Violence Database

Prepared by: Colombian Commission of Jurists

Crimes of torture, cruel, and inhuman treatment have been on the rise with the highest peaks occurring between 2018 and 2021. In the period analyzed by this report (2015-2022), 2019 had the highest number of cases (86), corresponding to 17.37 % of the total during the period, followed by 2020 (77 cases) corresponding to 15.56% and 2015 (74 cases), representing 14.95% of the total. According to the annual report published by the UN Office of the High Commissioner for Human Rights in Colombia, human rights violations increased in 2019.⁴

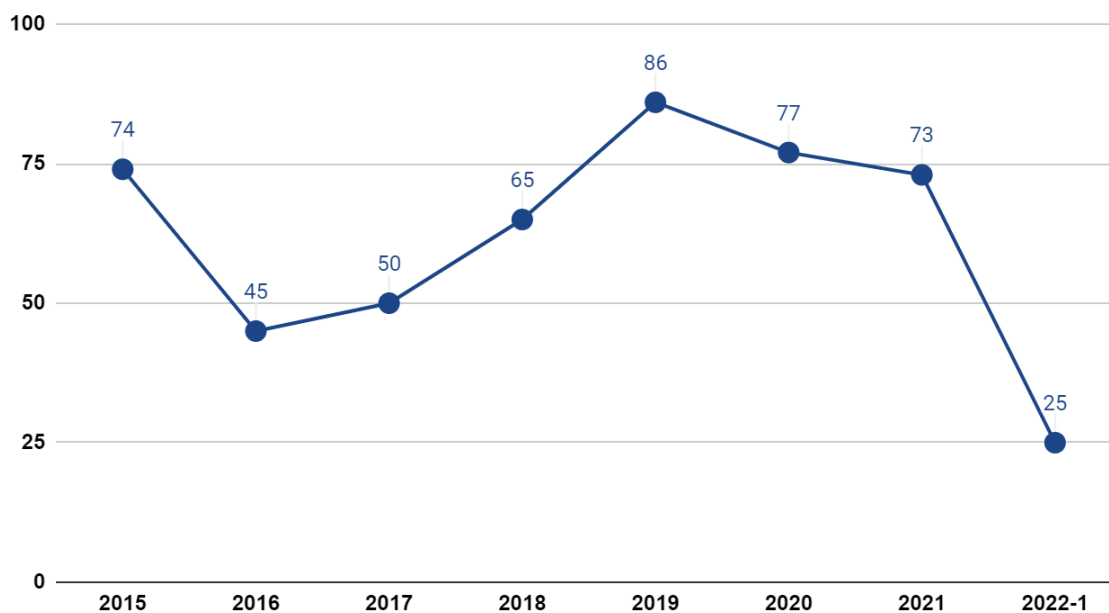
In 2020 there was a humanitarian crisis caused by the COVID-19 pandemic during which there was evidence of human rights violations that in many cases became a form of torture. This was particularly the case for the most vulnerable sectors including people with disabilities, children and adolescents, the elderly, and persons deprived of liberty.

In 2021, Colombia experienced an intense process involving demands for the fulfillment of rights and a surge in social mobilizations. The civilian population's discontent with the humanitarian situation, the violation of environmental and territorial rights, non-compliance with the Peace Agreement, and the announcement of regressive social policies led different sectors of society to raise their voices and take to the streets in protest.⁵ In response, the state violently repressed demonstrations and punished and intimidated protesters using excessive and arbitrary force (in violation of international norms and standards related to the use of force). Several cases of torture were identified in this context.

Figure 2. Frequency of Torture from 1 January 2015 to 30 June 2022.

⁴ United Nations (2019) “2019, un año muy violento para los derechos humanos en Colombia.” Available at: <https://news.un.org/es/story/2020/02/1470201>

⁵ Defensor la Libertad (2022) “¿QUÉ HA PASADO CON LA PROTESTA SOCIAL EN COLOMBIA EN 2022?” Available at: <https://defenderlalibertad.com/que-ha-pasado-con-la-protesta-social-en-colombia-en-2022/>

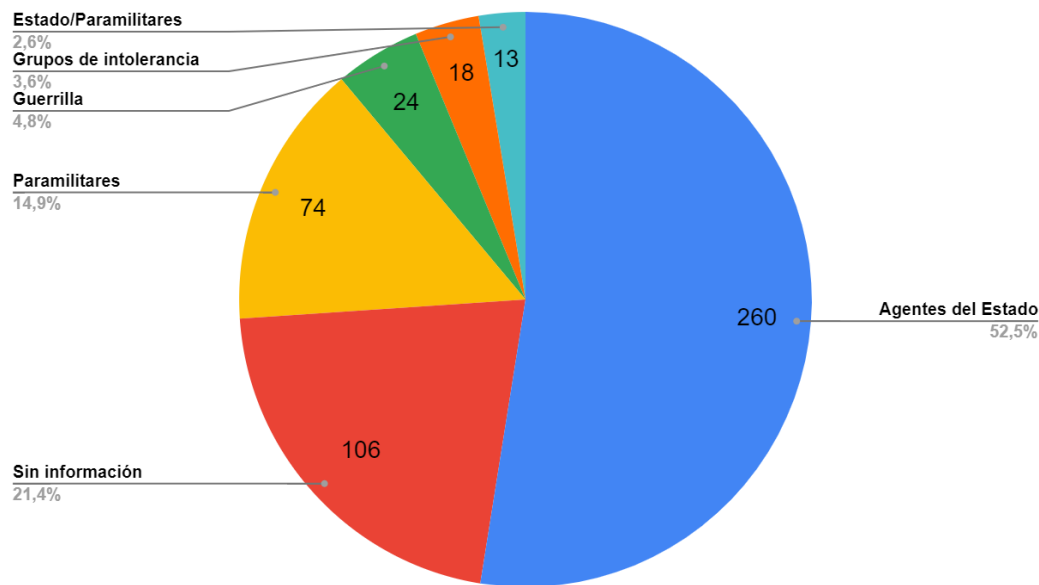


Source: CCJ Sociopolitical Violence Database

Regarding the alleged perpetrators of torture, 52.5% of cases are attributed to state agents, 14.9% to paramilitary groups, 4.8% to guerrilla groups, 3.6% to socially intolerant groups and 2.6% to acts committed in collusion between paramilitary groups and state agents. The alleged perpetrator of torture is unknown in 21.4% of cases.

It is important to note that the pattern presented in the previous report period is ongoing, with state agents being the primary perpetrators of torture in Colombia, despite the Committee having made specific recommendations on the matter.

Figure 3. Alleged Perpetrators of Torture between 1 January 2015 and 30 June 2022



Source: CCJ Sociopolitical Violence Database

Torture affects the physical and mental health of those who experience it. These effects extend to family, friends, communities, and organizations. Vulnerable persons and those that require special protection such as children and adolescents, women, peasants, Indigenous people, Afro-Colombians, persons of diverse sexual orientation, and persons deprived of liberty, among others, are affected by this crime in a differentiated and disproportionate manner. In Colombia, torture is concentrated in departments that have been historically affected by the internal armed conflict and has occurred in a context of silencing and repressing social leadership and the defense of rights.

Torture and other forms of cruel, inhuman, and degrading treatment or punishment do not occur in Colombia in isolation. Generally, other human rights violations take place prior to, during, or after the commission of acts of torture.⁶ For example, Cali and Bogotá were epicenters of violence in the context of social protests. In these cities, the repression of the protests caused a number of human rights violations such as eye injuries, physical injuries, homicides, arbitrary deprivations of liberty, gender-based violence, sexual violence, enforced disappearances, and other acts that amount to or are related to torture. This is discussed in greater detail in Section 2.7. of this document.

Torture and other related human rights violations have been documented amid intense claims for the fulfillment of rights. These demands are met with repression and zero progress in terms of

⁶ For example, between 1 January 2015 and 31 December 2018, the Sociopolitical Violence Database operated by the Comisión Colombiana de Juristas documented 546 violations related or concomitant to the occurrence of torture. Of these, 22.89% of the cases correspond to women, 60.62% to men and in 16.48% the gender of the victim is unknown.

protection, prosecution, and punishment. Victims of torture and cruel and inhuman treatment face cumbersome procedures to file complaints, high levels of impunity, and the indifference of the state, which is responsible for both actions by security agents and its lack of action to address this issue.

2. Patterns of Torture in Colombia (CAT, Arts. 2, 10, 16)

Patterns persist in Colombia in relation to the commission of the crime of torture and CIDTP. Acts of torture do not generally occur in isolation. They are usually recurrent in certain contexts or are directed against specific social sectors. As mentioned above, during this period, state agents were identified as the primary alleged perpetrators of this crime in Colombia. Torture and CIDTP are strategies used by the state and armed actors to control and constrain the exercising of different rights. Torture and CIDTP are also used as a form of social control, to repress expressions of social discontent, and as a form of discrimination. The patterns of systematicity found in the commission of the crime of torture and CIDTP are presented below. It is important to note that these patterns are similar to those presented in the report from the previous period. They show that the Colombian state did not comply with the recommendations made by the CAT, nor did it take any measures geared at transforming the systematic patterns with which torture is committed in Colombia.

2.1. Torture as a Form of Discrimination

Torture in Colombia is repeatedly committed against persons belonging to historically discriminated groups. It forms part of violence against women, children and adolescents, and persons with disabilities, which will be discussed in Section 4 of this report.

The different forms of torture and CIDTP practiced against these populations were accentuated during the prolonged lockdowns established in the country during the COVID-19 pandemic. Women, children, adolescents, and people with disabilities experienced different physical and psychological afflictions and the state did not take action to alleviate these. On the contrary, the Colombian state adopted measures that aggravated these situations.

In the context of the Colombian armed conflict, these populations, particularly women, children, and adolescents, continue to disproportionately suffer the effects of the war on their bodies while their life projects are repressed. No measures have been taken by the state to prevent these populations from continuing to endure both physical and psychological acts of torture and CIDTP in the context of the armed conflict.

In the context of social protests, women were repeatedly subjected to torture and CIDTP, which restricted their right to demonstrate freely. The commission of acts of sexual and gender-based

violence by those who repressed protests in Colombia particularly affected young women in the country.

2.2. Torture as an Instrument of Intimidation Against Human Rights Defenders and Social Leaders (CAT, Arts. 2, 10, 12, 13, 16)

Among the multiple violations committed against the lives and physical integrity of human rights defenders in Colombia, torture and CIDTP are aggressions used to silence the voices of those who defend rights and lead social causes in Colombia. This practice affects human rights defenders, their communities, and social organizations.

Incidents of torture and CIDTP against this group generally occurred in areas where illegal armed actors wish to control the civilian population and quell social leadership. It was evident that many of the bodies of murdered human rights defenders were decapitated, had visible signs of physical torture, and were publicly exhibited. This is undoubtedly a way to control the local population, but it also generates fear and anxiety among people who defend rights and lead social causes in their regions, representing a form of psychological torture.

During the reporting period, sexual violence was committed against women leaders and sexually and gender diverse activists and community representatives.⁷ These populations were also victims of threats that had an additional factor compared to the threats received by male defenders and social leaders as they *“include[d] sexist content, alluding to their bodies or sexual insinuations. The ultimate aim of these threats is to prevent active participation in the representation of social and community interests through a direct attack on her status as a woman.”*⁸ These acts of aggression generate anxiety and fear among women defenders and activists who are also members of the LGBTIQ+ community.⁹

The situation faced by human rights defenders in the country is critical. Despite constant denouncements and insistent requests [to respond to] of aggressions against human rights defenders, specifically acts that are directly related to their work to defend human rights, the judicial processes associated with these investigations have advanced slowly.¹⁰

⁷ According to the Somos Defensores program, the acts of torture recorded in relation to homicides against [human rights] defenders in the first half of 2022 include: *“A particularity is that all cases occurred against women and sexual and gender diverse individuals; three were women, one of them was a trans woman, and the fourth case was against a male activist from the LGBTIQ+ community. In addition, the murders of 3 of these persons were gender-based, i.e., motivated by their sexual identity (2 were feminicides). This highlights the additional risks faced by women and persons with diverse gender and sexual identities who suffer more severely from violence amid a misogynist culture that tries to eliminate difference.”* Report: Al Filo de la Oscuridad, 2022. p., 79.

⁸ Inter-American Commission on Human Rights Human. Human Rights Defenders and Social Leaders in Colombia. 2019. OEA/Ser.L/V/II. Doc. 262, 6 December 2019, p. 41, paragraph 71. Available at: <https://www.oas.org/en/iachr/reports/pdfs/colombiadeffenders.pdf>

⁹ *“The acts aimed at punishing the participation of women in the public sphere affect the leader and her organization and seek to inhibit the emergence of new leadership and visible women’s organizational processes.”* Ombuds Office (28 February 2018). Early Warning Note No. 026-19. P. 56. Cited by Sisma Mujer and Red Nacional de Mujeres Defensoras, Situación de las mujeres defensoras en Colombia. 2013 – 2018. 2019. Monitoring Report on Court Order 098 of 2013. 2019, p. 50.

¹⁰ In the findings of the report *“Sistematicidad, estigmatización y precarios avances en materia de investigación, juzgamiento y sanción Patrones en el asesinato de las personas defensoras, líderes, líderes sociales y excombatientes en los territorios de Norte del Cauca; Urabá antioqueño y Bajo Atrato chocoano; Sur de Córdoba; Nordeste y Bajo Cauca antioqueño [Systematization, stigmatization and precarious progress in terms of investigation, prosecution and punishment, Patterns in the murder of defenders, social leaders, and former combatants in the territories of Norte del Cauca, Urabá Antioqueño, the Bajo Atrato Chocoano, Sur de Córdoba, Northeast and Bajo Cauca Antioquia]”* it was found that *“the practices of the Office of the Prosecutor General (FGN) on the treatment and presentation of statistics on the handling of homicide investigations do not comply with the parameters established by the Inter-American Commission on Human Rights as they:*

When investigated, these processes do not take into account the use of acts of torture and mistreatment as a form of social control and to sow terror in communities. This evidences that the state has not responded objectively or efficiently to the recommendations made regarding the investigation and punishment of attacks. It also ignores the state's duty to protect the physical safety and treatment of human rights defenders and social leaders.

It is urgent that cases of torture of human rights defenders are investigated quickly and appropriately. There is also a need to establish suitable channels through which victims can file reports of torture in accordance with the obligations enshrined in Articles 12, 13, and 16 of the Convention.

2.3. Torture as a Form of Disciplining the Incarcerated Population (CAT, Arts. 2, 10, 11, 16)

In the Colombian penitentiary system, different kinds of torture have been used to manage and impose penitentiary order at the expense of the dignity and physical and mental integrity of persons deprived of liberty. These dynamics include the arbitrary and excessive use of force, prolonged isolation, sexual violence, and torture or cruel, inhuman or degrading treatment of a psychological nature.

The arbitrary and excessive use of force is often justified by prison guards as necessary to safeguard internal order and security. This phenomenon is expressed in two ways: beatings, physical intimidation, body-to-body “fighting”, strangulation maneuvers, physical restraint, and blows with batons; and the use of potentially lethal weapons that violate the regulation governing their rational use. Inmates at the Valledupar prison¹¹ spoke of being victims of the irregular use of pepper spray on their genitals and that guards continued to use tasers even though inmates were already subdued and secured.

These forms of violence also occur in the transportation of persons deprived of liberty, during cell inspections, and within prison blocks. These cases include the use of tear gas, the destruction of personal items, and the transfer of persons deprived of liberty with restraints (handcuffs) who are placed in unnatural positions during the journey, which causes pain to their limbs and bodies.

- Use a 'progress in clarification' category without specifying for how many cases it was possible to establish the intellectual authors, structures or alliances behind crimes, or the accomplices and perpetrators.

- Disseminate information to the public that does not coincide with the OAG's actual prosecution activities. For example, in the cases of social leaders Aquileo Mecheche, José Leandro Chavarria, and Norberto Alonso Gutiérrez, none of those arrested for the alleged murder of these leaders were arrested for the crime of homicide, but for other crimes such as conspiracy to commit a crime or illegal possession of weapons.

- Do not include cases documented by the Ombuds Office or by sources from civil society organizations. The FGN's cases are only based on those documented by the Office of the United Nations High Commissioner for Human Rights in Colombia (OHCHR), despite the fact that the agency has issued a public warning about the provisional nature of its records and that they need to be supplemented with other sources.

Indepaz, Colombian Commission of Jurists, Somos Defensores Program, Interchurch Commission of Justice and Peace, Forjando Futuros Foundation. 2021. Available at: https://www.coljuristas.org/nuestro_quehacer/item.php?id=488

¹¹ Interview conducted with inmates on 3 December 2021 at the Valledupar High Security Prison. A criminal investigation is currently underway in relation to this incident.

Prolonged isolation usually occurs in deteriorated areas of prisons while there are cases of the confinement of entire prison blocks for several months, with persons deprived of liberty not able to access the rest of the establishment for breaks, recreational activities, work, or study. This generates sensory deprivation as they do not receive sunlight and are cut off from the outside world. During the interviews conducted by the CSPP in the San Isidro prison in Popayán, prisoners stated that they were locked in their cells for around three months as a punishment for initiating strikes in 2020 to demand improved COVID-19 protection for inmates.

Sexual violence as torture inflicted on persons deprived of liberty takes many forms in Colombian prisons. We identified a recurrent practice of invasive searches by Custody and Surveillance personnel of both persons deprived of liberty and visitors. On several occasions these searches involved unjustified touching of genitals and private parts. In addition, forced stripping and sexualization with the purpose of humiliating detainees has been documented. In 2020, this practice was recorded in videos during a standoff at the La Modelo prison in Bogotá. We identified cases of sexual violence committed by inmates at the instigation and/or with the acquiescence of prison guards. INPEC received 18 complaints of sexual violence against persons deprived of liberty between 2020 and 2021.

We identified cases of torture and CIDTP in the form of constant threats made to persons deprived of liberty about worsening their conditions of confinement, alienating them from their support network through unjustified transfers, putting them in prolonged isolation, and retaliating against their families and belongings. In these cases, and despite the fact that the threats do not always materialize, PDL report that they are emotionally affected by the levels of anxiety and defenselessness caused by these threats.

Also found to be recurrent was the mistreatment of women, Indigenous, Afro, and LGBTIQ+ populations that are deprived of liberty because of their identity and for not complying with the roles and stereotypes socially assigned to these historically discriminated populations. Between 1 January 2020 and 31 October 2021 alone, INPEC recorded 44 complaints of verbal abuse and 67 complaints of discrimination based on sex, race, gender, and other grounds committed by INPEC personnel against inmates and family members.

In relation to recommendations from the Committee's previous report, the state is reminded that, "the state party should ensure that the conditions of detention conform to international standards in this arena. In particular, the state party should: (a) Ensure without delay the allocation of necessary resources for the proper medical and health care for prisoners; and (b) Urgently adopt effective measures to reduce occupancy levels in prisons, primarily through the use of alternatives to custodial sentences in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)."

Second, that the state party should: “(a) Ensure that solitary confinement is only used as a measure of last resort, for the shortest possible period of time, and under strict conditions of supervision and judicial control; (b) Prohibit the application of solitary confinement measures for mentally ill prisoners and juveniles in detention facilities; (c) Establish a control system to supervise the application of solitary confinement.”

Finally, the use of torture as a means of subjugating the prison population and to repress protest, as well as the lack of regulation regarding the use of force in relation to acts of torture inflicted through the mechanisms described above, shows that the Colombian state did not comply with the recommendation made by the Committee to “adequately train all law enforcement agents on the use of force and regulate the use of firearms by security forces in accordance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.”

2.3.1. The Lack of Regulation of the Use of Force Against People Deprived of Liberty and its Relationship to Incidents of Torture

In this section we discuss the three main difficulties that we identified regarding the current regulation of the use of force against persons deprived of liberty and how these are related to the acts of torture suffered by this population in the country. The first difficulty we encountered is a lack of clarity regarding many of the concepts used in the regulations. The second problem is a result of the emphasis that the regulations place on describing tactics for the use of force, and not on when and why an official should use force. The third issue is that the procedures for controlling the use of force depend on officials’ own assessment of the need to activate these controls.

The use of force is one of the most relevant issues when developing a policy to prevent torture and mistreatment. There are significant challenges to achieve the adequate use of force inside prisons in Colombia. Evidence of this problem is that between 2020 and 2021 the majority of reports, complaints, and claims by PDL (related to human rights violations and submitted to INPEC) referred to excessive use of force.

The regulation of the use of force is contained in INPEC Resolution 192 of 25 January 2018 and the Tactical Technical Manual for the development of the Use of Force Model. Both documents are supported by the legal powers conferred by Article 125 of Law 65 of 1993 and Article 8 of Decree 4151 of 2011.

Taking this into account, we consider that there are risks with delegating absolute regulation of this issue to INPEC as having clear, precise, rigorous, and respectful regulations of international standards is a determinant to prevent acts of torture and other cruel, inhuman, or degrading treatment or punishment against persons deprived of liberty. As will be shown below, self-regulation may in fact be one of the reasons why these rules end up endorsing irregular penitentiary practices. These have grown over time as a way of managing a dysfunctional penitentiary system through arbitrary acts and violence disguised as legality.

Regulatory provisions are either flexible or vague when they relate to the principles of legality, necessity, proportionality, temporality, and rationality. For example, criteria for the use of force in the penitentiary and prison systems are too broad. Three of the four criteria could justify the use of force in almost any scenario: 1. For the protection of public assets; 2. To prevent the occurrence of events that alter the order or discipline of an ERON; 3. To enforce internal rules and regulations.

This means that officials can use force in scenarios where it is not required, as there is a wide margin of interpretation of what “*order*” and, particularly, “*discipline*” imply. It is even questionable if force can be used for disciplinary offense and not exclusively for imminent risks to life, integrity, and security, which is what is normally established by international standards. We also found that inmates are unaware of internal regulations in several facilities. Internal regulations are not publicized and inmates do not have access to them. This generates a setting in which custody and surveillance officials can act arbitrarily in a climate of acceptance and normalization.

The manual presents a strategy for the use of force based on an assessment of the risk, threat, and behavior of the person deprived of liberty. Although it details how an official should act at each level, the description of the assessment levels is quite broad. For example, the first level is described as “a scenario in which the PDL voluntarily accepts and respects the regulations of the Colombian Penitentiary and Prison System.” The second level is described as when “there is a latent risk and there may or may not be cooperation from the PDL.” The third level does not present any description beyond the title “active physical resistance”. It is this level where the use of physical force and coercive means is permitted. The absence of elements that would help an official clearly evaluate the level of a situation that might require the use of force is a cause for concern.

Based on this description of the procedure, it can be inferred that level three is a result of the failure of level two without the risk or threat having increased. It is even more concerning that the purpose of the first tactic at this level (physical control techniques) is to “convince the person deprived of liberty by argument or by force to change their way of acting or thinking.” This seems to indicate that the way of thinking of the person deprived of liberty is a situation that merits the use of force and coercive means such as a truncheon-type baton, chemical agent tear gas, electrical control and pneumatic devices, the latter being most commonly used “*to counteract behaviors of the person deprived of liberty that affect the order, discipline, and security of the facility.*”

The fourth level is described as “*non-lethal aggression*” and the fifth level as “*an action that places the Custody and Surveillance Body (CCV) or third parties involved in a conflict situation in imminent danger of death or serious injury.*” The description of the procedure omits the important qualifier of possible injuries, which could become confused with level four. This is concerning because level five authorizes the institutional use of firearms and ammunition. At the

end of the Manual, there is a small section on “*command responsibility*,” which establishes the best practice involving “*the obligation to inform the officer on duty and/or the watch commander as expeditiously as possible*.” This officer shall, among other actions: “*Inform the Director of the facility so that they may inform the Regional Directorate and the Strategic Group of Penitentiary and Prison Information if they consider it necessary...to request the presence of the penitentiary services they consider necessary to deal with the situation, including the judicial police service which, if possible, will record a video of the events. If necessary, members of the judicial police service will denounce any actions that violate the legal code with the relevant authorities*.”

The problem with this provision is that these important actions are always subject to whether the official considers them necessary. The document does not provide conceptual or practical elements or tools to determine when these actions are or are not necessary. In other words, the obligations are not based on an objective situation, but involve a subjective assessment made by an official without clear criteria to guide their assessment. This even goes against the legal obligations of prison officials who must denounce any irregular, arbitrary, or illegal act.

Although the Tactical Technician’s Manual that contains the model for the use of force mentions different types of potentially lethal weapons and their probable use, the level of training for the use of each weapon with which prison guards are equipped is unknown. It seems that, in practice, not all guards are continuously trained on the use of these potentially lethal weapons. The objective risk of this situation is somehow permitted. These weapons end up being used in inadequate and unregulated ways, increasing the subjective risks and possible damage caused to the health of inmates. There are several documented cases of the improper use of these weapons to increase the harm done to a person. These cases go against the principle of proportionality and could constitute an act of torture, as the harm would be inflicted with the purpose of punishing and teaching a lesson to persons deprived of their liberty. An example of this is the use of tear gas in cells and enclosed spaces, which causes widespread suffocation rather than seeking to disperse a crowd. Another example is the use of truncheons to beat subdued persons rather than to maintain control and keep a safe distance from a person exerting resistance. All this means that between 2015 and 2022, 82 persons who were deprived of their liberty died, and 242 were injured¹² during internal disturbances. Despite this high number of affectations, Colombia’s forensic medicine institution has noted that since 2015 just ten persons deprived of liberty had been assessed by their forensic clinical service¹³ while only seven autopsies had been performed to examine evidence of suspected torture or cruel, inhuman, or degrading treatment on persons deprived of liberty in the forensic pathology service.¹⁴

There has been an increase in reports on the illegal use of isolation in Colombian detention centers, both in terms of the time spent by inmates in solitary confinement and justification of the

¹² INPEC’s response to an information request. File No. 2022EE0226351

¹³ File No. 2072-SSF-2021. National Institute of Legal Medicine and Forensic Sciences.

¹⁴ File No. 2154-SSF-2021. National Institute of Legal Medicine and Forensic Sciences.

isolation measure. According to Law 65 of 1993, in Colombia persons deprived of liberty may be isolated at the request of the inmate, for health reasons or for the security of the facility (this isolation period should not exceed five calendar days). However, complaints of prolonged and unjustified isolation are increasingly frequent. This isolation is often used as a form of punishment, denying the PDL any communication and generating light sensory deprivation and undignified conditions.

In most facilities, the space where people are isolated for health reasons is the same space where people are isolated for safety reasons. The risk of this is two-fold: it exposes one population group to infectious disease; and it exposes sick inmates to being assaulted by other persons deprived of liberty.

The people most affected by the illegal use of isolation are those with mental illness. Isolation is particularly used as a control mechanism when there is a shortage of psychiatric medication. This situation has been aggravated by the approach that exists in ERONs to medicate a high number of PDL, forcing them to become dependent on psychiatric medication and then failing to provide it. By 2022, 16 facilities had more than 99 people diagnosed with mental illnesses while 22 ERONs had fewer than 99 but more than 51 people diagnosed with a mental illness. Between June 2022 and December 2022, 126 suicide attempts were reported in ERONs with 10 PDL dying by suicide through hanging.¹⁵

The Monitoring Commission for Ruling T-388 of 2013 (CSS) indicated that the national government adopted insufficient measures to manage the pandemic, despite having been warned by civil society.¹⁶ One of these measures was to alleviate overcrowding in the system by transferring PDL to temporary detention centers (CDT). This generated even more serious violations of human dignity than in prisons. It also normalized the irregular, illegal, and constitutionally unsound use of CDTs for the execution of custodial measures. It was a mistake to delegate this responsibility to the National Police and regional entities as it denaturalized the role of the National Police by imposing activities that went beyond its constitutional function and required it to redirect resources. Former President Duque's administration presented the reduction of overcrowding in the penitentiary and prison system as progress to overcome the crisis, when in fact prisoners were simply transferred to cells in police stations.

According to the response given by the National Police to the Constitutional Court's information request through Court Order 1629 of 2022, CDT occupancy as of 16 November 2022 was described as follows:

Table 1. Capacity and Occupancy of CDTs Nationwide

¹⁵ Ministry of Justice and Law. Thirteenth six-monthly monitoring report on penitentiary and prison ECI. December 2022. See: <https://bit.ly/3I63kpP>

¹⁶ Civil Society Monitoring Commission on Ruling T-388 of 2013. Décimo informe sobre centros de detención transitoria (2022). See: <https://bit.ly/3UTi92K>

Transitory Detention Center	Detainee capacity	Total number of detainees	Percentage of overcrowding
Police stations	5443	16150	296.71%
Substations	282	543	192.55%
CAI	270	1026	380.00%
URI	863	1816	210.43%
Total	6858	19535	284.85%

Prepared with data from the National Police

Table 2. CDTs with the Highest Percentage of Overcrowding in the Country			
Transitory Detention Center	Detainee capacity	Total number of detainees	Percentage of overcrowding
Desepaz Police Station	4	111	2775 %
Fundación Police Station	3	70	2333 %
CAI La Victoria	3	69	2300 %
San Pedro De Los Milagros Police Station	1	22	2200 %
Centro Histórico Police Station	6	107	1783 %
San José Police Station	6	107	1783 %
Caucasia Police Station	9	152	1689 %
Alfonso López Police Station	3	48	1600 %
Chinú Police Station	1	15	1500 %
Nueva Floresta Police Station	6	90	1500 %
Planeta Rica Police Station	2	28	1400%
Jamundí Police Station	8	111	1388%
Simón Bolívar Police Station	6	82	1367%
Terrón Colorado Police Station	3	41	1367%
Acacias Police Station	2	27	1350%
El Diamante Police Station	10	134	1340%
Salgar Police Station	4	51	1275%
El Bosque Police Station	10	125	1250%
Aguablanca Police Station	3	35	1167%
Carmen De Bolivar Police Station	4	46	1150%
Mariano Ramos Police Station	9	103	1144%

El Lido Police Station	10	111	1110%
Aldana Police Station	1	11	1100%
Guacarí Police Station	2	21	1050%
Santa Rosa De Osos Police Station	2	21	1050%
Andes Police Station	4	42	1050%
Caimeg - Riohacha	18	187	1039%
Usaquén Police Station	10	100	1000%

Prepared with data from the National Police

Table 2. CDTs with the Highest Number of Detainees in the Country			
Transitory Detention Center	Detainee capacity	Total number of detainees	Percentage of overcrowding
Puente Aranda Police Station	250	590	236.00%
Santa Marta Police Station	100	452	452.00%
Permanent Central	66	392	593.94%
Centro Police Station	145	343	236.55%
Cascajal Police Station	100	328	328.00%
Sijin Cells, 2nd Floor	155	316	203.87%
Life Projection Unit	225	290	128.89%
Kennedy Police Station	60	285	475.00%
Sijin Cells, 1st Floor	127	276	217.32%
Candelaria Police Station	80	242	302.50%
Ciudad Bolívar Police Station	60	235	391.67%
CTP	77	220	285.71%
Bosa Police Station	35	220	628.57%

Prepared with data from the National Police

This situation is even more serious if one takes into account that doubts surround the sudden increase in detainee capacity in police stations as this does not seem to involve an expansion of infrastructure that guarantees dignified conditions for PDL. This was noted by the Civil Society Monitoring Commission:

“Given that the National Police did not specify or account for the capacity of the rooms, these increases are dubious for several reasons. First, because of the rapid month-to-month variation. For example, in 2021 it went from having 6,748 spots in January to 6,595 in February and went from 7,128 spots in June to having 6,866 in July. Second, because the conditions that guarantee this capacity are not explicit; increased quotas may not reflect true increases in the capacity of temporary detention centers to provide dignified conditions, but only represent the provision of beds and mattresses for sleeping and the use of tents, buses, and other irregular facilities as if they were adequate spaces for the detention of persons.”¹⁷

Despite the alarming figures reported by the National Police to the Constitutional Court, underreporting of this situation exists. For example, the information provided does not represent the total number of Police Stations, Police Substations, Immediate Attention Centers (CAI), and Immediate Reaction Units (URI) in the country. By way of example, there is no mention of the El Muelle Police Station in the city of Barrancabermeja. In a human rights verification exercise conducted by the CSPP on 22 August 2022, the NGO found that 49 people were deprived of their liberty in this police station in a space measuring two meters wide by five meters long with a barred door measuring two meters high by 80 centimeters wide. This door was the only space through which ventilation and lighting was available. The lack of space hinders basic activities for PDL, such as sleeping and other physiological needs. There were only two highly unsanitary toilets and showers. Newly arrived or punished persons are handcuffed to a pipe in the parking area. On the day of CSPP’s visit, four (4) people were found in this situation. One of them indicated that he had been handcuffed there for eight (8) days, eating and sleeping outside, without a mattress, and handcuffed to a pipe.

Officials justify these sorts of practices by stating that the level of overcrowding increases the risk of escape for persons deprived of their liberty¹⁸ as CDTs do not have the infrastructure or the same security protocols that penitentiary and prison facilities have. At the technical roundtable cited by the Constitutional Court in Court Order 1629 of 2022 to monitor the injunctions of Ruling SU-122 of 2022, the Secretary General of the National Police, Colonel Hernán Alonso Meneses, stated that 1,700 police officers undertake daily custody activities for persons deprived of liberty. This number of police officers is insufficient to guard the more than 16,150 detainees, especially given that the infrastructure is not designed for this activity.

These difficulties can lead to cruel, inhuman, and degrading treatment to prevent prisoners from escaping.¹⁹ For example, there have been reports of exemplary punishments to maintain order

¹⁷ Ibid. p. 11

¹⁸ As an example of the above, the following sources are presented: Radio Nacional, “Reportan fuga de 11 detenidos de URI de Puente Aranda en Bogotá.” 18 April 2022. See: <https://bit.ly/3AAacXY>; El Tiempo, “Se fugaron 17 detenidos de la Estación de Policía de Kennedy.” 20 September 2022. See <https://bit.ly/3gtQQVG>; El País, “Investigan fallas que provocaron la fuga masiva de 26 reclusos de estación de Policía en Bogotá.” 9 August 2022. See: <https://bit.ly/3EwjEwM>.

¹⁹ RTC Noticias. “36 presos se fugaron de una estación de Policía en Cali.” 19 July 2022. See <https://bit.ly/3tQnps0>.

inside temporary detention centers. These practices constitute torture. The information reported by the National Metropolitan Police of Bogotá is that, since 2021, twelve persons deprived of liberty have died in police stations in the city during internal disturbances. Of these, ten had been accused and just two had already been convicted.²⁰ It is very possible that these deaths are largely underreported as we requested information from some police stations, and many indicated that they did not have any regulations on the treatment of the population of persons deprived of liberty. This legal vacuum has generated incentives for the excessive use of force, prolonged isolation, torture, and cruel, inhuman, and degrading treatment.²¹

It is important to stop the practice that persons deprived of liberty do not undergo forensic medical examinations when they are victims of torture. This is evidenced by the low number of examinations performed by the National Institute of Forensic Medicine. Between 1 January 2013 and 31 October 2021, only 24 PDL were examined for suspected torture or cruel, inhuman, or degrading treatment out of a total of 163 people. During the same period, just 10 autopsies were performed on PDL by the forensic pathology service out of a total of 1849 autopsies. Torture victims do not receive legal advice about their rights. In fact, many of them do not recognize themselves as victims as these serious violations of their rights have been normalized.

The aforementioned situation makes it evident that the observation issued by the Committee in 2015, in which the Colombian state was urged to comply with “its duty to ensure, both in law and in practice, that persons deprived of liberty enjoy all fundamental legal safeguards from the very moment of arrest, in particular the right to receive legal assistance without delay and the right to request a medical examination by a professional of their choice, regardless of any medical examination carried out at the request of the authorities,” has not been fulfilled. The right to due process for persons deprived of liberty guarantees effective legal assistance in the context of their prosecution. The right to receive specialized and independent medical care in cases where torture or CIDTP is inflicted continues to be violated.

It is clear that the underreporting of PDL deaths runs counter to what the Committee stated in its previous review, expressing its “concern about the high number of deaths recorded in detention centers and regrets not having received information regarding the causes of death for these persons or the results of the investigations carried out.”

It is important to reiterate to the state that the application of the Istanbul and Minnesota Protocols, as well as the obligations contained in the Convention, are fundamental to ensure that prisons and penitentiary centers do not continue to violate the dignity of PDL.

²⁰ National Metropolitan Police of Bogotá, response to an information request. GS-2023-047086-MEBOG-01312023212932

²¹ Information request submitted to the National Metropolitan Police of Bogotá asking for information about the guidelines used by the National Police for the proportional and legitimate use of force in protests carried out by persons deprived of liberty in CDTs, as well as the protocols and guidelines issued for situations of disturbances to internal order. The entity replied that “...the National Police has no constitutional or legal authority to intervene in any matter involving the custody, surveillance, and temporary or permanent control of persons under preventive or sentenced detention, functions specifically allocated to INPEC, nor does it have the uniformed personnel, nor the technical, physical, operational or technological capital to do so, and much less to commit public assets to assume this type of obligation.”

2.4. Torture as a Mechanism of Social Control: Confinement During the COVID-19 Pandemic (CAT, Arts. 2, 11, 16)

As mentioned in the introduction, the COVID-19 pandemic brought with it severe restrictions on rights that were violated on multiple occasions. In the case of Colombia, the lockdowns that were in force—with some modifications—for a period of around nine months led to numerous cases of torture and CIDTP when law enforcement tried to force compliance, or punish non-compliance, with the lockdown restrictions.

Below is a detailed analysis of how some population groups experienced this violation of their rights in specific ways.

2.4.1. Confinement and Especially Vulnerable Groups

As a result of the emergency measures established by the Colombian government to reduce the risk of COVID-19 spreading, regulatory actions in relation to the mobility of the civilian population exacerbated the levels of risk and vulnerability faced by protected groups, including children and adolescents, women, the LGBTIQ+ population, the elderly, and people with disabilities.

These actions increased the risk of inadequate care and affected the enjoyment of rights in the areas of physical and mental health. First, there was a lack of access to basic care for the elderly, children and adolescents, and people with disabilities. Second, access to healthcare and medical attention from qualified medical personnel was restricted for the general population.

In non-urban areas, mobility restrictions particularly reduced access to specialized medical centers, health and prevention campaigns, and adequate disease management for vulnerable populations. This situation was caused by a late prevention and action response from the national government to mitigate healthcare access barriers, affecting the right to healthcare in optimal conditions and resulting in a deterioration of the health of these populations.

In the case of people with disabilities and young children, the health emergency increased the deterioration of their daily living conditions as they found themselves in degrading situations caused by mandatory isolation in which total or partial dependence on their caregivers affected their care and relationships with their support networks.²² This undermined their continuity of care and placed additional burdens on caregivers.

An Ecoanalítica²³ survey was conducted in July 2021 to evaluate the main differential challenges faced by people with disabilities during the COVID-19 pandemic. It stated that, “the majority

²² DANE. Government of Colombia. Personas con Discapacidad, retos diferenciales en el marco del COVID-19. Available online at: <https://www.dane.gov.co/files/investigaciones/discapacidad/2020-Boletin-personas-con-discapacidad-marco-COVID-19.pdf>

²³ UN Women, UNFPA and UNICEF (2021). Análisis de la situación de las personas con discapacidad en Colombia: Entre avances y retos, p. 13. Available online at: <https://colombia.unwomen.org/es/digital-library/publications/2022/05/analisis-de-la-situacion-de-las-personas-con-discapacidad-en-colombia-2021>

(54%) of individuals with disabilities consider that before the pandemic their situation was better, for 37% their situation remained the same, and for just 9% their situation was worse.” These conditions are not just visible in terms of care, but also in the provision of differentiated health services, given the fact that most people with disabilities require specific and more frequent medical attention and health care.

This takes on special importance since, according to the national census conducted in 2018, “*in Colombia there are 3,134,036 people who have difficulties with performing basic daily activities, of whom 1,784,372 reported having difficulties at the highest severity levels (1 and 2) on the Washington Group continuum.*”²⁴

Violations considered to be degrading treatment were associated with the restrictions established during the COVID-19 pandemic, resulting in an exclusionary treatment of LGBTIQ+ people based on their gender. This restriction, known as “pico y género,”²⁵ restricting access to purchasing food and other basic supplies based on a person’s gender. This measure generated discriminatory acts that violated and degraded trans persons, specifically in commercial establishments and public and private service outlets. During this period, it was evident that staff from the businesses that supplied basic needs and/or public services did not have the necessary sensitivity to implement this measure without engaging in cruel and discriminatory acts that undermined the identities and gender expressions of the LGBTIQ+ population that also needed access to these rights.²⁶

These examples allow us to conclude that the regulatory and emergency regulations established in Colombia during the COVID-19 pandemic failed to apply and include intersectional approaches that would have facilitated adequate provision of services or special attention to address the vulnerabilities and needs of historically excluded groups. This resulted in repetitive incidents and actions that constitute cruel, inhuman, and degrading treatment with a pattern of exclusionary victimization.

2.4.2. Confinement and Persons Deprived of Liberty

In the context of the COVID-19 pandemic, persons deprived of liberty were subjected to torture as well as cruel, inhuman, and degrading treatment. The different dynamics caused by COVID-19 in the country’s prisons can be organized into four groups. First, there was a lack of timely and effective actions to reduce the risk of COVID-19 spreading in prisons. Second, a number of strikes and protests were organized by persons deprived of liberty as a result of the measures

²⁴ DANE. Government of Colombia. Personas con Discapacidad, retos diferenciales en el marco del COVID-19. p. 2. Available online at: <https://www.dane.gov.co/files/investigaciones/discapacidad/2020-Boletin-personas-con-discapacidad-marco-COVID-19.pdf>

²⁵ FRANCE24. Covid-19: ¿por qué la medida de restricción por género violenta a la comunidad trans? 15 April 2020. Available at: <https://www.france24.com/es/20200415-pico-y-genero-trans-restriccion-bogota>

²⁶ For more information see: <https://cerosetenta.uniandes.edu.co/el-pico-y-genero-fue-tan-exitoso-como-asegura-la-alcaldia-los-datos-muestran-otra-cosa/>

taken during the pandemic, which received disproportionate repression from prison authorities. Third, COVID-19 affected the health of a significant number of persons deprived of liberty. Fourth, restrictions on the rights of persons deprived of liberty were maintained despite a considerable reduction of risks associated with COVID-19.

At the beginning of the pandemic there was high level of uncertainty among the general public, which was even higher among the population deprived of liberty. Although the national government foresaw the serious impact that COVID-19 would have on persons deprived of their liberty, it did not adopt the required measures in a timely manner in order to protect them. The national government was aware of the situation in Europe and Asia, where the disease's magnitude meant that COVID-19 had a significant impact on penitentiary and prison establishments (hereinafter establishments). For example, crowded conditions in the establishments exacerbate the risk of the spread of infectious diseases.²⁷

The Ministry of Health issued Resolution 385 on 12 March 2020 and the Presidency of the Republic issued Decree 417 on 17 March 2020 that declared a state of economic, social and ecological emergency. This Decree was found to be constitutional by Ruling C-145 of 2020 of the Constitutional Court. One of the seventy considerations included in Decree 417 was:

With the same purpose of limiting the possibilities of spreading the new COVID-19 virus and protecting the health of the general public and the public servants who attend them, it is necessary to issue rules that permit online judicial and administrative proceedings and to adopt relevant measures that guarantee the provision of public justice, notary, and registry services, legal defense of the state, and health care in the penitentiary and prison system.

However, it was only on 26 May 2020 that the Ministry of Health adopted a biosecurity protocol to manage and control coronavirus risks in establishments through Resolution 843 of 2020.

In addition, the unjustified delay to adopt this protocol and the fact that the actions of different entities and regulations concerning rights were not agreed upon or shared with the population deprived of liberty generated high levels of concern and stress among these persons. This situation was exacerbated by the lack of information provided to persons deprived of liberty regarding the risk level to which they were exposed and the Colombian state's historical abandonment of this population.²⁸

As a result, the population deprived of liberty feared for their lives and in many establishments

²⁷ The most studied disease in the country's prisons is tuberculosis. A study showed that "in cities such as Medellín and Bucaramanga (2010-2011) it was found that the incidence of TB was 20 times higher in prisons than in the general population, See: Lopera Medina MM, Hernández Pacheco J. *Situación de salud de la población privada de la libertad en Colombia. Una revisión sistemática de la literatura*. Revista Gerencia y Políticas de Salud. 2020; 19. p. 12. See: <https://bit.ly/3jvq3BT>

²⁸ This is evidenced by the unconstitutional state of affairs that has lasted for almost nine years.

engaged in protest actions to raise awareness among the public about the high levels of vulnerability they were facing. The national government, prison authorities, and prison guards responded with a disproportionate use of force, killing 24 inmates and injuring 173. The media reported only partially on this situation, mostly in the case of the La Modelo prison, due to its location in the capital and the seriousness of the events.

As a result of the visibility achieved through media outlets, the authorities eventually adopted measures to address the health emergency in establishments. These measures included the aforementioned Health Protocol and Decree 546 of 2020, which sought to reduce overcrowding. This regulation lacked effectiveness and a suitable gender approach, and it was implemented through arbitrary decisions that were not justified by medical-scientific parameters.

In July 2021, persons deprived of liberty were included in Stage 4 of the National Vaccination Plan. Despite the general decrease in the number of cases in the country and a significant reduction in establishments, restrictions on the rights of persons deprived of liberty were maintained. For example, there were continued restrictions on visits, monitoring by human rights organizations and oversight entities, as well as participation in occupational, academic, sports, recreational, and cultural activities. Although some of these regulations were eased in 2022, their prolongation over time was unjustified and caused profound effects on the mental health of persons deprived of liberty. These regulations also limited the possibility of persons deprived of liberty being able to report irregularities and human rights violations inside the establishments.

Despite Resolution 1144 of 22 March 2020, which declared a prison emergency along with the relevant contracting measures, the Colombian state did not create sufficient spaces to isolate suspected COVID-19 cases.²⁹ During the health emergency, INPEC did not establish isolation spaces in a timely manner. On the contrary, it used Special Treatment Units (UTE) that are used to isolate inmates outside of the pandemic. In relation to the UTEs, the Constitutional Court declared that:

[I]n many of the country's detention centers, the cells or spaces used for isolation are very small, lack natural or artificial light, and do not have adequate ventilation. There are some solitary confinement cells that have deplorable sanitary conditions as they lack water and sanitary facilities. In several cases it was observed that persons in solitary confinement were forced to accumulate their physiological waste in improvised containers, generating high risks to their physical health (...) prisoners in solitary confinement do not even receive

²⁹ W Radio. "Juez ordena hacer pruebas de COVID-19 a todos los reclusos de la cárcel La Picota." La W Radio. Published on 12 August 2020. See at: <https://bit.ly/3RpE5li>
De la Rosa, Mauricio. "Alerta en cárcel de Tumaco por 19 contagiados con Covid-19." El Tiempo. Published on 7 June, 2020. See at: <https://bit.ly/3DuJe5F>
Caracol Radio. "Cárceles y estaciones de Policía no tienen áreas para aislar contagiados." Caracol Radio, Published on 18 July 2020. See at: <https://bit.ly/3XQonll>
Castellanos, Jenny. "Lo que hay detrás de la primera muerte por COVID-19 en la cárcel el Buen Pastor." El Espectador, Published 23 July 2020. See at: <https://bit.ly/3WUqOSB>

an hour of sunshine, they spend all day in the confinement cell (...) Several of the isolation places visited are not sufficiently protected from the environment, particularly rainfall.³⁰

Through interviews with inmates, the Comité de Solidaridad con los Presos Políticos (CSPP) learned that many of these spaces did not have mattresses or access to sunlight. They also reported that people held in these cells were the last to receive food and did not have the option of communicating with their families. On other occasions persons deprived of liberty were confined in their cells with no possibility of going out into the yard or corridors. This was especially serious for the cells that did not have a water supply. This type of cell is commonly found on the top floors of establishments, either because no taps are installed or because the lack of water pressure means that the water supply does not reach these cells.

Prolonged isolation is a form of cruel, inhuman, and degrading treatment as it usually occurs in deteriorated areas of prisons. There are cases of the confinement of entire prison blocks for several months, with persons deprived of liberty who were not able to access the rest of the establishment for breaks, recreational activities, work, or study. This generates sensory deprivation as do not receiving sunlight and being cut off from the outside world.

On occasion, isolation is used as a type of torture due to the intention of causing harm or suffering with this practice, for example to punish inmates. During the interviews conducted by the CSPP in the San Isidro prison in Popayán, prisoners stated that they were locked in their cells for around 3 months as punishment for initiating strikes in 2020, when they demanded greater protection from COVID-19 for inmates. This measure was justified by the argument that it was designed to prevent transmission.³¹

In the Colombian penitentiary system, different dynamics of torture have been used as a way of imposing order at the expense of the dignity, physical, and mental wellbeing of persons deprived of liberty. These include an arbitrary and excessive use of force, prolonged isolation, sexual violence, and cruel, inhuman, or degrading psychological treatment.

An arbitrary and excessive use of force is often justified by prison guards as necessary to safeguard internal order and security. This phenomenon is expressed in two ways: beatings, physical intimidation, body-to-body “fighting,” strangulation maneuvers, and physical restraint with batons; and the use of potentially lethal weapons that violate the regulation governing their rational use. Persons deprived of liberty in the Valledupar prison³² demonstrated that they were victims of the irregular use of pepper spray on their genitals and that guards continued to use tasers despite the fact that inmates were already subdued and secured.

³⁰ Constitutional Court. “*Ruling T-684 of 2005*.” See <https://bit.ly/3WOBYbC>

³¹ Interview conducted with inmates on 26 November 2021 at the San Isidro Maximum and Medium Security Penitentiary Establishment (EPAMSCAS), Popayán.

³² Interview conducted with inmates on 3 December 2021 in the Valledupar High Security Prison. A criminal investigation is currently underway in relation to this incident.

These forms of violence also occur in the transportation of persons deprived of liberty, during cell inspections, and inside prison blocks. These cases include the use of tear gas, the destruction of personal items, and the transfer of persons deprived of liberty with restraints (handcuffs) who are placed in unnatural positions during the journey, causing pain to their limbs and bodies.

Prison strikes and protests during the COVID-19 pandemic were a response to different situations. First, there was an unjustified delay in the biosecurity protocol's adoption to manage and control of the risk of COVID-19 in the establishments. Second, regulations concerning the rights of persons deprived of liberty and relevant actions by different entities were not agreed upon nor shared with this population. This disregarded the International Committee of the Red Cross recommendation, which indicated that it was absolutely essential to provide information to the prison population and carry out general awareness raising activities while emphasizing that the pandemic era restrictions would be temporary.³³

Third, there was a significant lack of information about the level of risk faced by persons deprived of liberty. Fourth, health departments in the establishments did not have the required staff or personal protection equipment to prevent and mitigate the risk of transmission. This forms part of an unconstitutional state of affairs in establishments that has been unresolved for nine years and has worsened in several areas. These situations triggered high levels of concern and stress among persons deprived of liberty. Many people feared for their lives and in many establishments, protests were organized to raise awareness with the general public about the high levels of vulnerability experienced by inmates.

The government, prison authorities, and guards responded to these protests with a disproportionate use of force that resulted in the deaths of 24 inmates and 173 people injured. Of the 24 deaths, 23 were the result of gunfire and one person deprived of liberty fell to their death from a significant height. As documented by Human Rights Watch and some media outlets, specific circumstances and evidence imply that the deaths could constitute extrajudicial executions. There is also evidence of cases of torture and cruel, inhuman, and degrading treatment during the protests. The authorities didn't just use INPEC guards to manage the protests, but also sent in members of the ESMAD riot squad that has a notorious record on the disproportionate use of force and human rights violations.

The following data was provided by INPEC.³⁴ This institution describes the protests as alterations to internal order (riots and attempted riots).

DATE	ERON	At the time of the event	Persons deprived of liberty	Staff
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³³ International Committee of the Red Cross. *Preparedness, prevention and control in relation to COVID-19 in prisons and other places of detention*. See at: <https://bit.ly/3HJu1Ae>

³⁴ INPEC's response to Information Request FILE 2022EE0060191.

		Population	Overcrowding rate	Deceased	Wounded	Deceased	Wounded
04/01/2019	537 COPED Pedregal	3,526	38.7%		0		0
06/01/2019	116 EPMSC Caqueza	119	10.2%		3		0
24/01/2019	313 EPMSC Riohacha	451	3510%		0		0
15/07/2019	620 RM Pereira	1,863	60.7%		0		0
19/09/2019	110 EPMS Ramiriqui	155	27.0%		0		4
20/10/2019	410 CPMS Bucaramanga	2,739	80.20%	1	10		0
8/12/2019	415 EPMS San Gil	263	0.4%		0		1
10/12/2019	620 RM Pereira	1,277	88.9%		0		0
25/12/2019	239 EPMSC Caicedonia	140	37.3%		0		0
17/03/2020	129 CPAMSMBOG Bogotá	2,231	77.3%		0		0
17/03/2020	113 COBOG Bogotá	9,338	55.6%		0		0
18/03/2020	319 EPMSC Sincelejo	783	52.9%		0		4
21/03/2020	639 COIBA Ibagué	5,241	1.3%		0		0
21/03/2020	113 COBOG Bogotá	9,338	55.6%		0		0
21/03/2020	114 CPMS Bogotá	4,916	59.6%	24	81		11
21/03/2020	225 CPAMSPAL Palmira	2,471	129.2%		0		0
21/03/2020	227 EPMSC Buga	963	17.3%		0		0
21/03/2020	242 COJAM Jamundí	4,975	10.1%		0		0

21/03/2020	150 CPAMSEB El Barne	4,255	59.7%		0		2
21/03/2020	502 EPMSC Medellín	3,345	144.5%		0		0
21/03/2020	537 COPED Pedregal	3,812	20.4%		0		0
22/03/2020	228 EPMSC Buenaventura	560	67.2%		0		3
22/03/2020	515 EPMSC Puerto Berrio	297	98.0%		0		0
22/03/2020	422 COCUC Cúcuta	4,093	54.4%		0		0
22/03/2020	131 EPMSC Villavicencio	1,819	102.3%		0		0
22/03/2020	422 COCUC Cúcuta	963	17.3%		0		0
22/03/2020	227 EPMSC Buga	2,557	1.3%		0		2
22/03/2020	323 CPAMSVAL Valledupar	1,441	-0.8%		0		0
23/03/2020	639 COIBA Ibagué	5,241	1.3%		0		0
23/03/2020	535 CPMSPTR Puerto Triunfo	1,790	36.0%		0		0
24/03/2020	422 COCUC Cúcuta	4,093	54.4%		18		8
27/03/2020	603 EPMSC Aguadas	115	71.6%		0		1
27/03/2020	318 EPMSC San Andres	266	95.6%		0		0
29/03/2020	608 EPMSC Pensilvania	125	123.2%		0		0
30/03/2020	129 CPAMSMBOG Bogotá	2,231	77.3%		0		0
30/03/2020	131 EPMSC Villavicencio	1,819	102.3%		0		0

05/04/2020	316 EPMSC El Banco	134	67.5%		0		0
07/04/2020	215 EPMSC Pasto	1,054	85.6%		1		0
12/04/2020	629 EPMSC Lebanon	131	32.3%		0		0
12/04/2020	502 EPMSC Medellín	3,097	126.4%		0		0
13/04/2020	139 EPMSC Neiva	1,793	82.2%		0		2
13/04/2020	158 EPMSC El Guamo	137	37.0%		0		0
18/04/2020	158 EPMSC El Guamo	137	37.0%		9		0
19/04/2020	530 EPMSC Quibdó	624	118.2%	1	16		0
23/04/2020	148 CPMSACS Acacias	3,022	27.2%		0		1
29/04/2020	131 EPMSC Villavicencio	1,766	96.4%		0		0
01/07/2020	617 EPMSC Santa Rosa De Cabal	200	12.4%		0		0
14/07/2020	533 EPMSC Istmina	121	49.4%		0		0
22/07/2020	148 CPMSACS Acacias	2,868	20.7%		0		2
20/01/2021	411 EPMSC Barrancabermeja	266	33.0%		0		0
13/03/2021	608 EPMSC Pensilvania	80	42.9%		0		0
23/08/2021	221 EPMSC Tuquerres	129	24.0%		0		0

Several conclusions can be drawn from the data contained in the above table.³⁵ First, 58% of the establishments in which a riot or attempted riot occurred in 2020 had a 50% or higher overcrowding rate while 15% of the establishments were more than 100% overcrowded.

³⁵ The information on riots was taken from INPEC's response to Information Request FILE 2022EE0060191. The information on overcrowding was obtained from monthly statistical reports published by INPEC. See <https://bit.ly/3Y6RgJL>

Of the facilities with an overcrowding rate below 50%, 60% of these had a population of over 1,000 persons deprived of liberty. In six establishments there was more than one riot or attempted riot in 2020 (COBOG Bogotá, COCUC Cúcuta, COIBA Ibagué, CPAMSMBOG Bogotá, CPMSACS Acacias, EPMSC Villavicencio). Two of these establishments have been subject to a declaration of an unconstitutional state of affairs through Ruling T-388 of 2013³⁶ (CPAMSMBOG Bogotá, COCUC Cúcuta). Three other facilities included in this ruling also had riots or attempted riots in 2020 (EPMSC Medellín, CPAMSVALL Valledupar, CPAMSPY Popayán).

The only prison included in this ruling that did not have any riots or attempted riots in 2020 was EPMSC Barrancabermeja, however these did occur at this establishment in 2021. The facility that had the highest number of riots or attempted riots in 2020 was EPMSC Villavicencio (on 22 and 30 March and 29 April). This may be due to the fact that it had the first outbreak in an establishment in the country. On 13 May 2020, it had the fourth highest number of infections in the country behind Bogotá and the departments of Valle del Cauca and Atlántico. This means that, at that time, a single prison had more positive COVID-19 cases than 22 departments.³⁷

A report published by the Ministry of Justice demonstrates that by 13 June 2020 there were 1,686 persons deprived of liberty with COVID-19 and 5 deaths caused by the virus.³⁸ Between 29 June and 21 August 2020, the general COVID-19 infection rate in Colombia was 3.18 persons per 1,000 inhabitants while the infection rate for persons deprived of liberty was 23.39 per 1,000 inhabitants. Similarly, the COVID-19 mortality rate for the general public was 0.37 per 1,000 inhabitants during this period while for persons deprived of liberty it was 0.43.³⁹

The above data contributes to the very probable thesis that the riots and attempted riots in March and April 2020 were protests carried out by persons deprived of liberty who sought to highlight the extreme vulnerability that they were facing. This situation was aggravated by a strong feeling of uncertainty generated by the relevant authorities' poor handling of the health emergency.

On the other hand, the data refutes the authorities' thesis that the use of force in the context of disturbances at the La Modelo Prison was due to *"a criminal plan to attempt a mass escape."*⁴⁰ The narrative presented by the authorities was that the number of persons deprived of liberty who were killed and wounded during the riots were necessary to prevent the escape of 5,000 inmates.⁴¹ On 12 April 2020, the Prosecutor General's Office accused ELN guerrillas and FARC dissidents of organizing the 21 March riots.⁴² Information obtained by media outlets refutes these claims. The media outlet Cerosenteta reconstructed what happened on the night of 21 March in the La

³⁶ Constitutional Court. *Ruling T-388 of 2013*. See at: <https://bit.ly/3jiDMGg>

³⁷ El Tiempo. *"La cárcel de Villavicencio es el infierno del coronavirus."* See at: <https://bit.ly/3XMMxgT>

³⁸ INPEC. Response to Ruling 3 June 2020. See at: <https://bit.ly/3DnoZAs>

³⁹ El Espectador. *"Covid-19 y cárceles en Colombia: lo que mata no es el virus, sino la indiferencia."* See at: <https://bit.ly/3DsCnd4>

⁴⁰ On 22 March 2020, Minister of Justice Margarita Cabello and INPEC director, General Norberto Mujica.

⁴¹ Twitter account, Office of the President. *'Declaraciones de la Ministra de Justicia Margarita Cabello y el director del INPEC.'* See at: <https://bit.ly/3Hnad4c>

⁴² DW, *Acusan a ELN y disidentes de FARC de instigar mortales motines carcelarios en Colombia*. See: <https://bit.ly/3jee00A>

Modelo prison using open-source images, visual analysis, and testimonies of persons deprived of liberty and guards.⁴³

This reconstruction is divided into 37 sections that are organized chronologically. The first sections show how the riot began in Prison Blocks Four and Five, which housed persons who had been accused and convicted of common crimes. *“At nightfall, dozens of inmates began to use pots and pans to bang on the cell bars and corridors and shout ‘freedom’ (...) ‘Us prisoners are outraged because we are living in very poor conditions and this epidemic is horrible,’ can be heard on an audio message sent from inside.”*⁴⁴

Section Five of the reconstruction shows that one hour later the persons deprived of liberty had left their cells and were in the courtyards of the blocks. Some had even climbed the first wall that surrounds the prison and were located between this wall and the perimeter wall that directly faces the street outside the establishment. Section 13 shows how the use of weapons by prison guards was focused on the persons deprived of liberty who were located between the two walls, even though they did not represent a risk to the lives or safety of others. According to the reconstruction, at least six of the persons deprived of liberty who were killed were located between the two walls. Another body was found on the roof of a building, where it was unlikely that they were putting other people in danger. The largest group of persons deprived of liberty who were killed were found between the food storage building and the north wing gate.

In Section 10, two hours after the disturbances began, a group of inmates tried to fire a Galil rifle, which they took from a guard at Guardhouse Nine: *“The inmates reportedly used up the 35 rounds of the rifle by firing into the air and trying to break the lock off one of the doors. The inmates also stole a tear gas shotgun, which they burned. None of the injured INPEC guards had bullet wounds.”*⁴⁵

A riot is a situation in which prison guards and security officers can use justified force. In the case of the La Modelo and other riots, the use of force was disproportionate and in many cases was a form torture. There was not always a clear correlation between the seriousness of the threat posed by the rioting inmates and the amount of force used. Persons deprived of liberty who were injured by the use of force did not receive timely medical attention, even after the riot had been controlled. Several videos show that the use of force extended beyond what was legally required to control the riot.⁴⁶ In terms of the limits on the use of force in prison contexts, the IACHR has highlighted the existence of regulations designed to guarantee security and maintain order in these establishments. The state’s power is not unlimited on this matter. It is necessary that the state act

⁴³ Cerosetenta, ‘*Siete horas de angustia en La Modelo.*’ See: <https://bit.ly/3RkyBYI>

⁴⁴ Ibid. Section 1

⁴⁵ Ibid. Section 11

⁴⁶ Caracol News. *Riot in La Modelo: the unknown evidence of a night of horror.* <https://bit.ly/3kQvWtQ>

within legal limits and in accordance with the procedures that ensure access to fundamental rights for individuals.⁴⁷ The Court has also noted that:

“States must adopt necessary measures, not just to prevent and punish murder committed as a criminal act, but also to prevent arbitrary executions carried out by their own security forces. This situation is aggravated when there is a pattern of human rights violations. Specifically, states must ensure that their security forces, which are allowed to use legitimate force in specific circumstances, respect the right to life of those under their jurisdiction.”⁴⁸

Torture practices in the context of the riots were not solely related to the use of force, but also included sexual violence involving forced nudity and sexualization, practices that had the objective of humiliating persons deprived of liberty. These acts can be seen in the videos that show the retaking of the La Modelo prison in Bogotá.⁴⁹

During interviews with the population deprived of liberty, they indicated that following the riots there was an increase in threats made by prison guards and security agents. For example, they received threats that the conditions of their confinement would worsen, disciplinary offenses would be invented and there would be retaliation against their families and the items they sent to the inmates. These threats may constitute torture, as the IACHR indicated that receiving threats and suffering harassment while deprived of liberty produces panic and fear for their lives, constituting a form of torture according to Article 5.2 of the American Convention.⁵⁰

It is important to note that between 1 January 2020 and 31 October 2021, INPEC recorded 44 complaints of verbal abuse and 67 complaints of discrimination due to a person’s sex, race, gender, and others committed by INPEC staff against inmates and their family members.⁵¹ In many cases these actions constitute cruel, inhuman, or degrading psychological treatment.

In conclusion, it is important to express concern regarding non-compliance with the obligations contained in Articles 1, 2, and 4 of the Convention. It is alarming that following the 1986 ratification of this instrument, repeated recommendations made by the Committee in its reviews, and the modification of the definition of the crime of torture in the Criminal Code, the Colombian state continues to ignore acts of torture committed with the purpose of intimidating or coercing a third party. As a consequence of the confinement measures established during the COVID-19 pandemic as part of the state of exception, there were serious cases of torture and cruel, inhuman, and degrading treatment, especially against vulnerable groups and persons deprived of liberty. To date there have been no investigations nor sanctions for those responsible for these acts.

⁴⁷ IACHR. *Case of the Urso Branco Prison regarding Brazil*. Resolution of the Inter-American Court of Human Rights, 7 July 2004, para.12.

⁴⁸ IACHR. *Case of Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs*. Judgment on 25 November 2006. Para. 238

⁴⁹ Caracol News. *Motín en La Modelo: las pruebas desconocidas de una noche de horror*. <https://bit.ly/3Y3RfGy>

⁵⁰ IACHR. *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment on 7 September 2004.

⁵¹ INPEC's response, 19 November 2021 to Information Request No. 8110-OFPLA-81101-GRUES 2021EE0208099

2.5. Torture as a Means of Repressing Protests (CAT, Arts. 2, 10, 15, 16)

Colombia experienced a high number of social demonstrations during the 2019 to 2021 period, with different peaks. Through its System for Registering Aggressions against Protests (SIAP), in 2021 the Campaign *Defender la Libertad: Asunto de todas* registered: 89 homicides (of which the National Police or ESMAD are identified as the alleged perpetrators in 36 cases); 106 reports of gender-based violence; 1,929 people injured; 343 human rights defenders assaulted; 3,546 detentions that were generally arbitrary and illegal; 1,636 complaints of abuse of power and police violence; and 116 eye injuries committed against protestors during social protests.⁵² In another report, this same civil society coalition evidenced that during 215 days of protests there were 2,820 possible victims of torture and cruel, inhuman, or degrading treatment.⁵³ Although 2021 represented a peak in human rights violations in Colombia, between 21 November 2019 and December 2022, the SIAP recorded 134 deaths due to the arbitrary use of force by state security forces, 80 cases of torture during administrative or judicial detentions, 2,683 injuries caused by the arbitrary and excessive use of force, and 150 eye injuries.

Many of the practices constituting torture and cruel, inhuman, or degrading punishment occurred in Transitory Detention Centers (Police Stations, Police Substations, CAI, URI). Victims were transferred to these locations based on the legal principle of a “protective transfer.” Paradoxically, Article 155 of Law 1801 of 2016 defines this type of transfer as a mechanism used by uniformed National Police to safeguard the lives and physical safety of people who are at risk or in danger. According to a report on the National Strike published by the Ministry of Defense, the Police detained 8,556 individuals using the protective transfer mechanism between 28 April and 27 June 2021, which is an average of 142.6 people per day.⁵⁴ As this mechanism facilitated acts of abuse and arbitrary detentions committed by members of the National Police (as it did not require that the person being transferred was suspected of committing a crime), it was modified by Law 2197 of 2021 and Law 2197 of 2022. The latter regulation specified that a protective transfer can only be carried out in specific circumstances.⁵⁵ There were also reports of acts constituting torture and CIDTP committed in bus stations, businesses, warehouses, and other sites where actions could not be overseen by control bodies such as the Prosecutor General’s Office.

It is important to highlight that some media outlets, the government, the Prosecutor General's Office, and other entities repeatedly stated that the social demonstrations were infiltrated and financed by illegal armed groups such as the ELN. Regardless of whether these infiltrations took place or not, the narrative imposed on the social demonstrations made the state security forces

⁵² CDLAT. *El sometimiento de la Democracia. Un balance del derecho a la protesta social en Colombia en el año 2021*. See at: <https://adobe.ly/40oxRG8>

⁵³ CDLAT. *Torturar y castigar a quien protesta*, p. 8. See at: <https://bit.ly/3RwUKn2>

⁵⁴ Ministry of Defense. Balance Sheet - National Strike 2021 as of 27 June 2021. See at: <https://bit.ly/3l3A6hT>

⁵⁵ Law 2197 of 2022. Art. 40: “1. They are involved in a verbal altercation. 2. They are wandering in a state of defenselessness. 3. They seem to have an altered mental state due to mental issues. 4. They appear to be under the influence of alcoholic beverages or illicit or prohibited psychoactive substances and are displaying aggressive or reckless behaviors. 5. They engage in dangerous or hazardous activities that endanger their life or safety, or that of third parties. 6. They are in danger of being assaulted.”

assume a warlike attitude towards citizens. In many cases, state security agents viewed demonstrators as combatants in the Colombian armed conflict. This created motivation for some members of the security forces to punish and intimidate the demonstrators and obtain information or a forced confession regarding their alleged membership in an armed group. This is evident not just in testimonies from victims of torture, but also in the twelve (12) investigation areas established by the Prosecutor General's Office for the social protests. As a result, investigations of acts of torture or CIDTP were ignored while "structural investigations to determine the role of organized criminal groups in the violent demonstrations"⁵⁶ were prioritized. This practice of seeking confessions by intentionally inflicting severe pain and suffering was shown in a video, recorded by National Police officers, which shows a detained young man who was forced to incriminate himself after being tortured.⁵⁷

2.5.1. Excessive Use of Force in the Context of Social Protests

We consider that the use of weapons by ESMAD and the National Police, which do not respect the principles of legality, necessity, proportionality, or precaution and had the purpose of harming, punishing, and instructing protesters may constitute an act of torture. Although in many cases these attacks are not directed at a specific person, the aggression does target a specific population. People who are demonstrating are intentionally inflicted with severe pain and suffering to punish them for exercising their right to protest, which also intimidates others who are participating in the demonstrations or plan to do so. This does not refer to pain as a consequence of legitimate punishment as ignoring the principles of legality, necessity, proportionality, and precaution with the use of force eliminates any claims that these actions are legitimate. This can be demonstrated by the number of eye injuries caused to demonstrators. "Of the 116 cases registered by SIAP in 2021, 99% of victims were participating in protest activities related to the National Strike."⁵⁸

Temblores ONG, which forms part of the GRITA coalition, registered 103 cases of eye injuries between 28 April and 21 July 2021, of which 14 resulted in loss of an eye and 14 in loss of vision.⁵⁹ In many of these cases the police and ESMAD officers fired rubber bullets, tear gas, and stun grenades were used at close range and directly at protestors' bodies, as well as the use of irritant gases in enclosed spaces.

As a result of Ruling STC 7641-2020 by the Supreme Court of Justice, the national government convened a Working Group with human rights coalitions and social organizations. This involved a consultation process and resulted in Decree 003 of 5 January 2021, which issued a Protocol on preventive, concomitant, and subsequent actions that was titled "Statute for reaction, use, and

⁵⁶ CDLAT. *Torturar y castigar a quien protesta*, p. 92. See at: <https://bit.ly/3RwUKn2>

⁵⁷ Cable News. *Denuncian detención arbitraria y tortura a estudiante de música durante protestas en Cali*. Published on 29 May 2021. See at: <https://bit.ly/3XSHJX8>

⁵⁸ CAPS, CSPP, CDLAT, MOCAO, Represión en la mira. *Lesiones oculares en el marco de las protestas en Colombia*. ISBN:978-858-53871.2.6. p. 32.

⁵⁹ Amnesty International, Universidad de los Andes, Temblores ONG. *Shots to the eye: Eye trauma in the framework of the national strike*. See at: <https://bit.ly/3Dz4SG9>

verification of the state's legitimate force and protection of the right to peaceful citizen protest.” This protocol establishes guidelines for police actions and their duty to guarantee fundamental rights and preserve coexistence between citizens and public order during public and peaceful demonstrations. Even though this is a protocol designed with civil society participation, seven human rights organizations shared their criticisms of the document (which are included in the Decree). For example, existing guidelines were not restructured, as ordered by the Supreme Court of Justice. This means that Resolution 3002 of 2017 is insufficient and too permissive regarding the use of force by state security agents. There was also no agreement on the use of tear gas and 12-gauge shotguns.

The national government did not permit a restructuring of actions to prevent human rights violations during protests. It also did not allow a review of detention procedures used by the police nor civil society participation in the Unified Command Post. No consensus was reached on regulating the role of the Armed Forces before and after the protests. The national government opposed the inclusion of “accurate, clear, and complete criteria” for arrests, protective transfers, and transfers for police proceedings. This would have allowed human rights organizations to carry out verification actions during police proceedings. Finally, no clear and complete criteria were established for the preparation of reports by police officers. Additionally, no criterion was established for the President of the Republic when human rights violations occur and it is not obligatory that the President participate in the National Roundtable for the Evaluation of Guarantees for Public Demonstrations.

2.5.2. Eye Injuries in the Context of Social Protests

During the protests that occurred in Colombia between 2019 and 2021, increasingly specialized repressive practices were used to attack social protests. Not only did these violate the relevant protocols, but those who were attacked experience lifelong physical and psychological effects.

The physical and psychological effects of eye injuries constitute torture. This is due to the perpetrators' intentions of causing physical pain and psychological effects through the excessive and arbitrary use of force, as well as the disproportionate use of potentially lethal weapons by state security forces when trying to control social protests.⁶⁰

Eye injuries were caused by state security agents occurred during social protests in 2019 and 2021. In 2019, 10 cases were recorded while 116 cases were recorded in 2021.⁶¹ These figures are based on reports prepared by different human rights organizations. These are systematic aggressions carried out with the intention of inflicting damage to protesters and leaving a physical scar on their faces. These eye injuries and loss of eyesight transform their identity forever as each day these

⁶⁰ Lesiones oculares como una agresión constitutiva de tortura. In: Represión en la mira. Lesiones oculares en el marco de las protestas en Colombia. CAPS, CSPP, CDLAT, MOCAO; Bogotá, Colombia, 2022.

⁶¹ Ibid., p. 30.

protester experience punishment for their legitimate and legal political participation in a state under the rule of law.

The intentional injury of demonstrators' eyes constitutes constant physical and psychological torture that generates psychosocial damage⁶² at individual, family, and social levels.

This type of aggression does not just constitute physical and psychological torture for the injured protesters, it also affects the survivor's family and friends. Eye injuries and loss of vision require them to permanently explain what happened throughout their lives. These are moments when the perpetrator is still hurting them without being present, ratifying the message sent by this violence in which society must not rise up against authoritarian and unjust structures. If they do, the authorities eliminate their ability to "see" this injustice. Eye injuries symbolize a desire to blind people's ability to participate in mobilizations that demand change and social transformations. Seeing the face of a "victim-survivor" of ocular trauma is a reminder of the price of raising one's voice.

People affected by eye injuries caused by police violence show how this traumatic event overwhelms their internal coping mechanisms. Victim-survivors experience: upsetting, involuntary, and intrusive memories of the traumatic event; recurrent disturbing dreams related to the violent events when they suffered their eye injury; intense and prolonged psychological distress during symbolic situations or experiences similar to what happened (such as mobilizations or social protests). They also suffer from: negative cognitive and mood alterations that are associated with the traumatic event and generate permanent sadness; a persistent negative emotional state; significant loss of interest or participation in meaningful activities; loss of self-esteem; the feeling of having a disability; abandonment and a reduction of abilities in regular daily activities; difficulties with interpersonal relationships as the victim-survivor feels that they are unable to maintain safe and fluid communication because they have limited access to non-verbal information due to their lack of eye contact; anxiety when going out on to the street; insecurity caused by difficulties in calculating distances; and difficulties with reading-writing processes and other academic and work activities for which they need their vision.

The psychological consequences of ocular trauma can include feelings of sadness, helplessness, rage, and a period of mourning or depression. The depth of these emotions can generate diagnosable psychiatric conditions that require comprehensive support through medical, psychological, therapeutic, and psychosocial treatment.

⁶² Impactos psicosociales de los traumas oculares por agresiones de la fuerza pública a manifestaciones durante protestas sociales. In: Represión en la mira. Lesiones oculares en el marco de las protestas en Colombia. CAPS, CSPP, CDLAT, MOCAO; Bogotá, Colombia, 2022.

3. Psychological Torture and Psychosocial Impacts (CAT, art. 14)

Every act of physical torture also includes psychological torture. Even though psychological torture does not require physically touching the victim or affected person,⁶³ it can cause profound and lasting damage over time. Psychological torture involves patterns of *systematicity, intentionality, and concealment*. In contexts of socio-political violence, this form of torture requires a structure capable of planning and executing these actions that cause damage to individual, family, organizational, institutional, community, and societal life projects.

Repression through psychological torture is designed to generate emotional and mental harm. Instead of physical violence, different forms of psychological aggression are used with recurring effects on individuals and social groups, affecting their professional work and activities in support of social causes. Recurrent psychological torture practices in Colombia include the following:

3.1. Permanent Threats as a Psychological Torture Mechanism with Psychosocial Effects

Threats do not just put people's lives at risk, but are increasingly made with the intention of breaking the affected parties' decision-making capacity, i.e. threats "*hit where it hurts the most*." Intelligence actions are carried out as part of these threats. These range from monitoring a person to identify their greatest vulnerabilities to investigating people's emotional ties in order to generate terror. Threats also involve intimidation and dissuading individuals and collectives by sowing anxiety about what could happen if they support, work on, or defend ideas similar to those championed by threatened people. Recurrent threats constitute a form of psychological torture that is carried out with the explicit aim of generating psychosocial effects on the targeted individuals and organizations.

Threats constitute a form of psychological torture that involves exercising social control through individual and collective intimidation designed to psychologically destroy human beings. Threats are used to generate fear and terror as part of an intimidation strategy. These are apparently "intangible" effects that constitute a form of psychological torture as lethal as physical torture.

Direct death threats or those made against family members have psychosocial effects on individuals and groups. On many occasions death threats affect people both affectively and emotionally and provoke feelings of rage, helplessness, insecurity, guilt, sadness, deep suffering, impotence, and anxiety. Death threats also generate family, social, community, and organizational ruptures.

63 Hereinafter we will use the term "affected." Although we understand that in the legal sphere the term "victim" is fundamental in the search for justice and to identify the perpetrator before the corresponding bodies, from a psychosocial lens, calling oneself a victim carries with it a very strong emotional burden of helplessness, impotence, and constantly revisiting the traumatic events. This causes the affected person to freeze and indirectly gives the perpetrator a role or power to determine their present-future. Therefore, referring to this population as affected or survivors dignifies their experiences and allows them to act as political subjects who have the capacity to report, take legal action, and demand justice as a transforming act that seeks not just clarification of the truth but also non-repetition.

3.2. Psychological Profiling

Psychological profiling is another form of psychological torture that involves investigating the attitudes, feelings, and behaviors that characterize a person, leader, political opponent, or journalist over a period of time. This information is used to construct their psychological profile. A range of illegal actions are employed to carry out this practice of harassment and intimidation including telephone interceptions, access to social networks, access to photographs, personal documents, and family information. This is achieved through continuous surveillance and even involves entering the places where the targeted person lives, works, or studies, as well as targeting close relatives including their children.

Profiling has the objective of using intimate information to try to psychologically destroy people, their families, and workplaces. The goal is to create an environment of vulnerability (“we know everything about you”) through actions in which there is an implicit instruction to stop their defense of human rights, political participation, and social activism. The idea is to cause terror in entire communities through “exemplary punishment.”

Profiling has been a repressive and illegal practice used by the state that ratifies its authoritarian character. This practice transmits a message of absolute control and seeks to eliminate the freedom and dignity of its targets. Profiling is used for a number of additional actions including trumped up charges, social discreditation, and reducing an adversaries’ political power. Spying and illegal surveillance are another specific practice that involve psychological torture.

4. Torture and CIDTP Against Historically Discriminated Groups

The following is a description of how torture and CIDTP are used against groups that have historically suffered from high levels of vulnerability in Colombia. During the period covered by this report, it was identified that women, children, adolescents, and people with disabilities experience differential aggressions due to the structural discrimination that persist in Colombia. This is despite all of the recommendations that have been made to mitigate the differential impacts on these populations. This section details specific situations involving torture and CIDTP inflicted as a discrimination mechanism, which were identified in Section 2.1 of this report.

4.1. Children and Adolescents (CAT, Arts. 2 and 16)

The unlawful recruitment of children and adolescents is a multi-faceted crime as it affects different protected legal dimensions including life, personal safety, dignity, family, freedom, integrity, and sexual education.⁶⁴

In terms of their involvement with armed groups, children are subjected to all kinds of abuses that can constitute acts of torture and other cruel, inhuman, or degrading treatment or punishment. This includes prolonged deprivation of food and water, constant threats, being affected by sexual

⁶⁴ By 2021, it is projected that at least 23,465 children and adolescents will have been affected by victimizing actions committed in the context of the armed conflict.

violence, being sentenced to death, being forced to kill their companions, and others. In addition, the harm caused by child recruitment extends to their families and friends who think about the suffering experienced by the child and experience angst because they don't know their whereabouts and don't even know if the child is alive.

There have been cases in which children or adolescents recovered by state security forces have been subjected to interrogations and other acts of intimidation. In March 2021, the Minister of Defense referred to children killed in a bombing as “*war machines*.”⁶⁵ This statement was condemned by the JEP, which required a declaration from the national government recognizing these combatants as victims of child recruitment.

COALICO has identified an intrinsic relationship between the crimes of child recruitment, torture, and CIDTP.⁶⁶ This is evidenced in the damage produced by child recruitment, which include: mockery and humiliation,⁶⁷ physical and mental health impacts,⁶⁸ breakdown of family and community relationships,⁶⁹ shootings and violations, and infringements of the right to sexual freedom.⁷⁰ It is important to mention the differential impact on girls and female adolescents caused by different sexual aggressions.⁷¹

During the period covered by this report, which coincides with the implementation of the Final Peace Agreement between the Colombian government and the former FARC-EP,⁷² there has been

⁶⁵ In March 2021, in the municipality of Calamar, department of Guaviare, there was an aerial bombing carried out by military forces against a FARC dissident camp. A total of 12 minors who had been recruited by the armed group were killed. In response to this event, Diego Molano, then Minister of Defense, supported this action and stated that “the FARC dissidents continue to recruit these young people and turn them into war machines.” This case highlights the double affectation faced by children and adolescents who are victims of the crime of recruitment by armed groups. In addition to the damage, they suffer as actors in the armed conflict, when they have the opportunity to return to civilian life they are judged and discriminated against by public employees from government agencies, who have the obligation of providing them with care and ensuring that these acts of torture do not happen again.

⁶⁶ Through the accompaniment provided by COALICO to victims from JEP Case 007, we have collected narratives shared by different victims: one of the accredited victims was recruited at the age of 12. When she joined the armed group they gave her an alias and later assigned her to combat activities. She was constantly threatened by the armed group if she thought about escaping and on previous occasions, she had witnessed the execution of children who disobeyed orders. The victim reported that another strategy implemented with the recruited girls was forced contraception. The victim narrates that the damage did not end when she left, as she was rejected by her family and community because she had been a member of the armed group.

⁶⁷ As a result of the accompaniment provided by COALICO to victims of JEP Case 007, it has been possible to identify the following situations: on several occasions the armed groups intimidated a child for being restless, according to witnesses. In order to control his behavior, they suggested that he was an army infiltrator and later threatened to shoot him or take him into combat if he did not change his attitude. It is important to highlight what it meant for the child to be accused of being an infiltrator in front of their peers; this could cause mockery and humiliation from other group members.

⁶⁸ Last year, in the department of Chocó there were three suicides by a girl and two boys who belonged to the Emberá Indigenous community. According to information provided by family and community members, the suicides were a form of resisting recruitment by the Autodefensas Gaitanistas de Colombia (AGC) armed group: Observatorio de niñez y conflicto armado (ONCA) COALICO.

⁶⁹ In March 2022, two children were recruited by armed groups in the area. The mother of one of the adolescents found out after finding a note from her son, which said that he had left to join the FARC dissident group and that it was better not to look for him or tell anyone what happened to avoid possible harm. In response to the incident, local organizations offered psychosocial support services to the mother, who at the time was afraid to report the incident.

⁷⁰ As a result of the accompaniment provided by COALICO to victims of JEP Case 007, it has also been possible to identify violations involving gender-based violence such as: A minor who was recruited at age 13 stated that from the first moment she joined the FARC armed group, she was forced to take contraceptives, noting that at the time she had no knowledge of how they worked. On another occasion, the victim mentioned that when she opted not to take the contraception, the armed group decided to punish her. Another case demonstrates that commanders manipulated girls so that they would agree to be their partners. The manipulation consisted of buying them gifts and allowing them to see their relatives on weekends.

⁷¹ “States have a heightened obligation to prevent and combat gender-based violence and discrimination against women, girls and lesbian, gay, bisexual, transgender, and intersex persons.” Taken from: Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment. Para. 68. A/HRC/31/57.

⁷² Revolutionary Armed Forces of Colombia – People's Army.

an increase in the recruitment and use of children and adolescents by armed groups, especially compared to the first year of the Agreement's implementation. In 2016, 36 cases were registered, while in the following years there was an exponential increase, reaching 113 cases in 2017 and a peak of 116 in 2020.⁷³ COALICO's Observatorio de Niñez Conflicto Armado (ONCA) recorded 15 events involving child recruitment in 2016, while in 2020 it identified 79 events that affected at least 222 children and adolescents.

This situation reiterates the observation expressed by the Committee to the Colombian state in the evaluation of the fifth report submitted in 2015, which recognized that the classification of the crime contained in Articles 137 and 178 of the Criminal Code does not include acts of torture committed with the purpose of intimidating or coercing a third party. It is necessary that the Colombian state recognizes the relationship between recruitment and torture within this criminal offense and the damage caused to children and adolescents who are recruited, as well as effects on their family and friends. The state has not modified the law, which means that it has not complied with the recommendation.

Considering the prior, and in compliance with its obligations in line with Articles 2 and 16 of the Convention, the Colombian state should recognize the relationship between recruitment and torture and the damage this causes to children and adolescents who are recruited by armed groups, as well as to their family friends. The state should consequently adopt effective reparations measures for victims as well as prevention strategies that will help to avoid a continuation of these practices.⁷⁴

4.2. Gender-Based Violence (CAT, Arts. 2 and 16)

Violence against women as a form of gender-based violence⁷⁵ is currently one of the main sources of risk for women in both public and private spheres in Colombia.⁷⁶ In its last report, the Committee urged the state to intensify *“efforts to combat all forms of gender-based violence by ensuring that all allegations are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, that appropriate penalties are imposed.”*⁷⁷ Despite the fact that Colombia has relevant regulations for prevention, attention, protection, investigation, and reparations, impunity continues and the persistence of violence and discrimination against women is a cause for concern.

Between 2015 and 2022, the Colombian state enacted several regulations for the comprehensive care of female victims of violence. These include: Law 1761 of 2015, known as the “Rosa Elvira

⁷³ IV Report of the Secretary-General on Children and Armed Conflict. S/2019/1017. 31 December 2019.

⁷⁴ “There is an urgent need to formulate policies that promote the use of alternative measures such as diversion and restorative justice, incorporate comprehensive prevention programs, create a protective environment, and address the root cause of violence against girls.” Ibid. paragraph 30

⁷⁵ CEDAW Committee. General Recommendation No. 35. CEDAW/C/GC/35. 26 July 2017, para. 9.

⁷⁶ Article 1 of the Convention of Belém do Pará, ratified by Colombia, establishes a definition of violence against women that applies in all spheres of life.

⁷⁷ Committee against Torture. Concluding observations on the Fifth Periodic Report of Colombia. CAT/C/COL/CO/5. 29 May 2015.

Cely” Law, which introduced provisions to typify the crime of feminicide as an autonomous crime and another series of measures to ensure the provision of comprehensive attention to female victims of violence;⁷⁸ Law 1959 of 2019 on domestic violence, which expanded the concept and subjects affected by this crime;⁷⁹ Law 2126 of 2021 on family police stations, which expanded protection measures for victims of domestic violence, recognizing that women are the most affected by this type of violence;⁸⁰ and Law 2215 of 2022, which ordered the creation of shelters throughout the country.⁸¹ These laws were promoted by the women’s and feminist movements that in recent years has demanded state compliance with international obligations. These involve the provision of legal frameworks in domestic legislation for the prevention, punishment, and eradication of these types of violence.⁸²

In addition, the Prosecutor General’s Office has issued important resolutions and directives on the investigation of cases of violence against women, specifically Directive 016 of 2014 on feminicides, Directive 001 of 2017 that was later replaced by 001 of 2021 on domestic violence and Resolution 01764 of 2016 through which it adopted a protocol for the investigation of sexual violence.⁸³ These regulations are relevant because they provide input and guidance to the prosecuting entity on the specific impacts and effects of these crimes on women and girls, and the importance of using a gender approach in criminal investigations.

Despite this progress, organizations such as Sisma Mujer—which provides legal advice and legal representation to victims of these crimes in different parts of the country—concludes that these laws are neither known nor complied with by the majority of public prosecutors. This translates into revictimization during the reporting process, the application of negative gender stereotypes in the collection of evidence, discounting these behaviors as a majority of the victims are women, and generalized low-level access to justice.⁸⁴ This situation ignores the standards of the Committee against Torture and other human rights bodies that have highlighted how due process and an impartial judiciary must be ensured in cases of gender-based violence.⁸⁵

The Committee also noted that women face differential torture or abuse risks and consequences, which can be aggravated by different intersecting circumstances such as race, nationality, religion, sexual orientation, age, or migratory status.⁸⁶ These can be materialized through violence perpetrated by individuals in a community and at home, such as domestic violence (Colombia uses

⁷⁸ Rosa Elvira Cely was a woman who lived in Bogotá, the country's capital. On 25 May, 2012 she was murdered by a man in a public park after having been a victim of sexual violence and impalement. http://www.secretariassenado.gov.co/senado/basedoc/ley_1761_2015.html

⁷⁹ http://www.secretariassenado.gov.co/senado/basedoc/ley_1959_2019.html

⁸⁰ http://www.secretariassenado.gov.co/senado/basedoc/ley_2126_2021_pr001.html

⁸¹ http://www.secretariassenado.gov.co/senado/basedoc/ley_2215_2022.html

⁸² Convention of Belém do Pará, Art. 7c, CEDAW, Art. 2.

⁸³ <https://www.fiscalia.gov.co/colombia/wp-content/uploads/Resoluci%C3%B3n-01774-003.pdf>

⁸⁴ Corporación Sisma Mujer has provided approximately 892 advisory statements on cases of violence against women and girls between 2011 and 2022.

⁸⁵ Committee against Torture. General Comment No. 3. CAT/C/GC/3. 13 December 2012, para. 33.

⁸⁶ Committee against Torture. General Observation No. 2. Implementation of Article 2 by States Parties. CAT/C/GC/2. 24 January 2008, para. 22.

the category of intrafamily violence) and feminicides. Official figures reflect the persistence of violence.

According to figures analyzed by Corporación Sisma Mujer,⁸⁷ between 2015 and 2022, a total of 4,282 feminicides were reported to the Prosecutor General's Office, with 2021 seeing the highest numbers with a total of 695 cases. During this period, at least one woman or girl was a victim of femicide every 16 hours. Likewise, the entity reports that for the same period, 837,553 victims of domestic violence were registered. Among the victims whose sex is known, 79.14% are women (642,388) and 20.86% are men (169,318). At least one woman or girl was a victim of domestic violence every six minutes during this period. Similarly, between 2015 and 2022, the National Institute of Legal Medicine and Forensic Sciences (INML-CF) conducted 716 medical-legal examinations related to interpersonal violence, in which the causal mechanisms were chemical and caustic agents. Of these, 51% were women and 49% were men. During this period, every eight days at least one woman or girl was a victim of this kind of attack.⁸⁸

On access to justice, as of 2021, 82.92% of domestic violence cases are in the investigation stage, indicating a high level of impunity. Only 16.09% of cases are in trial and just 0.8% are in the sanction stage. In cases of sexual violence, 88.19% of the cases of sexual crimes against women are in the investigation stage, indicating high-level impunity, only 6.85% of the cases are in trial, and just 0.13% are in the sanction stage; and in cases of femicide, 44.06% of all cases are still in the investigation stage, 33.81% are in trial, 13.73% in investigation, and only 7.17% are serving a sentence.⁸⁹

Femicide is one of the most worrying situations for women and society in general, especially intimate partner feminicides.⁹⁰ Just in 2022, the National Institute of Legal Medicine and Forensic Sciences performed 134 forensic medical examinations on women victims of femicide perpetrated by their partner or ex-partner. These cases represented 13.19% of all violent deaths in women during the previous year. In most cases, the alleged aggressor was their permanent partner (48.51%), followed by spouses (18.66%), and former permanent partners (18.66%). In six cases the victims were minors, that is, 4.48% of all intimate partner feminicides.⁹¹

Although most victims of femicide were Colombian women in 2022, 34 cases were registered against migrant women, representing 5.2% of all cases: 33 were Venezuelan women and girls and

87 Information consulted and processed by Sisma Mujer, based on statistics from the Oral Criminal Accusatory System (SPOA in Spanish) of the Prosecutor General's Office, up to 31 December 2022

88 It is important to note that attacks with a chemical agent do not appear in the tables for 2015, 2016, and 2017; the public count is recorded as of 2018.

89 Corporación Sisma Mujer. Bulletin No. 29. International Women's Day 2022. Violencias contra las mujeres y participación en el mercado laboral. Available at: <https://www.sismamujer.org/wp-content/uploads/2022/03/VF-Boletin-8M-2022-1.pdf>

90 Julia Monárrez Fragoso offers a more in-depth conceptual understanding of the codification of intimate partner femicide in her work: *Las diversas representaciones del feminicidio y los asesinatos de mujeres en Ciudad Juárez, 1993-2005*. Available at: https://catedraunescodh.unam.mx/catedra/mujeres/menu_superior/Feminicidio/5_Otros_textos/9/6/vii.pdf

91 Information consulted and processed by Sisma Mujer, based on preliminary numbers from the Violence Observatory of the National Institute of Legal Medicine and Forensic Sciences, up to 31 December 2022.

one was a Peruvian woman. Of the cases of feminicide against migrant women, 14.71% were minors, 32.35% were young women between 18 and 28 years of age, 44.12% were adult women between 29 and 59 years of age, and there is no information on the age of the migrant victims in 8.82% of cases. The departments with the highest number of feminicides against migrant women are Magdalena (17.65%), Valle del Cauca (14.71%), and Bogotá (14.71%).⁹²

Some organizations have documented feminicides that occurred in conjunction with other human rights violations against women and girls. For example, in 2020 the Fundación Feminicidios Colombia⁹³ recorded 37 feminicides in which women had been previously disappeared, 39 cases where women's bodies were disposed of in areas such as forests, rivers, streams, and other locations, including in bags, and 10 cases of women who were burned alive, 4 of whom died. In 21 cases women were catalogued as victims of torture.

The Committee against Torture has emphasized that the “*state’s indifference or inaction provides a form of encouragement and/or de facto permission*,”⁹⁴ noting that this principle applies in cases of gender-based violence such as “*rape, domestic violence, female genital mutilation, or trafficking, or the failure to protect victims*.”⁹⁵ This is relevant for Colombia, because despite the existence of standards that formally protect women and girls, and growing knowledge about their rights in recent years, in many feminicide cases it was shown that previous complaints and requests for protection measures had been filed, some even granted, but these were insufficient to protect their lives.

Finally, feminist organizations such as Women's Link Worldwide have undertaken innovative actions on reproductive violence as an autonomous category of sexual violence, especially for cases that occurred in the context of the armed conflict, achieving a constitutional recognition of the intra-ranks violence committed by former FARC guerrillas and its reparation.⁹⁶ This work is based on the precept that “*in Colombia there are forms of gender-based violence experienced by women and girls in the armed conflict that do not necessarily fit into the category of sexual violence*.”⁹⁷ Other reports relate events of reproductive violence (in cases of pregnant women, forced abortions, forced sterilization, and forced contraception in the context of the conflict) that constitute torture or cruel treatment under international standards.⁹⁸ The Committee against Torture has already drawn attention to this situation in General Comment No. 2.⁹⁹

⁹² Ibid.

⁹³ Fundación Feminicidios Colombia. No somos un día. 2020 Annual Report. Available at: <https://www.feminicidioscolombia.org/wp-content/uploads/2022/09/INFORME-ANUAL-NO-SOMOS-UN-DIA-2020.pdf>

⁹⁴ Committee against Torture. General Observation No. 2. Implementation of Article 2 by States Parties. CAT/C/GC/2. 24 January 2008, para. 18.

⁹⁵ Ibid.

⁹⁶ See the report submitted by Women's Link Worldwide to the Truth Commission: <https://www.womenslinkworldwide.org/files/3163/informe-completo-una-violencia-sin-nombre-violencia-reproductiva-en-el-conflicto-armado-colombiano.pdf>

⁹⁷ Ibid., para. 34

⁹⁸ Centro de Derechos Reproductivos. Violencia reproductiva en el conflicto armado colombiano. Available at: https://reproductiverights.org/wp-content/uploads/2020/12/Violencia-reproductiva-en-el-conflicto-armado-colombiano_Reporte-1.pdf

⁹⁹ Committee against Torture. General Observation No. 2. Implementation of Article 2 by States Parties. CAT/C/GC/2. 24 January 2008, para. 22.

These developments, along with the country's legal and social movements, were able to position the decriminalization of abortion as a necessity to protect women and girls. Thus, on 21 February 2022 the Constitutional Court decriminalized abortions up to 24 weeks, establishing that after this period the exceptions established in ruling C-355 of 2006 remain valid.¹⁰⁰ However, almost a year after the ruling, organizations note that the barriers to access abortion persist and that government measures are lacking effective guarantees.¹⁰¹

In conclusion, it is essential that the Colombian state continue taking the necessary judicial, legislative, and administrative measures to ensure that gender-based violence is eliminated and prevented in accordance with Article 2 of the Convention. Additionally, it is important that situations, such as reproductive violence, be prohibited in line with Article 16 of the Convention.

4.3. Sexual Violence and Torture in Colombia (CAT, Arts. 2 and 16)

Sexual violence is an internationally recognized form of torture, and one that particularly impacts women and girls. Colombia is no exception and, both in the context of their daily lives and the armed conflict, women continue to suffer this violation of their rights.

4.3.1. Sexual Violence Against Women and Girls in Colombia Outside of the Context of the Armed Conflict, 2015 to 2022

Sexual violence is one of the forms of violence against women that is the most difficult to recognize, investigate, and redress. Despite being one of the most frequent acts of violence, there are high levels of impunity and many women are afraid to report it due to the social, economic, labor, and personal impacts involved.¹⁰² These are aggravated in hard to reach rural areas, and in scenarios of armed conflict and intensified violence, where women and girls face a greater risk of being victims of human trafficking, including trafficking for the purposes of slavery and sexual exploitation.¹⁰³

Between 2015 and 2022, the National Institute of Legal Medicine and Forensic Sciences (INML-CF) performed a total of 183,934 forensic medical examinations for alleged sexual crimes.¹⁰⁴ Of all of these examinations, 158,535 were performed on girls and women (86.19%) and 25,399 on boys and men (13.81%). Of all of the victims that are girls and women, the majority are minors, with 133,811 cases of girls, equal to 84.4% of the cases. According to statistics, during this period, every 26 minutes at least one woman and one girl were victims of sexual violence in Colombia. These figures are alarming as they reveal that girls and adolescents are those most affected by

100 There are three grounds: 1. when pregnancy constitutes a risk to the woman's life and health, 2. when there is a malformation of the fetus that makes extrauterine life unviable, and 3. when the pregnancy is the result of rape or incest. Constitutional Court. Ruling C-055 of 2022. Presiding Judges: Antonio José Lizarazo Ocampo and Alberto Rojas Ríos. Available at: <https://www.corteconstitucional.gov.co/Relatoria/2022/C-055-22.htm>

101 See Causa Justa por la eliminación del aborto: <https://causajustaporelaborto.org/movilizacion-por-los-6-meses-del-fallo-historico/> Even though it does not fall within the dates for this report, on 12 January 2023 the Ministry of Health and Social Protection issued Resolution No. 51 of 2023 which regulates access to abortion in compliance with the Constitutional Court's order.

102 Ibid., para. 9.

103 Report of the United Nations Secretary-General to the Security Council. Conflict-Related Sexual Violence. S/2020/487. 3 June 2020, para. 35.

104 Information consulted and processed by Sisma Mujer, based on preliminary numbers from the Violence Observatory of the National Institute of Legal Medicine and Forensic Sciences, up to 31 December 2022.

sexual violence¹⁰⁵ and that their main aggressors were individuals who live with them in the home, a situation that was aggravated by the COVID-19 pandemic.¹⁰⁶

Corporación Sisma Mujer brought visibility to information from the National Institute of Legal Medicine and Forensic Sciences (INML-CF), showing that in 2020 “*of the 13,011 reported cases of sexual violence against girls and adolescents, in only 399 cases (3.06 %) the alleged aggressor was registered as unknown, in 6,625 cases (50.91 %) the alleged aggressor was a family member, and in 2,573 cases they were an acquaintance (19.77 %).*”¹⁰⁷ “*Likewise, it was reported the sexual violence took place in the home in 81.83% of these cases.*”¹⁰⁸

It is important to note that 2020 was the year with the lowest registry of cases of alleged sexual crimes. As Sisma Mujer warned in various publications, this does not represent a decrease in violence, but rather reduced access to justice due to the confinement and restrictions associated with the COVID-19 pandemic. On the contrary, the increase in calls to complaint hotlines or pregnancies in girls and adolescents due to sexual violence are indicators of increased violence against women and girls, mostly in their places of residence.¹⁰⁹

Sexual violence also continues in public arenas. The United Nations High Commissioner for Human Rights made a statement on the repression of protests and the state security forces’ indiscriminate use of force against peaceful demonstrators in the context of the national strike that began in April 2021. The Office also indicated that it was aware of 60 cases of sexual violence committed against women and men. At least 16 of these incidents were confirmed and in 13 cases the prosecutor’s office reported that criminal investigations had been initiated.¹¹⁰ Social organizations such as Temblores ONG, Indepaz, and PAIIS, which recorded human rights violations during the protests, reported at least 25 victims of sexual violence and six victims of gender-based violence. Meanwhile, the Campaign *Defender la Libertad un Asunto de Todas* registered 29 cases of gender-based violence and five sexual assaults. The National Ombud’s Office reported 106 incidents of gender-based violence and 23 of these cases sexual violence.¹¹¹ The Inter-American Commission on Human Rights’ June 2021 working visit to Colombia received multiple reports on the use of gender-based violence and sexual violence as a form of repression

105 Inspector General’s Office of the Nation. Bulletin 684. Nuevamente, las niñas y las adolescentes, las principales víctimas de violencias sexuales en Colombia. 24 November 2022. Available at: <https://www.procuraduria.gov.co/Pages/las-ninas-y-adolescentes-principales-victimas-de-violencias-sexuales-en-colombia.aspx>

106 Corporación Sisma Mujer, Los derechos humanos de las mujeres no están en cuarentena. Bulletin No. 20. 23 April 2020. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/08/Boleti%CC%81n-Sisma-Mujer-COVID-19-y-DH-de-las-mujeres-en-Colombia-1.pdf>. Corporación Sisma Mujer, En tiempos de pandemia tampoco es hora de callar las violencias contra las mujeres. Bulletin No. 21. 25 May 2020. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/08/Boleti%CC%81n-No-21-2020.pdf>

107 Corporación Sisma Mujer. En 2021 no es hora de callar: por la erradicación de la violencia sexual contra las mujeres en el marco del conflicto armado. Bulletin No. 26. 25 May 2021, p. 5. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/08/Boletin-25M-2021.pdf>

108 Ibid., p. 4

109 Sisma Mujer. Bulletin No. 29. International Women’s Day 2022. Violencias contra las mujeres y participación en el mercado laboral. 2022. Available at: <https://www.sismamujer.org/wp-content/uploads/2022/03/VF-Boletin-8M-2022-1.pdf>

110 Report of the United Nations High Commissioner for Human Rights. Situation of human rights in Colombia. A/HRC/49/19. 17 May 2022. para. 52.

111 These numbers correspond to the report submitted by various feminist and human rights organizations to the Inter-American Commission on Human Rights on sexual and other violence against women in the 2021 National Strike in Colombia. See press release: <https://cjlibertad.org/violencias-sexuales-y-otras-violencias-contra-mujeres-en-el-contexto-del-paro-nacional-de-colombia-2021/>

against women, girls, and LGBTIQ+ people, the differential impacts on Indigenous and Afro-Colombian women, and the state security forces notable role.¹¹²

The high percentage of impunity in these cases sends a message of tolerance to society, which becomes an obstacle for victims to guarantee and protect their rights, as well as a continuum of violence that sustains the discrimination and subordination of women and girls. This is contrary to the international due diligence obligations in cases of violence against women and the prohibition of discrimination, which are set out in multiple binding treaties that the Colombian state has the obligation to fulfill.

According to a 2018 report from the Inspector General's Office, in general, access to justice is insignificant in the cases of sexual violence brought before the criminal justice system. In the January 2017 to August 2018 period, it was reported that of "72,701 cases, 90% are in the inquiry stage, 5.7% in trial, 2.5% in investigation, 0.1% resulted in a plea, 0.4% appear as retracted by the victim, and 1.2% are in an execution of sanctions."¹¹³ In 2021, 88.19% of the cases on sexual crimes against women were under investigation, 6.85% were in trial, and only 0.13% were in the stage of executing sanctions.¹¹⁴

Moreover, in the context of the region's current migratory situation, Venezuelan women and girls have also experienced situations of sexual violence in the Colombian territory. Between 1 January and 31 December 2022, INML-CF performed 22,367 medical-legal examinations of women and girls for alleged sexual crimes. Of these cases, 1,213 or 5.43% were against migrant women. Of all the migrant victims of sexual violence, 83.29% are girls and 16.71% are adult women. Most migrant women and girls who are victims come from Venezuela (1,142 cases, corresponding to 93.99%). There was also a registry of 15 cases of women and girls from Ecuador, 15 from Spain, nine from the United States, and four each from Bolivia, Panama, Brazil, and Chile.

Sexual violence as a form of torture must be recognized by the Colombian state and therefore it must reinforce its commitment to the prevention and elimination of any act constituting sexual violence, through regulatory and administrative adaptations, and the prosecution and punishment of those responsible, in line with the obligations established in the Convention.

4.3.2. Sexual Violence Against Women and Girls in the Context of the Armed Conflict Between 2015 and 2022

112 IACHR. Observations and recommendations. Working visit to Colombia. Visit: June 2021. Section 3.2. Available at: https://www.oas.org/en/iachr/reports/pdfs/ObservacionesVisita_CIDH_Colombia_ENG.pdf

113 Inspector General of the Nation, La doble violencia: impunidad y desatención en delitos sexuales, Report from the Inspector General's Office of the Nation on the fulfillment of Law 1719 of 2014, p. 15.

114 Corporación Sisma Mujer. International Women's Day 2022. Violencias contra las mujeres y participación en el mercado laboral. Bulletin No. 29. Available at: <https://www.sismamujer.org/wp-content/uploads/2022/03/VF-Boletin-8M-2022-1.pdf>

Sexual violence in the context of the armed conflict is one expression of gender discrimination¹¹⁵ in Colombia and impacts women and girls in a differential and disproportionate manner. These crimes have been committed by all of the armed actors and throughout the national territory, impacting women's life projects and rights. The tolerance of these acts by the state and the fact that they are perpetrated by state agents, who are protected by both silence and judicial ineffectiveness, allows this violence to continue. Sexual violence, like all violence against women and gender-related violence, is an expression of the power relations established and legitimized in societies, in and outside of conflicts, and, as the CEDAW Committee has pointed out, it "does not stop with the official ceasefire or the signing of the peace agreement and often increases in post-conflict settings."¹¹⁶ This is particularly relevant given that violence against women did not end with the peace agreement which the Colombian government signed with the former FARC-EP guerrillas in 2016, after almost five years of negotiations.

According to figures from the Unified Registry of Victims of the Unit for Attention and Comprehensive Reparation for Victims (UARIV in Spanish) which were analyzed by Corporación Sisma Mujer, between January 2017 and October 2022 a total of 3,811 victims of sexual violence were recorded, of these 3,449 (90.5%) are women, 277 (7.27%) are men, and 85 (2.23%) are LGBTIQ+ people. As for cases reported by the Prosecutor General's Office, between January 2017 and June 2022, 745 victims were registered. Of these, 606 (81.34%) are women, 89 (11.95%) are men, and there is no information on the remaining 50 individuals (6.71 %).

According to INML-CF figures analyzed by the same organization, the main alleged perpetrators are in the category of "*members of the armed forces, police, judicial police, and intelligence services*" with a total of 286 cases (31.43%).¹¹⁷ This data shows that state measures to prevent and protect against sexual violence in the country are still ineffective.

As the Constitutional Court has pointed out, sexual violence is a systematic practice,¹¹⁸ with the highest impunity rates due to the obstacles for victims to access justice. This is due to an underreporting,¹¹⁹ authorities' lack of due diligence in investigation, punishment, and reparation, the lack of legal and psychological support for victims,¹²⁰ the denial of its relationship with the

115 According to the CEDAW Committee: "Violence against women and girls constitutes a form of discrimination prohibited by the Convention and a human rights violation." General Recommendation No. 30. para. 34.

116 Ibid., para. 35.

117 It is important to note that there is a difference between the information recorded in the RUV of the UARIV, as this is the scenario where victims seek attention and comprehensive reparation under Law 1448 of 2011 (Victims Law), while the figures reported by the Prosecutor's Office and the INML-CF correspond to cases reported in the criminal jurisdiction. We recognize that these are not statistically comparable scenarios, but they do reflect the gaps in access to justice.

118 Constitutional Court. Ruling 092 of 2008. Presiding judge: Manuel Jose Cepeda Espinosa. para. III.1.1.1. Available at: <https://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>

119 The National Center for Historical Memory has recognized problems related to the registry and statistics on conflict-related sexual violence, and the consequent challenges to collect and process figures. See: Memoria histórica con víctimas de violencia sexual: aproximación conceptual y metodológica, December 2018, p.43.

120 Working Group to Monitor Constitutional Court Ruling 092 and 009, Confidential Annexes. Estado de cumplimiento de las órdenes impartidas por la Corte Constitucional para la garantía de los derechos de las mujeres víctimas de violencia sexual en los casos que componen los anexos reservados de los autos 092 de 2008 y 009 de 2015. Seventh report. 2020. Section III. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/09/Septimo-Informe-del-Seguimiento-al-Auto-092.pdf>

armed conflict or of its occurrence by armed actors,¹²¹ the presence of stereotypes in judicial assessments,¹²² the absence of guarantees to file a complaint, and the lack of an application of differential approaches, among others.¹²³

According to figures reported in the Unified Registry of Victims of the UARIV, between 2015 and 2022 a total of 5,871 victims of crimes against sexual freedom and integrity were registered in the context of the Colombian armed conflict.¹²⁴ Of these, 5,304 victims were women, or 90.34%. During this period, 2015 had the highest numbers of female victims with 952 were recorded. The lowest registry of female victims was in 2022, with a total of 491. Between 2015 and 2022, at least every eight hours a woman was a victim of sexual violence in the context of the Colombian armed conflict.

This shows that women and girls are the main victims of these crimes and are impacted in a differential and disproportionate manner. Therefore, comprehensive and gender-focused state measures are required.¹²⁵

In previous reports, the Committee was informed that the Constitutional Court—in following up on Ruling T-025 of 2004, which declared a State of Unconstitutional Affairs in the country with respect to forcibly displaced persons—issued Order 092 of 2008,¹²⁶ ruling on the following issues: the protection of the fundamental rights of women displaced by the armed conflict in Colombia, and the prevention of the disproportionate gender impact of the armed conflict and forced displacement. In that decision, the Court noted that sexual violence constituted a gender risk for displaced women and a gendered facet of displacement as a “*habitual, widespread, systematic, and invisible*”¹²⁷ practice. The Court also received information on 183 events of sexual violence associated with the armed conflict, which was included in a confidential annex sent to the Prosecutor General’s Office for investigation. In relation to these cases, civil society organizations established a Follow-up Working Group¹²⁸ (hereinafter the Working Group) which to date has issued seven reports on compliance with Ruling 092.

121 A study on this subject addressed the elements that explain this relationship. See: Conexidad entre la violencia sexual y el conflicto armado, un llamado al no retroceso en la Jurisdicción Especial para la Paz, Alianza Cinco Claves, p. 11-39 Available at: <https://www.sismamujer.org/wp-content/uploads/2019/07/Publicación-5-claves-final-a-una-pag-1.pdf>.

122 Inter-American Court of Human Rights. Case of Bedoya Lima Et Al. V. Colombia Ruling 26 August 2021. Series 431 (Merits, Reparations, and Costs), para. 172.

123 Working Group to Monitor Constitutional Court Ruling 092 and 009, Confidential Annexes. Acceso a la justicia para mujeres víctimas de violencia sexual. Sixth Follow-Up Report on Ruling 092 of 2008 and First Follow-Up Report on Ruling 009 of 2015, Confidential Annexes. 2016. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/08/2016-AUTO-SEXTO-WEB-2.pdf>

124 Information consulted and processed by Sisma Mujer, based on the Unified Registry of Victims of the Unit for Attention and Comprehensive Reparation for Victims, up to 31 December 2022.

125 Sisma Mujer. Tratamiento de la temática de violencia sexual en la Jurisdicción Especial para la paz:

Llamado feminista para poner fin a la impunidad y construir una paz con enfoque de género. 2022. Available at: <https://www.sismamujer.org/wp-content/uploads/2022/05/Tratamiento-de-la-violencia-sexual-en-la-JEP-7.pdf>

126 Constitutional Court. Ruling 092 of 2008. Presiding uudge: Manuel Jose Cepeda Espinosa.

127 Monitoring Working Group on Ruling 092 of 2008 - Confidential Annex. Acceso a la justicia para mujeres víctimas de violencia sexual. Fifth Follow-up Report to Constitutional Court Ruling 092 of 2008, Confidential annex. 2013, p. 11. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/08/Acceso-a-la-justicia-para-mujeres-victimas-de-violencia-sexual-Quinto-informe.pdf>

128 Made up by the Alianza Iniciativa de Mujeres Colombianas por la Paz, the Centro de Estudios de Derecho, Justicia y Sociedad, the Colectivo de Abogados José Alvear Restrepo, the Comisión Colombiana de Juristas, the Consultoría para los Derechos Humanos y el Desplazamiento, the

Subsequently, and in follow-up to this decision, Ruling 009 of 2015¹²⁹ was issued by this same body, which confirmed the continuity of the events and risks constituting sexual violence against women in the context of the armed conflict and forced displacement since the issuance of Ruling 092. It declared that all Colombian authorities have the constitutional and international obligation to act urgently and with due diligence to: i. effectively prevent factors that have given rise to a persistence of sexual violence in the context of the internal armed conflict and forced displacement, emphasizing the presumption of a close and sufficient relationship between the internal armed conflict, displacement, and acts of sexual violence; ii. attend to and protect survivors of sexual violence; and iii. guarantee a fulfillment of their rights to truth, justice, reparation, and guarantees of non-repetition.

It also pointed out that sexual violence is committed by all armed actors, legal and illegal, in the conflict and emphasized that displaced women are also at risk of being victimized by non-armed actors and that this is related to the conflict.¹³⁰ In this decision, the Court referred to 444 cases of sexual or gender-based violence in the confidential annexes, which together with Ruling 092, allowed the Working Group to address a total of 627 cases reported by the Court. In the sixth follow-up report on Ruling 092 and the first follow-up report on Ruling 009, the Working Group concluded that there were 634 events that affected at least 768 victims¹³¹ and that 97% of these cases were in impunity.¹³²

In 2017, the Court issued Ruling 737¹³³ which evaluated advances in the protection of the fundamental rights of women victims of forced displacement in Colombia, specifically the measures proposed in these rulings, and determined that, at that time, the compliance level of the orders issued in those rulings—in terms of an effective enjoyment of rights—was low and that institutional obstacles persisted. These impede significant improvements for women victims of forced displacement and other events that violate their rights. In its ongoing work to follow up on the Court's orders, the Working Group issued its last follow-up report in 2020,¹³⁴ confirming the conclusions of its previous report: in the cases included in the confidential annexes there is almost total impunity, which remains at 97%.

Based on information submitted by state entities such as the Prosecutor General's Office, the organizations demonstrated multiple obstacles for victims to access justice and guarantees for their rights, including i. reporting inconsistencies, meaning that it was not possible to comprehensively understanding the status of the universe of cases, ii. an extremely low percentage of cases in the

Corporación Casa de la Mujer, the Corporación Sisma Mujer, the Liga de Mujeres Desplazadas, la Mesa de Trabajo Mujer y Conflicto Armado, the Observatorio Género Democracia y Derechos Humanos, the Organización Nacional Indígena de Colombia, and the Ruta Pacífica de las Mujeres.
129 Constitutional Court. Ruling 009 of 2015. Presiding Judge: Luis Ernesto Vargas Silva. Available at: <https://www.corteconstitucional.gov.co/RELATORIA/Autos/2015/A009-15.htm>

130 Sixth Working Group Report Annexes, Op. Cit., p. 6

131 Ibid., p. 12. In its report the Working Group mentions that it differentiates events from acts as the former, as reported by the court, includes events that affected more than one woman, and therefore the latter refer to each individual act.

132 Ibid., p. 14.

133 Constitutional Court. Ruling 092 of 2008. Presiding Judge: Gloria Stella Ortiz Delgado. Available at: <https://www.corteconstitucional.gov.co/relatoria/autos/2017/A737-17.htm>

134 Seventh Working Group Report Annexes, Op. Cit.

sentencing or post-sentencing stage: only 34 of all of the cases, 16 of which are reported as convictions for events that include gender-based violence, and iii. more than half of the cases are in preliminary stages: 289 cases (66.8%), of these 136 are inactive. Additionally, the Working Group evidenced practices by investigators that revictimize and discriminate against women victims and perpetuate impunity. These include ignoring the duty to investigate in: generalized situations of sexual violence, cases where there is a ruling for other crimes, and missing cases, in addition to decisions to archive, not make a ruling, and preclude without grounds which appears to be contrary to the obligation to investigate.¹³⁵

A case that exemplifies these obstacles to access justice and scenarios of impunity are the violent events that occurred on 25 May 2000 against Colombian journalist Jineth Bedoya, who was kidnapped, sexually assaulted, and tortured by paramilitaries when she visited a prison in the capital to conduct an interview. It was not until 6 May 2019, that the Fifth Criminal Court of the Specialized Circuit of Bogotá convicted the perpetrators of these events. It took almost 20 years to obtain justice from the state.¹³⁶ The unjustified delays led Jineth to report the authorities' failure to act to the Inter-American Human Rights System, and in 2021 the Inter-American Court declared that Colombian state was responsible.

In its decision, this body stated that the Colombian state “*failed to comply with and disregarded in this specific case its obligation to prevent, protect, and provide justice,*”¹³⁷ in addition to revictimizing the journalist by requiring her to make multiple statements and failing to comply with its obligation to due diligence regarding the threats prior to and after the events. In this decision, the Inter-American Court recognized the differential risks faced by women, and in the journalist's specific case, as a victim of sexual violence in the context of the armed conflict.¹³⁸ The body concluded that in this case the acts to which the journalist was subjected constituted acts of physical, sexual, and psychological torture in line with international standards, including statements from the Committee against Torture and the United Nations Special Rapporteur on Torture, and furthermore, that “[*these crimes*] *could not have been carried out without the acquiescence and collaboration of the state, or at least without its tolerance.*”¹³⁹

The statistics also show that the persistence of sexual violence does not discriminate against women by age or ethnicity. Of all the women registered as victims of sexual violence in the context of the conflict, between 2015 and 2022, 61.43% were between 29 and 60 years old, 29.09% were young women between 18 and 28 years of age, and 5.83% were minors.

¹³⁵ Ibid., p. 6-23.

¹³⁶ Sisma Mujer. Reconocer y erradicar la violencia sexual contra las mujeres para consolidar una paz estable y duradera. Comportamiento de la violencia sexual contra mujeres y niñas en Colombia durante 2018 y 2019. Bulletin No. 17. 25 May 2019. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/08/24-05-2019-Boleti%CC%81n-SISMA-25-de-mayo-de-2019.pdf>

¹³⁷ Inter-American Court of Human Rights. Case of Bedoya Lima Et Al. V. Colombia Ruling 26 August 2021. Series 431 (Merits, Reparations, and Costs)

¹³⁸ Ibid., para. 94

¹³⁹ Ibid., para. 104.

In terms of ethnicity, 40.37% of the women and girls registered as victims belong to an ethnic group. Of them, 84.07% belong to Black, Afro-descendant, Raizal, and Palenquero communities; 15.6% are Indigenous, and 0.33% are gypsies or Rroma.

The situation faced by Indigenous women and girls with respect to sexual violence in the context of the conflict is of particular concern. According to reports from the Follow-up Committee for the Confidential Annexes, of all the victims, 64 are Indigenous (8.6%, which corresponds to 28 events reported by the Court), and even more concerning, the Prosecutor's Office concluded that 52 of these cases were committed by state security forces.¹⁴⁰ Despite this, methodologies that respond to gender and differential approaches have not been applied to investigate these cases or to protect the girls. Moreover, these events occur in militarized territories and in the context of the girls and their families' day to day life, where the violence is compounded by economic inequalities and the lack of a state presence—outside of state security forces—by institutions that should guarantee basic rights. The resulting scenario favors impunity in cases of sexual violence.

In recent years, the country learned about the case of a 12-year-old Emberá Indigenous girl who, on 21 June 2020, was a victim of sexual violence at the hands of seven soldiers of the National Army in the township of Santa Cecilia, municipality of Pueblo Rico (Risaralda). The men were convicted for abusive carnal access.¹⁴¹ Recently several complaints came to light concerning sexual violence by army members against Nukak Makuk Indigenous girls in San José del Guaviare, which has occurred since at least 2019. The Prosecutor General's Office announced that disciplinary investigations would be carried out against the regional director of the Colombian Institute of Family Welfare, who apparently had knowledge of these events and did not take the appropriate actions, and against the military members allegedly involved.¹⁴²

Considering the persistence of a high number of events of sexual violence against women in the context of the armed conflict, specifically its disproportionate impact on Afro-Colombian and Indigenous women, girls, and adolescents, it is evident that the state did not implement the Committee's recommendation to take measures with an ethnic and gender approach to prevent the torture of children and adolescents, especially in rural populations that experience the armed conflict and forced displacement.

4.4. Persons with Disabilities (CAT, Arts. 2, 10, and 16)

Persons with disabilities are victims of two principal, yet not exclusive, forms of torture and CIDTP in Colombia. One has to do with their institutionalization, or placement in a health institution, almost always against the will of the person with a disability. The other is the

140 Sixth Follow-Up Report on Ruling 092 of 2008 and First Follow-Up Report on Ruling 009 of 2015, Op. Cit., 39-40

141 See press release from the Prosecutor General's Office: <https://www.fiscalia.gov.co/colombia/noticias/confirmada-condena-contrasoldados-por-acceso-carnal-a-nina-indigena-en-departamento-de-risaralda/>

142 Inspector General's Office of the Nation. Bulletin 53 of 2023. The Inspector General's Office initiated two disciplinary proceedings for cases of abuse and sexual violence against Indigenous girls in Guaviare. Available at: <https://www.procuraduria.gov.co/Pages/procuradur%C3%ADa-inicio-actuaciones-disciplinarias-casos-abuso-violencia-sexual-ni%C3%B1as-indigenas-Guaviare.aspx>

performance of surgical procedures that seek to sterilize people with disabilities, without consulting their opinion on the matter or applied against their will.

4.4.1. Forced Institutionalization of Persons with Disabilities

Deprivation of liberty on the grounds of a disability constitutes a direct violation of the rights to equality before the law, independent living and community life for persons with disabilities and constitutes a discriminatory practice under the CRPD.¹⁴³ The CRPD Committee notes that, in addition, the institutionalization of persons with disabilities is a form of violence that:

“(…) exposes persons with disabilities to forced medical intervention with psychotropic medications, such as sedatives, mood stabilizers, electro-convulsive treatment, and conversion therapy, infringing Articles 15, 16, and 17. It exposes persons with disabilities to the administration of drugs and other interventions without their free, prior, and informed consent, in violation of Articles 15 and 25.”¹⁴⁴

Based on the CRPD Committee’s findings, institutionalization of persons with disabilities should be prohibited and, in fact, should be *“legislated to criminalize the detention and institutionalization on the grounds of a disability, and other acts that result in disability-related torture and abuse.”*¹⁴⁵ The phenomenon of institutionalization includes institutions such as psychiatric centers, long-stay hospitals, nursing homes, special boarding schools, rehabilitation centers other than community centers, halfway houses, group homes, family homes for children, protected homes, forensic psychiatric settings, transitional housing, albinism shelters, leper colonies, among others.¹⁴⁶ In relation to the institutionalization of children and adolescents with disabilities, the CRPD Committee specifically recommended that the ICBF adopt *“a plan to deinstitutionalize children with disabilities, including those who are institutionalized on the grounds of protective measures ordered [by ICBF], and to develop community-based services and the provision of support to families, especially single mother households, to guarantee the right of children with disabilities to grow up in a family environment and the right to family life.”*¹⁴⁷ Although Law 1878 of 2018 was issued, modifying the PARD and eliminating disability as grounds to initiate the program, in addition to establishing deadlines to deinstitutionalize dozens of adults with disabilities under ICBF care, the CDPD Committee’s recommendation has yet to be fully implemented and many people who were seeking to be deinstitutionalized returned to ICBF

¹⁴³ United Nations. *Convention on the Rights of Persons with Disabilities*. 2006. Arts. 5, 12, 14, and 19. The CRPD was ratified by Colombia in May 2011.

¹⁴⁴ United Nations. Committee on the Rights of Persons with Disabilities. CRPD/C/5. *Guidelines on deinstitutionalization, including emergencies*. 10 October 2022. para. 6.

¹⁴⁵ Ibid., para. 120.

¹⁴⁶ Ibid., para. 15.

¹⁴⁷ United Nations. Committee on the Rights of Persons with Disabilities. CRPD/C/COL/CO/1. *Concluding observations on the initial report of Colombia*. 31 August 2016. para. 19.

care. Likewise, there are numerous nationally known cases of abuse and violence against people with disabilities and children and adolescents in homes that have agreements with the ICBF.¹⁴⁸

People with psychosocial disabilities continue to be victims of forced psychiatric treatment, which often involves foregoing their informed consent, both for admission to psychiatric institutions, medicating, and measures such as isolation and limits on socialization. The involuntary institutionalization of persons with disabilities is not supervised by any competent entity and exclusively depends on the medical order and subsequent authorization by the health care provider. Specifically, Article 63 of Resolution 5269 of 2017 refers to the “commitment of a patient with a mental disorder or illness.”¹⁴⁹ This states that when a person with a psychosocial disability is considered dangerous to the life or wellbeing of himself/herself or others, the length of the commitment will be the duration considered necessary by the treating professional.

Therefore, involuntary commitment and forced psychiatric care are a clear violation of the right to liberty and wellbeing of persons with disabilities and constitute acts of torture and CIDTP. The Colombian state must comply with the obligations established in the Convention, specifically in Articles 2, 10, and 16.

4.4.2. Forced Sterilizations of Persons with Disabilities (CAT, Arts. 10 and 16)

The 2013 Report of the Special Rapporteur on TPCID highlighted the importance of a standard that protects persons with disabilities, considering the close ties between forced medical interventions based on discrimination and the deprivation of legal capacities.¹⁵⁰ Invasive and irreversible medical treatments, when lacking a therapeutic aim, may constitute torture and abuse if applied or administered without the patient’s free and informed consent.¹⁵¹

There have been important advances in Colombia to curb this practice, such as Resolution 1904 of 2017 from the Ministry of Health and Social Protections and Law 1996 of 2019. The Resolution should seek to ensure informed consent from persons with disabilities through the use of reasonable accommodations and support. Law 1996 expressly repealed Article 6 of Law 1412 of 2010, which established the exceptional nature of procedures without consent in cases of a mental disability where *“the request and consent will be signed by the respective legal representative, with judicial authorization.”*

148 Some of them:

- a. <https://www.caracoltv.com/septimo-dia/que-paso-ese-dia-con-el-nino-denuncias-de-presunto-maltrato-en-hogares-del-icbf-pr30>
- b. <https://www.rcnradio.com/bogota/con-video-denuncian-grave-caso-de-maltrato-infantil-en-centro-de-cuidado-del-icbf>
- c. <https://www.lafm.com.co/bogota/video-denuncian-caso-de-maltrato-infantil-en-centro-de-cuidado-del-icbf>
- d. <https://www.rcnradio.com/recomendado-del-editor/madres-denuncian-que-menores-estarian-siendo-maltratados-en-fundacion>
- e. https://www.lasexta.com/noticias/sociedad/detienen-trabajadores-internado-donde-maltrataban-torturaban-ninos-discapacitados_2017102159eb25a20cf2fc58bff8a8ba.html

149 Ministry of Health and Social Protection. Resolution 5269 of 2017. *Por la cual autoriza integralmente el Plan de Beneficios en Salud con Cargo a la Unidad de Pago por Capitación (UPC)*.

150 United Nations. General Assembly. A/HRC/22/53. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez. 1 February 2013.

151 Ibid.

Despite these regulatory advances, it is known that the sterilization of persons with disabilities without their consent continues in some areas of Colombia.¹⁵² There are no regulations that expressly prohibit these procedures without the individual's consent, nor are there any specific punishments for implementing these procedures, much less reparation measures for victims. Consequently, it is important to call on the Colombian state to comply with Article 16 of the Convention.

5. Psychological, Physical, and Psychosocial Damages Caused by Physical and Psychological Torture

Within the framework of the experience relative to the professional services provided by the *Corporación Centro de Atención Psicosocial* (CAPS) to people affected by various forms of torture, we identified the principal damages resulting from the effects of physical and psychological torture.

Psychological Damage

Post Traumatic Stress Disorder

Intense and prolonged psychological distress when exposed to internal or external factors that symbolize or resemble the traumatic event

Hyper alertness or a permanent state of alertness

Reliving the traumatic event

Persistent avoidance of stimuli associated with the traumatic event

Increased physiological activation response

Generalized fear

Negative cognitive alterations in attention, memory, and decision-making processes associated with the traumatic event

Intense emotional distress with various mood manifestations such as sadness, irritability, and fear (among others) associated with the traumatic event

Feelings of detachment

Loss of self-esteem

Altered autonomy

Distrust

Anxiety

¹⁵² There is no reliable record of the number of persons with disabilities who have undergone a surgical contraceptive procedure and whether the person consented to the procedure, or the use of reasonable accommodations or support in the decision-making process.

Repetitive thoughts

Insomnia

Restricted affection

Persistent negative emotional state manifested by fear and anger

Multiple and complicated mourning

Physical Damage

This manifests as the appearance of psychosomatic ailments and / or various illnesses, which have a direct relationship to the events of psychological torture, where the immune, endocrine, and central nervous systems are subjected to extreme stress, generating significant changes in these systems, presenting the victims with pathologies such as:

Metabolic syndrome (obesity, high blood pressure, diabetes mellitus)

Irritable bowel syndrome

Acid peptic disease (gastritis, esophagitis, gastroduodenal ulcer)

Dyslipidemia

Cardiovascular pathologies: HTA, coronary heart disease, stroke

Migraines

Hypothyroidism, predominantly in women

Dyspepsia

Cervico-dorsolumbalgia

Fibromyalgia

Cancer: breast, colon, gastric, glioma

Recurrent urinary tract infection in women

Rheumatoid arthritis

Depressive disorders

Bipolar affective disorder

Anxiety disorder

Panic disorder

Sleep disorder

Suicidal ideation

Addictions

Severe ocular trauma

Visual disability and permanent disability due to blindness in the eye affected by an eye injury caused by a blunt object fired by the mobile riot squad (ESMAD) during social demonstrations.

Psychosocial Damage

Damage to the life project

Moral Damage

Damage to life in a relationship
Damage to fundamental rights
Political damages
Rupture of the social fabric, stigma, and social discrimination
Family damage - Disruption of the nuclear family and a forced change of roles
Deterioration in academic functions
Impaired social functioning
Loss of cultural practices and material goods
Multiple and unfinished mourning on a community level
Impunity as a violation of human rights
Loss of privacy
Loss of confidence in the state
Loss of identity
Damages in respect to their profession
Damage to the ability to express divergent opinions
Symbolic damage related to the value of protesting
Damage to gather as a community without the fear of being stigmatized
Damage to express cultural and ethnic roots
Damage to the construction of community and resistance projects
Damage to processes on memory and the reconstruction of violence from the victims' voice

The previous list is not a ranking of the severity of the effects; on the contrary, it seeks to show the wide range of effects that occur in the psychological, physical, and psychosocial spheres when people are victims of psychological torture. An individual, their family, or community may present several of these effects. The intensity level of the torture, its frequency and duration, as well as the victim's coping mechanisms will cause different levels of intensity in the disorders and impacts.

In assessing these events as a whole, we conclude that psychological torture has impacts that transform how we perceive and relate to the world and how we inhabit social, family, and work life, altering all spheres of life. The most shocking aspect is how it is normalized by those who have been subjected to these practices, as if it were "normal" to receive death threats and be a victim of physical and/or psychological torture for defending life, dignity, freedom, and rights.

In conclusion, we can affirm that psychological torture based on systematic patterns in the applied practices and intention of perpetrators who apply threats, eye mutilations, psychological profiling, gender-based violence, and other actions cause varied psychological impacts to survivors. The intention is to cause physical and psychological harm (undermining mental faculties and personality) and to destroy dignity, autonomy, and confidence which in turn deeply alters the

individual's emotional stability and pressures them to abandon their activities as leaders, land claimants, and defenders of human rights, land, and nature.

The Colombian state must guarantee that reparation for victims and their families includes psychological support and rehabilitation in line with the provisions of Article 14 of the Convention.

6. Impunity (CAT, Arts. 2, 7, 10, 12, and 13)

Torture and CIDTP remain human rights violations that are not adequately investigated, prosecuted, and punished by the Colombian justice system. Practices and mechanisms that promote impunity for these crimes persist; on the contrary, the state used investigations for crimes associated with torture as mechanisms to criminalize the right to social protest.

This lack of progress is related to the scant advances from the Colombian state on the Committee's recommendation from the previous review, which states that it is the state's obligation to a) "ensure that all complaints related to the excessive use of force by law enforcement officers and military personnel are promptly, effectively, and impartially investigated, and ensure that the alleged perpetrators are prosecuted and, if convicted, punished in accordance with the gravity of their acts. b) also ensure that victims or their families receive adequate redress."

Regarding the recommendation that urges the state to "promptly, thoroughly, and impartially investigate all deaths of persons in detention, performing the corresponding autopsies...it must also evaluate any potential responsibility of law enforcement and penitentiary officials and, where appropriate, duly punish the guilty parties and provide adequate reparations to the victims' families."

Thus, the following is an assessment of the state relative to impunity for torture and CIDTP in Colombia during the period examined by the Committee.

6.1. Status of Torture Investigations in Colombia

The Prosecutor General's Office investigates cases of torture and CIDTP through different offices or units, but there is no specific office in charge of investigating this type of human rights violation.

According to the Office of Policies and Institutional Strategy of the Prosecutor General's Office, 1,183 open criminal cases are reported between 2017 and 18 December 2022, where the crime of torture (Article 178 of the Colombian criminal code) is charged in combination with other crimes. Of these, 82.41% are active and 17.58% are in inactive. The departments with the highest number of cases are Antioquia, with 180 cases (15.22%), followed by Bogotá with 155 cases (13.10%), and Valle del Cauca with 151 cases (12.76%) of the total number of cases.

Regarding the stage in which each case is found, the vast majority are in the early stages of criminal proceedings, the highest percentage are in the inquiry stage with 889 cases, representing 75.14 %

of the total number of cases, followed by 97 cases in the investigation stage, representing 8.19 % of all of the cases.¹⁵³

In contrast, only a small percentage of cases which include charges for the crime of torture are in an advanced stage of the criminal proceedings. Of all torture cases, 117 (9.89%) are in the trial stage and 54 (4.56%) are in the execution of sanctions stage.¹⁵⁴ As such, there is a pervasive context of impunity for torture and CIDTP. Below, we will address impunity in cases of torture in prisons and in the context of social protests.

6.2. Information Systems of State Entities to Investigate the Crime of Torture.

All the reports show a coordination problem between the different entities responsible for reporting and investigating acts considered torture or cruel, inhuman, or degrading treatment, which has generated a production of information that is inconsistent, sporadic, and lacking rigor, both in its collection and systematization. For example, information from the Prosecutor's Office does not allow for a distinction between crimes committed inside or outside the establishment; or whether the victim of a crime is a person deprived of liberty or not. In almost all entities, the information collection and systematization mechanisms do not have an adequate differential approach; very few cases can be disaggregated by the victim's age, sex, race, sexual orientation, penitentiary institution, transitory detention center, among other categories. This erases specific phenomenon based on these categories and represents a breach in the nation's obligations to make investigation results public.¹⁵⁵

6.3. Impunity for Torture in the Context of the Armed Conflict

Often, events of torture and CIDTP that occurred in the context of the armed conflict are not adequately addressed by the Colombian justice system, rendering them invisible.

Specifically in rural contexts, adequate conditions for the civilian population to file complaints on acts of torture and other CIDTP committed by armed groups are not available. In some contexts, a complaint is not filed due to a lack of security conditions for civilians, as the armed groups exercise territorial and social control, thus generating fear in the individuals who have been victims of human rights violations.

In other cases, it is due to a lack of trust in the local prosecutors' offices to file the respective complaints. In some territories, armed groups have access to the complaints filed by civilians, and there have been cases of threats and a revictimization of the individuals who file complaints with the prosecutor's office.

153 Additionally, the Prosecutor General's Office reports four proceedings (0.33%) in the pre-trial stage and 22 proceedings in the preliminary investigation stage (1.85%).

154 Prosecutor General's Office, Policy and Strategy Office (20.12.2022). Response to the information request presented by the Comisión Colombiana de Juristas, file number 20221400005171, doc No. DPE-10200.

155 Case Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgement of 5 July 2006. Para. 139.

Even when cases of torture and CIDTP are reported, the events are rendered invisible by judicial authorities when they occur in connection with other human rights violations such as extrajudicial executions, enforced disappearance, or forced displacement. The Prosecutor General's Office and judges address the latter offenses and do not consider the events of torture.

6.4. Impunity for Torture in Prisons

A principal cause of impunity in the prisons is the lack of reporting inside the penitentiary and prison system, as victims fear reprisals from the guards and surveillance body (CCV in Spanish). For example, the Ombuds Office noted that:

“In dialogues with alleged victims of torture who are deprived of liberty, it has been concluded that specialized psychological and medical care is poor compared to the serious impacts inherent to this crime. Additionally, victims expressed an absolutely understandable fear of reprisals and constant harassment by INPEC staff against those who report such incidents. This leads to a *sui generis* situation: the victims constantly live with their alleged perpetrators, which is not observed in other scenarios in which acts of torture are committed.”¹⁵⁶

Also, inmates who survive an attack experience psychological torture due to the constant threats and the real danger generated by state actions that could lead to their death or serious injuries to their physical wellbeing. Additionally, on the one hand, there are practical difficulties to file a complaint, and on the other hand, the limited awareness-raising strategies are not aimed at teaching persons deprived of liberty to identify the elements that constitute torture. INPEC campaigns have focused on making known the disciplinary offenses as a mechanism to raising awareness among CCV members in the different EROs, as well as training on the General Disciplinary Code, publishing issued rulings, sharing circulars, etc. In other words, the strategies are focused on teaching the CCV the rules that regulate the use of force. This is insufficient and even more so if we consider the regulatory shortcomings on these issues. Additionally, the only material that refers to torture is from June 2019, and it emphasizes a conceptual lens on the regulatory framework and some general points on the Istanbul protocol, the events of the Gutiérrez Soler Case, and the orders issued by the IACHR in this case. Beyond this, the strategy presents scarce information that could permit an identification of certain elements that constitute torture and how officials, victims, and family members should act to prevent these events from going unpunished, or the legal recourse available to victims to access reparation and guarantees of non-repetition.

The lack of knowledge on elements that allow for an identification of acts constituting torture or CIDTP is the first barrier for victims to access justice. Many believe that suffering these

¹⁵⁶ Ombuds Office response to Information Request, File 2021004030375351

aggressions is a part of the punishment imposed by the state for the conduct that led to their deprivation of liberty.

Persons deprived of liberty lack knowledge of their rights that are restricted, those that are suspended, and those that remain intact in the framework of a criminal sanction; for example, persons deprived of liberty who were interviewed in one of the establishments did not connect the concept of torture or cruel and inhuman treatment with the fact that they had been placed in solitary confinement for three months as a punishment for participating in the protests that took place in March 2020.

Public documents such as the Technical Tactical Manual to develop the use of force model are not shared sufficiently. Often the documents are not published on the official websites and those deprived of liberty have indicated that the majority of these documents are unknown to them. This can make it difficult for victims to identify excessive or arbitrary behavior committed by the CCV and to file the respective complaint.

However, a lack of complaints does not excuse the government from initiating investigations on events made known by different media outlets. There are very few new reports on the crime of torture, despite the high number of victimizing events covered by the media. The few investigations carried out by the Prosecutor's Office show serious shortcomings in the collection of material evidence, as many of the investigations were carried out using only the results of the forensic medical examination. The Prosecutor's Office and Inspector General's Office did not take urgent steps to preserve and collect other elements that would provide a general context for the circumstances (time, method, and place) that led to the commission of the alleged crime of torture.¹⁵⁷ Although the duty to investigate is an obligation of means, and not of results, it must be assumed by the state as a "judicial obligation and not a mere formality condemned from the start as fruitless, or a mere management of private interests that is dependent on the initiative of victims or their relatives or an external contribution of evidence."¹⁵⁸

6.4.1 Impunity in Criminal Investigations for Torture in Prison Facilities

Between 2015 and 2022, the Prosecutor General's Office investigated acts of torture among 120 officials from the police, ESMAD, and INPEC. Of these, only 39 have been charged with the crime of torture with the aggravating circumstances of Article 179:2 (relating to their capacity as public servants).¹⁵⁹

¹⁵⁷ Ombuds Office response to Information Request, File 2021004030375351

¹⁵⁸ Case Vera Vera et al V. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgement 19 May 2011. Para. 87.

¹⁵⁹ Prosecutor's Office response to information request. File No. 20221400005141. Document No. DPE-102000.

Institution to which the person under investigation belongs	2015	2016	2017	2018	2019	2020	2021	2022	Total
INPEC	1	0	9	6	2	6	1	0	25
ESMAD	0	0	0	0	1	0	0	0	1
Police	15	7	9	1	7	17	20	18	94
Total	16	7	18	7	10	23	21	18	120

	2015	2016	2017	2018	2019	2020	2021	2022	Total
Number of victims	18	3	10	3	10	17	32	16	109

Of the 58 cases against 120 officials, 76% of the investigations were initiated following the presentation of a complaint. The remaining 23% were initiated because of urgent acts, by internal initiative or because charges were filed. Only nine of the proceedings were the result of referrals from INPEC or the National Police. This indicates that the few investigations carried out by the Prosecutor General's Office are primarily driven by victims, families, and civil society organizations, and is an indication of the state's failure to answer for its obligation to immediately and by its own initiative begin impartial, independent, and thorough investigations when, for example, PDL are injured in ambiguous situations.

Type of Criminal Notice	Complaint	Urgent Acts	Internal initiative (reports)	Certification of Copies	Total
Cases	44	4	7	3	58
Accused	84	18	11	7	120

This number of investigations may seem particularly low if one takes into account INPEC reports showing that, between 2015 and 2022, 83 PDL died in events relating to the disruption of internal order, and a further 242 PDL were reportedly injured in these same events. These figures starkly contradict the 25 INPEC officials investigated by the Prosecutor's Office during this same period. Furthermore, as relates to alleged INPEC perpetrators, in the 2013 to 2020 period, only 14 criminal proceedings were registered for torture, and only three in 2020 (in which six officials were investigated).

The comparatively low reporting and investigation rate is clear when we compare these figures with reports, complaints, and grievances presented to INPEC. In 2020 and 2021, there were (respectively) 61 and 58 reported incidents of excessive use of force alone. Additionally, complaints and grievances for irregularities in solitary confinement increased from 11 to 52 between 2020 and 2021.¹⁶⁰ The state has an obligation to immediately and by its own initiative open an effective investigation to identify, prosecute, and punish those responsible when there is an allegation or well-founded reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention. The fact that a PDL presents serious injuries whilst in detention is itself sufficient reason for the competent authorities to initiate, of its own accord, an investigation into what happened to the detainee. “Such action is also specifically regulated in Articles 1, 6, and 8 of the Inter-American Convention against Torture, which require state parties to implement all effective measures to prevent and punish all acts of torture within the scope of their jurisdiction.”¹⁶¹ Similarly, the IACHR has stated that even when it has not been reported to the authorities, the state must immediately and by its own initiative initiate an impartial, independent, and thorough investigation to determine the nature and origin of the injuries reported, to identify those responsible, and to initiate proceedings, taking into account that the victim does not commonly denounce the facts out of fear.¹⁶²¹⁶³

The lack of investigation by the Prosecutor General’s office can be further illustrated by observing the events that occurred in the La Modelo prison in Bogotá on 21 and 22 March 2020, in which 24 PDL died, and 81 PDL were injured.¹⁶⁴ On 16 November 2021, the Prosecutor General’s Office indicated that it had established three main lines of investigation in relation to these events¹⁶⁵: 1. Homicides, 2. Torture and other CIDTP, and 3. Concealment, manipulation or destruction of evidence. They established three main lines of investigation concerning the crime of torture: 1. During the period in which control was being regained (beatings, forced nudity), 2. During transfers to medical centers (beatings, forced nudity), 3. In solitary confinement cells (beatings, forced nudity, lack of medical attention, violations of human dignity in general). However, this investigation has only resulted in the indictment of three active INPEC draftee prison officers. These officers were later released on 4 January 2023 following a decision issued by a Bogotá Control Court that determined that the maximum time to initiate a trial of these three officials had already expired.¹⁶⁶

Although the indictment was filed on 17 February 2022, the trial was still pending on 4 January 2022. The low number of indictments and lack of procedural momentum contrasts with the report filed by the prosecution on 21 March 2021, which indicated that 43 PDL had been injured by

160 Comité de Solidaridad con los Presos Políticos. Torture and abuse in Colombian prisons. OMCT. Embassy of the Federal Republic of Germany. See: <https://bit.ly/3HlmpXf>

161 Case of Tibi Vs. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of 7 September 2004. Para. 159.

162 Case of Bayarri Vs. Argentina. Preliminary Objections, Merits, Reparations and Costs. Para. 92.

163 Ibid.

164 INPEC response to information request. Communication 2022EE0226351.

165 Prosecutor’s Office response to information request. File No. 20215300043861.

166 El Espectador. *Tres guardias del INPEC procesados por tortura en La Modelo quedaron en libertad*. 4 January 2023. See: <https://bit.ly/3XOsiPo>

firearms and 19 by beatings by INPEC officials.¹⁶⁷ According to the National Institute of Legal Medicine and Forensic Sciences, in 2020 there were only five PDL whose injuries were being evaluated by forensic medicine. In the same year, two autopsies were also carried out by the offices of forensic pathology as a result of suspicion of the torture or CIDTP of individuals who had been deprived of liberty at the time of their death.¹⁶⁸ All of the above are clear examples of the multiple institutional barriers that prevent events constituting torture or CIDTP from being investigated by the state.

The difficulties in obtaining criminal prosecution are compounded by a lack of procedural momentum in the actions of the Prosecutor's Office against the CCV. For example, the filing rate for criminal charges of torture and homicide when the alleged perpetrator is an INPEC official was 32.7% in 2013 and 21.4% in 2020. This lack of procedural momentum is also evident in cases related to crimes of discrimination. For example, between 2013 and 2020, 45.8% of all criminal complaints of acts of racism or discrimination were archived, and none of them reached the indictment stage. Similarly, 100% of criminal complaints for acts of racial discrimination and harassment based on race, religion, political ideology or national origin were archived during the same period.

Regarding impunity in disciplinary investigations for torture committed in prisons, the Prosecutor General's Office registered 58 active disciplinary investigations for torture, ill-treatment, and CIDTP for the period between 2015 and 2022. Of these, the responsible party is identified as being an official of the following institutions: Prosecutor General's Office, INPEC, and the National Police. These cases are in the following procedural stages:¹⁶⁹

Preliminary study	19
Evidentiary stage (preliminary inquiry)	7
Evidentiary stage (disciplinary investigation)	26
Evaluation of preliminary inquiry	2
Evaluation of disciplinary investigation	4

The Prosecutor General's Office has registered 445 inactive disciplinary investigations for torture, ill-treatment, and CIDTP for the 2015 to 2022 period. Of these, the responsible party is identified as an official of the following institutions: Prosecutor's Office, INPEC, and National Police. Only 16 of these investigations are inactive for having resulted in a punitive ruling (all for National Police officers). Despite the seriousness of the investigated misconduct, the sanctions imposed in these rulings were: six dismissals and general disqualifications, three fines and, in the remaining seven cases, there is no record of the nature of the sanction imposed. Finally, between

¹⁶⁷ National Institute of Legal Medicine and Forensic Sciences response to an information request. Communication No. 2154-SSF-2021.

¹⁶⁸ Prosecutor General's Office response to an information request. File number 20215300043861.

¹⁶⁹ Inspector General's Office response to an information request. File number E-2021-57762.

2015 and 2022, the Inspector General's Office ordered just 11 transfers based on rulings by the Prosecutor General's Office.¹⁷⁰

We have identified three main problems related to disciplinary investigations:

1. The Prosecutor General's Office does not use its preferential jurisdiction to investigate all acts constituting torture and CIDTP against PDL.¹⁷¹ This results in many of the disciplinary investigations being processed through INPEC's internal control mechanisms. This is particularly concerning if one considers that, on the one hand, there may be reprisals by INPEC staff towards those who report incidents, and on the other, it increases the risk of what has been called "departmental solidarity," whereby INPEC officials have little incentive to carry out rigorous investigations into their colleagues. For example, between 2015 and 2022, INPEC has opened eight processes for torture and CIDTP. Of these processes, however, six have been permanently archived, one declined jurisdiction, and another is still under evaluation.¹⁷²
2. In recent years, the number of individuals involved in disciplinary proceedings opened against INPEC officials has decreased considerably, from 270 individuals investigated in 2013 to just one in 2021.¹⁷³ These figures do not reflect the data provided by INPEC itself, especially with respect to the increase in the number of reports, complaints, and claims made to INPEC related to the discrimination of PDL on grounds of sex, race, gender, or religion, irregularities in isolation practices, and verbal abuse of PDL and/or their visitors.¹⁷⁴
3. A high number of cases filed are subsequently archived. Of 811 proceedings against INPEC officials between 2013 and 2021, 656 were archived, 19 acquitted, and eight resulted in convictions.¹⁷⁵ This is alarming if we consider that, of the 811 persons linked to these processes, 167 were under investigation for an abuse of authority in an arbitrary and unjust act, 116 for acting beyond the scope of their functions, 49 for CIDTP, 41 for personal injury, eight for torture, and four for the homicide of a protected person.¹⁷⁶ These statistics represent a failure by the state to comply with its obligations to remove—within a reasonable period of time—all factual and legal obstacles and mechanisms that maintain

¹⁷⁰ Prosecutor General's Office response to information request. Communication: S-2022-112679

¹⁷¹ Article 8 of Resolution 456, 14 September 2017, dictates that the Inspector General's Office exercise its preferential disciplinary power to take on and transfer its knowledge of disciplinary proceedings to other authorities, by its own initiative or at the request of any person. It is applicable when: (i) the matter would have an impact of a social, economic, political, or institutional nature, or would be of particular importance to national or regional public opinion; (ii) it is determined that in order to guarantee compliance with the principles governing the disciplinary process, the proceedings should be carried out directly by the Inspector General's Office. (iii) the Inspector General's Office determines that a specific case must be taken on in order to guarantee the fulfilment of the fundamental objectives of the entity, in accordance with the constitutional mandates that govern it.

¹⁷² INPEC response to information request. Communication: 2022EE0226351

¹⁷³ Prosecutor General's Office response to information request. File number: E-2021-577622

¹⁷⁴ INPEC response to information request. Communication: 2021EE020899

¹⁷⁵ Of these eight rulings, in two cases the sanction was suspension, in another two, the sanction was suspension from office and disqualification, in one case it was dismissal and general disqualification, and in another case it was suspension and special disqualification. In two cases there is no record of the sanction imposed.

¹⁷⁶ Prosecutor General's Office response to information request. File number E-2021-577622

impunity, to grant sufficient security guarantees to judicial authorities, prosecutors, witnesses, justice workers, and victims, and to use all available measures to identify, prosecute, and punish those responsible for acts of violence, excessive use of force, and extrajudicial execution of PDLs.¹⁷⁷ Proceedings carried out by the Prosecutor General's Office are valuable in that they contribute to the clarification of the facts, and its decisions are considered important, among other reasons, for the symbolic value of reproach represented by its disciplinary sanctions.¹⁷⁸ Both criminal and disciplinary liability have their own substantive and procedural rules, which means that if criminal liability is not established, it is not sufficient reason to suspend the procedures to determine other types of liability, such as those that could be imposed by the Prosecutor General's Office.

Regarding the complaint mechanism for acts of torture in prisons, it is worth noting that an inter-institutional mechanism was designed in 2015 to highlight and refer complaints on events that may constitute acts of torture against PDL in Colombia to the competent authorities. This mechanism includes the National Institute of Legal Medicine and Forensic Sciences, the Inspector General's Office, the Prosecutor General's Office, the National Penitentiary and Prison Institute (INPEC), the Ombuds Office, and the Ministry of Justice and Law. In 2017, a National Monitoring Roundtable comprised of these same entities was created for the mechanism. However, it has been inactive since August 2018 due to the lack of inter-institutional coordination among the entities that comprise it.

This mechanism has different challenges. First, it is only in place in 44 out of 135 detention centers for which INPEC is responsible nationwide, amounting to a very low coverage rate of just 32.5%.¹⁷⁹ Second, it has had very poor results. Between 2015 and 2021, it received a total of 27 complaints for alleged acts of torture in national level correctional facilities (ERON).¹⁸⁰ Of the 27 complaints received:

“Twenty-one of them correspond to acts that could allegedly constitute acts of torture in line with the medical-legal assessments carried out in application of the Istanbul Protocol by the Institute of Legal Medicine and Forensic Sciences. The remaining six complaints correspond to alleged cases of personal injury, in accordance with the expert reports rendered.”¹⁸¹

Of the 21 complaints that could allegedly constitute acts of torture, 19 of the victims were incarcerated in the Metropolitan Prison and Penitentiary Complex of Bogotá at the time of the events. Only two are currently under preliminary investigation (despite the fact that the

177 Case of Montero Aranguren et al (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of 5 July 2006. Para. 138

178 Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits, and Reparations. Judgment of 14 May 2013. Para. 224

179 Ombuds Office response. File number 20210040304375351.

180 These complaints are not solely against INPEC officials. In fact, the largest number of complaints were against members of the CORES group.

181 Ombuds Office response. File number 20210040304375351.

complaints were received in 2017 and 2018, respectively). The remaining 19 complaints were archived for “atypical conduct” (Art.79 CPP).

6.5. Impunity in Cases of Sexual Violence and Other Gender-Based Violence

Regarding sexual violence in the context of the conflict, various coalitions¹⁸² have indicated the ongoing prevalence of impunity for these acts, as well as of denied access to justice, especially for women and LGBTIQ+ victims. Indeed, the first round of prioritization of the Chamber of Recognition of Truth and Responsibility and Determination of Facts and Conducts (SRVR) of the Special Jurisdiction for Peace did not consider opening a macro-case to cover these acts and include a specific methodology and gender focus. This meant that only victims who could provide evidence that their cases had occurred within the framework of the territorial cases,¹⁸³ or for whom sexual violence had occurred in concert with other prioritized crimes,¹⁸⁴ were granted access to the procedures established in the Final Peace Agreement (FPA) and its regulatory norms.¹⁸⁵ This has meant that the victims have been held in a state of legal limbo—although their cases have been submitted to the JEP through reports presented by state entities and feminist and women’s organizations, at present they are not even accredited within any [macro] case.¹⁸⁶

Corporación Sisma Mujer exemplifies this. It documented and presented the cases of 205 women to the JEP, of which only eight have been accredited within the territorial cases, while the rest remain in a legal limbo. In September 2022, it was announced that Case 11 would be opened to cover sexual violence, reproductive violence, and other types of violence based on the victims’ gender identity or sexual orientation.¹⁸⁷ This had been a demand of women’s organizations since the signing of the FPA.¹⁸⁸

However, to date this case has not yet formally opened, and there has been no information about the methodology it will apply or the date on which it will initiate. The case will be of special relevance considering that, in the experience of those organizations litigating existing cases, serious obstacles to the participation of victims and their representatives has so far been evident. This has included: a clear lack of methodologies with a gender-based approach to investigate acts

182 La Alianza Cinco Claves, made up by Corporación Sisma Mujer, Red Nacional de Mujeres, Corporación Humanas, Colombia Diversa, and Women’s Link Worldwide, is one of these. Its foundational document, “Cinco claves para un tratamiento diferenciado de la violencia sexual en los acuerdos sobre la justicia transicional en el proceso de paz” was submitted to the negotiating table during the peace talks and can be consulted at: https://humanas.org.co/wp-content/uploads/2020/10/01-abril_de_2015.pdf

183 Case 002: “Territorial Situation of Ricaurte, Tumaco, and Barbaças (Nariño),” Court Order 004 of 2018, SRVR., Case 004: “Territorial Situation of the Urabá Region,” Court Order 040 of 2018, SRVR, Case 005: “Territorial Situation of the Northern Cauca Region,” Court Order 078 of 2018, SRVR. In these cases, only victims whose [victimizing] events occurred in the prioritized territories and for whom the crime took place within the dates established by the Recognition Chamber will be accredited.

184 Case 001: “Illegal Retention of People by the FARC-EP,” Court Order 002 of 2018, SRVR, Case 006: “Victimization of Patriotic Union Members,” Court Order 027 of 2019, SRVR, Case 007: “Recruitment and Use of Minors in the Colombian Armed Conflict,” Court Order 029 of 2019, SRVR.

185 The FPA, Law 1957 of 2019, and Law 1922 of 2018, among others, include specific provisions for a gender approach and the rights of women and LGBTIQ+ persons, and especially for victims of sexual violence. However, this has not translated into real access to justice.

186 Cinco Claves. “Lecciones de litigio ante la JEP: qué ha pasado con la violencia sexual, la violencia reproductiva y otros crímenes motivados en la sexualidad de la víctima.” p. 12. Available at: <https://www.sismamujer.org/wp-content/uploads/2021/12/Lecciones-del-litigio-ante-la-JEP.pdf>

187 SRVR. Court Order 103, 11 July 2022.

188 Cinco Claves. “Un caso nacional de violencia sexual, violencia reproductiva y otros crímenes motivados en la sexualidad de la víctima: una medida necesaria y urgente.” Available at: <https://www.sismamujer.org/wp-content/uploads/2021/07/caso-nacional.pdf>

of GBV, especially in cases of sexual violence; barriers such as difficulties in accessing the testimony and transcripts of victims and thus to present evidence; and the repetition of stereotypes among judges, lawyers, and the witnesses themselves within the framework of testimonies. Among other limitations, these issues greatly impact access to justice, truth, reparation, and guarantees of non-repetition for victims.¹⁸⁹

6.6. Impunity in Investigations in the Context of Social Protest

According to information from the Prosecutor General's Office, there have been three investigations initiated for the crime of torture during the social demonstrations that took place between 28 April and 29 October 2021. In at least one of these investigations, the victim was an agent of the National Police, and the alleged perpetrators were three civilians. However, in the same period of time, SIAP recorded 1,555 injuries as a result of excessive use of force, and 79 victims of torture and CIDTP during detention procedures.¹⁹⁰ National and international norms stipulate that the Military Criminal Justice (JPM) system is not a suitable mechanism for investigating human rights violations by members of armed state institutions.

The fact that the investigations are carried out under this judicial system is a violation of due process, revictimizing the victims and witnesses who are forced to testify before personnel of the same institution that caused them serious harm. Many witnesses, victims, family members, and lawyers have mentioned in interviews that they do not feel safe having to visit military bases in order to exercise their right to access justice. Despite all this, JPM is aware of 390 investigations for crimes committed by agents of the security forces in the context of social protest between 2019 and 10 June 2021. The report "Torturing and Punishing those who Protest" indicates that:

"In 2019, 260 investigations were launched for personal injuries and abuses of authority. Of these at least 24 have been archived, and the rest are still in the pre-trial stages. Additionally, in 2020, 78 investigations were initiated for abuse of authority and personal injury, 76 of which are still in the investigation stage. Of these, 92.7% are at the pre-trial investigation stage, and 28 have been archived."¹⁹¹

Of the 390 investigations, 74% are related to the crime of personal injury. It is highly probable that acts of torture and CIDTP are being investigated as personal injuries, ignoring the fact that severe pain and suffering was intentionally inflicted, and in many cases, was intended to punish citizens exercising their right to protest, as well as to intimidate other people who were participating in the demonstrations or planning to do so.

189 In 2022, Corporación Sisma Mujer conducted a study on stereotypes in 13 voluntary testimonies from Case 002, and made it available to the JEP and general public. Available at: <https://www.sismamujer.org/wp-content/uploads/2022/05/Tratamiento-de-la-violencia-sexual-en-la-JEP-7.pdf>

190 CDLAT. *Torturar y castigar a quien protesta*, p. 9. Available at: <https://bit.ly/3RwUKn2>

191 Ibid

The Prosecutor General's Office has issued twelve investigative guidelines that prioritize the events that occurred in the context of the demonstrations. However, none of them prioritize investigations for torture and CIDTP.¹⁹² They do, however, prioritize “attacks by civilians in the context of violent demonstrations” and “investigations into violent situations that cause the destruction of public and private property.” In fact, of the 12 guidelines, only one expressly refers to investigating the responsibility of state agents: “Personal injuries and/or state security force abuse of citizens.” Acts of torture and CIDTP are thus rendered invisible by including them under the definition of less serious crimes, mirroring how they are treated in the Military Justice Courts. This has implications not only on the level of severity of penalization that can be imposed, but importantly also on the ability of the state to investigate the crime. An investigation for personal injury is precluded just four years after initiation, while one for the crime of torture can be carried out up to 22 years following the punishable behavior, and indeed, in some cases, there is not a time limit on investigation.

Impunity levels for acts of torture is such that, in one case, police officers recorded a video showing a young man who was forced to incriminate himself after being tortured during his detention.¹⁹³ It is unknown whether the Prosecutor General's Office charged the National Police officers with the crime of torture in this case.

As the entity responsible for directing the National Institute of Legal Medicine and Forensic Sciences, the Prosecutor General's Office has disregarded the application of the Istanbul protocol, a technical medical-legal test that is used to ensure the proper investigation of cases where the crime of torture is alleged or suspected to have occurred.

“From 1 January 2019 to 31 October 2021, the National Institute of Legal Medicine and Forensic Sciences has conducted 261 medical-legal assessments in the clinical and forensic psychiatry departments for cases of suspected CIDTP. However, the alleged aggressor is a police officer in just nine cases (3.4%)¹³⁰. Five of these cases occurred during allegedly illegal detentions, and four in military or police facilities.”¹⁹⁴

It is important to condemn the how accusations of the crime of torture have been used to criminalize the social protests that occurred during the 2019 and 2021 national strikes. Protesters were charged by the Prosecutor General's Office with the crime of torture, in some cases without solid evidentiary grounds to demonstrate that the crimes committed fulfilled the definition of torture. As a result, in some cases the charges were imposed arbitrarily with the objective of ensuring that the person be detained and imprisoned.

¹⁹² Ibid, p. 92

¹⁹³ Cable Noticias. *Denuncian detención arbitraria y tortura a estudiante de música durante protestas en Cali*. Published on 29 May 2021. Available at: <https://bit.ly/3XSHJX8>

¹⁹⁴ CDLAT. *Torturar y castigar a quien protesta*, p. 94. Available at: <https://bit.ly/3RwUKn2> Information extracted from Notification No. 704-DG-2021, dated 19 November 2021, issued by the National Institute of Legal Medicine and Forensic Sciences.

Consequently, the sub-directorate on public policy and institutional strategy of the Prosecutor General's Office reported a registry of 51 cases of indictments for the crime of torture, of which a recorded 45 defendants were detained.¹⁹⁵

Moreover, under the direction of Francisco Barbosa, the Prosecutor General's Office used the Specialized Office Against Organized Crime (DECOC) to investigate and charge demonstrators accused of committing illegal acts during the national strike that began on 21 April 2021. This unit is not designed to investigate crimes associated with the exercise of social protest, since it was created in the framework of the FPA to investigate and dismantle illegal armed groups that threaten the implementation of the peace agreement. This application amounts to an act of institutional stigmatization that presupposes that social protest is inherently linked to armed groups, thereby violating the fundamental right to social protest.¹⁹⁶

6.7. Impunity in the Context of the Military Criminal Justice System

As explained in previous reports submitted to the Committee, the Military Criminal Justice System (JPM) in Colombia is a specialized court responsible for investigating, prosecuting, judging, and sanctioning punishable conduct committed by active-duty members of the state security forces (military forces and National Police) in relation to military service. This jurisdiction is founded on the norms of Articles 116, 221, and 250¹⁹⁷ of the National Political Constitution. The entity has administrative and financial authority as governed by Law 1765 of 2015.

The very nature of this entity means that crimes committed by members of state security forces are tried by military courts, thus removing them from the jurisdiction of the Prosecutor General's Office and placing the administration of justice in the hands of members of their own institution, thereby precluding criminal prosecution in the ordinary justice system. Consequently, events that took place in the context of nationwide social protests in 2019 and 2021¹⁹⁸—including believed acts of torture and CIDTP against the civilian population during repressive actions by the security forces—have revealed the military criminal justice system's ineffective prosecution and punishment of such conducts.

Such ineffectiveness is similarly reflected in the following statistics: the JPM had 24,921 formal processes and preliminary case investigations in 2019, with this number climbing to 18,650 cases

195 Information collected and published by outlet Cuestión Pública (28 October 2022). *La Fiscalía persigue a manifestantes como si fueran parte de grupos armados*. Available at: <https://cuestionpublica.com/la-fiscalia-persigue-a-manifestantes-como-si-fueran-parte-de-grupos-armados/>

196 Ibid.

197 Article 116: "The Constitutional Court, Supreme Court of Justice, State Council, Supreme Judicial Council, Prosecutor General's Office, courts and judges administer justice. So, too, does the military criminal justice system."

Article 221: "Crimes committed by members of state security forces on active duty and in connection with their service will be heard by the martial courts or military tribunals, in accordance with the prescriptions of the Military Criminal Code." Legislative Act No. 2 of 1995, which amended Article 221 with the following text: "Crimes committed by members of state security forces on active duty and in connection with their services shall be heard by martial courts or military tribunals, in accordance with the provisions of the Military Criminal Code. Such courts or tribunals shall be composed of active or retired state security forces members."

198 In its June 2021 country visit report, the IACHR reiterated its concern that cases of human rights violations committed by the police, particularly by the ESMAD, were being heard by the military criminal justice system and that the events had been considered related to service. The IACHR urged the state "that all cases, especially those related to human rights violations by the security forces, be heard by the ordinary justice system and not by the military criminal justice system." See: IACHR. Observations and Recommendations. Working Visit to Colombia. June 2021. p. 30, para. 127

in the first quarter of 2020. In contrast, in the same period of 2019, there were 587 court martials in which punishable conducts were prosecuted with 911 rulings issued, most of them convictions. Likewise, in the first quarter of 2020, there were only 59 courts martials and 133 rulings issued.¹⁹⁹

In light of this impunity and the civilian character of the police, Legislative Act Bill 09/21 was presented for discussion before the Congress of the Republic in 2021. In principle, the bill sought to reform many JPM activities and to ensure that cases considered human rights and International Humanitarian Law violations would not be heard by this jurisdiction on the grounds the crimes are not related to military service. Unfortunately, the bill was archived during the legislative process that was required to push forward the reform, and an agreement on a new initiative was not reached.

Considering the aforementioned situation of widespread impunity for acts of torture and CIDTP, the recommendations made by the Committee in its previous review remain firm. Evidence suggests that the state should: (a) Guarantee that all allegations of torture and ill-treatment are promptly and impartially investigated by an independent body with no institutional or hierarchical relationship between the investigators and the alleged perpetrators, and that the alleged perpetrators should be duly prosecuted; (b) Initiate an investigation whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed; (c) Establish a centralized registry of cases of torture and ill-treatment; (d) Periodically evaluate the effectiveness of the complaint systems available to PDLs.”

7. Conclusions

1. The overall picture that emerges of torture and CIDTP in Colombia continues to be alarming. There were 495 cases documented between 1 January 2015 and 30 June 2022, in which 12 of the victims were children and adolescents under 15 years old. The violations took place in 27 of the 32 departments that make up the national territory. In 52.5% of the cases, the alleged perpetrator was an agent of the state.
2. Three key factors have caused a further deterioration of the already alarming situation of torture and CIDTP in Colombia. First, the number of cases grew in regions where the civilian population is particularly at risk due to the continued armed conflict caused by non-compliance with the Final Peace Agreement, and territorial disputes between the different armed groups. Secondly, COVID-19 triggered a humanitarian crisis in which the violation of rights in many cases became a form of torture, notably for specially protected groups whose vulnerability and risk levels were heightened by the confinement measures decreed by the government. There were also cases of PDL being subjected to torture and CIDTP during prison strikes and protests in the context of COVID-19. Finally, practices

¹⁹⁹ Information published by El Espectador: “¿Hora de reformar la justicia militar? Un debate que levanta roncha,” published on 23 January 2021. Available online: <https://www.elespectador.com/politica/hora-de-reformar-la-justicia-militar-un-debate-que-levanta-roncha-articulo/>

of excessive use of force and torture were prevalent during the repression of the social protests in 2021.

3. Systemic patterns of torture and CIDTP that were identified in the previous report to the Committee against Torture are still evident. Torture continues to be applied: i) As a method to discriminate against historically vulnerable populations such as children and adolescents, women, and people with disabilities; ii) As a form of persecution against human rights defenders, leaders, and social leaders; iii) As a way to subjugate the prison population (including the use of threats and profiling as forms of psychological torture); iv) As a mechanism to impose social control, including the use of torture to repress protests.
4. Torture and CIDTP as a method to discriminate against children and adolescents occurs primarily in the contexts of forced recruitment and the use of this population by armed groups and gangs. It is especially important that the relationship between these two violations is acknowledged. As denounced in the previous report, torture by means of gender-based violence and sexual violence continues to be used to discriminate against women and persons with non-normative sexual orientations or gender identities. Advances have been made in the enactment of legislation to provide comprehensive care for women victims of violence and in the adoption of guidelines for the investigation of these cases. Nonetheless, there are significant delays in their implementation and enforcement. A pattern can also be observed in the use of torture as a form of discrimination against persons with disabilities through involuntary internment, psychiatric treatment, and forced sterilizations.
5. Torture also continues to be used to persecute human rights defenders and social leaders through the application of constant attacks to silence the claims, visibility, and reporting of the rights violations experienced by human rights defenders and their communities, peoples, and social organizations. Additionally, the rare judicial processes and investigations associated with these events advance slowly to the extent that most of the violations remain in impunity.
6. Torture continues to be used to control the prison population and to impose prison order at the expense of the dignity and physical and mental integrity of PDL through the application of arbitrary and excessive use of force, prolonged isolation, sexual violence, and psychological torture. Present legislation on the use of force, and how it relates to acts of torture, lacks clear definitions and criteria on principles of legality, proportionality, temporality, and rationality, and when and why to make use of different tactics for the application of force. Additionally, many of the procedures to control the use of force depend on the officials' own assessment of the need to activate these controls.

7. The various forms of torture recorded not only caused physical injuries, but also psychological and psychosocial damage to the affected persons. Recurring practices of psychological torture in Colombia were identified, such as constant threats and psychological profiling and the psychosocial impacts of other acts of torture and CIDTP, including the targeted mutilation of protesters' eyes by state security forces in the context of social protests, and gender-based violence. Such actions have intentionally sought to cause physical and psychological harm and to damage emotional stability by pressuring leaders, land claimants, human rights defenders, and land and nature defenders to abandon activities aimed at defending social causes. Psychosocial effects also extend to the family and social surroundings of victims of torture, therefore transcending the individual level.
8. Cases of torture and CIDTP in Colombia are not being adequately investigated, prosecuted, or punished by the Colombian justice system. Continued practices and mechanisms that promote impunity were identified:
 - a. In the context of the armed conflict, the security conditions of the civilian population, social and territorial control by armed groups, and a perceived lack of confidence in regional prosecutors' offices discourage victims from filing complaints for these types of violations, given that those who do so frequently receive threats and are re-victimized.
 - b. In cases of torture in prisons, many victims are unaware that these acts constitute violations of their rights and/or are afraid to report them because of the possibility of reprisals by custody and surveillance personnel (CCV). Despite these factors, the majority of ongoing investigations have been initiated by victims, their families, and civil society organizations. The state has failed to uphold its obligation to immediately and by its own initiative initiate impartial, independent, and thorough investigations in cases of suspected torture and CIDTP within this context.
 - c. In cases of torture in the context of social protests, the fact that investigations into human rights violations by members of state security forces are conducted under the jurisdiction of the Military Criminal Justice System is both a violation of due process, and revictimizes those who have been attacked. Moreover, in some cases, the state has used investigations for crimes associated with torture to criminalize the right to social protest.
9. Regarding sexual violence in the context of the armed conflict, in September 2022 the JEP announced the opening of Case 11 on sexual violence, reproductive violence, and other forms of violence based on the gender identity or sexual orientation of the victims. The opening of the case had been called for by women's organizations since the signing of the

FPA. However, Case 11 has not yet been formally opened, and information on the methodology to be used has not been released, meaning that many victims of this type of violence remain in legal limbo.

10. In general, there are institutional obstacles to denounce, investigate, and make progress in criminal and disciplinary proceedings for acts of torture and CIDTP in Colombia, particularly when the alleged perpetrators are agents of the state. Most of the investigations remain in the initial stages of the criminal or disciplinary process, and there is a lack of coordination between the entities in charge of reporting and investigating incidents. As a result, the information available is inconsistent, interrupted, and insufficiently rigorous. This constitutes a breach of the state's responsibility to make the results of investigations on torture and CIDTP publicly available.
11. During the period under review, Colombia continued in its failure to comply with international obligations under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Neither did it implement the recommendations made by the CAT in its last review. The information contained in this report provides evidence of the mass scale occurrence of crimes and the systematic patterns identified in their commission, as well as the continued prevalence of impunity in their prosecution. We request that the Colombian state be urged to adopt urgent measures and to adhere to international standards to both prevent the continuation of these practices and provide effective reparations the victims.

8. Recommendations

In view of the information described in this report, the Colombian Coalition Against Torture and other co-signing organizations request that the following recommendations be presented to the Colombian state:

8.1. The General Situation of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment and its Classification in the Colombian Legal System:

- Bring the definition of the crime of torture in line with international standards, specifically in terms of its classification in Articles 137 and 138 of the Penal Code, so that acts which aim to intimidate or coerce for reasons other than those involving some type of discrimination to be legally recognized as torture.
- Adequately implement the Optional Protocol to the Convention against Torture (OPCAT) following its ratification, specifically ensuring the establishment, operation, and

sustainability of the National Mechanism for the Prevention of Torture and civil society participation throughout the set-up process.

- Adopt comprehensive measures that would prevent state agents from continuing to commit acts of torture and other cruel, inhuman, or degrading treatment or punishment by promoting effective investigations and comprehensive human rights training.
- Ensure the investigation, prosecution, and punishment of state agents who have committed acts of torture and other cruel, inhuman, or degrading treatment or punishment to ensure due process and access to justice for victims.
- Guarantee comprehensive reparation of damages to victims of torture and their families, including medical and psychological attention and social services tailored to the specific needs of each person.

8.2. Torture and Cruel, Inhuman, or Degrading Treatment or Punishment of Children and Adolescents

- Recognize the relationship between the recruitment of children and adolescents and torture, as well as the harm this causes, with a perspective of fostering preventive strategies to eradicate its continuation.
- Adopt comprehensive reparative measures for children and adolescent victims who have been recruited by armed groups.
- Ensure the equal treatment of demobilized children and adolescents, recognizing and identifying the differential impacts of torture and other mistreatments, guaranteeing comprehensive attention and full reintegration into civilian life.

8.3. Torture and Cruel, Inhuman, or Degrading Treatment or Punishment and Gender-based Violence

- Guarantee due diligence in the prevention, punishment, and eradication of gender-based violence and discrimination against women, girls, and LGBTIQ+ persons, especially in regard to sexual violence.
- Adequately implement policies and regulatory guidelines to address gender-based violence, particularly femicide, ensuring an intersectional approach is applied.

- Ensure all women's comprehensive access to the voluntary interruption of pregnancy, taking into account differentiated contexts, and strengthen the measures adopted to ensure effective implementation.

8.4. Torture and Cruel, Inhuman, or Degrading Treatment or Punishment and Sexual Violence

- Ensure access to justice and protection for victims of sexual violence, especially for Indigenous girls in militarized contexts.
- Prevent, investigate, and punish sexual violence as a form of torture, especially with a view to protecting children, adolescents, and women.
- Guarantee the physical integrity and dignified treatment of individuals belonging to the LGBTIQ+ community held under police custody.

8.5. Torture and Cruel, Inhuman, or Degrading Treatment or Punishment of People with Disabilities

- Define detention and institutionalization on the grounds of disability as a crime, along with any other act that results in torture and other cruel, inhuman, or degrading treatment or punishment, such as involuntary internment or forced psychiatric treatment.
- Ensure that the forced sterilization of people with disabilities is prohibited under legal guidelines, as well as guaranteeing due diligence and reparation for victims.

8.6. Torture and Cruel, Inhuman, or Degrading Treatment Against Human Rights Defenders

- Guarantee the right to defend human rights, particularly by stepping up efforts to eradicate torture practices, as well as CIDTP against human rights defenders and social leaders.
- Prevent actions which discredit and stigmatize the work of human rights defenders, and promptly and effectively investigate threats and attacks suffered by human rights defenders in Colombia.
- Strengthen protection mechanisms and ensure access to justice for human rights defenders and social leaders, ensuring full recognition of their work and the high levels of violence they face.
- Ensure that measures are in place to allow human rights defenders to monitor possible human rights violations during protests.

8.7. Torture and Cruel, Inhuman, or Degrading Treatment or Punishment of the Prison Population

- Strengthen ongoing efforts to prevent cases of excessive use of force, arbitrary detention, torture, and other cruel, inhuman, or degrading treatment or punishment of PDL.
- Ensure the physical and mental well-being of PDL with a view to preventing possible acts of torture and other cruel, inhuman, or degrading treatment or punishment.
- Monitor the security personnel in detention centers to ensure that their operational protocols adhere to the highest standards of human rights protection, and that they respect the right to life and personal safety of PDL.
- Guarantee that solitary confinement is only used as a last resort, for the shortest possible time, and only under strict supervision and judicial control.
- Promptly, thoroughly, and impartially investigate all deaths occurring in custody, including by carrying out autopsies in accordance with the Minnesota Protocol.
- Investigate, prosecute, and punish possible crimes committed by law enforcement and prison officials, as well as guarantee adequate reparations to the victims and their families.

8.8. Torture and Cruel, Inhuman, or Degrading Treatment or Punishment as a Means of Repressing Protests

- Guarantee the right to protest, ensuring that protocols and mechanisms are implemented, as well as ensuring full respect for human rights in the context of public demonstrations.
- Modify standards that permit the practice of torture and cruel, inhuman, or degrading treatment or punishment during demonstrations at the hands of state security forces, and urge the state to adopt mechanisms to ensure that protests can be carried out in safe conditions. Call upon the state to establish effective controls on the use of “less-lethal weapons” to ensure that state security forces do not commit abuses in the context of social protests.
- Investigate, prosecute, and punish those responsible for torture in protest contexts, including those responsible for reprisals and acts of intimidation against victims and family members who file complaints about cases of torture during protests.

- Ensure that state officers are removed from duty during the period in which they are being investigated for acts of torture in the context of protests.
- Guarantee the right to protest, ensuring compliance with the appropriate protocols and mechanisms, as well as ensuring full respect for human rights in the context of public demonstrations.

8.9. Psychological Torture and the Psychosocial Impacts of Torture

- Design and implement a policy guaranteeing the non-repetition of psychological torture.
- Effectively investigate and punish public officials who commit any of the various practices of psychological torture.
- Guarantee prompt and full reparations both to individuals and family members affected by psychological torture, particularly in cases of profiling, gender-based violence, and ocular mutilation.
- Advance in the development of specialized programs to provide psychosocial attention to people affected by threats, profiling, gender-based violence, and ocular mutilation as a result of police violence.

9. Impunity for Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

- Investigate torture and CIDTP which has been committed alongside other criminal acts to ensure that it is not treated as part of more commonly prosecuted conducts, but rather is subject to independent investigation, thereby highlighting the seriousness of this violation and allowing for the contexts in which it occurs most frequently to be identified.
- Provide the required resources to ensure that an interdisciplinary and qualified team is permanently available in all regions of the country so that possible victims of torture can be assessed through the application of the Istanbul and Minnesota protocols.
- Investigate cases of torture and human rights violations committed in contexts of social protest, particularly those acts committed by state security forces and police. Guarantee access to justice, the right to an independent and impartial judge, and full reparation for the victims, as well as the identification of those who gave the orders to violently repress protests or who tolerated such actions, going beyond the identification of the direct perpetrators of the crime.

- Guarantee that investigations of torture and CIDTP, both within and outside the context of the armed conflict, fall exclusively within the jurisdiction of the civilian judicial authorities and not the military criminal justice system.
- Recognize the competence of the Committee against Torture to receive and review individual communications from persons claiming to be victims of acts of torture or CIDTP within the national territory, per Article 22 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.