

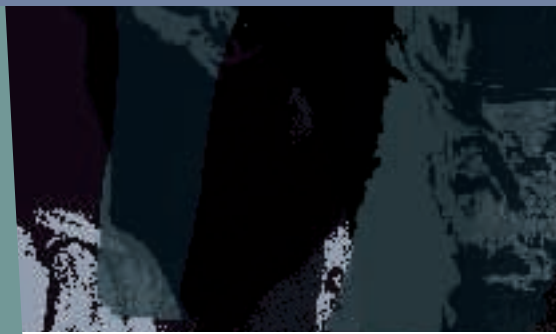


# State Violence in Colombia

AN ALTERNATIVE REPORT

TO THE UNITED NATIONS

COMMITTEE AGAINST TORTURE



*A project coordinated by*  
**World Organisation Against Torture**  
P.O. Box 21- 8, rue du Vieux Billard  
CH-1211 Geneva 8, Switzerland



**CSPPP**  
Comité de Solidaridad  
con los Presos Políticos



**COMISIÓN COLOMBIANA DE JURISTAS**  
Organización no gubernamental con status consultivo ante la ONU  
Filial de la Comisión Andina de Juristas (Lima) y de la Comisión  
Internacional de Juristas (Ginebra)

World Organisation Against Torture  
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CH-1211 Geneva 8, Switzerland

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## AN ALTERNATIVE REPORT TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

In collaboration with the following organizations

The AVRE Corporation (Apoyo a victimas pro recuperacion emocional)

The Comisión Colombiana de Juristas

The CSPP (Comité de Solidaridad con los presos politicos)

A project presented by



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## STATE VIOLENCE IN COLOMBIA

## Foreword

Writing alternative reports is one of the main activities of the OMCT and a vital source of information for the members of the Committee Against Torture. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture.

Under the aegis of the European Union and the Swiss Confederation, the “Special Procedures” program presented this report on state violence and torture in Colombia at the 31st session of the Committee against Torture, which took place in Geneva between 10-21 November 2003 and during which the Colombian Government’s report was examined.

This report was jointly prepared by three Colombian human rights NGOs with the support of a large national coalition\*:

- The AVRE Corporation (Apoyo a victimas pro recuperacion emocional),
- The Comisión Colombiana de Juristas,
- The CSPP (Comité de Solidaridad con los presos politicos).

- 
- \* Asamblea Permanente de la Sociedad Civil por la Paz
  - \* Asociación de familiares de detenidos desaparecidos -ASFADDES-
  - \* Asociación de trabajo interdisciplinario -ATI-
  - \* Asociación Nacional de Mujeres Campesinas e Indígenas de Colombia -ANMUCIC-
  - \* Asociación para la promoción social alternativa -Minga-
  - \* Benposta Nación de Muchachos
  - \* Centro de Investigación y Educación Popular -CINEP-
  - \* Colectivo de Abogados “José Alvear Restrepo”
  - \* Comité Permanente por la Defensa de los Derechos Humanos
  - \* Consultoría para los derechos humanos y el desplazamiento -CODHES-
  - \* Corporación Jurídica “Humanidad Vigente”
  - \* Corporación “Reiniciar”
  - \* Corporación Casa de la Mujer -Bogotá-
  - \* Corporación regional para la defensa de los derechos humanos -CREDHOS-
  - \* Defensa de los Niños Internacional
  - \* Fundación Dos Mundos
  - \* Fundación para la promoción de la cultura y la educación popular -FUNPROCEP-
  - \* Instituto María Cano -ISMAC-
  - \* Instituto Popular de Capacitación -IPC-
  - \* Organización Femenina Popular -OFP-
  - \* Proceso de Comunidades Negras -PCN-
  - \* Proyecto Agenda Gays, Lesbianas, Bisexuales y Transgeneristas
  - \* Ruta pacífica de las mujeres

Three delegates from these NGOs presented the report during the information session and shared their observations and concerns with the members of the Committee against Torture.

This study is divided into two parts. Part I provides a general overview of torture and other cruel, inhuman or degrading treatment within the particular sociopolitical context of violence in Colombia. Part II deals with the implementation of the convention. The Committee against Torture's Concluding Observations and Recommendations adopted following examination of the Colombian Government's Report are included in the Appendices.

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## Introduction

Based on its experience, the Committee against Torture has stated that “*The committee considers that torture is practiced systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from directed intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the Central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice*”<sup>1</sup>.

This report demonstrates that all of the elements in the Committee definition are present in Colombia and that torture is widespread and systematic. This situation is not new either; on the contrary, it has existed for many years now. In the year 1996, after examining the second periodic report on Colombia, the Committee against Torture highlighted this aspect by stating,

*“The Committee observes with great concern the persistence of a large number of violent deaths and cases of torture and ill-treatment attributed to members of the army and the police, in a manner that would appear to indicate a systematic practice in some regions of the country”*<sup>2</sup>.

The situation has substantially worsened and torture is rampant in the grave crisis of human rights and humanitarian law that Colombia is suffering. The evolution of the practice of torture throughout time is described in Chapter One. It shows that not only has torture been maintained throughout time but also that its use has increased, going from an average of more than one person tortured every other day in 1996 to an average of almost one victim per day recorded last year, this being the highest average in the past seven years<sup>3</sup>. Upon analyzing the statistics on the perpetrators of this crime, it becomes obvious

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1 *Committee against Torture activities applying Article 20 in the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Sentences: Peru*, May 16, 2001, UN Doc. : A/56/44, paragraph 163, p.63.

2 Final Observations made by the Committee against Torture: Colombia July 9, 1996, A/51/44, paragraphs 66-83.

3 The period under study for these statistics covers from July 1996 to June 2003.

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that it is the paramilitary groups who are responsible for most of the cases of torture in the country and that in many of the events attributed to these groups, there has been active participation by members of the Public Forces.

Also in Chapter One<sup>4</sup>, the customary, deliberate nature of torture is highlighted. The perpetrators (Public Forces, paramilitary groups, and guerrilla groups) have clear objectives when they commit crimes of torture. The different perpetrators have different objectives with their own patterns. From our analysis, we have evidence of at least three: They wish to obtain information from the victims; they wish to persecute political men and women opponents and punish them for their activities; They wish to terrorize the civilian population, within the context of the armed conflict.

Despite of the lack of sufficient statistics, there is sufficient evidence to prove that the rape of women and girls is also used as a means of social and political persecution and as a weapon of war. On many occasions, with their loved ones present, Colombian women and girls are raped by several men.

Many persons deprived of their liberty, including girls and boys, have not been able to denounce the torture and cruel, inhumane and degrading treatment to which they have been subjected. However, in Section 1.2. of this report, with conclusive facts, it is proven that the Colombian State does not comply with the obligation that it acquired when it signed the Convention against Torture. Article 11 therein sets forth the obligation to avoid the torture of persons submitted to any kind of arrest, detention or imprisonment. Regarding the situation of persons deprived of their liberty, in the year 2000, the Office in Colombia of the United Nations High Commissioner for Human Rights stated that “*Detainees and convicted prisoners in penitentiaries and prisons suffer not only from overcrowding and the most deplorable sanitary conditions, but also from repeated abuse and the use of unnecessary force by the public servants who guard them*”<sup>5</sup>.

Boys and girls in conflict with the law are also subject to acts of torture and cruel, inhuman and degrading treatment, when they are confined in special State centers. That situation is illustrated in Section 1.2.2 in this report.

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4 Section 1.1.2.

5 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, March 9, 2000, UN Doc. E/CN.4/2000/11, paragraph 36.

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Torture and other cruel, inhumane and degrading treatment are normal practice during police and military operations. The population most vulnerable to being submitted to arbitrary treatment during arrests is the poorest population. The frequent practice of such abuses against low-income persons has led to their believing that this type of treatment is inherent to Public Force functions.

Chapter Two of this report corroborates how policies and legislation have contributed to creating conditions for the practice of torture to exist. Through the state of internal unrest legislation, the population's rights have been arbitrarily and disproportionately restricted, giving rise to acts of torture in addition to other violations of human rights. The situation has worsened due to the fact that the Colombian government have had the intention of converting the state of internal unrest legislation into permanent legislation, through laws or even through constitutional reforms.

Finally, this report shows how the Committee against Torture's recommendation of 1996 to put an end to the situation of impunity has not been followed. The State violates the obligations set forth in Article 12 in the Convention which provides that impunity is a key element in the widespread, systematic practice of torture in Colombia.

As a result of the above, the Committee against Torture should emphatically call the Colombian State's attention to the conditions that have enabled the increase and expansion of the practice of torture in recent years. If no measures are taken to modify these conditions, the practice of torture and of other cruel, inhumane and degrading treatment will increase in coming years. Along these lines, the final pages of this report make a series of specific recommendations to the Committee and further requests it visit Colombia to carry out an investigation, pursuant to Article 20 in the Convention.



**PART I**

**TORTURE AND OTHER CRUEL,  
INHUMANE OR DEGRADING TREATMENT  
WITHIN THE SOCIOPOLITICAL CONTEXT  
OF VIOLENCE<sup>6</sup>**



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Since the Committee against Torture studied Colombia's report and issued its final comments in 1996<sup>7</sup>, the situation of human rights and humanitarian law in Colombia has deteriorated dramatically. This fact has been acknowledged by international protection organizations that have indicated the widespread, systematic nature of violations of human rights in Colombia. For example, the United Nations High Commissioner for human rights has said that "*The human rights violations are taking place in a context of serious, massive and systematic repetitive practices (...) The breaches of international humanitarian law also constitute a widespread practice occurring on a large scale...*"<sup>8</sup>

Political murders, enforced disappearances, murders of socially marginalized persons, kidnappings, forced displacement of populations and other many forms of socio-political violence are all part of the Colombian reality. Torture and cruel, inhumane and degrading treatment do not escape this reality, being persistent, systematic practices throughout recent years. This is acknowledged by the Office in Colombia of the United Nations High Commissioner for Human Rights that indicated, "*torture has become a systematical, recurring practice of terror*"<sup>9</sup>.

In spite of this fact, the Colombian State has not taken any effective measures aimed at ensuring the respect for and guarantee of human rights nor has it aimed to put an end to the serious, systematic violations of human rights. At present, in Colombia about 20 people die every day due to the socio-political

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- 6 Sociopolitical violence means acts, which represent attacks against life, physical integrity, and liberty produced through the abuse of State agents, whether originated from political motives, derived from the discrimination against socially isolated persons or caused by the internal armed conflict. Along with common violence, these particular origins of violence form a scenario that propitiates violations of human rights and humanitarian law.
  - 7 United Nations (UN), Committee against Torture, *Final Observations of the Committee against Torture: Colombia*, 7/9/96, CAT/A/51/44, paragraphs 66-83.
  - 8 *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 24 February 2002, document E/CN.4/2002/17, par. 72 and 73. See also: *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 24 February 2003, UN Doc. E/CN.4/2003/13, par. 10 and 14 executive summary. See also: *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, 8 February 2001, document E/CN.4/2001/15, par. 250 and 251.
  - 9 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, UN Doc. E/CN.4/2000/11, Human Rights Commission, 56th Period of Sessions, March 9, 2000, paragraph 34.

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violence (that is twice as many victims as seven years ago) and an average of one person a day is a victim of torture.<sup>10</sup>

In many of the cases of violations of the right to life, the victims have also been subjected to torture or cruel, inhumane or degrading treatment. Very often these events are not reported, much less investigated. However, the available data is sufficient to affirm that such violations of the right to personal integrity are widespread and systematic.

### 1.1 Torture as a Widespread, Systematic Violation

The Committee against Torture has indicated that torture may be considered a systematic practice in a Member State when the following elements are present<sup>11</sup>:

a. Continuance of the practice of torture throughout time

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10 From July 1996 to June 2003, 30,782 people were victims of extra-judicial executions, sociopolitical murders, forcible transfers, and deaths in combat (for 22,968 cases there have been identified alleged perpetrators, for 2,628 cases the act is attributed to an unidentified combatant group, and 6,164 cases are under study).

The percentages of the perpetrators of violations of human rights have changed. From July 1996 to June 1998, violations of the right to life attributed allegedly to State agents represented more than 50%. This percentage has gradually dropped year after year. From July 1998 to June 1999, the percentage was 17.60%. Also, the percentage of events attributed to paramilitary groups has increased gradually year after year; it has risen from 20% in 1993 to 38.06% from July 1998 to June 1999. The total number of deaths produced by the different combatant groups had remained the same and then started to increase until it doubled in 2001. Throughout the past three years, that is to say, from July 2001 to June 2003, the total balance of persons dead and victims of enforced disappearance due to sociopolitical violence has been around 7,000.

From July 1996 to June 1998 an average of almost 10 persons died every day due to the sociopolitical violence; from July 1998 to June 1999 the average increased to more than 11 persons every day; from July de 1999 to June 2000 the average increased to almost 15 persons a day; and from July 2000 to June 2001, the average reached more than 18 victims every day. During the last two years, the average of persons dead due to sociopolitical violence has remained at near 20 persons every day.

11 *Committee against Torture Activities pursuant to Article 20 in the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Sentences: Peru, 5/16/2001, UN Doc. A/56/44, paragraphs 144-193, paragraph 20. Comisión Colombiana de Juristas loose translation.*



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- b. The habitual, intentional nature of the violations in a considerable portion of the territory of the State in question
- c. The existence of inadequate legislation, which in practice enables or encourages the use of torture<sup>12</sup>.

The purpose of this section is to illustrate the magnitude of the violations of the right to personal integrity in Colombia by clarifying the systematic nature of the practice of torture throughout the period under study (July 1996 to June 2003). Torture is systematically used throughout the national territory by all of the combatant groups: the military forces and the police, the paramilitary groups, and the guerrilla groups. This crime is most frequently committed by the military and police forces and by the paramilitary groups who act with their support, tolerance and acquiescence, as well as by the guerrilla groups.

### 1.1.1 The Continuance of the Use of Torture throughout Time

From July 1996 to June 2003 at least 1,776 persons were victims of torture. Of them, 242 were tortured and left alive and 1,534 were tortured before they were murdered. Likewise, at least 747 persons were victims of cruel, inhumane or degrading treatment; most of them during processes of detention, in jail or during Public Force repressions of demonstrations in public places. These statistics signify that, on average, more than 253 persons were tortured each year and 106 were victims of cruel, inhumane or degrading treatment<sup>13</sup>.

From July 1996 to June 1998, the daily average of victims of torture was more than one person every two days. From July 1998 to June 1999 this daily average dropped to more than one victim every three days and for the period from July 1999 to June 2002, the daily average stayed at more than one person

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12 In Chapter 2.1 of this report we illustrate how the legislation in Colombia has created propitious conditions for acts such as torture to be committed.

13 These statistics are under-recorded regarding the events of torture and cruel, inhuman treatment that take place in Colombia. That is because this type of violation is rarely reported, especially because often they are associated with other violations of the right to life or the right to personal liberty, so acts of torture or cruel, inhumane treatment are not reported, much less investigated. In many other cases the victims of this type of violation do not denounce them out of fear of possible reprisal. Therefore, these statistics must be understood as a minimal recording, not as definitive data for the total number of victims.

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every two days. During the last period from July 2002 to June 2003, the average increased to about one victim a day, this being the highest average recorded in the past seven years<sup>14</sup>.

With respect to the perpetrators, 63.63% of all of the acts of torture committed during the period under study were attributed to State agents: cases of direct perpetration represented 12.04% (214 cases) and cases through omission, tolerance, acquiescence or support to violations committed by paramilitary groups represented 51.57% (916 cases). 5.68% of the cases (101 victims) were attributed to the guerrilla groups.

In 545 of the cases, the alleged perpetrator of the violations is unknown. However, in 78 of those cases (4.39%) there are clues that indicate that the perpetrator was one of the armed groups in the conflict, without being able to specify which one. In 467 cases (26.29%) there are no indications of the alleged perpetrator.

The paramilitary groups are the ones who have perpetrated the most acts of torture in Colombia. In many of the events attributed to these groups, there is active participation of members of the Public Forces. In the cases in which such participation does not exist or there is no evidence of its existence, the Colombian State is, at any rate, responsible for these events due to the absence of a decided policy to combat them. The Office in Colombia of the United Nations High Commissioner for Human Rights stated, *“For the purposes of this report acts that can be attributed to the latter [paramilitary groups] also constitute human rights violations which, by act or omission, therefore also entail the international responsibility of the State. This consideration is based on the fact that these groups have the support, acquiescence or toleration of State officials and benefit from the lack of an effective response by the State”*<sup>15</sup>.

The lack of a serious policy aimed at dismantling these groups, the lack of opening investigations against these groups and the persons who instigate or sponsor them in order to shed light on the events, and the lack of penalizing the parties responsible and of giving reparations to the victims all constitute factors that contribute to perpetuating the use of torture, as is illustrated in Section 2.1. in this report.

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14 See annexed chart and graph.

15 *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, E/CN.4/2000/11, paragraph 25.

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### 1.1.2. The Customary Nature of Violations of the Right to Personal Integrity in Colombia

Torture in Colombia is not an isolated event. On the contrary, it is a customary, deliberate practice used by perpetrators, each with their own clear objectives and patterns. Generally speaking, we may acknowledge at least three methods of action: in some cases, torture is used to obtain information; in others, torture is used as a means of political persecution, to punish persons for their political or social activity; and yet in others, torture is used within the context of the armed conflict as a method to terrorize the civilian population.

The joint report on Colombia made in 1995 by the Special Rapporteur on Torture and by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, after their visit to Colombia, regarding the issue of torture, stated, *“Most of the torture, which is widespread, is said to be used by the security forces, and by paramilitary and other armed groups working in parallel with them, if not as a direct part of their campaigns. Torture may be used to extract information or confessions or to terrorize. It may occur before the victims are killed or are subjected to enforced disappearance”*<sup>16</sup>.

#### *a) Torture as a Means to Obtain Information*

This means of action is especially characteristic of the Public Forces. In most cases, they seek to gather information on the guerrilla groups by interrogating the civilian population accused of being collaborators of these groups. In other cases, the objective is to obtain confessions or to pressure people until they inculcate themselves as being members of the guerrilla. The victims are usually peasants who have been submitted to the control of guerrilla groups or they are persons who carry out activities that the Public Forces consider subversive, that is to say, they are union leaders, human rights defenders or persons who are social leaders and community leaders.

Although we have seen this means of action as a recurring practice throughout the complete period under study, the policy of democratic security initiated under the present Government has given rise to a concerning increase in this type of abuse perpetrated by members of the Public Forces, especially in the

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16 Human Rights Commission, 51st Period of Sessions, Joint Report made by the Special Rapporteur on Torture, Nigel S. Rodley and by the Special Rapporteur on extrajudicial, summary or arbitrary executions Bacre Waly Ndiaye, on their visit to Colombia from October 17-26, 1994, Document E/CN.4/1995/111, paragraph 104.

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militarized zones called “rehabilitation and consolidation zones”<sup>17</sup>. This means of action is based on the idea that the enemy has to be sought out among the civilian population because the armed actors “*camouflage themselves among the civilian population*”<sup>18</sup>.

It is possible that this means of action is also used by guerrilla groups and paramilitary groups; however, among the cases that have been made known during this period, we did not find any events of torture with such characteristics perpetrated by these groups. This could be due to a lack of information for the reasons we mentioned above.

*In the morning of January 16, 2003, Dr. Carlos Montoya left Puerto Inírida on his way to Sejal, a jurisdiction under the Provincial Department of Guainía. He traveled along the Guaviare River to meet with some native Indian authorities of the Guahibo tribe, for the purpose of establishing the location of a new health station. At that moment, Colombian military forces machine-gunned the motorboat in which he was traveling from an airplane.*

*That afternoon, he was detained by members of the National Army who violently took him out of the motorboat, shot at his feet and around his ears, threw him to the ground and trampled him, indicating that he was a doctor who collaborated with the guerrilla. The unit commander interrogated him, took his documents away, accused him of being a guerrilla fighter, and then turned him over to the Marine Infantry who in turn turned him over to the National Police.*

*At the Police station, he was interrogated and accused of terrorism. He was told that there was a court proceeding against him and that he had to give all of the information that he could on the guerrilla, as he was a doctor in their zone. The doctor was interrogated for two days during which time he was not allowed to sleep.*

*As of January 29, 2003, the Delegate Disciplinary Office of the Procurator for the Defense of Human Rights has been forwarding a preliminary investigation filed as # 008-80670-03 against members of the Public Forces. In the month of January a criminal denouncement was presented regarding these same events to the National General Prosecutor’s Office and it is presently in the stage of preliminary investigation*<sup>19</sup>.

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17 Decree 2002 dated September 9, 2002, through which measures are issued to control the public order and rehabilitation and consolidation zones are defined.

18 The Government stated this officially in 2002 Decree 2002, 3rd Whereas Clause.

19 Information contributed for this report by the human rights non-governmental organization Colectivo de Abogados José Alvear Restrepo.

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*On March 15, 2003, in San José de Apartadó, members of the National Army Seventeenth Brigade tortured Jesús Rivera. The Army troops arrived at Jesús Rivera's house. He works as bus driver. They told him that he had to transport them and accompany them to a school nearby. Jesús agreed to do so. When they arrived, he was told that he could go. Nonetheless, the military returned some hours later to his home, tied him up and took him back to the school. There, they beat him up, put a wet towel around his head, and shot at him between his legs, as they screamed at him to turn himself in, that there was an arrest warrant for him. Jesús told them that that was not true because he was not a guerrilla fighter. The military then told him to work with them accusing people, "that they would give him a lot of money, a house, a nice farm, and even security", that they would tell him what to say. Finally, they told him that he had to sign a document stating that he had been properly treated. Jesús refused to do so, but then they put a revolver to his head and told him that, if he did not sign, they would kill him. After he signed the document, Jesús was set free<sup>20</sup>.*

*In Bogota on March 19, 2003, 52-year old Luis Manuel Valencia Rojas, a handicraft merchant and member of the Provincial Department of Meta Traveling Salesmen's Union (Sinuam is the Colombian acronym), was arbitrarily detained and tortured allegedly by members of the Attorney General's Office Technical Investigation Corps members. The events occurred when Luis Manuel was approached by two uniformed persons who identified themselves as members of the Attorney General's Office Technical Investigation Corps (CTI is the Colombian acronym) who made him get into a dark blue van with polarized windows and drove him to the basement of the Attorney General's Office building, without recording his entry as a detained person. There, three persons who did not identify themselves, took photographs of him and tied him with leather straps to rings set into the wall. Later, they made him strip and, after insulting him, they alternated between electrically shocking him on several parts of his body and beating him with a rubber bat until midnight.*

*The individuals asked whom he had been speaking with. They made reference to an offer of money made 25 days before when they had attempted to force him to acknowledge being a member of the insurgent group Ejército de Liberación Nacional - ELN (National Liberation Army), reinstated into civilian life, and to*

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20 CINEP and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, # 27, 2003, page 103; denouncements # D-03624 and D-03743, Comisión Colombiana de Juristas archive.

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*testify in the proceeding being forwarded against Hernando Hernández, leader of Unión Sindical Obrera - USO (Worker's Union), who was detained at that time.*

*As Luis Manuel Velandia gave negative answers to all of their questions, he was taken out of the facilities, bare-chested, with no shoes and with his hands tied with his own shoestrings. He was put into a red car and abandoned near Monserrate Mountain in the southeastern sector of the capital. There he hid among the bushes near a stream until nine in the morning.*

*Two days later he filed a complaint with the Ombudsman's Office, and that office had a doctor of legal medicine examine him and confirm his physical condition<sup>21</sup>.*

*b) Torture as a Means of Political Persecution*

In many cases, torture is used by the actors in the armed conflict as a means of persecution against persons whom they consider their opponents. The idea is to punish the victims for their political or social activity, as well as to intimidate them enough so that they abandon such activities.

*In Coyaima (Provincial Department of Tolima) on January 14, 2003, the young native Indian Fredy Loaiza Tique, 24 years old, militant of the Partido Comunista Colombiano (Colombian Communist Party) and of the Unión Patriótica (Patriotic Union political party) and member of the Asociación de Cabildos Indígenas del Tolima - ACIT (the Association of Indian Tribesmen of the Provincial Department of Tolima), was tortured allegedly by the paramilitary belonging to the Tolima Block of Autodefensas Unidas de Colombia - AUC (United Self-Defense Groups of Colombia).*

*The event occurred when the paramilitary group entered the settlement of Doyare-Porvenir in the municipality of Coyaima and headed toward Fredy's home where his mother, Rosa Inés Tique Olivero, who is also a militant of the Colombian Communist Party and of the Patriotic Union and a member of ACIT, was. The paramilitary knocked on the door but Fredy's mother was suspicious and did not open the door. Then they began shooting at the door while screaming and accusing her of being a guerrilla fighter. Fredy decided to leave the house to protect his mother's integrity. Once outside, the paramilitary started to beat him up brutally, demanding that he give them the names of his relatives who are also members of the Communist Party, of the Patriotic Union, and of ACIT. As Fredy remained*

21 Information contributed for this report by the human rights non-governmental organization Colectivo de Abogados José Alvear Restrepo.

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*silent, they tied him to a tree and proceeded to beat him with the broad side of a machete and then they fired several shots pretending that they were going to kill him while they continued to interrogate him about his family. At that moment, Hernán Loaiza Tique, ex Indian Governor of the tribe and Gendry Loaiza Tique, member of the municipal council of Coyaima (Provincial Department of Tolima) for the Communist Party and the Patriotic Union, as well as both of Fredy's brothers, arrived at the place of the events and demanded that the armed men stop beating Fredy. The paramilitary started shooting at them and, in the midst of the confusion, Fredy was able to untie himself and escape. Later, his family took him to the hospital for medical treatment.*

*In spite of the fact that Fredy's mother denounced these events to the Coyaima police commander, no measure was taken to guarantee the Tique Loaiza family's life and integrity. Nine days later the paramilitary returned to the Loaiza Tique's village, shooting and throwing grenades at the Coyaima inhabitants' houses. Although everybody was able to escape, the Tique family's house was burned down. That same day the family forcibly transferred to the urban hub of Ibagué, the capital of the Provincial Department.<sup>22</sup>*

In many of the actions perpetrated by the guerrilla, torture is inflicted on members of the Public Forces who, in most of the cases, are persons who have been kidnapped at the roadblocks set up on the roads; they are tortured and later murdered.

*In Tuluá (Provincial Department of Valle) on January 19, 2003, Hermes Alberto Ordóñez Ocampo, a soldier assigned to National Army Palacé Battalion, was tortured and later executed allegedly by Fuerzas Armadas Revolucionarias de Colombia - FARC (Revolutionary Armed Forces of Colombia) guerrilla fighters. The event took place when the guerrilla group detained the public transportation vehicle in which the soldier was traveling, at a roadblock that they had installed in the rural zone of the municipality of Tuluá. The soldier was on a leave of absence and was traveling dressed as a civilian. Hermes Alberto's body was found near the road, with the bones in his hands fractured and with visible signs of torture.<sup>23</sup>*

22 Information remitted for this report by the human rights non-governmental organization "Reiniciar"; Cinep and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, # 27, 2003, page 17.

23 CINEP and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, # 27, 2003, page 25.



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*c) Torture as a Means to Terrorize the Civilian Population*

Torture and cruel, inhumane or degrading treatment are also used as a mechanism to terrorize the civilian population, for the purpose of sending a clear message to the community at large for it to do something or not to do something. This is an especially recurring practice in acts perpetrated by the paramilitary. Regarding this matter, the United Nations High Commissioner for Human Rights has stated, “*Members of paramilitary groups frequently use torture and, in almost all cases, it preceded extrajudicial execution. People who are taken prisoner by paramilitary groups are generally tortured, not during questioning, but for the purpose of punishment, coercion or intimidation. In this way, torture has become a systematic and habitual way of instilling terror*”<sup>24</sup>.

*From February 18 to 21, 2000, more than 300 paramilitary remained in the urban hub of the small village of El Salado, where they murdered approximately 100 persons. Some of them were beheaded; others were hung or beat to death. According to the information given by the settlers, several women were subjected to sexual violence, among them a 20-year old woman whom several paramilitary raped and then forced to eat cactus. The settlers’ anguish lasted for three days. They were forcibly taken out of their homes, captured when they tried to escape, rounded up like cattle in the soccer field in the center of the village or in front of the church, where they were murdered one after another, having been subjected to a kind of macabre raffle where the first price was death.*

*During these three days, the paramilitary played accordion and drum music to celebrate the deaths. There were nearly 100 victims throughout the village<sup>25</sup>, peasants who the paramilitary accused of being guerrilla collaborators<sup>26</sup>.*

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24 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, Document E/CN.4/2000/11, Human Rights Commission, 56th Period of Sessions, March 9, 2000, paragraph 34.

25 The settlers themselves are not certain who many of victims were. Many bodies were left abandoned without the coroner coming.

26 Information gathered by Comisión Colombiana de Juristas during the humanitarian mission to the municipality of El Carmen and to the village under police jurisdiction El Salado on March 1-2, 2000, made by the People’s Ombudsman’s Office Provincial Department of Bolívar Regional Office , the Barranquilla (Provincial Department of Atlántico) Early Alert Service (SAT is the Colombian acronym), Red de Solidaridad Social, the Office in Colombia of the United Nations High Commissioner for Refugees (UNHCR), and the non-governmental organizations Agritec, Opción Legal, and Comisión Colombiana de Juristas.



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*According to testimonies, the paramilitary operation had the acquiescence and complicity of the Marine Infantry Rifle Battalion troops, Bafim # 5, assigned to the First Brigade<sup>27</sup>. During the three days that the massacre took place, helicopters with military insignia flew over the village and machine-gunned the area, an event that could be proven by the marks of the projectiles found in the roofs of the houses in the village<sup>28</sup>. In spite of the fact that mobilizing troops by land only takes two hours from Corozal, the Marine Infantry troops arrived three days after the incursion; one half hour after the paramilitary group had fled.*

*Social organizations and the Catholic Church had alerted the authorities regarding the possible occurrence of a massacre, and they had requested measures to avoid an attack against the population<sup>29</sup>. However, the State did not take any measures to protect the population.*

*The Attorney General's Office arrived three days after the events occurred. From February 22 to 23, it exhumed the bodies that the settlers themselves had been buried, some of them in the cemetery and others in common trenches. The investigating body of this agency identified 28 bodies, among them, the body of a 6-year old girl and the body of a 65-year old woman. In spite of the fact that there was information given on sexual violations being committed, no evidence was gathered to establish the occurrence of such events or the identity of the alleged perpetrators.*

*The massacre provoked the forced displacement of 600 families<sup>30</sup> to the municipalities of El Carmen de Bolívar, Turbaco, Arjona, and Ovejas and to nearby cities such as Cartagena, Sincelejo, and Barranquilla. Other families fled to other Provincial Departments and some sought refuge in Venezuela.*

*The National Attorney General's Office is forwarding a disciplinary investigation against nine members of the Public Forces, including Retired Rear Admiral*

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27 CINEP and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, # 15, 2000, page 118.

28 Information gathered during the humanitarian mission to the municipality of El Carmen and to the village under police jurisdiction El Salado in the Provincial Department of Bolívar on March 1-2, 2000.

29 CINEP and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, # 15, 2000, page 112.

30 People's Ombudsman's Office, Defense Resolution # 008, *Regarding the Return process of the Population Forcibly Transferred from the village under police jurisdiction El Salado in the Provincial Department of Bolívar*, Bogota, November 2002, page 7.

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*Rodrigo Quiñónez, also under investigation for another massacre. In March 2001, the Attorney General's Office proffered a resolution to file charges against 15 persons who belong to the United Self-Defense Groups of Colombia (AUC) for the crimes of aggravated homicide and paramilitarism. Carlos Castaño Gil, the leader of the paramilitary group is also under investigation for this crime.*

*On March 30, 2003, in Viotá (Provincial Department of Cundinamarca the peasants Hernando Micán, 21 years old, and Wilson Duarte, 31 years old, suffered enforced disappearance, torture, and murder allegedly at the hands of Autodefensas Campesinas del Casanare paramilitary who had arrived in the region of Viotá days after the National Army Battalion Colombia had undertaken a military operation in the municipality.*

*These peasants and four other persons had taken a break from working and were at a store drinking a soda when they were surprised by a group of thirty heavily armed men dressed in camouflage uniforms, carrying communications equipment and wearing armbands that identified them as members of Autodefensas Unidas de Colombia. After cornering them, harassing them and asking them for their papers, the paramilitaries proceeded to detain them. The men accused the peasants of being members of the guerrilla groups that operated in the region and, after seriously insulting them, the men identified themselves as Autodefensas Unidas del Casanare who had come to the region for the purpose of eliminating those who opposed their organization.*

*The body of Wilson Duarte was found on April 2 with signs of torture. Witnesses said that the peasant was subjected to interrogation and, as he did not give the paramilitary the information that they requested, they proceeded to dismember him and finally they decapitated him<sup>31</sup>. In the settlement of Alto Palmar, on April 8 the body of Hernando Micán was found with visible signs of torture, signs of machete cuts on the back, the stomach cut open and dismembered. The body of Hernando Micán appeared 30 meters from where the body of Wilson Duarte was found.*

*These events are part of the paramilitary assault against the inhabitants of the municipality of Viotá initiated in March 2003, after the National Army Battalion Colombia entered the region. On March 29 a paramilitary group issued*

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31 Information remitted by Colectivo de Abogados José Alvear Restrepo.

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*a communiqué in which its made public its intention to “kill all communists who fall under their power and to (...) protect the people from the communists, that the communists had to get out of the zone because the paramilitary objective was to start a patriotic crusade”<sup>32</sup>. According to the Ombudsman’s Office, these violent events gave rise to the forced displacement of a group of 1,710 persons<sup>33</sup>.*

*The Attorney General’s Office is forwarding a preliminary investigation filed as # 1698 of the events of forced displacement, torture and murders committed in the municipality of Viotá in the year 2003 by Autodefensas Campesinas del Casanare<sup>34</sup>.*

*In Tierralta (Provincial Department of Córdoba) on May 22, 2001, Darío Antonio Hernández, Daury Manuel Hernández Corrales, Diabime Molino Cardona, Edilma Rosa Hernández Torres, Eduardo Arrieta Hernández, Fabián N., Faiver Antonio Cardona Hernández, Furiel Palacios Manco, Guillermo José Hernández, Jaime Antonio Rodríguez Araújo, Jaime Eugenio Arango, José Hernández Corrales, José Miguel Pérez, Juan Palacios Guerra, Luis Eduardo Borja, Magalis Pérez, Manuel Esteban Atencia, Manuel Hernández Sepúlveda, Pedro Antonio Hernández, Rigoberto Borja David, Rudis Pérez Hernández, Solángel Hernández Torres, and William de Jesús Barrios Hernández were tortured and murdered allegedly by Revolutionary Armed Forces of Colombia (FARC), a guerrilla group. Their bodies were found in the waters of the Sinú River, with obvious signs of torture. This event caused the forced displacement of the inhabitants of the settlements of El Socorro, La Gloria, and La Palestina. Likewise, the native Indians from the communities of Kanyidó, Koredó, Kanchichí, Kapupudó, Begidó, and Nawua who belong to the Embera Katio ethnic tribe had to abandon their territory<sup>35</sup>.*

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32 Denouncement # D-03597, Comisión Colombiana de Juristas archive.

33 Denouncement # D-03653, Comisión Colombiana de Juristas archive.

34 Information contributed to this report human rights non-governmental organization Colectivo de Abogados José Alvear Restrepo.

35 CINEP and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, 2000, # 20, page 144.

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*d) Sexual Violence against Women*

In her report on her visit to Colombia made from November 1 to 7, 2001, the Special Rapporteur on violence against women stated, “*Although men are most frequently the victims of summary executions and massacres, violence against women, particularly sexual violence by armed groups, has become a common practice in the context of a slowly degrading conflict and lack of respect for international humanitarian law*”<sup>36</sup>.

Indeed, sexual violence against women is a recurring practice for all of the armed actors in the country. Unfortunately, there is no reliable statistical record of such events, partially because many women who are victims of this type of aggression prefer not to report it, out of fear of possible reprisal, but also because, in many cases, the women are murdered after being raped. In those cases, only the murder is recorded and there is almost no evidence gathered that would make investigating the rape viable. In this regard, the mentioned report made by the Special Rapporteur on violence against women states, “*Women are often killed after the rape and therefore are documented as a murder statistic only; there must be a move to document what happened to the victim prior to death by including information contained in the forensic reports in the official statistics*”<sup>37</sup>, so a record is compiled of the various elements of the crime that is committed including the gender-based dimension”<sup>38</sup>.

Often sexual violence is used as a means to terrorize women and the community at large in the midst of the armed conflict, during the perpetration of massacres or other violations of human rights. In many cases several men rape women with their children or their loved ones present.

*In San Benito Abad (Provincial Department of Sucre) on August 23, 2002, four women were victims of sexual rape by paramilitary fighters of the United Self-Defense Groups of Colombia (AUC). The events occurred when a group of*

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36 *Report Made by the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences*, Ms. Radhika Coomaraswamy, Human Rights Commission, 58th Period of Sessions, E/CN.4/2002/83/Add.3, March 2002, paragraph 42.

37 During the visit, the police agreed to forward a forensic report to the Special Rapporteur which would give more information about what had happened to female victims prior to death. Unfortunately, however, the forensic report has not arrived and therefore statistics on this issue cannot be included in this report.

38 *Ibid.*, paragraph 45.

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*approximately 60 paramilitary entered the urban hub of this small town and, after intimidating its settlers, raped four women with their children present. During the same events, an undetermined number of peasants were wounded and the shops and houses in the village were pillaged. These events caused the forcible displacement of approximately 50 families. The Institute of Family Welfare (ICBF) sent a commission to verify the events and found the population in a state of profound psychological crisis, post-traumatic stress, and general widespread anxiety.<sup>39</sup>*

*On May 5, 2003, in the small village of Betoyes, in the municipality of Tame (Provincial Department of Arauca), the pregnant 16-year old native Indian Omaira Fernández was raped and later murdered. According to the source, “they also tore out the six-month old fetus, dismembered it, and threw the mother and the dismembered fetus into the river”. During the same events, Daniel Linares Sánchez, Nilson Delgado and Samuel Linares Sánchez were victims of extra-judicial executions. Also, Marcos López Díaz and Narciso Fernández were wounded and Maribel Fernández and two other girls were raped. The alleged perpetrators of these acts are members of the Navas Pardo Battalion assigned to the National Army Eighteenth Brigade<sup>40</sup>.*

*These events and the ongoing violations of human rights perpetrated by the military forces generated the forced displacement of more than 500 persons from the villages of Betoyes, Flor Amarillo and Santo Domingo and from the native Indian communities of Rokeros, Parreros II, Velazqueros and Julieros to Saravena<sup>41</sup>. Also, members of the National Army Revés Pizarro Mechanized Group filmed the native Indian House in Tame and recorded the personnel data of the persons in the*

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39 CINEP and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP, 2000, # 25, page 75.

40 Denouncements D-03678, D-03650, y D-03649, Comisión Colombiana de Juristas archive.

41 Humanitarian Commission Verification Report, Delegate Ombudsman’s Office for Native Indian and Ethnic Minority Affairs, Delegate Office of the Procurator for the Defense of Human Rights and Ethnic Affairs, Arauca Regional Ombudsman’s Office, Ombudsman’s Office Arauca Rehabilitation Zone Coordination Office, ONIC; June 23, 2003.

42 Fundación Hemera, *Tense Situation in Arauca*, June 13, 2003, [www.etniasdecolombia.org](http://www.etniasdecolombia.org)

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*Indian House*<sup>42</sup>.

The Rapporteur also indicated the widespread, systematic nature of violence against women and expressed her concern for the degree of impunity for cases of violations of women's rights, especially those that occur as a consequence of the armed conflict or those that are worsened by the armed conflict. In particular, she expressed great concern for the treatment that women receive in the judicial system and for the low percentage of sentences proffered for cases of rape. Regarding this issue, she stated, "*The failure to investigate, prosecute and punish those responsible for rape and other forms of gender-based violence has contributed to an environment of impunity that perpetuates violence against women, including rape and domestic violence. It is essential that cases of gender-based violence are investigated and the perpetrators brought to justice*"<sup>43</sup>.

In spite of this, the policies implemented by the State have not been aimed at investigating and punishing those responsible for committing this type of abuse. On the contrary, the measures adopted by the Government within the framework of the reinstatement policy are aimed at letting grave violations of human rights such as rape go unpunished<sup>44</sup>.

### 1.1.3. Grave, Constant Suffering Caused to the Relatives of Victims of Violations of Human Rights

The murders, enforced disappearances, tortures, kidnappings, forced displacement, and many other forms of violence that are committed in Colombia in a widespread, systematic manner, in addition to the pain inflicted on the victims, have a severe effect on the community in which the victims live, on the social or political organization to which they belong, and particularly on their loved ones and relatives. The pain and the discomfort caused to the victims' loved ones and relatives are so strong that it may be considered psychological torture.

In the case of enforced disappearances, for example, it is common for the crime to bend the will of the victims' relatives. Those affected feel impotent against the perpetrator. Often they are so paralyzed by fear that they are

43 *Report Made by the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences*, Ms. Radhika Coomaraswamy, Human Rights Commission, 58th Period of Sessions, E/CN.4/2002/83/Add.3, March 2002, paragraph 103.

44 See Section 2.1.4. in this report.

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unable to denounce the act or to try to clarify what actually happened. The State's lack of political will to repress this type of aggression, the impunity for such acts, and at times the State agents' complicity in the act, whether by action or omission, all generate so much pain that these factors turn into a new act of aggression.

Upon studying the third period report on Guatemala, the Committee against Torture stated, "The lack of an independent commission with wide powers and extensive resources to investigate the circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains. Uncertainty about these circumstances causes the families of disappeared persons serious and continuous suffering"<sup>45</sup>.

In Colombia, with regard to the situation of impunity, we add the fact that the relatives of persons who have suffered enforced disappearances continue to be victims of constant attacks against their right to life, to personal integrity, and to liberty. The members of Asociación de Familiares de Detenidos Desaparecidos (Asfaddes) have been victims of attacks. They are repeatedly threatened, followed, and harassed; some also suffer enforced disappearances, others are murdered. These violent acts are obviously related to these persons belonging to the Association or to a favorable evolution of the cases in which light is being shed on the perpetrators of the disappearance of their relatives.

*On October 6, 2000, in Medellín (Provincial Department of Antioquia), Claudia Patricia Monsalve and Ángel Quintero, both members of Asfaddes, disappeared. The alleged perpetrators are members of the Public Forces who acted together with paramilitary groups. Claudia became a member of Asfaddes on May 6, 1995, after her brother Edgar Augusto was a victim of enforced disappearance allegedly by members of the Public Forces<sup>46</sup>. Ángel became a member of Asfaddes in January 2000; several of his family members had been victims of enforced disappearance years before in Urabá (Provincial Department of Antioquia) and in the city of Santa Marta (Provincial Department of Magdalena).*

Upon request by the Executive Council of Asfaddes, in the year 2001, Corporación Apoyo a Víctimas de Violencia Sociopolítica pro Recuperación Emocional (Avre) made a psychiatric, psychosocial evaluation of the members of Asfaddes. The evaluation sought to determine the individual harm that the attacks against the members of Asfaddes had produced and their effect on the

45 UN Doc. : CAT/C/49/Add.2.

46 Denouncement made directly to Comisión Colombiana de Juristas.

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organization. The evaluation examined 30 persons who, during the previous five years, had been direct victims of situations of threats, harassment or other acts of violence (such as the enforced disappearance of the above-mentioned members, Claudia Monsalve and Ángel Quintero)<sup>47</sup>.

The results of the evaluation showed how the new violent acts reactivated the emotional suffering generated by the initial act that had motivated the persons' affiliation to Asfaddes (the enforced disappearance of a relative). *"The suffering consists of a complicated period of grieving, that is very difficult or impossible to express, causing fear, distrust, uncertainty, pessimism, concern, and sadness. We also found that it was common for these persons to fantasize with what could happen to them, in terms of harm or violence, such as torture, murder or enforced disappearance. Also, in the persons who, in response to the threats, harassment and other acts of violence, had opted to stop participating in Asfaddes, in order to minimize the risk, we observed feelings of frustration for having given up that activity and feelings of guilt as they felt that they were not continuing their search for an explanation and clarification on what had happened to their relative who had suffered enforced disappearance"*<sup>48</sup>.

The weakening of the organization was also acknowledged, due to the direct effect of the situation generating a sensation of very high risk and to the tension derived from the internal conflicts that arose as a result of the situation.

The evaluation showed that *"by submitting the relatives of the persons who were victims of enforced disappearance to new violations, these persons became victims of an additional extreme violence, which corresponds to a form of psychological torture in which the perpetrators seek for these cases to create an effect by being an example of what could happen to the other members, for the ultimate purpose of sowing terror in the organization and destroying it"*<sup>49</sup>.

The study proved the existence of the following characteristics of psychological torture in these cases<sup>50</sup>:

- The Intentional Nature of the Events and of Their Consequences: To par-

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47 28 women and 2 men (the members of Asfaddes are mostly women). The age groups evaluated ranged from 22 to 70 years old.

48 Corporación de Apoyo a Víctimas de Violencia Sociopolítica, pro recuperación emocional (AVRE), *Psychiatric Psychosocial Evaluation of Asfaddes*, Bogota, mimeograph, 2001.

49 *Ibid.*

50 *Ibid.*



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alyze the efforts of searching for their relatives and the investigation of the events and of the perpetrators.

- **The On-going Nature of the Situation and the Persistence of Forced Trauma:** The relatives of the persons who are victims of enforced disappearance suffer an on-going psychological pain that worsens when the bodies of their relatives are found with clear evidence of physical torture.
- **Punished Search and Controlled Behavior:** The threats and harassment that the relatives evaluated have suffered for months or years proves that they are persistently punished for their behavior of seeking the truth and justice. They live a situation in which their movements are limited. These persons feel that they are under the control of the perpetrators, and they receive no guarantees of security from the State.
- **State Agents' Responsibility, Whether by Action or by Omission**
- **Impunity:** The terrified victims and their relatives prefer not to denounce the event, due to the lack of guarantees of judicial proceedings to punish the perpetrators and to give reparation to the victims (if a denouncement is made, it usually does not produce results) as well as out of fear of reprisal.

### 1.2. Torture and Cruel, Inhumane or Degrading Treatment against Persons Deprived of Their Liberty

In Colombia, the situation of persons deprived of their liberty is especially serious. In this section, we illustrate the abuse of power, translated into torture and cruel, inhumane and degrading treatment during detention and deprivation of liberty. In spite of the lack of statistics on this issue, and despite the fact that the absence of guarantees impedes persons deprived of their liberty from denouncing the arbitrary treatment that they are given, the information that we have is sufficient to illustrate how the Colombian State does not meet the obligation embodied in Article 11 in the Convention to avoid torture of persons who have been arrested, detained or imprisoned.

#### 1.2.1. Torture and other Cruel, Inhumane and Degrading Treatment during Arrests

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Torture and other cruel, inhumane, and degrading treatment are the usual practice while carrying out police operations to repress common crime and during military operations. Very frequently, when persons are apprehended, their captors proceed to threaten them, interrogate them using violence and punish them extra-judicially<sup>51</sup>.

*In Bogota, on March 3, 1997, police officers wounded, captured, and tortured Walter Alexander Isaza Quiceno. Walter Isaza was traveling in a taxi on Avenida Primero de Mayo. Near Hospital de Kennedy, the public service vehicle was intercepted by a police patrol car. The taxi driver got scared and tried to put the car in reverse. The occupants of the patrol car started to shoot.*

*Already seriously wounded, Walter Isaza, was the victim of beatings during more than two hours. The police officers insistently asked him about a van that had been stolen. At noon the officers realized that Walter Isaza was seriously bleeding so they drove him to the Kennedy Hospital. There, he underwent surgery because a bullet had entered into his lung and another had hit his spinal column.*

*In spite of the fact that Walter became an invalid, he was later detained in the Kennedy police station during four days and his family was not allowed to visit him. In addition, Walter stated that at no time did the police officers ever show him an arrest warrant<sup>52</sup>.*

*In Bogota, on November 21, 1997, Juan Alexander Luma Gómez was traveling on a city bus at around 8:45 in the morning. There were about 30 to 35 other persons in the bus. At Calle 68 and Avenida Boyacá, two policemen detained the service vehicle. The armed police officers told all of the occupants to get off the bus and they proceeded to quickly do so.*

*Suddenly, one of the policemen started shooting at the bus. All of its former occupants fled. Juan Alexander and two other passengers entered a mechanic shop, to hide from the police officers who were shooting at those who had run. One of the*

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51 Section 2.1.1 in this report, in reference to the states of exception, illustrates other cases of torture occurred during arrests.

52 Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), *Exploratory Report on Torture and Cruel and Inhumane Treatment, with an Emphasis on Persons Deprived of Their Liberty in Colombia*, Bogota, Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), 2002, page 54.

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*police officers reached Juan Alexander on the second floor of the mechanic shop. He aimed his gun at him and beat him on his head, face and back. Then two or three other policemen entered and they kicked him all the way down the stairs. Finally, there were eight policemen gathered around him, beating him. One of the policemen hit Juan Alexander with the butt of a sub-machine gun and he collapsed.*

*Back out on the street, Juan Alexander was left on one of the dividers on Calle 68 and Avenida Boyacá. Later, he was lifted onto the bed of a truck. One of the police officers demanded that he tell them who had robbed a bank. As Juan Alexander remained silent, the police officer became furious and aimed his revolver. Juan Alexander immediately threw himself to one side of the bed of the truck in spite of which the shot hit him in his right leg. The other police officers warned their companion that he was making a mistake because there were “many canaries around” (informers).*

*With wounds on his face, head and leg, the police drove Juan Alexander to a police station. After arriving there, the police kicked him and punched him. When a policeman dressed as a civilian saw him, he said to his companions, “Take him to the operating room. I’ll be right down”. Juan Alexander was taken to the mentioned place. There, two more policemen dressed as civilians arrived who intimidated Juan Alexander, “You talk or you die, because nobody knows where you are”. Then they hit him in the stomach and on the back and demanded he confess and tell them where the other bank robbers were.*

*A half hour later, the police station commander arrived. He spoke to two of his subordinates, “You and you, go bring me the “therapy group”. And he added, looking at Juan Alexander, “Don’t you worry. You’re going to talk or we’ll help you get rid of your pain forever”.*

*Six more police officers dressed as civilians arrived. They forced Juan Alexander down on his knees and proceeded to tie his hands and feet. One of the policemen put a black plastic bag over his head and told him, “You talk or you die”. Scared, Juan Alexander asked what information they wanted. One of them answered that they wanted to know if any police officer had been involved in the bank robbery. Alexander answered that he didn’t know anything about a bank robbery. This led to the order “tighten it”. One of the policemen covered his head with the bag and tightened it in order to cut off his air, while another applied a tourniquet to his testicles. Another one was beating him at the level of his lungs and his stomach to block his air. They insisted that Juan Alexander confess.*

*Again, Juan Alexander was submitted to the punishment of the bag, the beatings*

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*and the tourniquet on his testicles. When they would see that the victim stopped fighting back, they would open the bag for him to get just enough air to be able to breathe. They repeated this procedure eight times in approximately 20 minutes time. The eighth time, Juan Alexander lost consciousness. When he awoke, the policemen made fun of him and asked him, “What happened? Did you fall down?”*

*Two hours later, the policemen forced Juan Alexander to change his shirt and put on a tie. They took him to a cellblock where there was a table with many weapons on it, including a grenade. They told him, “Stand here and face forward”. Facing him were four photographic cameras and a video camera<sup>53</sup>.*

*In Pereira (Provincial Department of Risaralda) on November 14, 2000, the police arrested Martha N. At the time of her arrest, Martha was five months pregnant. When they booked her, she had a fractured arm. Martha was taken to the police station in the city of Pereira where she was forced to remain without eating<sup>54</sup>.*

*On July 17, 2000, Eliécer\* was detained by members of the Medellín (Provincial Department of Antioquia) Police during an armed confrontation. The police used the victim as a human shield. The police took him, handcuffed and without shoes, on the back of a motorcycle, to the Guadalupe police station installations in the northeastern part of that city. During the ride, the police officers hit him several times with the butts of their rifles.*

*At the police station, Eliécer was handcuffed, beaten and confined in an empty, very dimly lit room. Five hooded police officers put a black plastic bag on his head*

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53 Fundación Comité de Solidaridad con los Presos Políticos (FCSP), *Exploratory Report on Torture and Cruel and Inhumane Treatment, with an Emphasis on Persons Deprived of Their Liberty in Colombia*, Bogota, Fundación Comité de Solidaridad con los Presos Políticos (FCSP), 2002, pages 59 to 61.

54 Fundación Comité de Solidaridad con los Presos Políticos (FCSP), *Exploratory Report on Torture and Cruel and Inhumane Treatment, with an Emphasis on Persons Deprived of Their Liberty in Colombia*, Bogota, Fundación Comité de Solidaridad con los Presos Políticos (FCSP), 2002, page 66.

\* Name withheld upon request of the victim

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and tightened it around his neck as they interrogated him, for him to identify the militia commanders. They asked him for the “zone commanders”. When Eliécer would start to suffocate, the policemen would loosen the bag. Before taking him out of the room, they beat him in the stomach, on the back, and in his testicles. When they took him to the police station office, the officers ironically asked him why he was beaten up, and they made him give his personal data over and over again.

Eliécer was sent to the La Gaitana police station in Medellín (Provincial Department of Antioquia). There he remained confined in a 6 x 3 meter jail cell with 30 other persons during 45 days. They forced him to consume marihuana and drink “Coca-Cola with pills pinching my nose closed, forcing me to swallow the mixture. The police officers made me take narcotics”. After the effects of the drugs had worn off, Eliécer felt excruciating anal pain, “I was bleeding and I was invaded by a profound feeling of shame and depression”<sup>55</sup>.

There is no statistical information on the occurrence of torture during arrests<sup>56</sup>. Many torture victims do not report the events during the investiga-

55 Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), *Exploratory Report on Torture and Cruel and Inhumane Treatment, with an Emphasis on Persons Deprived of Their Liberty in Colombia*, Bogota, Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), 2002, page 65.

56 An International Mission invited by the Office in Colombia of the United Nations High Commissioner for Human Rights went even further, “neither the police system nor the judicial system nor the penitentiary system are reliable systems for data on criminal justice”. Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: A State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001.

57 On June 25, 2002, a prosecutor refused to remit Juan Dael Hurtado to Legal Medicine. Members of the Gaula group assigned to the National Army Third Brigade had tortured him. Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), *Exploratory Report on Torture and Cruel and Inhumane Treatment, with an Emphasis on Persons Deprived of Their Liberty in Colombia*, Bogota, Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), 2002, page 76.

58 Office in Colombia of the United Nations High Commissioner for Human Rights, *Diagnosis of the Ordinary Criminal Court Program of the Public Defender's Office. Guidelines for its Reorientation*, Bogota, OCUNHCHR, 2002, page 460. Unidad de Investigaciones Jurídico-Sociales “Gerardo Molina” (Unijus), *Justice without a Face. Study on Regional Justice*, Bogota, Unijus, 1996, pages 94 to 96.

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tion. Some persons do, but the Attorney General's Office does not pay attention to the denouncements anyway<sup>57</sup>. In addition, in the Colombian justice system, there is no control over the legality of the arrest<sup>58</sup>. The population most vulnerable to torture during arrests is the poorest population. The frequent practice of abuses against this population has led to the idea that torture and other cruel, inhumane or degrading treatment are inherent to legal punishment.

### 1.2.2. Cruel, Inhumane and Degrading Treatment While in Detention

The conditions of detention that prevail in Colombia constitute cruel, inhumane, and degrading treatment. The United Nations High Commissioner for Human Rights has stated:

*“There is a chronic pattern of cruel, inhuman or degrading treatment of prisoners in prisons and police stations. Detainees have to put up with extreme overcrowding, insanitary conditions, mixing of categories of prisoners, inadequate night-time privacy in cells, inadequate sanitary installations, lack of drinking water and personal hygiene items, non-existent or poorly organized health services and other forms of deprivation that are contrary to international standards relating to the treatment of prisoners. The situation of men, women and juvenile prisoners in the so-called “holding rooms” in police stations is especially inhuman”<sup>59</sup>.*

No legal, constitutional or international mandate for the purpose of preserving personal dignity prevails in Colombian jails. Persons deprived of their liberty suffer chronic violations of their rights, derived from the conditions of detention in which they are held and from the bad treatment that they are

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59 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, February 28, 2002, Document E/CN.4/2002/17, paragraph 97. Also see United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, March 9, 2000, Document E/CN.4/2000/11, paragraph 36; United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, March 20, 2001, Document E/CN.4/2001/15, paragraph 41.

60 Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: A State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001.

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given by the police as well as judicial, and prison authorities. In reality, there is “a pattern of grave, systematic and generalized violations of the State’s obligations regarding human rights in the prisons and holding rooms, in the country”<sup>60</sup>.

Among the consequences of all of the violations of human rights perpetrated within jails and penitentiaries, the number of violent deaths and a progressive increase in the number of suicides are especially concerning. According to the Instituto Nacional Penitenciario y Carcelario - INPEC (National Penitentiary and Jail Institute), from January 1997 to October 2001, there were 721 homicides and 63 suicides. On average, one person deprived of his/her liberty was murdered every two and a half days (every 58 hours) and one person deprived of his/her liberty committed suicide every month<sup>61</sup>.

Consequently, there is a very high probability that deprivation of liberty, either as a securing measure or to serve a sentence, becomes an extra-judicial death penalty. “The lack of security in prisons continued to be a matter of great concern to the Office. Riots, escapes and murders continue to take place without any effective response by prison and government authorities. The lack of internal control appears to be the main cause of much of the violence, such as that which occurred on 13 April 1998 in La Picota prison in Bogotá, when 15 prisoners were killed by other prisoners”<sup>62</sup>.

61 Calculations prepared by freelance researcher David Martínez, using information furnished by Instituto Nacional Penitenciario y Carcelario (INPEC).

62 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, March 16, 1999, Document E/CN.4/1999/8, paragraph 65.

63 At the La Modelo jail in Bogota, from the afternoon of July 2 to the early hours of July 3, 2001, inmates belonging to paramilitary groups perpetrated an attack against persons deprived of their liberty belonging to guerrilla groups and against other political detainees. See Colombian NGOs’ Pronouncement, *Inconveniences of a Warrior Option to Confront the Jail Crisis*, Bogota, mimeograph, July 11, 2001.

64 “Since the massacre one year ago, the relatives of 16 inmates have known absolutely nothing. After the confrontations on April 27, 2000 in cell blocks 4 and 5, 16 inmates were allegedly criminally executed and buried inside the jail [La Modelo de Bogota]”: Jineh Bedoya, “Disappeared Inmates in La Modelo”, *El Espectador* newspaper, Bogota, July 8, 2001, page 10A. “More than 80 Disappeared in Jails”, *El Espectador* newspaper, Bogota, July 9, 2001, [www.elespectador.com/judicial/nota2.htm](http://www.elespectador.com/judicial/nota2.htm)

65 “There are even gangs who kidnap people inside the jail (...). If they know someone has money, they put him in a hole and, as a condition to take him out, they ask his family to make out a check or transfer a property to a certain person”: testimony made by Alberto Caicedo, advisor to the Inpec General Directorate, from November 1998 to March 1999, in Patricia Lara, “The Devil’s Cauldron”, *El Tiempo* newspaper, Bogota, May 1, 2000, page 3A.

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Other reasons for concern are the occurrence of armed confrontations of very large proportions<sup>63</sup>, alleged disappearances<sup>64</sup>, and evidence that the practice of kidnapping is common<sup>65</sup>.

On April 28, 1998, the Constitutional Court indicated the *“existence of an unconstitutional state of affairs in the penitentiary system”*<sup>66</sup>, in the sense that the authorities in charge openly disregard national and international norms (also jurisprudence) regarding the rights of persons deprived of their liberty<sup>67</sup> and therefore, *“Colombian jails have a problem of public order; they are centers in which the inmates’ fundamental rights are systematically violated”*<sup>68</sup>.

At present, the rate of overcrowding in Colombian prisons has substantially increased and remain a critical situation. Given the fact that this phenomenon has been the dominant trait in the jail panorama for the past seven years, the situation of jail over-population is chronic.

This means that there is not sufficient space for detainees to live in a dignified manner. There is not enough space in the cells or in the public areas. In most of the prison establishments, the cells that were originally designed to confine one person are housing up to 10 persons and not all persons have a place to sleep. Nor is there sufficient space in the public areas, especially on visiting days.

On July 31, 2002, in the prison establishments administered by the INPEC<sup>69</sup>, there were 51,074 prisoners, out of which 47,654 (93.30%) were men and 3,420 (6.70%), were women. Of them, 20,348 (39.84%) were awaiting trial

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66 Constitutional Court, 1998 Sentence T-153, page 83. The Court proffered a decision for two writs of injunction in which prisoners from the largest jails in Colombia denounced that they had become victims of an on-going situation of overcrowding that was becoming more and more critical.

67 Constitutional Court, 1998 Sentence T-153, page 83

68 *Ibid.*, page 89.

69 We do not know how many jail and prison institutions the INPEC administered in July 2002. We do know that in the month of April, the INPEC administered 161 establishments, out of which 10 were in the process of being closed. In the month of November 2002, Inpec administered 150 establishments.

70 Inpec Planning Office, *Chart: Total Prison and Jail Population Broken Down by Gender, Legal Situation, by Provincial Department and by Regions*, Bogota, mimeograph, July 31, 2002.



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and 30,726 (60.16%) were serving sentences proffered in their trial or after appeal. At that date, in all of the prisons there was total space for 44,326 prisoners, therefore, there was an overpopulation of 6,748 persons, which generated a national average overcrowding rate of 15.22%<sup>70</sup>.

On June 30, 2003, in the 146 prison establishments administered by the INPEC, there were 59,011 persons deprived of their liberty confined, out of which 54,291 (92.05%) were men, and 4,140 (7.02%) were women. Of them, 25,515 (43.24%) were awaiting trial and 33,496 (56.02%) were serving sentences proffered from in their trial or after appeal. At that date, in all of the prisons there was total space for 44,326 prisoners, therefore, there was an overpopulation of 14,075 persons, which generated a national average overcrowding rate of 31.32%<sup>71</sup>.

Pursuant to international standards provided for on jail occupancy, it is considered that there is a situation of critical over-population when a prison or jail system records an overcrowding rate of 20% or above<sup>72</sup>.

During the first year of this present government's administration, the prison population increased 15.54% (7,937 persons), space for 610 more was adapted, and the overcrowding rate practically doubled. The rate is now over 30% and the gravity of the critical overcrowding situation is obvious.

Overcrowding contributes to more serious violations of human rights of prisoners. In addition, its increase makes the material conditions of imprisonment itself constitute cruel, inhumane and degrading treatment<sup>73</sup>.

While deprived of their liberty, the respect for the inmates' human dignity depends directly on the material living conditions that the State gives these

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71 Inpec Planning Office, *Chart: Total Prison and Jail Population Broken Down by Gender, Legal Situation, by Provincial Department and by Regions*, Bogota, mimeograph, June 30, 2003. 13,263 persons were serving a sentence after appeal, whereas 20,233 persons were serving a sentence from their original trial.

72 According to the Council of Europe, a density equal to or greater than 120 persons per 100 spaces available (120:100) is considered overcrowding, or its equivalent a percentage of jail population overcrowding equal to or greater than 20%. Elías Carranza, "Jail Overpopulation in Latin America and in the Caribbean: Situation and Possible Answers", Elías Carranza (coordinator), *Criminal Justice and Prison Overpopulation. Possible Answers*, San José, Ilanud y Siglo XXI Editores, 2001, page 20.

73 Inter-American Human Rights Commission, *Human Rights in Colombia. Third Report Made by the Inter-American Human Rights Commission*, Annex 1, Press Release # 20/97, Bogota, Comisión Colombiana de Juristas, 1999, page 12, paragraph 38.

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persons through the penitentiary and jail system, as well as the disciplinary policy that is imposed on them. To the extent that persons deprived of their liberty cannot provide goods and services themselves to satisfy their basic needs, the State is under obligation to provide for such needs, thus complying with its commitment to protect human rights.

Most of the jail infrastructure which the INPEC administers is very old and inadequate, as well as seriously deteriorated. The quality of the jail spaces is very poor. The predominant physical condition of the jails and prisons imply some degree of corporal punishment and represent additional punishment<sup>74</sup>. The darkness, the humidity, the exaggerated heat or cold, the impossibility of permanently having drinking water and the densely populated reduced spaces are the main conditions that deteriorate the health of imprisoned persons. To these, we add other conditions that deny dignified treatment: living spaces that do not meet minimum ventilation, area, and lighting requirements; structural damage in the hydraulic, sanitary, and electrical networks that generate scarcity of water, deficient evacuation of wastewater, continuous overflowing of the bathrooms, and an abundance of unsafe, homemade electrical power networks. Therefore, the situation is not only that there is insufficient space for the present jail population, but also that most of the existing facilities do not guarantee the dignity of the persons deprived of their liberty.

Some of the new jail buildings have partially changed this jail infrastructure

74 A note is appropriate here: “the extremely deficient physical conditions, in addition to the violation of the inmate’s right to a dignified life, can also be considered cruel and unusual punishment; the inmate’s health and even his/her life may be in danger and, that in itself, violates his/her right to not be submitted to torture and cruel, inhumane or degrading treatment”. Inter-American Human Rights Institute (IIDH is the Spanish acronym), *Manual of Good Penitentiary Practices. Implementation of the United Nations Minimum Rules for the Treatment of Prisoners*, San José, IIDH y Reforma Penal Internacional, Second Review Reprint, 2000, page 61.

75 Rule 9. United Nations Minimum Rules for the Treatment of Prisoners.

76 Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: An State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001. People’s Ombudsman’s Office, during the inspection visits that it has made to the new prisons, has diagnosed other design errors: a cold, damp atmosphere in the isolation pavilions, some public areas are unprotected from rain, the areas for educational activities, workshops, bathrooms and conjugal visits are very small.

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panorama. However, their designers have ignored the rule that “*only one prisoner should occupy a cell or room for night confinement*”<sup>75</sup>. The new buildings still have problems, such as the flooding of cells, an insufficient number of showers, and overflowing of the toilets and sinks, merely one year after they have entered into operation. This occurred, for example, in the Valledupar (Provincial Department of Cesar) penitentiary<sup>76</sup>.

### 1.2.3. Torture and Other Cruel, Inhumane or Degrading Treatment in Prison and Jail Establishments

Cases of torture and cruel, inhumane or degrading treatment in prison and jail establishments are less frequently recorded than other forms of sociopolitical violence and of common violence. We do not have statistics on the magnitude of the events of torture and other cruel, inhumane or degrading treatment of which detainees are victims.

In spite of the fact that the Office of the Procurator encourages some preventive actions, it does not keep a record of specific cases. In its files, from 1998 to 2002 there were only four complaints of alleged torture inflicted on persons deprived of their liberty<sup>77</sup>.

Notwithstanding the absence of statistical data, torture and other cruel, inhumane or degrading treatment appear to be common practice in prison and jail establishments and transitory detention centers. In the year 2000, the Office in Colombia of the United Nations High Commissioner for Human Rights stated, “*Detainees and convicted prisoners in penitentiaries and prisons suffer not only from overcrowding and the most deplorable sanitary conditions, but also from repeated abuse and the use of unnecessary force by the public servants who guard them*”<sup>78</sup>.

In October 2001, an international mission invited by the Office in Colombia of the United Nations High Commissioner for Human Rights visited 11 prison and jail establishments administrated by the INPEC and four holding

77 Office of the Coordinator in charge of the Group of Jails and Forcible Transfer of the Delegated Office of the Procurator for Prevention regarding Human Rights and Ethnic Affairs to the Secretary General of Fundación Comité de Solidaridad con los Presos Políticos, Bogota, July 25, 2002.

78 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Office in Colombia*, March 9, 2000, Document E/CN.4/2000/11, paragraph 36.

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areas administrated by the National Police. Regarding the abusive treatment of persons deprived of their liberty committed by authorities in charge of supervision and custody, the final report states:

*“In all the penitentiaries, prisons and police stations visited by the mission, except one [women prison Buen Pastor in Medellín (Antioquia)], the mission received denunciations and/or testimonies of beatings and other cruel, inhumane or degrading acts perpetrated by the prison’s guardians or by “confident detainees”. Several victims were examined by the mission, and they had injuries compatible with their denunciations”<sup>79</sup>.*

The situation of violence in the prisons and jail establishments is conducive to the occurrence of acts of torture. The discovery of dismembered human bodies and the occurrence of mass torture in jails and penitentiaries are concerning indications of the possibility that torture is systematically used by the INPEC supervision and custody personnel, as well as by other prisoners, with the consent of the penitentiary authorities.

*In Cellblock 2 in La Modelo jail in Bogota on April 27, 2000, officials from the Attorney General’s Office, from the Technical Investigation Corps, and from Legal Medicine went in to investigate the facts regarding the body of Carlos Alberto León Giraldo, a person deprived of his liberty in that jail. The body was dismembered. It was found in a sewer in Cellblock 2, stuffed in black polyethylene bags<sup>80</sup>.*

79 Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: An State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001. The International Mission did expert examinations of persons deprived of their liberty who showed signs of abuse, in the penitentiaries of Itagüí (Provincial Department of Antioquia) and La Picota in Bogota; in the Bellavista jail in Medellín (Provincial Department of Antioquia), Villahermosa jail in Cali (Provincial Department of Valle), La Modelo jail in Bogota and La Modelo in Bucaramanga (Provincial Department of Santander); in the women’s prison Buen Pastor in Cali (Provincial Department of Valle); and in detention rooms in the police stations in Girardot and in the Kennedy neighborhood in Bogota. In the top security penitentiary in Valledupar (Provincial Department of Cesar) it gathered denunciations of torture and declarations from some officials regarding the treatment given to the inmates.

80 Ombudsman’s Office, Official Document DRB/05543 from the People’s Ombudsman to the Delegate of the Office of the Procurator for Human Rights, Bogota, May 3, 2000.

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*At the Villahermosa de Cali (Provincial Department of Valle) jail on January 29, 2002, there was an explosion in the area used for the handicraft workshop. After the explosion, shots were heard. Amid the disorder, Guard Guillermo Balanta and First Corporal José Antonio Romero were killed; they were both INPEC supervision and custody personnel. The communication media described the event as an escape attempt.*

*Furious after the news of their companions' deaths, the guards entered the cell-blocks. They forced the inmates to strip and, among insults and beatings, they led them to the football field. Most of the 3,351 persons deprived of their liberty who were confined in that jail remained outside from a little before noon to approximately 5:30 p.m. when they were taken back to their cells. There the guards shot firearms and launched tear gas.*

*During the day, members of the INPEC supervision and custody personnel selected 50 persons deprived of their liberty and took them to a room near the annex between the infirmary and the internal guards cubicle, a place known as the "tuberculosis victims room". There, the guards submitted those persons to cruel torture, asking them who had killed their colleagues and demanding they talk to them about the alleged escape attempt.*

*Most of these persons were led to "the room for the tuberculosis victims" with plastic bags on their heads and once inside they were badly beaten. Alberto Aguilar was put into a tank of water, handcuffed and feet tied. He was wounded with a sharp cutting weapon and was the victim of a simulated execution, a guard pointing a gun to his head. Franklin Batioja was the victim of a near asphyxiation; the guards put a plastic bag on his head, covering his face and immersed him in a tub of water. Alexander Colorado was subjected to a beating so intense that one of the toes on his right foot was split open and fractured in several parts. Many persons were burned with cigarettes and lime and salt water put on their wounds. Others were the object of attempts of near hanging with ropes and strips of cloth.*

*Jorge Cerón was not in the so-called "room of the tuberculosis victims". A guard identified him to the other guards as "the one with the pacemaker". They put him in a truck that left at approximately seven at night. Outside the jail, a guard*

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81 Fundación Comité de Solidaridad con los Presos Políticos (FCSPP), *Exploratory Report on Torture and Cruel and Inhumane Treatment, with an Emphasis on Persons Deprived of Their Liberty in Colombia*, Bogotá, Fundación Comité de Solidaridad con los Presos Políticos, July 2002, pages 26 to 30.

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*pulled two electrical cables out of an outlet and applied several discharges to the man's chest*<sup>81</sup>.

*On March 7, 2002, prisoner Luis Fernando Preciado Osorio who was confined in Cell 311 in Tower 1 in the top security Valledupar penitentiary (Provincial Department of Cesar) died. His death was the direct result of the torture committed by INPEC supervision and custody personnel. Also, the lack of adequate medical attention contributed to his death.*

*The day before his death, Luis Fernando Preciado had requested permission from the tower 1 head of the guards to place a call to his family. Although the guard promised to allow him to call, he did not do so during the day. In the late afternoon, Luis Preciado repeatedly banged on the door of his cell demanding that he be able to make his call. In the early evening, two officials and five guards arrived at his cell, chained his hands and his feet, beat him and repeatedly trampled his stomach while one of the officials encouraged the others by saying, "be tough on that piece of shit". Luis Preciado lay on the floor of his cell with his hands and feet still chained.*

*From the night of March 6 to the night of March 7, Luis Preciado vomited blood on several occasions, continuously complained, and requested the help of prisoners in joining cells. He was taken to the infirmary on the night of March 6, again in the morning of March 7, and for the last time on the night of that same day.*

*On Friday March 8, 2002, the Director's Office of the Valledupar (Provincial Department of Cesar) top security penitentiary reported to the Provincial Department of Cesar Regional Ombudsman's Office that prisoner Luis Fernando*

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82 Ombudsman's Office, *Defense Resolution # 21*, Bogota, April 12, 2002.

83 Regarding the United States cooperation, please see *Colombian Penitentiary System Enhancement Program. Appendix 11 of the Annex to the General Agreement for Economic, Technical and Related Assistance between the Government of the United States of America and the Government of the Republic of Colombia*, Bogota, July 9, 2001.

84 The INPEC defines the purpose of the new prison culture: "to direct the penitentiary and jail system, guaranteeing compliance with the sentence of deprivation of liberty, precautionary detention, security, social care and the penitentiary treatment of the inmate population [through] an organization that is modern, humane, highly effective, and committed to the State and to the institutions; by managing the resources aimed at totally solving the penitentiary problem regarding security and re-socialization". Inpec, *Everything You Need to Know about the National Penitentiary in Valledupar*, Bogota, January 10, 2001, page 1.

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*Preciado had died and that, given the fact that his death had not been violent, the Valledupar Prosecutor's Office had refused to do an autopsy*<sup>82</sup>.

*a) Effects of the "New Prison Culture" Policy*

As of the year 2000, in cooperation with the United States Federal Bureau of Prisons, the Government of Colombia put into operation a new top security and average security prison model<sup>83</sup>. The initiative was part of what the INPEC called the "new prison culture"<sup>84</sup>. The pilot prison for this initiative was the Valledupar (Provincial Department of Cesar) top security penitentiary. Afterward, the average security penitentiaries in Acacías (Provincial Department of Meta), in Girardot (Provincial Department of Cundinamarca), and in San Isidro de Popayán (Provincial Department of Cauca) and the top security penitentiary in Cóbbita (Provincial Department of Boyacá) put the initiative into operation.

Whereas the "new prison culture" assumes that penitentiary authorities make every effort to rigorously apply the law when applying restrictions to prisoners, it does not appear to be as rigorous when adopting measures to meet the obligations that the State has regarding such persons. In 2002, regarding this new model, the United Nations High Commissioner for Human Rights stated:

*"The living conditions, the transfer of prisoners - always handcuffed and under*

85 The INPEC defines the purpose of the new prison culture: "to direct the penitentiary and jail system, guaranteeing compliance with the sentence of deprivation of liberty, precautionary detention, security, social care and the penitentiary treatment of the inmate population [through] an organization that is modern, humane, highly effective, and committed to the State and to the institutions; by managing the resources aimed at totally solving the penitentiary problem regarding security and re-socialization". Inpec, *Everything You Need to Know about the National Penitentiary in Valledupar*, Bogota, January 10, 2001, page 1.

85 This facility is intended for convicts serving prison sentences of more than 15 years, who have certain additional required characteristics (Directive No. 0016 of 28 December 2000).

86 The transfer of accused persons to Valledupar prison prevents defence lawyers from contacting their clients or appearing for court proceedings on the date for which they have been called, in cases where neither the case file nor the defence counsel is based in that jurisdiction.

87 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, February 28, 2002, UN Doc. E/CN.4/2002/17, paragraph 268.

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*guard - the disciplinary model, and the use of physical force (rubber-covered metal rods) all violate the principle of respect for human dignity. The Office has received numerous complaints during the year of failure to comply with INPEC rules governing the profile of those to be held in this facility<sup>85</sup>, restrictions being placed on the exercise of the right to a defence,<sup>86</sup> and mistreatment of detainees and their relatives”<sup>87</sup>.*

The persons imprisoned in average security and maximum security establishments are permanently subjected to different types of cruel, inhumane and degrading treatment, against the Minimum Rules for Treatment of Prisoners: i) their heads are shaven; ii) they are forced to get up at five in the morning, take a bath with cold water in an outside area of the cellblock (sometimes the temperature is below 5 degrees centigrade) and remain naked and wet outside for a long time<sup>88</sup>; iii) they are not allowed to use proper clothing (gloves, wool caps, and covers) to protect them from the cold<sup>89</sup>; iv) they are fed rotten food that smells of chemicals or that is contaminated with fecal matter<sup>90</sup>; v) they are handcuffed when they are led about inside the penitentiary installations, for the visits of lawyers and relatives, and even for medical exams<sup>91</sup>.

As to the conditions of health care and the existence of cases of persons with visible signs of physical abuse, the Ombudsman’s Office recorded the answers of the physician at the top security Valledupar (Provincial Department of Cesar) penitentiary to their questions as follows:

*“We also asked him (...) if he had medically attended inmates that showed signs of physical abuse and he said that that was “everyday stuff”, so then we asked him if he had notified the authorities of that and he answered that he had not. He added*

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88 Ombudsman’s Office Boyacá Regional Office, *Cómbita Prison Report*, Tunja, Octubre 24, 2002, page 16. Comisión Colombiana de Juristas, *Torture and Arbitrary Detention of Human Rights Defender Juan Carlos Celis González*, Bogota, May 19, 2003, page 2.

89 Ombudsman’s Office Boyacá Regional Office, *Cómbita Prison Report*, Tunja, Octubre 24, 2002, pages 5 and 6.

90 Comisión Colombiana de Juristas, *Torture and Arbitrary Detention of Human Rights Defender Juan Carlos Celis González*, Bogota, May 19, 2003. Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: A State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001.

91 Ombudsman’s Office, Defense Resolution # 21, Bogota, April 12, 2002, page 14.

92 92 *Ibid.*, page 4.



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*that nobody had told him to do so. Also, he stated that he normally attended the inmates handcuffed because that is what the United States Bureau of Penitentiaries had taught him to do. It had taught him that the inmates had to be attended handcuffed and in chains and that at no time should the handcuffs or chains be taken off nor should the inmates be left alone*<sup>92</sup>.

Secondly, there are isolation cells in the new jail infrastructure; this goes against international recommendations for jails. In the average security San Isidro de Popayán (Provincial Department of Cauca) penitentiary, the prison authorities intensively use isolation as punishment. In 80% of the cases in which the prisoners are punished, the penalty has consisted of isolation: 37% corresponds to isolation in a cell for 40 to 60 days, 27% to isolation in a cell from 20 to 40 days, and 16% to isolation in a cell from one to 20 days. In the average security penitentiary in Acacías (Provincial Department of Meta), 52.5% of the penalties consist in isolation in a cell<sup>93</sup>.

Thirdly, prisoners are subjected to regulatory restrictions that are in reality a form of punishment, in the sense that they are not in any way related to the purpose of guaranteeing security. Visits are restricted, especially conjugal visits, which cannot last over exactly 30 minutes. It is prohibited to have books, TV sets, fans, and watches; even clocks are prohibited in the public areas. Neither the supply of water nor the supply of electricity can be controlled by the inmates. In addition, persons awaiting trial do not receive any different treatment from persons serving a sentence, nor are average security inmates treated any differently from maximum security inmates<sup>94</sup>.

Penitentiary authorities have attempted to restrict the jail inspection work that corresponds to the Ombudsman's Office:

*"The penitentiary Director told the Boyacá Regional Ombudsman that because this was his first official visit, he would allow him to personally meet with the inmates and enter the cellblocks, but that on the next visit he could only speak with the inmates through the security cubicles that the defense attorneys use. It is obvious that the director's statement not only violates national and international*

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93 Camilo Bernal, *From "La Modelo" to "Coleman": Transformations in the Colombian prison and jail system*, Bogota, mimeograph, page 36.

94 Resolution 3152 dated September 19, 2001 and Resolution 4328 dated December 11, 2001 issued by the INPEC General Directorate, through which the internal policy for top security prison establishments and pavilions is set forth.

95 Ombudsman's Office Boyacá Regional Office, *Combita Prison Report*, Tunja, Octubre 24, 2002, page 16.

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*norms, but also represents a clear obstacle to the control of the Ombudsman's Office, labor that the INPEC even acknowledges through 2001 Resolution 3152 that embodies the rules and regulations for penitentiaries. Article 38 in this resolution expressly sets forth that "administrative and judicial authorities will have no restriction of either days or times to make visits to the top security pavilions, provided that the visits are strictly official, for them to carry out their functions and duties"*<sup>95</sup>.

Furthermore, these restrictions are clearly contrary to the prerogatives that the Colombian Constitution has expressly conferred on the Ombudsman's Office, for it to carry out its activities and make its investigations, under the following terms: *"excluding the exceptions provided for in the Constitution and by law, the Office of the Procurator and the Ombudsman may demand from the authorities all of the information that they need to perform their duties, and the authorities must furnish such information without any reservations whatsoever"*<sup>96</sup>.

*b) Searches*

During searches conducted by the supervision and custody personnel, it is frequent for them to commit abuses against prisoners. Once the search operations are over, the persons deprived of their liberty return to their cells to find notable damage to their cells and to their personal belongings; sometimes they discover that some of their belongings were taken while they were out. Although the damage caused to the installations and to their belongings is serious, even more serious is the inhumane, degrading treatment to which persons deprived of their liberty are submitted. The INPEC supervision and custody personnel has made it an institutional, systematically used procedure to force the inmates to strip down to their underwear, they take them out into an open field (normally the soccer field) and make them stay there outside for

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96 Constitution of Colombia, Article 284.

97 On April 27, 2000, inmates belonging to paramilitary groups perpetrated a massacre in cellblock # 4 at the La Modelo jail in de Bogota, in which 25 persons were killed and 18 seriously wounded. See "The April 27 Massacre at the La Modelo Jail in Bogota", *Desenrejar – Bulletin on the Jail Situation*, Bogota, Fundación Comité de Solidaridad con los Presos Políticos, # 11/12/13, December 2000, pages 24 to 29.

98 At the La Modelo jail in Bogota, from the afternoon of July 2 to the early hours of July 3, 2001, inmates belonging to paramilitary groups perpetrated an attack against persons deprived of their liberty belonging to guerrilla groups and against other political detainees. See Colombian NGOs' Pronouncement, *Inconveniences of a Warrior Option to Confront the Jail Crisis*, Bogota, mimeograph, July 11, 2001, 10 pages.

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hours while a search operation is being carried out inside. We are aware of four significant cases in which this arbitrary measure was applied: i) during the night of April 28, 2000 and the early morning of April 29, 2000, the prisoners imprisoned in cellblocks 1 and 2 in the La Modelo jail in Bogota were subjected to this practice<sup>97</sup>; ii) on July 3, 2001, once again the persons imprisoned in cellblocks 1 and 2 in the La Modelo jail in Bogota suffered the same procedure<sup>98</sup>; iii) on January 29, 2002, most of the 3,000 persons deprived of their liberty imprisoned in the Villahermosa jail in Cali (Provincial Department of Valle) had to stand this treatment; and iv) on November 13, 2002, the procedure occurred in the average security penitentiary El Barne in Tunja (Provincial Department of Boyacá).

*In the average security penitentiary El Barne in Tunja (Provincial Department of Boyacá) on November 13, 2003, approximately 400 prisoners in cellblocks 2, 3, 4, and 6 were forced to strip down to their underwear and remain exposed to the sun from nine in the morning until three in the afternoon. The sun burned them and 186 persons were ill for 15 days having suffered first-degree burns without any medical treatment or legal assistance. 17 other persons were disabled for 20 to 25 days having suffered second-degree burns. 24 hours after these events occurred, none of the victims had received any medical treatment. The International Committee of the Red Cross (ICRC) undertook the corresponding formalities to make the necessary medicine available to attend the emergency because, 48 hours after the event, the INPEC had not done anything.*

*The penitentiary Director told the Boyacá Regional Ombudsman that he had adopted this measure as a result of a squelched attempt of mutiny among the persons imprisoned in the isolation pavilion (known as Security Cellblock 10) because of the damage that they had caused to the cells and of the aggressions that they had perpetrated against the INPEC supervision and custody personnel<sup>99</sup>.*

The routine physical search, which consists of making the inmates strip, bend over or bend at the knees and show their private parts to the guards constitutes inhumane, degrading treatment and the Constitutional Court has recog-

99 Ombudsman's Office Boyacá Regional Office, *Barne Penitentiary Report (average security)*, Tunja, November 26, 2002.

100 Constitutional Court, 2001 Sentence T-702, page 2.

101 Letter from the Group of Political Prisoners at the Bellavista jail in Medellín (Provincial Department of Antioquia) to the Ombudsman's Office, the Office of the Procurator, the International Committee of the Red Cross, and national and international human rights NGOs, Bello, April 7, 2000.

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nized it as such<sup>100</sup>. Nevertheless, this practice is frequent in jails and penitentiaries.

*On April 5, 2000, a supervision and custody corps patrol entered cellblock 8 in the Bellavista jail in Medellín (Provincial Department of Antioquia) to do a general search and proceeded to curse and threaten the inmates. Most of them were forced to undress and to do genuflections for the purpose of seeing if they were hiding any object or weapon in their anal cavity. The prisoners complained to the Director that he had not kept his verbal promise to them to not use this method of search any more<sup>101</sup>.*

*On June 5, 2001, approximately 100 guards entered cellblock 5 in the Bellavista jail in Medellín (Provincial Department of Antioquia) as part of a general search operation. Except for 50 inmates, all of the prisoners were led to the jail chapel. There they were forced to strip and do the above-mentioned genuflection. As they were returning to their cellblock, the political detainees found that a large number of their belongings had been damaged and that their cells had suffered serious damage. On the walls and doors of their cells there were four signs drawn signed in the initials of the United Self-Defense Groups of Colombia (AUC)<sup>102</sup>.*

In the top security Valledupar penitentiary, searching the inmates' private parts is a generalized practice. According to the Ombudsman's Office, that procedure "is followed by forcing the inmates to strip and bend at the knees several times with their hands on the back of their necks, in front of other inmates<sup>103</sup>". Prisoner Ómar Albeiro Gaviria Rúa was a victim of a complementary procedure, "totally naked, with my back to them, they made me bend over several times. Then, they forced me to pick up my testicles and lower and raise my penis and slide

102 from Fundación Comité de Solidaridad con los Presos Políticos to the Inter-American Human Rights Commission (IAHRC), Bogota, July 3, 2001. Subject: IAHRC Request for Information to the Government of Colombia on the Situation of the Political Detainees Imprisoned in Cellblock # 8 in the Bellavista jail in Medellín (Provincial Department of Antioquia). The Director of the jail was the same one as on April 5, 2000.

103 Ombudsman's Office, Evaluation Report # 3010-06 regarding the results of the visit made to the National Penitentiary in Valledupar (Provincial Department of Cesar) on March 28-30, 2001, Bogota, mimeograph, June 15, 2001, page 14.

104 Testimony, Constitutional Court, 2001 Sentence T-702 de 2001, page 2.

105 INPEC General Directorate, Resolution 035 dated March 26, 1997.

106 Sworn statements by the Commander of the Guards and by the Director of the Penitentiary. Constitutional Court, 2001 Sentence T-702, page 2.

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*back my foreskin*<sup>104</sup>.

Penitentiary authorities know that these are illegal practices. In addition, through a Government administration act, the INPEC General Director's Office prohibited genital searches and vaginal probes and even prohibited the practice of making prisoners and their visitors undress for a search procedure<sup>105</sup>. Nevertheless, they try to justify this search method, in spite of them having electronic detectors. Some guards say that if they have a founded suspicion, it is necessary to make persons deprived of their liberty undress "*because the inmates tape hand-made weapons to their body*" or because "*the inmates use many strange methods to carry prohibited elements*"<sup>106</sup>.

The use of searches that violate human dignity is extended to the inmates' visitors, especially if they are women. *On April 18, 2002, the Constitutional Court warned the Director's Office of the maximum security penitentiary in Valledupar (Provincial Department of Cesar) "not to conduct abusive searches of the inmates' visitors when they enter the jail establishment as they go against these persons' human dignity"*<sup>107</sup>. *"The Court adopted this decision after reviewing the writ of injunction filed by Jenny Alexandra Santos Velez. According to her, in spite of the penitentiary having electronic devices to detect the entry of prohibited objects when people enter to visit, the women guards treat women in a degrading manner because they make them reveal their breasts, lower their underwear, and get on all fours or bend at the knees in addition to putting their hand in their pelvic region. If a woman complains about this undignified treatment, the guards verbally insult her and threaten to never let her enter the penitentiary again"*<sup>108</sup>.

The International Mission invited by the Office in Colombia of the United Nations High Commissioner for Human Rights confirmed that it is common for supervision and custody personnel to subject the persons who visit their

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107 Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: An State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001.

108 Constitutional Court, 2002 Sentence T-269, page 1.

109 Office in Colombia of the United Nations High Commissioner for Human Rights, (International Experts: Federico Marcos, Morris Tidball-Binz, and Raquel Z. Yrigoyen), *Prisons and Jails in Colombia: An State of Affairs of Unconstitutionality and of Flagrant Violation of Human Rights. Report Made by the International Mission: Human Rights and the Jail and Prison Situation*, October 31, 2001.

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friends and relatives in prisons and jails to abusive searches, particularly women:

*“It is important to mention that it is common in the jails and penitentiaries to see how the guards themselves search the persons who come to visit prisoners, in a degrading manner. The delegation received many denunciations, including from the People’s Ombudsman’s Office, which indicate that vaginal probes are frequently done and in a manner totally contrary to the regulations in force. In one of the jails visited, the delegation was able to confirm that the women guards themselves do the probe, without the intervention of medical professionals; they are done in a discretionary fashion, without judicial authorization, in a manner that puts the examined women’s health at risk because they use the same surgeon’s glove for several vaginal examinations (...). The delegation considers that such practices constitute cruel, inhumane, and degrading treatment, as is established in Inter-American Human Rights Court jurisprudence”<sup>109</sup>.*

### 1.2.4. Cruel, Inhumane or Degrading Treatment of Girls and Boys Deprived of Their Liberty

The critical situation of children’s human rights in Colombia<sup>110</sup> allows us to affirm that the State has not taken any serious measures aimed at guaranteeing the rights of boys and girls nor does the State prevent violations of the criminal statute. In addition, in Colombia depriving the liberty of girls and boys who commit crimes is a general rule and not a measure taken as a last resort.

For many years now, the Ombudsman’s Office has denounced that girls and boys who have broken the law are victims of serious violations of human rights including torture and cruel, inhumane and degrading treatment. These abuses are committed from the moment the children are apprehended or arrested to the moment when the judge pronounces protection measures against them.

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110 Ombudsman’s Office, *Report on the Situation of Children in Colombia, 2001*. This presentation may be consulted at [http://www.defensoria.org.co/search/espanol/web/ninez\\_movie.htm](http://www.defensoria.org.co/search/espanol/web/ninez_movie.htm).

111 Ombudsman’s Office, *Children and Their Rights*, Bulletin # 6, Bogota, June 2000, page 9.

112 Ombudsman’s Office, *Children and Their Rights*, Bulletin # 6, Bogota, June 2000, page 23.

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When boys and girls enter re-education centers, they have to live in overcrowded conditions and are subjected to cruel, degrading treatment. During an inspection made in the year 2000, the Ombudsman's Office discovered that in some institutions the boys and girls are mistreated. In the city of Cúcuta (Provincial Department of Norte de Santander), for example, it was discovered that the boys and girls were beaten with a board. In the city of Palmira (Provincial Department of Valle del Cauca), one of the methods of punishing boys and girls was called "spinning". It consisted in making them spin around until they vomited, with all of their companions looking on<sup>111</sup>.

Repressive measures are preferred to reeducating the boys and girls. The Ombudsman's Office has verified that one of the measures imposed on minors is to isolate them in the so-called "reflection rooms". These places are small, dark, and damp; there is no bathroom and the girls and boys have to sleep on the floor<sup>112</sup>.

Consequently, the State is seriously violating the most elemental rights of boys and girls who break the law; on one hand, by denying them the possibility of reintegrating themselves into society and assuming a constructive function in the society, as required in the Convention on the Rights of the Child Article 40, and on the other hand, by committing acts of torture, cruel, inhumane and degrading treatment against the boys and girls confined in special State centers.





**PART II**

**ANALYSIS OF THE IMPLEMENTATION  
OF THE CONVENTION**



**STATE VIOLENCE IN COLOMBIA**

Instead of preventing the crime of torture, Colombian legislation has created favorable circumstances for it to be committed, through measures in which people's rights are not properly guaranteed, especially the right to liberty, the right to privacy and the right to personal integrity. In this chapter we will especially refer to the legislation of a state of exception, which has arbitrarily and disproportionately restricted the population's rights, giving rise to the commission of acts of torture, in addition to other violations of human rights. The situation has worsened because of the tendency of Colombian governments to make the legislation of the state of exception a permanent legislation through new laws or even through constitutional reforms.

**2.1. Obligation to Prevent (Legislation that Permits the Occurrence of Torture)**

One of the elements that the Committee has identified as characteristic of a systematic situation of the use of torture is that *“Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice”*<sup>113</sup>.

The purpose of this chapter is to show how the Colombian legislation has created a framework that permits acts of torture. To do so, we will refer to the many declarations of a state of internal unrest, on one hand, because they enable implementing measures that violate human rights, and on the other hand because there is a government tendency to convert measures accepted in a state of exception into permanent legislation. We will also make reference to the paramilitary groups because they are the main perpetrators of the crime of torture in Colombia.

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113 *Committee against Torture Activities pursuant to Article 20 in the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Sentences: Turkey*, 11/15/93, A/48/44/Add.1, paragraph 39. *Committee against Torture Activities pursuant to Article 20 in the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Sentences: Egypt*, 03/05/1996, A/51/44, paragraphs 180-222, paragraph 214. *Committee against Torture Activities pursuant to Article 20 in the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Sentences: Peru*, 16/05/2001, A/56/44, paragraphs 144-193, paragraph 20.

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### 2.1.1. Excessive Declarations of State of Exception

During the past 50 years, Colombia has experienced many periods of internal unrest (3 out of every 4 years: 75%). This situation has not significantly changed since the 1991 Constitution entered into force in spite of the fact that the Constitution was intended to limit “the executive power to decree states of exception [and thus] avoid the tendency of continuing with a legislation allowing on-going states of exception”<sup>114</sup>.

Today, violations of human rights in Colombia are “serious, massive and systematic” and breaches of humanitarian law occur “in a recurring, massive, systematic manner”<sup>115</sup>. The repeated declarations of states of exception have not affected the illegal armed groups; to the contrary, the number of participants in the guerrilla and in the paramilitary has increased.

On August 16, 1995, President Ernesto Samper’s government decreed a state of internal unrest, arguing that the disproportionate increase in crime justified adopting extraordinary measures. On October 18, 1995, the Constitutional Court declared the government decision unconstitutional, considering that the conditions for a state of exception required pursuant to the Constitution and to Article 4 in the International Covenant on Civil and Political Rights and to Article 27 in the American Human Rights Convention<sup>116</sup> had not been met. On November 2, 1995, the Government again declared a state of internal unrest. That declaration of interior commotion was extended once in February 1996 and once again in April 1996. The state of exception was in force until July 25, 1996, although exceptional measures were in force until October 25, 1996.

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114 Inter-American Human Rights Commission, *Human Rights in Colombia. Second Inter-American Human Rights Commissions Report*, Bogota, Comisión Colombiana de Juristas, 1994, page 381, paragraphs 1 and 2.

115 *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, February 28, 2002, Document E/CN.4/2002/17, paragraphs 72 and 73. Also see *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, February 24, 2003, Document E/CN.4/2003/13, summary. Also see *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, February 8, 2001, UN Doc. E/CN.4/2001/15, paragraphs 250 and 251.

116 Constitutional Court, Sentence C-466 dated October 18, 1995.

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On August 11, 2002, four days after his inauguration, President Alvaro Uribe Vélez declared a state of internal unrest for a 90-day period<sup>117</sup>. The Government extended the state of interior commotion for two additional 90-day periods<sup>118</sup>. The second extension was declared unconstitutional by the Constitutional Court through 2003 sentence C-327 because it did not meet the requirement of having been duly debated and approved in the Senate. Consequently, the state of interior commotion was in force until April 29, 2003.

In 1996, upon studying the second period report for Colombia, in its final observations the Committee against Torture stated its concern that “*The Government has made virtually constant use of a tool such as the state of internal disturbance which, given its seriousness and pursuant to the Constitution, should be exceptional*”<sup>119</sup>.

Also, in 1997 the Committee on Human Rights stated similar concern for the frequency of the declarations of a state of exception and reiterated its recommendation to the Colombian State not to make use of this figure unless the requirements embodied in the International Agreement on Civil and Political Rights Article 4 were first met. It had already made that suggestion in 1992 and the Committee felt that its recommendation had not been followed<sup>120</sup>.

During states of internal unrest, the Colombian governments have adopted measures through which they have violated constitutionally granted rights. That is why the Constitutional Court has declared many of these measures unconstitutional. In this report we will make reference in particular to the measures that in practice allow torture.

*a) Measures Adopted after the Declarations of State of Internal Unrest in 1995*

Under the state of internal unrest declared in August 1995, the Government adopted, among other measures, restrictions that violated the rights to due

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117 Through Decree 1837 dated August 11, 2002.

118 Through Decree 2555 dated November 8, 2002 and Decree 245 dated February 5, 2003.

119 Final Observations Made by the Committee against Torture: Colombia, 09/07/96, A/51/44, paragraphs 66-83.

120 United Nations Human Rights Committee, *Committee Study of the Fourth Period report Presented by Colombia*, UN Doc. CCPR/C/79/Add.75, 59th Period of Sessions, April 9, 1997.

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process and to personal liberty, and others that went against the repeated recommendation of inter-governmental organizations to create a guaranteed criminal policy.

In addition, the Government adopted measures against the right to not be forcibly displaced. On one hand, throughout the national territory, it generalized the practice of detentions and searches without a court order<sup>121</sup>. It made it possible to arrest persons without a personalized arrest warrant, that is to say, it legalized the issuance of blank arrest warrants. It also converted into crimes behavior such as failure to denounce a known punishable event 24 hours after the event occurred<sup>122</sup>. Furthermore, in coordination with the Ministry of Defense, it nominally empowered mayors and governors to order the dislodgment and mobilization of the citizenry in zones in which the public forces were carrying out military operations<sup>123</sup>.

In the framework of another state of interior commotion decreed in November 1995, 1996 Decree 717 established special public order zones as “geographical areas for the purpose of re-establishing the security and coexistence of citizens affected by criminal and terrorist organizations making it necessary to apply one or more of the measures” that restricted the right to free movement and the right to residence, such as establishing curfews, military road blocks, special insignia on vehicles, safe-conducts, registration in the respective municipal mayor’s office, and advanced advice of displacements outside the municipal hub.

1996 Decree 900 set forth the regulation for public order zones. It granted the Public Forces the power to detain and search without a court order. It authorized military authorities to make a census and record the data of all persons living in these zones as well as persons in transit and empowered any member of the Public Forces to detain for up to 36 hours any person carrying unregistered communications equipment or transporting a cargo of a volume that made the members of the Public Forces suspicious of it being for the guerrilla or of it being used to help the guerrilla.

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121 That measure was being applied in the region of Urabá by virtue of 1995 Decree 1590 issued under the protection of the declaration of interior commotion. 1995 Decree 1902 was issued with the same aim.

122 1995 Decree 1901. For example, for the behavior mentioned, a sentence ranging from 5 to 10 years of prison was set forth.

123 1995 Decree 2027.

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*In San José del Guaviare (Provincial Department of Guaviare) on April 2, 1996, three minors, Édgar Geovanni Fajardo, Dagoberto Parra and Fabricio Vera Trujillo on their way to work were detained and tortured by Mobile First Brigade soldiers. These events occurred in the settlement of El Vergel Bajo, in the Puerto Nuevo police inspection area. The military accused the minors of being guerrilla fighters. They tortured them and then forced them to put on military uniforms and FARC armbands<sup>124</sup>.*

*In San José del Guevara (Provincial Department of Guaviare) on April 7, 1996, Juan Camilo, a settler living in the settlement of La Reforma, in the Puerto Nuevo police inspection area, was tortured by Mobile First Brigade soldiers after they broke into his house and demanded information about the guerrilla. They tortured him and later burned down the house in which he and his family lived<sup>125</sup>.*

*b) Measures Adopted after the Declaration of the State on Internal Unrest in 2002*

Decree 2002 issued on September 9, 2002, contains the main measures for the restriction of rights and liberties, adopted during the internal unrest declared in August 2002. The decree espouses the idea that two of the main manners to support the criminal action of criminal groups are “on one hand, camouflaging its members within the civilian population and hiding their telecommunications equipment, weapons, and ammunition in the towns and, on the other hand, constantly supplying them with goods and taking them to the places where they hide out”<sup>126</sup>.

This decree authorized arrests without a court order throughout the national territory, through “legal figures” that do not exist in the Colombian legislation, such as “transitory detention” or “preventive arrest”. Said arrests are not made because there is any crime committed or within the framework of a criminal proceeding but because there is “an indication of participation or of an intention to participate in committing a crime” or because there are “circumstances that make it impossible to obtain a court order” and because there is “an urgency that cannot be kept waiting and a need to protect a fundamental right in serious or imminent danger”.

124 Comisión Colombiana de Juristas, *Human Rights and Humanitarian Law*, 1996, Bogota, CCJ, 1997, page 47.

125 *Ibid.*

126 2002 Decree 2002 3rd Whereas Clause.

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In particular, in the specially militarized zones created through the emergency measures called “rehabilitation and consolidation zones”, anyone with a telephone at home who has not advised the authorities of such, anyone traveling without a permit or anyone not carrying identification can be arrested without a court order. Also, any person transporting food or any other type of cargo is subject to arrest without a court order in these zones if there is an indication that allows a police officer or a soldier to suspect that such food or cargo is intended to help some criminal organization or some of its members<sup>127</sup>.

The court declared unconstitutional the power granted to the military commanders in these zones for them to gather and keep information on the place of residence and the normal occupation of the persons living in the area or of those traveling through or entering these zones<sup>128</sup>. The Court sentence notwithstanding, these population censuses have continued and the information is sometimes gathered using violent, degrading methods, such as roping-off certain parts of the town, massively and arbitrarily detaining the persons in these areas and sometimes even marking them with indelible ink.

*In Saravena (Provincial Department of Arauca), on November 12, 2002, in the early hours of the morning, under the name of “Operación Heroica” (“Heroic Operation”), military and police patrols roped off the municipality and proceeded to round up at least 500 persons whom they confined in the municipal coliseum facilities. These persons suffered verbal abuse from the Public Forces who made a census on them and then marked their arms and legs with indelible ink seals. Again in Saravena. On November 12-13, 200 persons were detained. 49 of them were submitted to a judicial proceeding; many of them were members of social or union organizations<sup>129</sup>.*

In addition, regarding restrictions of the right to privacy, pursuant to an Office of the Procurator’s report, the National Army made 294 searches and 1,078 “voluntary registrations” during the period of the interior commotion in Arauca:

*“This procedure has been insufficiently explained and even less justified in legal terms because, although some members of the army indicate that it is a procedure*

127 Ibid, Articles 15,16, 18, 20, and 21.

128 Authorization embodied in 2002 Decree 2002 Article 17. Constitutional Court, 2002 Sentence C-1024, Presiding Judge: Alfredo Beltrán Sierra.

129 See *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, February 2003, UN Doc. E/CN.4/2003/13, paragraph 68.



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*supported by the Attorney General's Office, it denies any such participation. (...). What is certain is that it is a format that the Army uses during an interior com-mo-tion to enter people's residences with their alleged acquiescence*<sup>130</sup>.

The arbitrary restriction of the right to liberty offered propitious conditions for the occurrence of torture and other cruel, inhumane or degrading treat-ment. In Arauquita (Provincial Department of Arauca), on September 18, 2002, at approximately seven thirty at night, police officers entered a public establishment owned by Carlos Barrera and detained 10 persons who were later confined in a two by three meter room in the Arauquita (Provincial Department of Arauca) police station for five days. At the very most, this room should hold two persons. The 10 persons deprived of their liberty were illegally detained and submitted to continuous verbal abuse and to interro-gations, without the presence of an attorney. The situation of overcrowding became even more critical because these 10 persons were not allowed to go to the bathroom<sup>131</sup>.

In addition to intimidating interrogations, the arbitrary restriction of liberty is accompanied by physical abuse. On October 1, 2002, at approximately eight thirty at night, a military patrol broke into the house of Emmanuel Rivero, a member of the "Joel Sierra" Human Rights Committee of Arauca. During the search operation, the military found and looked through human rights mater-ial. The soldiers said that this was ELN political propaganda but Emmanuel repeatedly stated that it was human rights documents. One of the soldiers started to beat him. "One soldier came up real close to me and hit me (...) I almost fell down. He told me that he was going to kill me, that I was a guerril-la fighter". Later, he threatened to put straight pins under Emmanuel's finger-nails and rip them off<sup>132</sup>.

Pursuant to the Office in Colombia of the United Nations High Commissioner for Human Rights:

*"Under these provisions (under the state of exception), the authorities launched a policy of large-scale raids and mass arrests in the last months of the year. The Office*

130 Office of the Procurator, *The Rehabilitation and Consolidation Zone in Arauca, Special Report*, Bogota, mimeograph, May 2003, page 20.

131 Corporación Jurídica Humanidad Vigente, *Human Rights Report. Arauca 2002*, Bogota, pages 42 and 43.

132 Testimony by Emmanuel Rivero. Corporación Jurídica Humanidad Vigente, *Human Rights Report. Arauca 2002*, Bogota, page 50.

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*(in Colombia) received reports of abuses by the security forces and of procedures incompatible with international principles, such as that of protection against arbitrary detention or those of lawfulness and the presumption of innocence. (...) the Office of the High Commissioner wishes to mention its concern at the abusive and indiscriminate use of force and the violations of due process and other fundamental rights entailed by measures that are not founded on the principle of legality and are removed from the prior and subsequent independent supervision of the courts and the Department of Public Prosecution. The main concerns in this respect focus on the need for adequate means of ensuring effective, independent State supervision. Moreover, the danger that the civilian population may end up being disproportionately affected and increasingly vulnerable, especially in the case of groups such as human rights defenders, social leaders and displaced persons, must be examined prudently and responsibly<sup>133</sup>.*

*In Bogota, on December 11, 2002, Juan Carlos Celis González, a human rights defender and a member of Corporacion Movimiento por la Vida, was tortured and detained by members of the National Police. These events took place within the framework of a series of operations carried out by members of the Public Forces who, based on information delivered by the network of informers or collaborators, made near 50 searches throughout the entire city<sup>134</sup>. In one of these operations, at 6:30 in the morning, the apartment of Juan Carlos Celis González was searched by approximately 15 persons, some of them uniformed, heavily armed members of the National Police and others dressed in civilian clothing, who entered without a court order and without being accompanied by the Office of the Procurator or by the Attorney General's Office.*

*Once inside the apartment, they insulted and hit Juan Carlos, whom they threw face down on the floor, handcuffed, pointed a gun at him and covered his head with a jacket as they screamed at him to acknowledge being "The Engineer" the person responsible for designing and fabricating the car bombs used in attacks in the city of Bogota. As Juan Carlos kept saying "no", the police continued to torture him, submitting him to electrical shocks on his whole body while handling a tape recorder and screaming at him to confess that he was "The Engineer".*

133 See *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, February 2003, UN Doc. E/CN.4/2003/13, paragraph 64 and 65.

134 "Metropolitan Police Frustrates New Attacks", *El Espectador* newspaper, December 11, 2002, at [www.elespectador.com](http://www.elespectador.com).

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*At 10:30 a.m. on the same day, Juan Carlos Celis Gonzáles was transferred to the installations of the Police Judicial Investigation and Intelligence Service (SIJIN is the Colombian acronym). He was not allowed to advise his relatives that he had been detained. Furthermore, his detention was made official through a signed act that did not state the grounds for his arrest and he was forced to sign an act, corroborating proper treatment during the search of his home. In spite of all that, during the inquiry process, Juan Carlos Celis Gonzáles told the authorities about the torture that the members of the National Police had subjected him to. They did not give him a physical examination nor has any investigation whatsoever aimed at shedding light on the events.*

*At present a criminal investigation is being carried out against Juan Carlos Celis charging him of terrorism, rebellion and of the fabrication, traffic and illegal bearing and storage of weapons<sup>135</sup>.*

*In Bogota on December 10, 2002, the home of Mercedes Corredor was searched by some 80 men allegedly members of the Metropolitan Police. They were dressed in civilian clothes and had no type of identification. She is a member of the Communist Party and a Union Patriótica (UP) Militant. Mercedes was verbally and physical abused as well as raped in front of her 9-year old daughter Dora Guevara Corredor and her brother Nelson Guevara Corredor (who is mentally retarded) who was also verbally and physically abused. The members of Mercedes's family were filmed and their place searched; however, the only things that they found were legal documents showing her political affiliation<sup>136</sup>.*

*On December 18, 2002, in the morning, Nicodemus Luna, ex leader of Unión Sindical Obrera - USO (Workers Union), was at the Surcentro shopping center in Cali (Provincial Department of Valle del Cauca). Five individuals dressed as civilians carrying long guns and short guns approached him. They threw him to the floor and started insulting him and kicking him, as stated in the USO denouncement of the event and in its publication in the CINEP y Justicia y Paz Database*

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135 Information furnished by the relatives and by the attorney of the victim. Comisión Colombiana de Juristas archive.

136 Information furnished by Corporación para la Defensa y la Protección de los Human rights "Reiniciar", August 4, 2003.

## STATE VIOLENCE IN COLOMBIA

*Bank*<sup>137</sup>. When the security guards at the shopping center saw what was happening, they called the police. When the police arrived, the aggressors identified themselves as being Gaula members (a specialized unit for fighting kidnapping and extortion) of the 3rd Brigade. They detained Nicodemus.

The unionist's relatives, several human rights organizations, and the Ombudsman's Office asked Gaula about where they were keeping the unionist: The unit at first denied that he was in their power. Only at three that afternoon did they acknowledge that he was detained and they advised that nobody could see him until the 36 hours established to turn him over to the authorities had passed. So they impeded the attorney's access and the Valle del Cauca People's Ombudsman's access as well. For quite some time, Nicodemus Luna had been receiving threats from the United Self-Defense Groups of Colombia paramilitary<sup>138</sup>.

In Arauquita (Provincial Department of Arauca), on November 10, 2002, Ana Alejandra Castillo del Rincón was subjected to torture by the Arauquita Police. Ana was sitting in the Arauquita Park with a man and a woman when the Police came and took her and the man accompanying her to the police station. Lieutenant David Ortegón Roncancio explained to her that he needed their collaboration in accusing a boy detained for being the murderer of a shoe repairman. Ana told him that she did not know the detainee and that she didn't even know that anyone had been killed. Then the Lieutenant threatened her with putting "two grenades up her and sending her to jail for 15 years" if she did not do what he wanted. She refused to lie and the police took photos of her and kept her handcuffed standing up in order to keep pressuring her. From time to time the Lieutenant would walk over to her and say, "You bitch, you're really going to be sorry if you don't collaborate. (...)", "I'm going to put you in there for 15 years and you're going to be on TV so that all of your family can see you (...). Your family will be ashamed of you for your being a guerrilla fighter". Near 6 in the evening, they transferred her to another area in the police station and she remained handcuffed and standing for five hours. Then a policeman walked over to her and said, "Look. You better collaborate because if the Lieutenant comes he's going to do worse

137 Cinep and Justicia y Paz Human Rights Data Bank (BCJP), *Night and Mist - Panorama of Human Rights and Political Violence in Colombia*, Bogota, BCJP,, # 26, 2002, pag. 151.

138 Information furnished by Corporación para la Defensa y la Protección de los Human rights "Reiniciar", August 4, 2003.

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*things to you than what I'm thinking about doing" and immediately thereafter he put an electrical shock cable near her breasts and started to fondle her, but she stepped backward "the best I could because I had been handcuffed standing up for hours and my whole body hurt", declared the victim.*

*On the next day they took her to another place and handcuffed her to some stairs next to a woman who was preparing food for the police. The Lieutenant said to the cook, "Please keep the chicken livers. I'm going to put cyanide in them and give them to this bitch to make her die. I wish I could just shoot her".*

*Finally, the Police was forced to free her because they had nothing against her, but as she was leaving the police station, Lieutenant Ortegón once again insulted her and seriously threatened her. Ana testified that the officer, in the presence of other policemen, shouted, "You son of a bitch! I swear to you that you're leaving here with your coffin on your back because, although you got away from me, you won't get away from the paramilitary (...)". Shortly after she was freed, Ana filed a denunciation with the local People's Ombudsman's Office<sup>139</sup>.*

On several occasions, the Committee against Torture has stated its concern that authorities have been granted the power to make arrests without a court order because the detained person can be submitted to torture. For example, in its final observations on Paraguay, in 1997, the Committee stated:

*"The fact that many arrests are made without a previously issued warrant from the competent authority and in cases other than those involving persons caught in flagrante delicto facilitates the practice of torture and cruel, inhuman or degrading treatment as a result of the clandestine circumstances in which it takes place and because the victims may remain at the disposal of their captors for longer than the 24-hour period within which detainees must, according to article 12, paragraph 5, of the Constitution, be brought before the competent judge"<sup>140</sup>.*

The Committee stated similar concern in the third period report on Argentina<sup>141</sup>.

139 Document contributed by Corporación para la Defensa y la Protección de los Human rights "Reiniciar", August 4, 2003.

140 UN Doc. CAT/C/SR.303, 304 and 306, paragraph 65.

141 UN Doc. CAT/C/SR.303, 304 and 306, paragraph 65.

**STATE VIOLENCE IN COLOMBIA****2.1.2. Tendency for the Legislation of States of Exception to become Permanent Legislation**

In the above point, we have shown how in Colombia the legislation of states of exception has propitiated violations of human rights and, in particular, how this legislation enables conditions for acts of torture. An additional element of concern is the fact that the Colombian governments keep attempting, each time with more force, to convert the legislation of the state of exception into permanent legislation. This would deteriorate the already serious situation of human rights in Colombia even more. President Andres Pastrana's government attempted to do this through a national security law that was declared unconstitutional by the Constitutional Court. The present Government presided by Alvaro Uribe has decided to reform the Constitution, for it to include a permanent restriction of rights. This report makes reference to each of these initiatives below.

*a) August 2001 National Security Law*

During Andres Pastrana's government, Law 684 dated August 13, 2001 regarding security and national defense was issued. The Constitutional Court declared that the law put the social democratic state of law at risk; it contradicted the State's duty to respect and guarantee all individuals under its jurisdiction the rights acknowledged in the International Agreement on Civil and Political Rights<sup>142</sup>.

The law granted undue powers and prerogatives to the Military Forces, such as attributing them judicial police functions. It did away with the temporary limit of 36 hours to turn over a person captured in the act to a judicial authority, thus enabling the detention of a person for an indefinite period of time and interrogating him/her in the police stations, all of which is expressly prohibited in the 1991 Constitution.

Secondly, this law created new mechanisms of impunity for the Public Forces, through measures, such as reducing the time period for making disciplinary investigations of violations of human rights. Using the pretext of regulating "the legitimate use of force", Law 684 also attempted to establish the assumption that State security agents always acted in legitimate defense, thus giving

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142 2002 Sentence C-251, Presiding Judges: Eduardo Montealegre Lynett and Clara Inés Vargas Hernández.

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them legal grounds on which to justify their violating human rights, in order to waive their criminal responsibility for such violations.

Thirdly, this law invented a new state of exception not provided for in the Constitution, the so-called “theaters of operations” that are zones in the national territory where the Public Forces prevail over local civilian authorities and where the restriction of fundamental rights would be allowed, in contradiction to the Constitution and to international treaties.

Fourthly, this law went against the State of law because, not only during a state of exception but at all times and in all places, it established in different manners the primacy of military authorities over civilian authorities, which goes against the Constitution and against the international commitments to which Colombia has acceded.

Fifthly, this law destroyed the principle of separation of powers, as it enthroned a fourth power (different from the legislative, executive, and judicial), the “national power”, in which public authorities and the citizenry would merge, without any distinction in their responsibility toward performing state security and defense functions that are proper in a state of law.

The Constitutional Court declared 2001 Law 684 completely unconstitutional through 2002 sentence C-251, based on the following considerations, among others:

Pursuant to the principle of pluralism, the society and the State cannot merge under the command of the executive power and much less can they disregard the citizens’ autonomy or their basic liberties, such as the liberty of expression and communication and the right to exercise political opposition. Individuals cannot be totally subordinated to the executive power or to the Public Forces.

In compliance with the mandates contained in international treaties, pursuant to which the civilian population must be distinguished from combatants, the civilian population cannot have duties imposed on it that would involve it in the armed conflict.

The legal regime of a security policy and the norms that develop it cannot be more burdensome on rights than the regime of a state of exception, nor can powers be granted to the authorities that go beyond those that could be granted to it during a state of exception, in legal and operational matters. By implementing security policies, fundamental rights must not be violated.

**STATE VIOLENCE IN COLOMBIA***b) Constitutional Reform for Granting Judicial Police Powers to the Military Forces regarding Civilians and for Authorizing Searches and Arrests without a Court Order*

What with 2001 Law 684 on security being declared unconstitutional, the difficult situation of public order in Colombia, and the international fight against terrorism, the new Government had a perfect context to state that the Political Constitution of Colombia and, thus, the Constitutional Court hindered the State from having the tools it needed to combat crime.

Acting against the provisions in the International Covenant on Civil and Political Rights Article 4, the Minister of Defense indicated that the Government “is planning to convert the measures adopted during the State of Interior Commotion into permanent legislation”<sup>143</sup>. Indeed, the Government started to do just that when, on April 23, 2003, one year after 2001 Law 684 was declared unconstitutional, it presented a bill of law for constitutional reform to authorize powers of judicial police to the military forces, as well as the powers to do searches, make arrests, and intercept communications without a court order and to register the population.

To date, the bill of law (House of Representatives 2003 Legislative Act 223 and Senate 2003 Legislative Act 015) has been approved in five of the eight debates that it must go through. It seeks to restrict the right to privacy and the right to freedom without any prior court order and to grant powers of judicial police to the military forces. That is to say, Constitution Articles 15, 24, 28, and 250 would be reformed.

If the reform is approved, it would make the remedy of habeas corpus inoperative, because during the first 72 hours, extendible for another 72 hours, or for a total of six days, a detained person would not have access to any judicial control. That would breach the international norms on human rights protection, which are acknowledged as norms that are supercede the 1991 Constitution and regarding which the Committee against Torture stated in its last observations on Colombia, “*The Committee notes that the new Constitution of Colombia contains various provisions that are very satisfactory from the standpoint of human rights and mechanisms for their protection, namely, the prohibition of torture, the regulations of habeas corpus, the functions of the*

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143 “Government to Extend State of Interior Commotion”, *El Espectador* newspaper, November 30, 2002, at *El Espectador.com*



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*Attorney-General and the Ombudsman, and the precedence of international human rights treaties over national legislation*<sup>144</sup>.

In addition, the bill of law would censure the communications media as they would not be able to reveal the identity of persons detained during the first 72 hours. Also, the Government would be in charge of regulating the limitations on the rights to liberty, privacy, and inviolability of homes and communications: In general, the international obligations that the Colombian State has acquired and the reiterated recommendations that international organizations have made would be disregarded.

During the presentation of grounds for the bill of law, the Minister of Defense argued that granting judicial police functions regarding civilians is valid because there is a need for the military forces to participate in maintaining public order and in fighting against terrorism. To do so, the bill of law provides that the military forces participate in judicial police units under the responsibility of the General Prosecutor's Office and that they have the duty to gather evidence, collect and analyze information, make searches and arrests without prior court order, intercept and record private communications, in addition to other functions that would be granted to them through a statutory law.

The United Nations Human Rights Commission President's Declaration on Colombia, adopted on April 25, 2003, prior negotiation with the Government of Colombia, called on the Colombian State to expressly abstain from granting, through a law, permanent powers of judicial police to the Public Forces. The requirement (paragraph 13 in the Declaration) imposes on the Government the *obligation* to withdraw the bill of law for the constitutional reform that is presently being discussed in Congress.

On April 4, 2003, the United Nations High Commissioner for Human Rights expressly urged the Government and the Congress *"not to introduce any rules in the Colombian legal system that would enable members of the military forces to exercise police or other functions incompatible with the independence of the justice system"*<sup>145</sup>.

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144 Final Observations by the Committee against Torture: Colombia, 09/07/96, UN Doc. A/51/44, paragraphs 66-83, paragraph 2.

145 Office in Colombia of the United Nations High Commissioner for Human Rights, *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, UN Doc. E/CN.4/2003/13, February 24, 2003, paragraph 169.

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The Office in Colombia of the United Nations High Commissioner for Human Rights as well as some members of the Congress, numerous NGOs and other sectors have all stated that the contents of this bill of law contradict Colombia's international obligations regarding human rights. The Office of the President of the Republic has responded that the bill of law does not "disregard human rights or the right to due process" and that the United Nations requirement does not "impose upon the National Government the obligation of removing the bill of law of constitutional reform because (...) the Colombian State's foreign relations are based on the respect for the self-determination of people's sovereignty and of the nation's sovereignty"<sup>146</sup>.

This is not the first time that the United Nations has urged the Colombian Government not to grant judicial police powers to the military forces. In this regard, the United Nations Human Rights Committee also said in 1997, upon studying the fourth period report on Colombia:

*"The Committee is particularly concerned by the fact that the military exercise the functions of investigation, arrest, detention and interrogation (...)*

*The Committee expresses its deep concern at the recent proposals for constitutional reform aiming at suppressing time-limits on states of emergency, eliminating the powers of the Constitutional Court to review the declaration of a state of emergency, conceding functions of the judicial police to military authorities(...)"<sup>147</sup>.*

In addition, after its visit to Colombia in 1988, the Work Group on Forced or Involuntary Disappearance had warned that granting judicial police powers to the armed forces facilitates enforced disappearance<sup>148</sup>. Likewise, the Special Rapporteur on Torture and the Special Rapporteur on Extrajudicial Executions who visited Colombia in 1994, stated in their report to the

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146 Answer from the Office of the President of the Republic to the petition made by several human rights NGOs, requesting the removal of the reform bill of law at hand. Office of the President of the Republic, Legal Secretariat, Bogota, October 1, 2003.

147 United Nations Human Rights Committee, *Study of the Reports Presented by the Member States pursuant to Article 4 in the Agreement*, UN Doc. CCPR/C/79/Add.76, 59th Period of Sessions, May 5, 1997, paragraphs 19 and 23.

148 United Nations, *Report Made by the Work Group on Enforced or Involuntary Disappearances, Report Made in Colombia by Two Members of the Group (from October 24 to November 2, 1988)*, UN Doc. E/CN.4/1989/18/Add.1, February 1989, paragraph 132.

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Commission on Human Rights in 1995 that the “acts that include detention and evidence gathering must be exclusively civil judicial police functions”<sup>149</sup>. The above was reiterated by the Special Rapporteur on the Independence of Judges and Attorneys who visited Colombia in 1996<sup>150</sup>.

The Committee against Torture has stated its concern regarding the subordination of civilian authorities to the Public Forces. Its final observations on Chile in 1994 as well as its final observations on Guatemala in 2000 are proof of this.

*“In a spirit of collaboration, the Committee suggests the adoption of the following measures:*

*c) Making the security forces subordinate to the civil authorities responsible for public safety and the abandonment (...)*<sup>151</sup>

*“C. Factors and difficulties impeding the application of the Convention: Legislative provisions which allow the army to take part in public security and crime prevention activities and which hinder the demilitarization of society, weaken the civil power of the State (...)*<sup>152</sup>.

If this bill of law is approved, it would make the Colombian State’s disregard of its duties regarding international human rights law even more flagrant. As far as the occurrence of torture is concerned, the constitutional reform would create conditions in which detained persons would be subjected to this type of violation of their rights, given the absolute lack of protections regarding arrest during the first days of detention.

### 2.1.3. Paramilitary Groups

In 1996, the Committee against Torture expressly recommended that in the Colombian State “*the practice of torture should be ended forthwith and to this*

149 *Report Made by Special Rapporteur on Torture and by the Special Rapporteur on Extra-judicial Executions*, UN Doc. E/CN.4/1995/111, paragraph 119.

150 *Report Made by the Special Rapporteur on the Independence off Judges and Attorneys*, UN Doc.E/CN.4/1998/39/Add. 2, paragraph 185.

151 Committee against Torture, Final observations, Chile, November 1994, UN Doc. CAT/C/SR.191 and Add.2.

152 Final Observations Made by the Committee against Torture: Guatemala. 06/12/2000. UN Doc. A/56/44, paragraphs 67-76, paragraph 72.

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*end suggests that the State party should act with great firmness to restore the State's monopoly over the use of force, disbanding all armed civilian or paramilitary groups, and ensure that swift and impartial investigations into allegations of torture are conducted immediately and that informers and witnesses are protected*<sup>153</sup>.

However, the behavior of the successive governments regarding torture has gone against this very recommendation, which has also been made by other international human rights protection organizations. As we will show below, the paramilitary groups, the main perpetrators of the crime of torture, have consolidated and they enjoy State collaboration (whether by act or by omission). In addition, in most cases neither the members of such groups nor such persons who collaborate with them have been investigated for the grave violations of human rights for which they are responsible. The situation of impunity becomes even more serious, given the fact that the present Government has presented a bill of law through which, if granted, the sentence would be suspended for perpetrators of serious violations of human rights or breaches to humanitarian law, including war crimes and crimes against humanity. We refer to these topics below.

*a) The Paramilitary: The Main Perpetrators of Torture in the Armed Conflict*

During the second half of the nineties, both the paramilitary groups' territorial expansion and the great impact that their activity has had on the crisis of human rights and humanitarian law that Colombia is suffering are notable<sup>154</sup>.

In many of the cases of extrajudicial execution perpetrated by paramilitary groups, selective murders as well as group homicides (massacres), death was preceded by brutal torture. This is acknowledged by the Government of Colombia in its report to the Committee against Torture:

*"The self-defense groups are involved in the practice of torture. In most cases, the tortured person is later found dead. Many of the acts perpetrated by the self-defense groups are committed for the purpose of intimidating and sowing terror among the civilian population, such as torture and selective executions (...) and forcible*

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153 Concluding observations of the Committee against Torture: Colombia. 09/07/96. UN Doc. A/51/44, paras.66-83, paragraph 79.

154 See Chapter 1 in this document.

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*transfer. We must bear in mind that the self-defense groups' military strategy is based on attacking the population*<sup>155</sup>.

The punishment that the paramilitary inflict on their victims also intends “to serve the purpose of intimidating or coercing others related to them”<sup>156</sup>. The UNHCHR recorded this in the following terms:

*“Members of paramilitary groups frequently use torture and, in almost all cases, it preceded extrajudicial execution. People who are taken as prisoners by paramilitary groups are generally tortured, not during questioning, but for the purpose of punishment, coercion or intimidation. In this way, torture has become a systematic and habitual way of instilling terror”*<sup>157</sup>.

In the cities, paramilitary violence is also aimed against homosexuals. In Barrancabermeja (Provincial Department of Santander), young homosexuals have been the victims of torture, degrading treatment, and rape by the paramilitary.

*“There are cases where youths have been forced to endure physical abuse by members of the AUC, and there are others where their belongings have been taken away from them. In the La Paz neighborhood, a youth was stripped and paraded around the neighborhood wearing a sign ‘I’m a queer’. Two lesbian women in the Miraflores neighborhood were forced to have sexual relations with members of the AUC, according to the men ‘to show these girls what a man feels like’. In the Villa Feliz neighborhood, a youth was killed because of a comment that he had made that had him perceived as a homosexual. His body was found with signs of torture and his penis had been brutally cut. It is said that the AUC have lists of persons with ‘gay behavior or tendencies’ and that the AUC is following them to execute them or make them abandon the city”*<sup>158</sup>.

155 Republic of Colombia, Ministry of Foreign Affairs, *Third Supplementary Report. Fourth Periodic Report to the Committee against Torture*, Bogota, mimeograph, December 2001, pages 3 and 4.

156 United Nations, *Report Made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, UN Doc. E/CN.4/2002/17, Human Rights Commission, 58th Period of Sessions, February 28, 2002, paragraph 94.

157 United Nations, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, UN Doc. E/CN.4/2000/11, Commission on Human Rights, 56<sup>o</sup> session, 9 march 2000, paragraph 34.

158 *Human Rights Report from the LGB T Sector (Lesbians, Gays, Bisexuals, and Transsexuals) in Colombia, for the Year 2002*, Bogota, [www.geocities.com/alf60cl/biblioteca/ddhh2002.RTF](http://www.geocities.com/alf60cl/biblioteca/ddhh2002.RTF), November 30, 2002, page 9.

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Also, torture and rape are part of the violence that the paramilitary groups use against women<sup>159</sup>. In addition to the fact that rape is used against alleged collaborators or guerrilla militants as “a warning mechanism and a form of retaliation”<sup>160</sup>, the woman’s body is materially marked with the sign of a paramilitary organization for the purpose of showing that the territorial control transcends even to “the symbolic territory of the female body”<sup>161</sup>. The testimony of a young inhabitant of Medellín (Provincial Department of Antioquia) illustrates this.

*“I was going to the school to make a payment. On the way, six men hooded dressed in camouflage pants, light green T-shirts, and boots stopped me. All of them were armed with long guns and short guns and three of them had armbands that said AUC. They asked me where I was going and I told them to school and I kept on walking. Two of them grabbed my arms and another one put a black piece of cloth over my eyes. They forced me to walk along the road heading south. After we had walked four or five minutes, during which time I felt that more men were joining us because of the voices and the laughter (...), we stopped. One of them, apparently the leader, stood in front of me and started to talk, ‘Tell me the truth, where are you from? We know you, we know what you do, we know that you are a guerrilla fighter, that you’re a revolutionary, tell us the truth. If you don’t, it’ll just be worse on you’. (...) Then another man got close and said, ‘We’re going to kill you, but first we’re going to have some fun with you’. (...) Then they threw me on the ground and three different men raped me. They cut up my clothes and wounded me several times with something sharp, apparently a razor blade, while all of them fondled me. They cut my mouth, my breasts, my thighs, and my buttocks. They pulled my hair and seemed to be taking turns at it. One of them grabbed my forearm and apparently with a knife engraved the initials AUC (...) on it”<sup>162</sup>.*

159 According to the Special Rapporteur on the Issue of Torture, sexual violation is “an especially traumatic form of torture”. United Nations, *Report Made by the Special Rapporteur on the Issue of Torture*, Document E/CN.4/1995/34, Human Rights Commission, January 12, 1994, paragraph 15.

160 Round Table “Women and the Armed Conflict”, *Report on Sociopolitical Violence against Women, Female Youths, and Girls in Colombia. Third Report-2002*, Bogota, Ediciones Ántropos, February 2003, page 67.

161 *Ibid.*

162 Testimony of a female youth in Medellín (Provincial Department of Antioquia), November 2002, quoted in Round Table “Women and the Armed Conflict”, *Report on Sociopolitical Violence against Women, Female Youths, and Girls in Colombia. Third Report-2002*, Bogota, Ediciones Ántropos, February 2003, page 68.

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*b) The State is responsible for failure to fight the Paramilitary Groups*

*“The State is legally responsible both for the attacks carried out directly by Colombian armed forces and for those committed by paramilitary organizations, to which State support, acquiescence or connivance have been contributory factors. The existence of links between the official army and/or civil servants and paramilitaries and the absence of sanctions for violations is a matter of great concern”*<sup>163</sup>.

In the last Declaration made by the President of the United Nations Commission on Human Rights on the situation of human rights in Colombia issued on April 25th, 2003, she stated that *“The Commission strongly deplores the persistence of links between paramilitary groups and members of State forces (...) It urges the Government of Colombia to implement fully the measures adopted to combat, repress and dismantle paramilitary groups, as well as to investigate and bring the links between military forces and the paramilitaries to an end.”*<sup>164</sup>

The Office in Colombia of the United Nations High Commissioner for Human Rights included in his 2003 report the topic of the paramilitary as one of the points of special concern:

*“In their activities, the paramilitaries continued to take advantage of the lack of action, tolerance or complicity shown by public officials in several regions of the country. In many of these areas, the paramilitaries have replaced the Government in important aspects of public life, including the use of armed force”.*

*(...)*

*“Paramilitary activities continued to be a destabilizing factor as far as the rule of law was concerned, especially on account of the links maintained with paramilitary groups by public officials and of the Government’s own inconsistent response to the situation. The ambiguity of the Government’s commitment was reflected in discrepancies between statements by the authorities about their efforts to combat paramilitarism and the facts as observed by the Office in Colombia under its mandate. Paramilitary control is more marked in urban areas, where paradoxically the security forces and the authorities are also more active; this is constantly an element in complaints of collusion between public officials and the paramilitaries. Statements*

163 Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on Human Rights Defenders, April 2002, UN Doc. E/CN.4/2002/106/Add.2, Paragraph 280.

164 Chairperson’s Statement “Situation of Human Rights in Colombia” (59th session), Geneva 25 April 2003 (OHCHR/STM/CHR/03/2), Paragraph 30.

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*by civilian and military authorities denying the presence of paramilitary groups in their areas, even though that presence is common knowledge...*<sup>165</sup>

At no time have the Colombian authorities shown any signs of elaborating much less executing a real plan of armed confrontation against the paramilitary groups. The Second in Command of the Army even stated publicly in 1998 that it was not a constitutional duty of the Military Forces to pursue the paramilitary<sup>166</sup>.

The present Government has no decided political will to eradicate the paramilitary. That omission became especially evident during the effective period of the “rehabilitation and consolidation zones” protected by the state of interior commotion decreed by the Government in August 2002<sup>167</sup>. According to the Office in Colombia of the UNHCHR, it is possible to state that the paramilitary groups consolidated and expanded in the territories that included those zones without encountering any resistance from the Public Forces<sup>168</sup>.

In reality, while counterinsurgent operations increased, *“At the same time as the security forces intensified their counter-insurgency operations in the rehabilitation zones, which cover areas traditionally under guerrilla control, paramilitary groups penetrated some places, as in the town of Sincelejo and other municipalities in Sucre, such as Chalán and Ovejas. In other places, such as Arauca, they maintained their presence despite the military operations”*<sup>169</sup>.

165 *Report of the United Nations High Commissioner for Human Rights on the Office in Colombia*, February, 2003 UN Doc. E/CN.4/2003/13, Paragraphs 34 and 74.

166 See Report Made by the Department of State of the United States of America, 1999, *Country Report on Human Rights Practices*, (Chapter on Colombia).

167 Decree 1837 dated August 11, 2002. The “rehabilitation and consolidation zones” were created through 2002 Decree 2002.

168 Office in Colombia of the United Nations High Commissioner for Human Rights, *An International Vision on the Rehabilitation and Consolidation zones*, Lecture Made by the Assistant Director Amerigo Incalcaterra, Sincelejo, mimeograph, July 25, 2003, page 5.

169 *Report made by the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, UN Doc. E/CN.4/2003/13, February 2003, paragraph 69. The Commander of the “rehabilitation and consolidation zone” in Arauca, General Carlos Lemus Castro, stated that the “self-defense groups are a lesser evil in this Provincial Department. They began penetrating one year ago. They are not linked to drug trafficking like the FARC”. *El País* newspaper, Cali, October 1, 2002, page 6A.



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The Office of the Procurator has drawn similar conclusions in its reports on the two “rehabilitation and consolidation zones” established during the interior commotion from August 2002 to April 2003<sup>170</sup>.

Notwithstanding the fact that it caught three confessed paramilitary fighters in the act, the Office of the Procurator gave a warning regarding the paramilitary activity in the “rehabilitation and consolidation zone” in the Provincial Departments of Bolívar and Sucre:

*“Some of the municipalities that make up the rehabilitation and consolidation zone have suffered the effects of guerrilla and paramilitary violence for a while now. Although the increased presence of the Public Forces has made the guerrilla back off, this has not happened with the paramilitary. In spite of the Government’s rapprochement with the paramilitary groups, in spite of the contacts made by the Exploratory Commission and in spite of the official declaration of ceasing hostilities decreed by the maximum leader of that outlawed organization, in the rehabilitation zone the active presence of members of the Bolívar Central Block has been maintained (...)”*<sup>171</sup>.

## 2.2. Obligation to Repress and to Give Reparation (Impunity in Torture Cases)

Impunity is one of the characteristics of the serious crisis of human rights in Colombia. The great majority of violations of human rights and breaches to humanitarian law are not investigated or tried and, when investigations are opened, they do not result in the identification of the responsible

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170 Office of the Procurator, *Rehabilitation and Consolidation Zones, Provincial Departments of Sucre and Bolívar, Special Report*, Bogota, mimeograph, 2003; Office of the Procurator, *The Rehabilitation and Consolidation Zone in Arauca, Special Report*, Bogota, mimeograph, March 20, 2003, and Ombudsman’s Office, *Project for Defense Support in the Rehabilitation and Consolidation Zones, First Activity Report*, Bogota, mimeograph, 2003.

171 Office of the Procurator, *“Rehabilitation and Consolidation zones, Provincial Departments of Sucre and Bolívar, Special Report*, Bogota, mimeograph, July 2003, pages 10 and 12. The Procurator quotes two reports made by the Police Commander of the Carmen de Bolívar (Provincial Department of Bolívar) police station, according to which the three persons extra-officially arrested had been recognized as members of the paramilitary groups.

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parties<sup>172</sup>. In addition, in spite of the many recommendations made by international human rights protection organizations, many of the investigations for violations of human rights are still being tried under military criminal court justice<sup>173</sup>.

To the traditional obstacles against acceding to the right to justice in Colombia, we must now add our serious concern regarding the behavior of the Attorney General's Office, and regarding a government initiative to let crimes such as torture and others of similar gravity go unpunished.

This chapter will illustrate that the Colombian State has not met the obligation that it acquired in Article 2 upon signing the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, in the sense of ensuring that *"whenever there is reasonable motive to think that an act of torture has been committed under their jurisdiction, the authorities must proceed to a prompt, impartial investigation"*.

### 2.2.1. Follow-Up on the Cases Reported by the Special Rapporteur on Torture

During the period from the year 1994 to the year 2002<sup>174</sup>, the United Nations Special Rapporteur on Torture requested information from the Colombian State on a total of 76 cases, pursuant to its mandate. For this report, we first reviewed the answers given by the State to the Rapporteur in order to determine in how many of these cases the Colombian State had

172 See, for example: United Nations (UN), Human Rights Commission, *Report Made by the United Nations High Commissioner for Human Rights in Colombia*, UN Doc. E/CN.4/2002/17, March 13, 2002; United Nations, Human Rights Commission, Promotion and Protection of Human Rights Defenders, *Report Presented by Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders by Virtue of Human Rights Commission Resolution 2000/61*, UN Doc. E/CN.4/2002/106/Add.2, April 17, 2002.

173 Inter-American Human Rights Commission, Report # 64/11, Case 11.712, Colombia, Leonel de Jesús Isaza Echeverry et al., April 6, 2001.

174 The following reports made by the United Nations Special Rapporteur on Torture were reviewed: UN Doc. E/CN.4/1994/31; UN Doc. E/CN.4/1995/34; UN Doc. E/CN.4/1996/35; UN Doc. E/CN.4/1996/35/Add.1; UN Doc. E/CN.4/1997/7; UN Doc. E/CN.4/1997/7/Add.1; UN Doc. E/CN.4/1998/38; UN Doc. E/CN.4/1999/61; UN Doc. E/CN.4/2000/9; UN Doc. E/CN.4/2000/9/Add.1; UN Doc. E/CN.4/2001/66; and UN Doc. E/CN.4/2002/76/Add.1.

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complied with Article 12 in the Convention. Then, by sending rights of petition<sup>175</sup>, we requested information from the pertinent authorities, in order to establish if, after the report had been sent to the Special Rapporteur, there was progress in the criminal or disciplinary investigations<sup>176</sup>.

The 76 cases acknowledged by the Special Rapporteur are a minimum sample of the broad spectrum of violations to the right to personal integrity, under the modalities of torture or cruel, inhumane and degrading treatment and punishment in Colombia<sup>177</sup>. However, we believe that we can draw some general conclusions based on the State's handling of these cases, for the following reasons:

- a) It is clear that the Colombian State is aware of these events. It is possible that, in some cases, the victims or their relatives have not made the Attorney General's Office aware of such crimes for various reasons, among them the lack of trust in the internal justice system or out of fear of being aggressed if they make a denunciation. However, the mere fact that the Special Rapporteur has requested information on the events to the State

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175 Article 23 in the Political Constitution acknowledges that all persons are entitled to present respectful petitions to the authorities for reasons of general interest or individual interest and to obtain a prompt solution.

176 Pursuant to Article 250 in the Political Constitution, the Attorney General's Office is bound to forward the filing of a criminal legal action and carry out the investigation for all events that have the characteristics of a crime, of which it becomes aware by means of denunciation, special petition, charge or official document. Article 26 in the Criminal Procedural Code indicates that filing the criminal legal action corresponds to the State and that it is the National General Prosecutor's Office function to do it. Pursuant to Article 277 in the Constitution, it is the Office of the Procurator's function to supervise the official behavior of top-level public servants; to preferentially exercise disciplinary power; and to forward the corresponding investigations and impose the respective penalties pursuant to law. Pursuant to this, rights to petition requesting information were sent to, the following authorities, among others: the General Director of Prosecution Offices; the Chief of the Human Rights Unit of the Attorney General's Office; the Delegate of the Procurator for Human Rights of the Office of the Procurator; Delegate Procurator General for the Military Forces; the Director of Military Criminal Court Justice; and the Minister of National Defense.

177 An approximation of the magnitude of this problem is stated in Section 1 in this document.

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authorities should have led to opening an official investigation<sup>178</sup>. Even, in some of the answers given by the State to the Rapporteur, it has indicated that internally *“they were not aware of any complaint whatsoever regarding the case but that, given the Rapporteur’s communication, it would carry out a preliminary inquiry”*. Therefore, at least regarding these cases, the State cannot say that the authorities had no knowledge of the event.

- b) These are not recent events. The time that has elapsed since the occurrence of the events and since the Rapporteur sent its communications (10 years in some cases) is more than sufficient time for the State to have been able to obtain results in the investigations and to have been able to make the right to justice effective.
- c) The Special Rapporteur on Torture’s mandate is established as a mechanism to contribute to States guaranteeing their citizens the right to not be tortured or subjected to cruel, inhumane or degrading treatment or punishment. The Special Rapporteur transmits to governments reliable, accurate information that it has received on denunciations of cases and practices of torture. In the case of Colombia, the Rapporteur has indicated that impunity is a determining factor for the occurrence of torture in this country<sup>179</sup>.

After their visit to Colombia in 1994, the Special Rapporteur on Torture and the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions recommended that the Government, *“fulfil its obligation under international law to conduct exhaustive and impartial investigations into all allegations of extrajudicial, summary or arbitrary executions and torture, to identify, prosecute*

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178 Pursuant to the Criminal Code in force (Article 27), a public servant who by any means becomes aware of the committal of a punishable behavior must start an official investigation without delay, if it is competent to do so; otherwise, he/she will immediately make the competent authority aware of the event. An official investigation of most punishable behavior must be carried out. Those that require charges are conditionally indicated in Article 35 in the Criminal Procedural Code. The crimes of torture described in Article 178 (torture in general) and in Article 137 (torture of a person protected by humanitarian law), must be officially investigated by the competent authorities. The obligation of officially investigating the crime of torture was also set forth in the previous criminal code (in force for 1993): see 1991 Decree 2700.

179 United Nations, *Report Made by the Special Rapporteur on Torture to the 53rd period of Sessions of the Human Rights Commission*, UN Doc.E/CN.4/1997/7, January 10, 1997, paragraph 64.

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and punish those responsible, grant adequate compensation to the victims or their families and take all appropriate measures to prevent the recurrence of such acts<sup>180</sup>. The Special Rapporteur on Torture reiterated this recommendation in the year 1998 in his follow-up report on compliance with the recommendations<sup>181</sup>.

Bearing in mind the importance of the Special Rapporteur's mandate and the quoted recommendations, it would be pertinent for the Colombian State to consider that, under the terms of Article 12 in the Convention, there are reasonable grounds to believe that acts of torture have been committed under its jurisdiction and, consequently, for it to initiate prompt, impartial investigations.

*a) Impunity, pursuant to the State Response to the Rapporteur regarding 76 Cases Reported by the Rapporteur*

In none of the 76 cases under study did the Colombian State report any positive results following the criminal investigation; the responsible parties were never identified much less punished. By analyzing the answers, we may observe several elements that are indicative of the form in which the State proceeds when it has knowledge that a possible crime of torture has been committed.

• *Absence of Coordination between Criminal Investigations and Disciplinary Investigations*

In Colombia, taking steps to meet with the obligation set forth in Article 12 of the Convention would mean, at least two things: one, that the necessary criminal jurisdiction proceedings be initiated and, two, that the disciplinary investigations of the case be carried out and the respective punishment imposed pursuant to law.

It is alarming that out of the 76 cases studied, only in four (5.2%) did the Colombian State answer the Rapporteur that both the criminal investigation

180 *Joint report of the Special Rapporteur on the Question of Torture, Mr. Nigel S. Rodley, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye*, UN Doc. E/CN.4/1995/111, Paragraph 115.

181 *United Nations, Report Made by the Special Rapporteur on Torture to the 54th Period of Sessions of the Human Rights Commission, Follow-up on the Recommendations Made after his Visit to Colombia in 1994*, UN Doc. E/CN.4/1998/38.

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and the disciplinary investigation were being forwarded. According to this, it would seem that forwarding both investigations (the criminal and the disciplinary) was not an obligation derived from the Political Constitution but an exceptional, fortuitous situation.

We find it inexplicable that if an investigation for acts of torture is in the hands of the Attorney General's Office that it is not known by the Office of the Procurator and vice-versa. Seemingly, there are no efforts made for both institutions to be made aware of events that violate human rights.

### • *Non-Operation of the Common Criminal Justice System*

Of the cases of torture reported to the Special Rapporteur, it was interesting to see that few of them were being processed by the Attorney General's Office. According to the answers given by the State, only 22 cases (29%) were in the hands of the Prosecutor's Office being investigated by civilian court justice. This may be due to the fact that many persons in Colombia do not denounce events because they do not trust the system or out of fear of being aggressed if they make a denouncement.

Of those 22 cases not one resulted in identification of the parties responsible for the crime of torture and thus, none resulted in the punishment of the responsible parties. In 20 cases the investigations were in process, without any result, and two of the investigations had been closed for lack of evidence.

In most of the cases (45, equal to 59.2%), from the Government's answers we may conclude that there was no criminal legal action being initiated. In some cases, the Government did not answer if it was forwarding a criminal investigation or not. In other cases it expressly answered that no criminal legal action was being forwarded.

It is particularly interesting that in those cases in which the State reported that the torture victims allegedly had committed some crime, State actions were even scarcer. The fact that the torture victim may have committed a crime seems to make the possibilities of justice regarding the crime of torture far more remote.

*In Zaragoza (Provincial Department of Antioquia), on March 14, 1993, Rubén Darío López Bustamante was detained and tortured allegedly by members of the Army Battalion Colombia.*

*The Colombian Government initially reported to the Special Rapporteur that the*

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victim was the chief of the 37th Squad of the FARC and that he had not received any bad treatment. Later, the Government affirmed that effectively members of the Army had detained a person who was set free because his “arrest had been illegal”; in addition, it indicated that there was no investigation being forwarded for the event of torture denounced<sup>182</sup>.

In Buenos Aires (Provincial Department of Cauca), on June 25, 1993, Jaime Valencia Cruz was detained and tortured allegedly by members of the National Army.

The Colombian Government reported to the Special Rapporteur that the Cali Regional Prosecutor’s Office had explained that the grounds for detaining him were his having two 9-millimeter guns without a permit and his acknowledgment of belonging to the ELN guerrilla group. When he was turned over to the judicial authority he did not denounce torture, according to the Government. He was given an anticipated sentence of 40 months in prison for the crime of rebellion through an early sentence<sup>183</sup>.

In Cajamarca (Provincial Department of Tolima), on October 5, 1993, Alba Libia Esquivel and José Albeiro Ortiz were detained and tortured allegedly by military belonging to the Sixth Brigade Battalion Jaime Rock. The Colombian Government reported to the Special Rapporteur that at the time of its communication, the judicial system had no knowledge of the events, but that based on the communication, it would start an investigation of the case. Later, the Government communicated that the Bogota Prosecution Office Directorate was forwarding an investigation against Alba and José for the crime of rebellion and that no information regarding torture had been furnished. Later, investigation was remitted to the Bogota regional courts where an anticipated sentence was pronounced; also, the Sixth Brigade Commander had communicated the legality of the arrest and the non-existence of any complaint that would merit any investigation of the events<sup>184</sup>.

182 United Nations, *Report Made by the Special Rapporteur on Torture to the 56th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1996/35/Add.1, paragraph 133 and UN Doc. E/CN.4/2000/9, paragraph 282.

183 United Nations, *Report Made by the Special Rapporteur on Torture to the 56th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1996/35/Add.1 paragraph 138 and UN Doc. E/CN.4/2000/9, paragraph 252.

184 United Nations, *Report Made by the Special Rapporteur on Torture to the 56th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1996/35/Add.1 paragraph 142 and UN Doc. E/CN.4/2000/9, paragraph 288.

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*In Bogota, on July 28, 1994, Alvaro Martínez Ramírez was detained and severely beaten by members of the Judicial Police and Investigational Section (SIJIN).*

*The Colombian Government reported to the Special Rapporteur that “undercover inquiries” to find the persons responsible for the violation were being initiated. The Government communicated that the General Prosecutor’s Office had been informed by the sub-unit of Terrorism in Attorney General’s Office Unit Delegated to the Bogota Specialized Circuit Court Judges, of the follow-up on the investigation against Alvaro Martínez Ramírez for the crime of homicide with terrorist ends, through official documents that were remitted to the competent courts.*

• *Impunity in the Military Criminal Court Justice System*

Military criminal justice courts are trying nine of the cases under study. This has occurred in spite of the Special Rapporteur on Torture having indicated, regarding the Colombian situation, that “(...) *the military judicial system has proved itself equally effective in guaranteeing impunity for violations of the ordinary criminal law in respect of acts (murder, torture, kidnapping) committed in the line of duty*”<sup>185</sup>.

Along the same lines, the Colombian Constitutional Court has indicated that violations and crimes against humanity are so foreign to the constitutional duty of the Public Forces that they could never be related to proper acts of service<sup>186</sup>.

In addition, upon examining the results of the investigations, we find it inexplicable that military criminal courts are trying crimes such as torture. The responsible parties have not been identified or punished in any case. In five of the nine cases, the investigations were closed after the preliminary inquiry, that is to say that military justice abstained from going to trial. In the other four cases, the Government reported to the Rapporteur that the investigations were underway, but did not report any results regarding the identification of those responsible. It is important to mention that, in one of these four cases, the disciplinary proceeding forwarded by the Office of the Procurator

185 *Joint report of the Special Rapporteur on the Question of Torture, Mr. Nigel S. Rodley, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, UN Doc. E/CN.4/1995/111, Paragraph 107.*

186 Constitutional Court, 1997 Sentence C-358, Presiding Judge: Eduardo Cifuentes Muñoz.



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culminated in a decision of punishing an Army lieutenant. Notwithstanding, the criminal justice court did not take any action<sup>187</sup>.

• *Precarious Results in the Disciplinary Investigations*

Only in 20 cases (27.6%) did the State report that it was initiating a disciplinary investigation of the events. In nine of the cases, the investigations were underway, but no results had been obtained. Two cases had been closed after the preliminary inquiry; two cases had been closed for lack of evidence after the investigation stage; in four cases the Office of the Procurator had filed charges<sup>188</sup>. In the remaining cases, there were two sentences with disciplinary sanctions and one that exonerated three policemen that were under investigation.

In one of the cases in which there was disciplinary sanction, the State reported that a police agent involved in the events had been removed from his post<sup>189</sup>. In the other case, the State reported, “*although there was a sanction of removal from their posts against the policemen involved, it was revoked in the appeal*”<sup>190</sup>.

In general, in its answers the State did not give the Special Rapporteur any reasons for which no criminal or disciplinary investigation had been made nor did it give him the grounds on which the investigations initiated did not progress. Nor did it explain why, after express recommendations regarding the matter, the right of the victims of torture to have access to impartial justice had not been granted. The Government answers seem to assume that such violations are normal and not susceptible to being changed. In the answers, we saw no evidence of any real intention to modify this lack of effectiveness and lack of independence of the justice system regarding a crime as serious as torture.

187 The disciplinary punishment consists of a 60-day suspension of duties (such is the case of Miguel Enrique Fernández, Henry Vásquez Arteaga, Óscar Hernán Jiménez San Miguel, and Gerardo Silva Martínez).

188 Upon expiration of the investigation term, the official in charge must evaluate the gathered evidence and file charges against the person under investigation or order the investigation to be closed. Filing charges is in order when the fault is objectively proven and when there is evidence to prove the responsibility of the person under investigation. Sole Disciplinary Code, Articles 161 and 162.

189 Case of Jairo Calderón Rueda.

190 Case of Alexander Peñuela Sanabria.

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*b) Impunity, based on the State Answer to the Petition for Information in 9 of the 76 Cases Reported by the Rapporteur*

In order to inquire about the status of the judicial and disciplinary investigations at present and considering that, in the cases in which the State did not have an answer for the Rapporteur, it is possible that afterward the situation may have changed, Comisión Colombiana de Juristas exercised the right to petition with the competent authorities.

The first thing that we would like to highlight in this point is that in most of the cases we have not received any answer to the request for information made using the right to petition. The term established by law to answer is 15 business days. However, at the date on which we finished this report, the deadlines to answer in most of the cases having expired, we had not received any answer<sup>191</sup>.

With regard to the status of the criminal investigations, we received sufficient information to verify the results from the Attorney General's Office in only nine cases, as a consequence of the rights to petitions sent. Below, we present each one of them, to illustrate how, conclusively, injustice prevails in cases of torture.

1. *In Betulia (Provincial Department of Santander), on May 11, 1995, the peasant boy Jairo Garavito Tirado was detained and beaten 38 times with a stick. The boy was laid down face up with his hands tied and salt water was poured into his nose. According to the source, the boy's mother was also beaten. The alleged authors of these events are members of a paramilitary group*<sup>192</sup>.

*The Colombian Government informed the Special Rapporteur that the Ombudsman's Office had not received any complaint regarding this case. Later,*

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191 Pursuant to Article 6 in the Contentious Administrative Code, "*Petitions will be met or answered maximum fifteen (15) days after the date on which they are received. When it is not possible to meet or answer them by that deadline, the interested party must be so informed and the reason for the delay as well as the date on which the petition will be met or an answer sent.*"

192 United Nations, *Report Made by the Special Rapporteur on Torture to the 53rd Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1997/Add.1, paragraph 97.

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*the Government indicated that an investigation had been opened in the corresponding prosecution office*<sup>193</sup>.

*The Regional Prosecution Office Directorate in Bucaramanga (Provincial Department of Santander) reported that no investigation whatsoever is being conducted regarding these events in that regional office, pursuant to the information obtained from the units consulted*<sup>194</sup>.

Based on the information furnished by the Attorney General's Office Human Rights Unit, that office is not carrying out any investigation of these events either<sup>195</sup>.

According to the information that we have now, eight years later, this event remains unpunished.

2. *In Paime (Provincial Department of Cundimarca), on April 17, 1997, Luz Stella Criollo was forced to undress and was raped with a rifle canon allegedly by members of the army. During the same events, Benedicto Aguilar and Gerardo Alonza were aggressed*<sup>196</sup>.

*The Colombian Government informed the Special Rapporteur that "in collaboration with the Attorney General's Office and the National Human Rights Unit, evidence was being gathered". Also, it indicated that the task of gathering such evidence was given to the Technical Investigation Corps and that it was awaiting the results*<sup>197</sup>.

*The Attorney General's Office Human Rights Unit reported that an investigation for the tortures of Benedicto Aguilar and Gerardo Alonza is being made*<sup>198</sup>. *The Unit has not remitted any information on the status of the*

193 United Nations, *Report Made by the Special Rapporteur on Torture to the 53rd Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1997/Add.1, paragraph 97.

194 National General Prosecutor's Office, Regional Prosecution Office Directorate, Bucaramanga, Official Document D-1849 dated September 8, 2003.

195 National General Prosecutor's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

196 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/61, paragraph 165.

197 United Nations, *Report Made by the Special Rapporteur on Torture to the 57th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/2001/66, paragraph 345.

198 Attorney General's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

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*investigation proceeding. Nor have we been able to establish if any investigation for the rape of Luz Stella Criollo is being carried out.*

Based on the information that we have at the moment, we cannot establish if any investigation is being carried out for the rape of Luz Stella Criollo. We do not know the status of the criminal investigation being made regarding the torture of Benedicto Aguilar and Gerardo Alonza. What we can affirm is that the time that the proceeding has been under the jurisdiction of the prosecution office (six years) is long enough to be able to speak of denial of justice<sup>199</sup>.

3. *In Quibdó (Provincial Department of Chocó), on May 27, 1997, José Henry Hinestroza was tortured and executed allegedly by the paramilitary.*

*The Colombian Government informed the Special Rapporteur that the Attorney General's Office was waiting for the respective reports from the General Prosecution Office in the place of the events, which would soon be reported<sup>200</sup>.*

*The Chocó Regional Prosecution Office Directorate reported that there is no record of any investigation for the alleged torture and homicide of that victim.*

*Based on the information furnished by the Attorney General's Office Human Rights Unit, that office is not carrying out any investigation of the events either<sup>201</sup>.*

According to the information that we have now, six years later, this event remains unpunished.

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199 The Inter-American Human Rights Court has indicated that a prolonged delay in judicial decisions constitutes denial of justice. In this regard, see: Case of Las Palmeras, Sentence proffered on December 6, 2001, in which it deemed that eight years without a sentence in a criminal case constituted such denial because it was an exaggerated delay. Pursuant to the legislation in force for matters of criminal procedure, the preliminary investigation must be carried out in a maximum term of six months (Article 325 in the Criminal Procedural Code). The trial period must last maximum 18 months. If there are three or more accused persons or crimes, it can last maximum 24 months.

200 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th and 56th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/61 and UN Doc. E/CN.4/2000/9, paragraph 283.

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4. *In Simití (Provincial Department of Bolívar), on June 3, 1997, Ariel Tovar Barón was tortured allegedly by members of the army. On the same date the peasant Edison Enrique was tortured allegedly by the same perpetrators.*

*The Colombian Government informed to the Special Rapporteur that it was awaiting the reports from the General Prosecution Office, the Ministry of National Defense, and the National Attorney General's Office regarding this case<sup>202</sup>.*

*The Regional Prosecution Office Directorate in Cartagena (Provincial Department of Bolívar) reported that there was an investigation underway for the crime of torture allegedly perpetrated by members of the National Army in Regional Prosecution Office No. 28 in Simití (Provincial Department of Bolívar). "From judicial technical information in this office, we found out that the cases filed as well as the ledgers kept in that Prosecution Office Unit had been burned by a subversive group in the area at that time. To be concrete, this happened on August 16 of that year and that is why we have no supporting documents based on which to furnish the required information"<sup>203</sup>.*

*Based on the information furnished by the Attorney General's Office Human Rights Unit, that office is not carrying out any investigation for these events<sup>204</sup>.*

*The Disciplinary Delegate of the Office of the Procurator for the Defense of Human Rights of the Office of the Procurator reported that it had issued a writ to file the case for lack of merit on October 27, 1998<sup>205</sup>.*

According to the information that we have now, six years later, this event remains unpunished.

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201 National General Prosecutor's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

202 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th and 57th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/61 and UN Doc. E/CN.4/2001/61, paragraph 344.

203 Attorney General's Office, Regional Prosecution Office Directorate, Cartagena de Indias, Official Document # 002236 dated September 1, 2003.

204 Attorney General's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

205 Office of the Procurator, Official Document # 3571 dated September 5, 2003.

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5. *In Barrancabermeja (Provincial Department of Santander), on June 17, 1997, Jairo Massiol Cedeño was detained and tortured allegedly by paramilitary. Later he was set free.*

*The Colombian Government communicated to the Special Rapporteur that the National Attorney General's Office was waiting for the respective reports from the Regional Prosecution Office in the place of the events, which would soon be reported<sup>206</sup>.*

*The Bucaramanga (Provincial Department of Santander) Regional Prosecution Office Directorate reported that no investigation was being conducted in that regional office. This information was based on the answers that it received from the units that it consulted<sup>207</sup>.*

*Based on the information furnished by the Attorney General's Office Human Rights Unit, that office was not conducting any investigation for these events<sup>208</sup>.*

According to the information that we have up to now, six years later, the event remains unpunished.

6. *In La Playa (Provincial Department of Norte de Santander), on July 20, 1997, 17-year old Elizabeth Ascanio Bayona was tortured allegedly by the paramilitary. As a consequence of the beating, the young woman was admitted to a health center with the diagnosis of possible abortion. On July 23, Elizabeth Ascanio Bayona recognized one of her aggressors at a military roadblock handled by Battalion Santander. On July 20, Jorge Eli Ascanio, Juan Abel Ascanio, Ana Dilia Pérez, Ana Élica Bayona, and nine minors were tortured allegedly by the paramilitary.*

*The Government communicated to the Special Rapporteur that the Attorney General's Office was waiting for the respective reports from the Regional Prosecution Office in the place of the events, which would soon be reported. Later, the Government reported to the Rapporteur that the Regional*

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206 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th and 56th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/61 paragraph 160 and UN Doc. E/CN.4/2000/9, paragraph 283.

207 Attorney General's Office, Regional Prosecution Office Directorate, Bucaramanga, Official Document # D-1849 dated September 15, 2003.

208 Attorney General's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

## STATE VIOLENCE IN COLOMBIA

*Prosecution Office Directorate in San José de Cúcuta (Provincial Department of Norte de Santander) was forwarding the investigation on the case, and that at that point it had not yet identified the perpetrators or participants in the illegal act*<sup>209</sup>.

*The Regional Prosecution Office in Cúcuta (Provincial Department of Norte de Santander) reported that it had forwarded the preliminary investigation and that as it had not been able to identify the perpetrators or participants in the events, on September 21, 2000, the Prosecutor provisionally suspended the investigation*<sup>210</sup>.

The fact that the investigation was closed after the preliminary inquiry means that without a trial, justice had been denied. The investigation may be opened again if new evidence is found. However, based on the normal way justice operates in Colombia, there is little possibility that this will happen.

7. *In Puerto Rico (Provincial Department of Caquetá), on October 14, 1997, Juan González Huber, a Dutch citizen, and Eduardo Herminio Guillén González were detained, beaten up, and threatened allegedly by members of the National Army Infantry Battalion No. 36.*

*The Colombian Government communicated to the Special Rapporteur that the Attorney General's Office was waiting the respective reports from the Regional Prosecution Office in the place of the events, which would soon be reported. Later, the Government reported that the Attorney General's Office Human Rights Unit had opened an investigation on the events and that two inspections had been ordered: one with an expert and one to receive testimonies*<sup>211</sup>.

*The Attorney General's Office Human Rights Unit reported that it was conducting the investigation of the tortures of Juan González Huber and Eduardo*

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209 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/61, paragraph 153.

210 National General Prosecutor's Office, Cúcuta Specialized Prosecution Office Unit Chief's Office, Official Document # FJU-YN-706.

211 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th and 56th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/61, paragraph 157 and UN Doc. E/CN.4/2000/9, paragraphs 283 and 293.

212 Attorney General's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

## STATE VIOLENCE IN COLOMBIA

*Herminio Guillén González*<sup>212</sup>. The Unit has not yet remitted any information on the status of the investigation.

The time that this proceeding has been under the jurisdiction of the Prosecution Office (six years) is long enough for us to speak of denial of justice.

8. *In Apartadó (Provincial Department of Antioquia), on December 19, 1997, Antonio Tuberquia, his wife Blanca Libia Guzmán, and Edilberto Úsuga were tortured allegedly by members of the army.*

*The Colombian Government reported to the Special Rapporteur that the Regional Prosecution Office had initiated the preliminary investigation and that it had been difficult to call the people to testify*<sup>213</sup>.

*The Attorney General's Office Human Rights Unit reported that it was initiating an investigation of the tortures of Antonio Tuberquia, his wife Blanca Libia Guzmán, and Edilberto Úsuga*<sup>214</sup>. The Unit has not yet remitted any information on the status of the investigation.

The time that this proceeding has been under the jurisdiction of the Prosecution Office (almost six years) is long enough for us to speak of denial of justice.

9. *In Bogota, on May 25, 2000, Jineth Bedoya Lima, a journalist, was kidnapped and tortured allegedly by the paramilitary. The victim worked with the El Espectador newspaper.*

*The Colombian Government reported to the Special Rapporteur that the National General Prosecutor's Office Human Rights Unit at that time was initiating an investigation of the crime of kidnapping*<sup>215</sup>.

*The Attorney General's Office Human Rights Unit reported that it was con-*

213 United Nations, *Report Made by the Special Rapporteur on Torture to the 55th and 57th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/1999/6, paragraph 163 and UN Doc. E/CN.4/2001/66, paragraph 343.

214 National General Prosecutor's Office, National Human Rights and International Humanitarian Law Unit, Official Document # 1876 dated August 14, 2003.

215 United Nations, *Report Made by the Special Rapporteur on Torture to the 58th Period of Sessions of the Human Rights Commission*, UN Doc. E/CN.4/2002/76/Add.1, paragraph 375.



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*ducting an investigation of the case for the torture of Jineth Bedoya Lima. The Unit has not yet remitted any information on the status of the investigation.*

The proceeding has taken more than three years under the jurisdiction of the Prosecution Office. We need to know the status of the investigation to be able to establish if there is any hope that justice will be served in this case.

As to the disciplinary investigations, in 21 cases information was received on the status of investigations. Out of those 21 cases, 14 have been closed by the Office of the Procurator<sup>216</sup>. Four of the proceedings were remitted “for reasons of jurisdiction” to the army or to the police. One of the disciplinary investigations is underway. In two cases, the investigations ended up in a sanction.

All of the above enables us to conclude that the State ostensibly did not meet the obligations set forth in Article 12 in the Convention. Its precarious handling of the mentioned events illustrates in a determining manner that in Colombia the practice of torture is widespread and systematic and that these crimes go unpunished.

### 2.2.2. Concerns regarding the Attorney General’s Management

A recommendation made in 1996 by the Committee against Torture, along the lines of ending the situation of impunity, has not been implemented. The situation at present is particularly difficult. On one hand, there are very serious concerns regarding the behavior of the National General Prosecutor<sup>217</sup>. These concerns have been summarized by the Office in Colombia of the United Nations High Commissioner for Human Rights :

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216 The decision to close this case regarding the disciplinary investigations is definitive (Article 150 in the Sole Disciplinary Code).

217 The present National General Prosecutor became director of the National General Prosecution Office in July 2001. Among the objections regarding the National General Prosecutor’s management, we mention two. First of all, the National General Prosecutor is not impartial: since his arrival to the National General Prosecution Office he has intended to diminish the importance of the violations of human rights committed by members of the Public Forces. Secondly, the National General Prosecutor has unduly interfered in the investigations underway, to the detriment of the victims’ rights. In this regard, see: Human Rights Watch, Colombia, *A Wrong Turn*, www.hrw.org, November 2002.

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*“Another issue of concern is the conduct of institutions that compromise judicial independence and impartiality. As an example of this, one can point to decisions by the Office of the Attorney-General to remove or transfer investigators, the position taken by the Attorney-General on the exercise by members of the armed forces of judicial functions normally belonging to the police, and his support for measures to control public order that were subsequently declared unconstitutional by the Constitutional Court”<sup>218</sup>.*

Additionally, other United Nations human rights protection mechanisms, such as the High Commissioner, the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on Violence against Women, and the Special Rapporteur of the Secretary General on Human Rights Defenders, have stated serious concern regarding the behavior of the present Attorney General<sup>219</sup>.

### 2.2.3. Government Proposal for Impunity of Crimes against Humanity

On August 21, 2003, the National Government presented to the Colombian Congress a bill of law through which it seeks to grant the benefit of conditional suspension of the execution of the sentence to members of outlawed organized armed groups, no matter what crime such persons have committed<sup>220</sup>. This bill of law would enable persons who have committed violations of

218 *Report of the United Nations High Commissioner for Human Rights on the Office in Colombia*, February 2003 UN Doc. E/CN.4/2003/13, executive summary.

219 See *Report Made by the Office in Colombia of the United Nations High Commissioner for Human Rights* (UN Doc. E/CN.4/2002/17, paragraphs 110, 244 to 252, 359 and 383), *Report Made by the Special Rapporteur on the Independence of Judges and Attorneys* (UN Doc. E/CN.4/2002/72, paragraphs 27 to 36), *Report Made by the Special Representative of the Secretary General of the United Nations on Human Rights Defenders* (UN Doc. E/CN.4/2002/106/Add.2, paragraphs 195 to 200), *Report Made by the Special Rapporteur on Violence against Women, their Causes, and Consequences* (UN Doc. E/CN.4/2002/83/Add.3, paragraphs 16 to 21), Speech Made by the United Nations High Commissioner for Human Rights, Mary Robinson to the Human Rights Commission upon Presenting Her Report on , April 17, 2002.

220 Senate Bill of Law # 087/03 “through which provisions are set forth to procure the reinstatement of members of armed groups who effectively contribute to obtaining national peace”. The bill of law provides that, if the President of the Republic so requests, “the judge must grant the suspension of the sentence imposed by a sentence through writ of execution” to “persons belonging to an outlawed armed group” who have committed a crime, no matter how serious (Article 2).

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human rights and breaches to humanitarian law, among them torture, to go free. Liberty would be granted to perpetrators of crimes against humanity executed in a widespread, systematic manner, such as massacres, kidnappings, enforced disappearance, tortures, rape, forcible transfer, and other behaviors of similar gravity.

The Office in Colombia of the United Nations High Commissioner for Human Rights stated its concerns regarding said initiative on August 28, 2003. Among other things, it indicated that the bill of law “opens the door to impunity” and establishes sentences that violate the democratic principles of fair retribution and proportionality of the criminal penalties<sup>221</sup>.

To this, we add that the Government has initiated peace conversations with the paramilitary groups, using this bill of law as an initial enticement. This strategy disregards the right to justice and tries to ignore the impunity of serious violations of human rights.

This bill of law intends to complete the framework of impunity already well underway through 2003 Decree 128 issued on January 22 of this year, which enables granting pardons to paramilitary or guerrilla combatants who abandon their arms and who have not been tried for crimes against humanity or for crimes that are not pardonable pursuant to national or international legislation. Of the approximately 12,000 paramilitary and 20,000 guerrillas in Colombia, very few have been prosecuted, that is to say, formally involved in a criminal investigation for these crimes. This means that most of these persons could be pardoned by virtue of this decree. The bill of law of conditional suspension of the sentence is aimed at granting impunity to those who do have court proceedings in course or who have been sentenced for such crimes, mainly the heads of the paramilitary or of the guerrilla.

The Committee against Torture has stated that the crime of torture is not subject to amnesty or pardon. We may see an example of this in the final observations of the study of the third period report on Peru:

*“The Committee expresses concern about the following:*

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221 Office in Colombia of the United Nations High Commissioner for Human Rights, *Observations on the Statutory Bill of Law that Deals with the Reinstatement of Members of Armed Groups*, [www.hchr.org.co](http://www.hchr.org.co), August 28, 2003.

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(g) *The use of, in particular, the amnesty laws which preclude prosecution of alleged torturers who must, according to articles 4, 5 and 12 of the Convention, be investigated and prosecuted where appropriate”*

*“In addition, the Committee recommends that:  
Amnesty laws should exclude torture from their reach”<sup>222</sup>.*

Along the same lines, the Human Rights Committee stated in its comments to Article 7 of the International Agreement for Civil and Political Rights:

*“The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible”<sup>223</sup>.*

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222 Committee against Torture, Final Observations, November 1999, Peru, CAT/C/SR.399, 402 and 404, paragraphs 59 g and 61 d.

223 Human Rights Committee, General Comment 20 on Prohibition of Torture and Cruel, Inhumane or Degrading Treatment, 10/03/92, paragraph 15.

**PART III**  
**CONCLUSIONS**  
**AND RECOMMENDATIONS**



**STATE VIOLENCE IN COLOMBIA**

1. In Colombia, torture and cruel, inhumane and degrading treatment and punishment are committed against the population in a widespread, systematic manner. Said practices have continued throughout time and are committed customarily and deliberately. The worsening of the situation since the time when the Committee against Torture studied the report on Colombia in 1996 is mainly due to the Colombian State's non-compliance of the obligations it derived from the Convention, in particular the obligations embodied in Articles 2 and 11.
2. In the context of socio-political violence that Colombia is experiencing, torture is committed by all of the combatant groups (the Public Forces, the paramilitary groups, and the guerrilla groups). The paramilitary groups are the perpetrators of most of the cases of torture and in many of the events attributed to these groups, there is active participation of members of the Public Forces.
3. Rape of women and girls is used as a social and political means of persecution and as a weapon of war.
4. The Colombian State does not meet the obligations embodied in Article 11 in the Convention against Torture in the sense that it does not protect persons subjected to any type of arrest, detention or imprisonment against torture. Girls and boys are also victims of such non-compliance.
5. Thanks to the legislation of states of exception, the rights of the population have been restricted, arbitrarily and disproportionately, giving rise to conditions conducive of acts of torture in addition to other violations of human rights.
6. There is practically total impunity for acts of torture and this is a determining factor in the affirmation that in Colombia the practice of torture is widespread and systematic.

The Colombian State must be urged to immediately comply with the following recommendations:

1. **Meet the obligations derived from the Convention against Torture in good faith**, guaranteeing that its agents will not continue torturing and that it will not tolerate torture by third parties or subject the population to cruel, inhumane and degrading treatment and punishment.

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2. **Take all of the measures necessary to protect children from torture and abuse**, guaranteeing that it will meet the obligations derived from Article 40 in the Convention on the Rights of the Child.
3. **Take all measures to eradicate rape of women and girls.** A good starting point for this matter would be the immediate compliance with the recommendations made by the United Nations Special Rapporteur on Violence against Women, after her visit to Colombia in 2001.
4. **Abstain from proclaiming laws or reforming the Constitution** with measures that in practice enable the occurrence of torture or cruel, inhumane or degrading treatment.
5. **Remove the proposal for a constitutional reform presently in course in the Congress of the Republic** through which the military forces would be granted judicial police powers; arrests, searches, and wiretapping would be authorized with out a court order; the remedy of habeas corpus would be eliminated; information on detentions during the first 72 hours would be prohibited; and the recording or registration of the population would be authorized under the military commanders.
6. **Proclaim the state of exception only as an exceptional measure if the requirements to do so are met**, without arbitrarily and disproportionately restricting the rights of the population, always guaranteeing effective judicial control over the actions forwarded within the framework of the state of exception. The principle of temporality of the measures must be respected and the competence of the Constitutional Court to judicially review the declaration of commotion and the measures that it develops must be maintained.
7. **Guarantee the rights of the jail population**, in particular the right to life, the right to not be subjected to torture or to cruel, inhumane or degrading treatment, and in general, the right to humane, respectful treatment. Measures must be taken to eliminate overcrowding in the detention centers, to separate persons awaiting trial from persons serving a sentence, and to avoid the entry of weapons into the jails, among others. Deprivation a person of his/her liberty as a securing measure must be the exception, liberty must be the rule.
8. **Ensuring that the Attorney General's Office act impartially and independently** in all investigations, particularly in those in which public servants are involved in violations of human rights. In this context, the Human Rights and International Humanitarian Law Unit must be



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strengthened, guaranteeing that it can be made up of experts and that their safety can be ensured.

9. **Investigate and punish all State agents who commit violations** of human rights and who collaborate, either by action or by omission, with the paramilitary groups and suspend them from service while criminal investigations are being forwarded by civilian court justice.
10. **Guarantee that crimes of torture and cruel, inhumane or degrading treatment or punishment be tried in an impartial courtroom.** Therefore, it must guarantee that such crimes are not tried by military criminal courts and that those that are presently being tried under it be immediately transferred to civilian court jurisdiction.
11. **Dismantle the paramilitary groups,** which includes investigating, trying and sentencing those who have committed violations of human rights and breaches to international humanitarian law.
12. **Prevent guerrilla groups from committing acts of torture,** by taking all measures under the constitutional provisions in force and in international norms regarding the protection of human rights, among them the investigation and sentencing of those responsible for the crimes.
13. **Make consistent efforts for a peace negotiation solidly based on the respect for human rights and humanitarian law,** guaranteeing the rights to truth, justice and reparation, and ensuring the participation of the victims, for a genuine, lasting reconciliation.
14. **Acknowledge the competence of the Committee against Torture to try individual complaints,** pursuant to the provisions set forth in Articles 21 and 22 of the Convention against Torture and other Cruel, Inhumane and Degrading Treatment.
15. **Ratify the Optional Protocol** of the Convention against Torture and other Cruel, Inhumane and Degrading Treatment.

SPECIAL PETITION  
TO THE COMMITTEE AGAINST TORTURE

Bearing in mind that the Committee has received reliable information which serves as grounds for establishing that in Colombia torture is systematically practiced, we respectfully request that it make an investigation under the terms of Article 20 in the Convention, including a visit to Colombia.

**COMMITTEE AGAINST TORTURE  
THIRTY-FIRST SESSION  
10-21 NOVEMBER 2003**

**CONSIDERATION OF REPORTS SUBMITTED  
BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUSIONS AND RECOMMENDATIONS OF THE  
COMMITTEE AGAINST TORTURE:  
COLOMBIA**



**STATE VIOLENCE IN COLOMBIA**

1. The Committee considered the third periodic report of Colombia (CAT/C/39/Add.4) at its 575th and 578th meetings, held on 11 and 12 November 2003 (CAT/C/SR.575 and 578), and adopted the following conclusions and recommendations.

**A. Introduction**

2. The Committee welcomes the third periodic report of Colombia, but regrets that it was submitted on 17 January 2002, five years late. It notes that the report contains little information on the practical application of the Convention over the reporting period. The Committee is, however, grateful for the exhaustive oral replies that the State party's delegation gave to most of its members' questions and for the statistics provided during the consideration of the report

**B. Positive aspects**

3. The Committee notes with satisfaction the State party's adoption of a number of domestic laws of relevance to the prevention and suppression of torture and ill-treatment, in particular:
  - (a) The new Penal Code (Act No. 599/2000), which defines the offences of torture, genocide, forced disappearance and forced displacement and states that due obedience will not be considered as justifying those offences;
  - (b) The new Military Penal Code (Act No. 522/1999), which excludes the offences of torture, genocide and forced disappearance from the jurisdiction of the military criminal courts and regulates the principle of due obedience;
  - (c) Act No. 548/1999, which prohibits the conscription of persons under 18 years of age;
  - (d) The new Code of Penal Procedure (Act No. 600/2000), title VI whereof provides that illegally obtained evidence will be inadmissible.

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4. The Committee also welcomes:
  - (a) Act No. 742/2000 approving the ratification of the Rome Statute of the International Criminal Court, the instrument whereof was deposited on 5 August 2002;
  - (b) Act No. 707/2001 approving the ratification of the Inter-American Convention on Forced Disappearance of Persons.
5. Similarly, the Committee expresses its satisfaction at:
  - (a) The statement by the State party's representative that there neither has been nor will be any amnesty or clemency in the State party for acts of torture;
  - (b) The positive role of the Constitutional Court in the defence of the rule of law in the State party;
  - (c) The ongoing cooperation between the office in Colombia of the United Nations High Commissioner for Human Rights and the Government of Colombia.

**C. Factors and difficulties impeding the application of the Convention**

6. The Committee is aware of the difficulties with respect to human rights and international humanitarian law arising from the current complex situation in the country, especially in a context characterized by the activities of illegal armed groups. The Committee nonetheless reiterates that, as stated in article 2 of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

**D. Subjects of concern**

7. The Committee reiterates its concern at the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside

## STATE VIOLENCE IN COLOMBIA

armed operations. It also expresses its concern at the high number of forced disappearances and arbitrary executions.

8. The Committee expresses its concern that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture. In this regard the Committee expresses its concern, in particular, at:

- (a) The recruitment of part-time “peasant soldiers”, who continue to live in their communities but participate in armed action against guerrillas, so that they and their communities may be the target of action by the illegal armed groups, including acts of torture and ill-treatment;

- (b) Constitutional reform bill No. 223/2003, which, if adopted, would seem to confer judicial powers on the armed forces and enable persons to be detained and questioned for up to 36 hours without being brought before a judge.

9. The Committee also expresses its concern at:

- (a) The climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims;

- (b) The allegations of tolerance, support or acquiescence by the State party’s agents concerning the activities of the paramilitary groups known as “self-defence groups”, which are responsible for a great deal of torture or ill-treatment;

- (c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the “alternative penalties” bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;

- (d) The allegations and information indicating:

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- (i) That some prosecutors in the Human Rights Unit of the Public Prosecutor's Office have been forced to resign and that members of the Unit have been threatened in connection with their investigation of cases of human rights violations;
- (ii) Inadequate protection against rape and other forms of sexual violence, which are allegedly frequently used as forms of torture or ill-treatment. The Committee further expresses its concern at the fact that the new Military Penal Code does not expressly exclude sexual offences from the jurisdiction of the military courts;
- (iii) The fact that the military courts are allegedly still, despite the promulgation of the new Military Penal Code and the Constitutional Court's decision of 1997 that crimes against humanity did not fall within the jurisdiction of the military courts, investigating offences that are totally excluded from their competence, such as torture, genocide and forced disappearance in which members of the police or armed forces are suspected of having been involved;
- (iv) The widespread, serious attacks on human rights defenders, who are playing an essential role in reporting torture and ill-treatment; in addition, the repeated attacks on members of the judiciary, threatening their independence and physical integrity;
- (e) The numerous forced internal displacements of population groups as a result of the armed conflict and insecurity in the areas in which they live, taking into account the continuing absence in those areas of State structures that observe and ensure compliance with the law;
- (f) The overcrowding and poor conditions in penal establishments, which could be considered inhuman or degrading treatment;
- (g) The absence of information on the application of article 11 of the Convention as regards the State party's arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment, and the reports received by the Committee to the effect that the State party is failing to discharge its obligations in this respect;
- (h) The lack of satisfactory information concerning the rules in the State party's law for ensuring the application of article 3 of the Convention to cases of refoulement or expulsion of aliens in danger of being tortured in the country of destination.



## E. Recommendations

10. The Committee recommends that the State party take all necessary measures to prevent the acts of torture and ill-treatment that are being committed in its territory, and in particular that it:
  - (a) Take firm steps to end impunity for persons thought to be responsible for acts of torture or ill-treatment; carry out prompt, impartial and thorough investigations; bring the perpetrators of torture and inhuman treatment to justice; and provide adequate compensation for the victims. It recommends in particular that the State party reconsider in the light of its obligations under the Convention the adoption of the “alternative penalties” bill;
  - (b) Reconsider also, in the light of its obligation to prevent torture and ill-treatment under the Convention:
    - (i) The use of “peasant soldiers”;
    - (ii) The adoption of measures that appear to give military forces powers of criminal investigation under which suspects can be detained for long periods without judicial control;
    - (iii) The judicial reform bill, so as to provide full protection for *amparo* proceedings and respect and promote the role of the Constitutional Court in defending the rule of law;
  - (c) Ensure that anyone, especially any public servant, who backs, plans, foments, finances or in any way participates in operations by paramilitary groups, known as “self-defence groups”, responsible for torture is identified, arrested, suspended from duty and brought to justice;
  - (d) Ensure that the staff of the Human Rights Unit of the Public Prosecutor’s Office are able to carry out their duties independently, impartially and in safety and provide the Unit with the resources needed to do its work effectively;
  - (e) Investigate, prosecute and punish those responsible for rape and other forms of sexual violence, including rape and sexual violence that occur in the framework of operations against illegal armed groups;
  - (f) That in cases of violation of the right to life any signs of torture, especially sexual violence, that the victim may show be documented. That

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evidence should be included in forensic reports so that the investigation may cover not only the homicide but also the torture. The Committee also recommends that the State party provide medical staff with the training necessary to determine when torture or ill-treatment of any kind has occurred;

(g) Respect the provisions of the Military Penal Code that exclude cases of torture from the jurisdiction of the military courts and ensure that those provisions are respected in practice;

(h) Take effective measures to protect human rights defenders against harassment, threats and other attacks and report on any judicial decisions and any other measures taken in that regard. The Committee also recommends the adoption of effective measures for the protection of the physical integrity and independence of members of the judiciary;

(i) Take effective measures to improve conditions in places of detention and to reduce overcrowding there;

(j) Ensure, so as to preclude all instances of torture or cruel, inhuman or degrading punishment, that persons subjected to any form of arrest, detention or imprisonment are treated according to international standards;

(k) Report in its next periodic report on the domestic legal provisions that guarantee non-refoulement to another State when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture;

(l) Make the declarations referred to in articles 21 and 22 of the Convention and ratify the Optional Protocol to the Convention;

(m) Ensure the wide distribution in its territory of the Committee's conclusions and recommendations;

(n) Provide to the Committee, within one year, information on its response to the Committee's recommendations contained in subparagraphs (b), (d), (f) and (h) above.

# State Violence in Colombia

Writing alternative reports is one of the main activities of the OMCT and a vital source of information for the members of the Committee Against Torture. With these reports, OMCT attempts to view the situation as objectively as possible and take a critical look at government action to eradicate torture.

Under the aegis of the European Union and the Swiss Confederation, the “Special Procedures” program presented this report on state violence and torture in Colombia at the 31st session of the Committee against Torture, which took place in Geneva between 10<sup>th</sup> – 21<sup>st</sup> November 2003 and during which the Colombian Government’s report was examined.

This report was jointly prepared by OMCT and three Colombian human rights NGOs:

- The AVRE Corporation (Apoyo a victimas pro recuperacion emocional),
- The Comisión Colombiana de Juristas,
- The CSPP (Comité de Solidaridad con los presos politicos).

Three delegates from these NGOs presented the report during the information session and shared their observations and concerns with the members of the Committee against Torture.

This study is divided into two parts. Part I provides a general overview of torture and other cruel, inhuman or degrading treatment within the particular sociopolitical context of violence in Colombia. Part II deals with the implementation of the convention. The Committee against Torture’s Concluding Observations and Recommendations adopted following examination of the Colombian Government’s Report are included in the Appendices.



**The World Organisation Against torture (OMCT) wishes to thank  
the European Commission and the Swiss Confederation for their support.**