



“ ... SO IT IS TORTURE!”

Analysis of the Acts of Violence That Amount to Torture
and other Ill-Treatment of Indigenous Peoples in Latin
America

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Red SOS-Tortura



“...So It is Torture!” is the first comparative analysis of the forms of violence faced by indigenous peoples in Latin America from the perspective of torture and ill-treatment. It has been compiled thanks to contributions from 11 experts from seven countries in the region, who are the members of a Working Group on Indigenous Peoples and Torture in Latin America (*Grupo de Trabajo de Pueblos Indígenas y Tortura en América Latina*) coordinated by the World Organisation Against Torture (*Organización Mundial contra la Tortura*) and the Fray Bartolomé de Las Casas Human Rights Centre, Mexico (*Centro de Derechos Humanos Fray Bartolomé de Las Casas de México*).



Methodology and content

This Report uses a collaborative method of dialogue and collective knowledge construction based on three common structural variables: i) the persistence of institutional and structural racism as a "breeding ground" that has allowed and encouraged acts of torture and ill-treatment of indigenous persons and their communities to be committed with impunity ii) social, political and economic violence through militarisation, tightening of national security policies and anti-terrorist laws, which violate the rights of indigenous peoples on a daily basis, and iii) land and territory-related violence, which has manifested itself in historical dispossession and usurpation of their ancestral territories.

For two years the experts of the Working Group met virtually – due to the Covid-19 pandemic virtually– during 5 training sessions, 20 work meetings and various other exchanges, while also carrying out field research activities in their countries. These inputs and discussions allowed them to analyse the context in each of the seven countries and to document specific cases of torture and ill-treatment against indigenous peoples. The report identifies five main contexts in which the torture of indigenous peoples takes place: 1) torture in the context of land dispossession; 2) torture in the context of social protest; 3) prosecution, stigmatisation and threats against indigenous leaders; 4) torture in the context of detention or imprisonment; and 5) torture through sexual and gender-based violence, especially against indigenous women.

Two key principles in indigenous peoples: the collective approach and the relationship to the land

...So It is Torture! (the Report) examines why it is necessary to include and prioritise a collective perspective when referring to torture and cruel, inhuman or degrading treatment or punishment (CIDTP) against indigenous peoples. In Western societies, it is the norm to consider individuals the subjects of law, i.e., the individual is responsible for his or her actions and has the capacity to realise his or her rights. And this is how it was reflected in most human rights instruments. This Report focuses attention on the importance of addressing torture with respect to collective subjects and argues that international human rights law must develop and interpret the absolute ban on torture in a way that incorporates the collective experience, meaning and impact that ill-treatment has on indigenous peoples and communities.

As an illustration, the Report presents a rich selection of testimonies from indigenous people about their views and experiences of torture. For example, in relation to the dispossession and expulsion from their territories, some of the interviewed participants stated that: *"We can only cry when settlers come and take over our communal land. Our croplands and forests are shrinking more and more. Our attempts at talking with the settlers are only met with violence, threats and even death."* Others shared testimonies about the criminalisation of leaders and their conditions of detention:

"To the extent that they are gradually inflicting great suffering on us as human beings, it is torture. When they see that we don't give up, they order arrest warrants to be issued over and over again, against

leaders who speak up to denounce all the abuses against collective rights, such as the right to defend our territory... so it is torture".

"Torture is a form of violation of our dignity", another participant declared. "It is harmful to us. We are deprived of our rights when we are unfairly imprisoned." Ultimately, numerous accounts support the collective and differentiated harm that torture and other acts of cruel, inhuman and degrading treatment and punishment (CIDTP) inflicted on indigenous peoples: "When will we finally stop suffering? When will we be left in peace? When will we be allowed to live peacefully with our families and communities?"

Through the analysis of several cases, the report also highlights that the destruction of the spiritual relationship between the land and the indigenous peoples triggers profound experiences and implications at the level of community and culture, which are tantamount to acts of torture. For indigenous peoples, land is not merely conceived of as a means of sustenance and economic development but is an intrinsic part of their worldview: an integrated being that combines spirituality, cultural identity and family, community and the structure of social organisation. As the United Nations Declaration on the Rights of Indigenous Peoples clearly states, if the right of these peoples to inhabit their ancestral territories is violated, their rights to health and food, and to live in freedom, peace and security as distinct peoples, among other rights, are also violated as a result. From this holistic perspective, the Report is a reflexive invitation based on solid empirical evidence to broaden the content and scope of the individualistic view of torture and other CIDTP through a multicultural, multi-ethnic and gender approach.

Main Findings

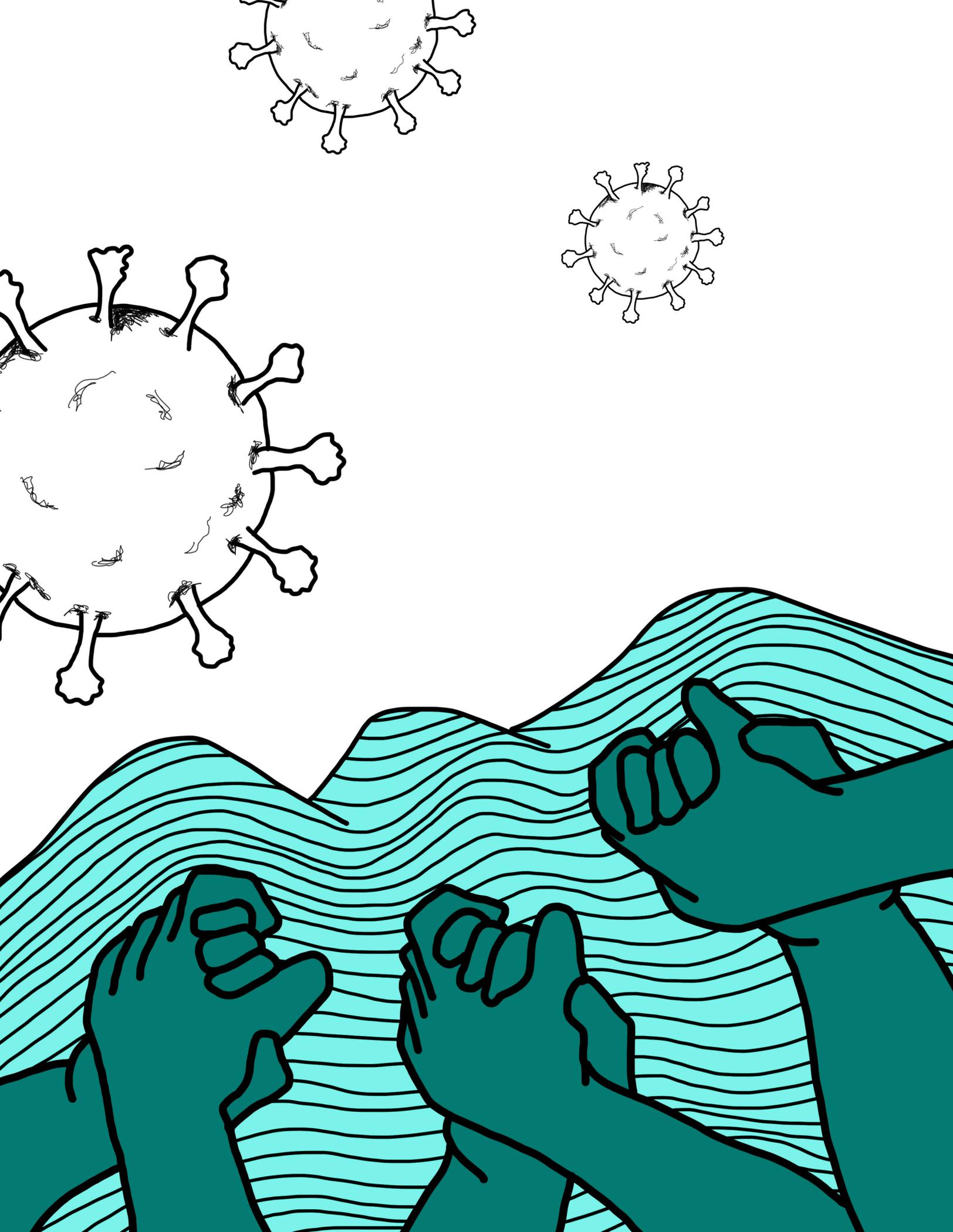
The rights of indigenous peoples are formally recognised in almost all Latin American Constitutions. However, a common regional denominator is the failure of this recognition to materialise in practice. And as a result, the personal and collective integrity of indigenous people and communities continue to be violated, and these violations remain in total impunity. The Report identifies five patterns in these violations.

Pattern 1: Torture in the context of land dispossession

Based on the opinions and accounts given by the indigenous people consulted for this Report, the dispossession of lands and their property can end up being tantamount to torture or ill-treatment for indigenous communities. It is committed not only by State authorities but also by private agents affiliated with public agencies, but also armed criminal groups, to gain control of the territory and the population. In these cases, States are either directly responsible or generally failing to comply with their protection obligations in line with the principle of due diligence.

This dispossession is often carried out to enable companies and large development projects (“megaprojects”) to be set up in indigenous territories without prior consultation or consent from the indigenous population, with economic and commercial interests taking precedence. Not only have these strategies caused displacement, but they also tend to be implemented through violence, force and intimidation, with the use of excessive force that is incompatible with international human rights standards.

Dispossessions also affect indigenous peoples collectively, both in exercising their rights to land and territory, as well as in their worldview, spirituality and social and cultural propagation.

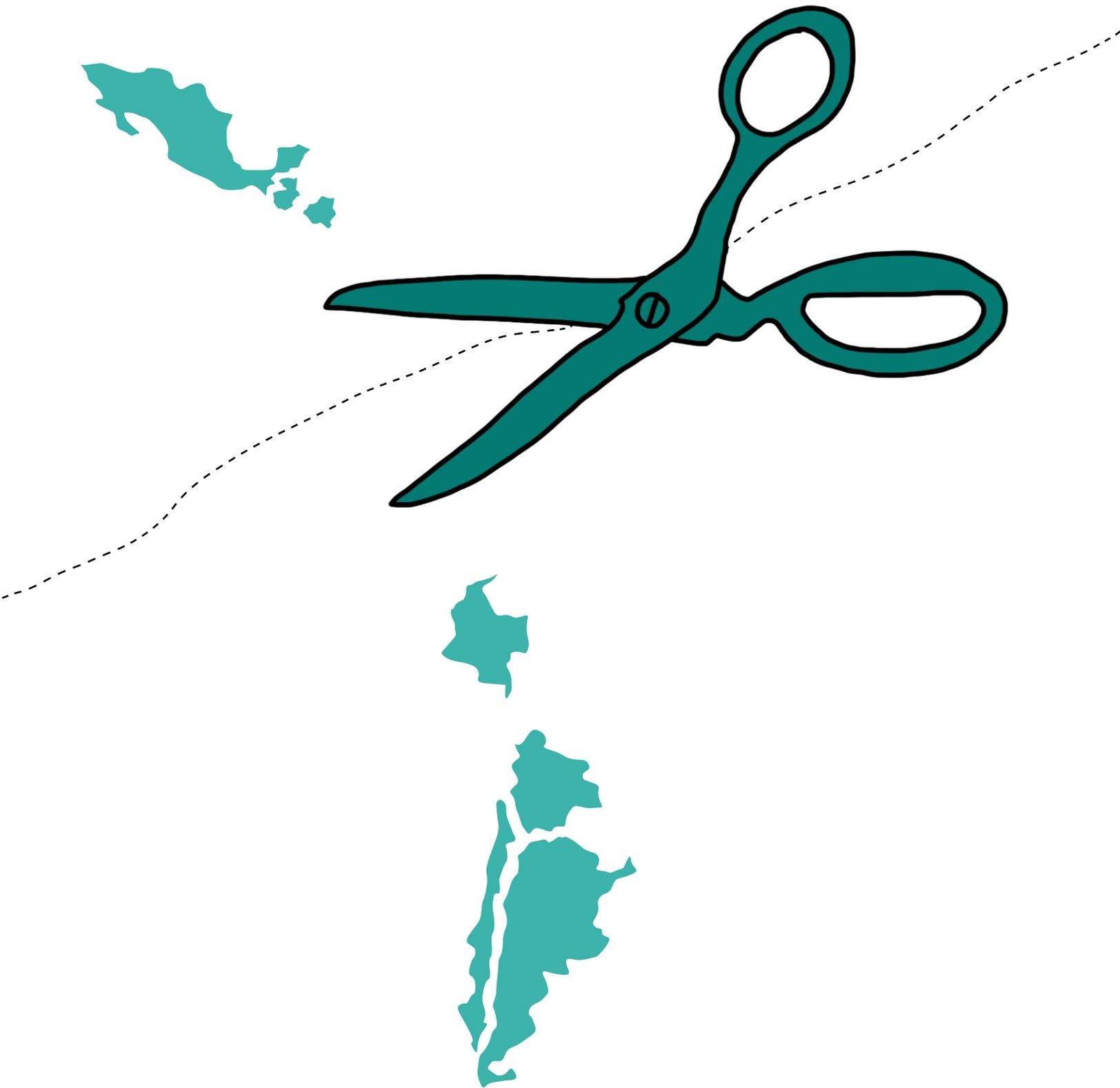


Pattern 2: Torture in the context of social protest

The torture and ill-treatment of indigenous peoples also occurs in the context of State repression of peaceful social protest, which in Latin America has often been linked to the defence of land, territory, and the environment.

Like in the context of land dispossession, State repression against those who protest peacefully for the exercise of their rights as indigenous peoples has been accompanied by the excessive, indiscriminate and disproportionate use of force, which has left numerous people dead and injured throughout the continent.

Additionally, the intentional and deliberate use of force against indigenous people, usually to punish, threaten or humiliate them because of their indigenous status, has been documented in all countries in the Report. This once again disproportionate use of force in the context of the discrimination and racism described above, means that such acts can be deemed torture and ill-treatment.

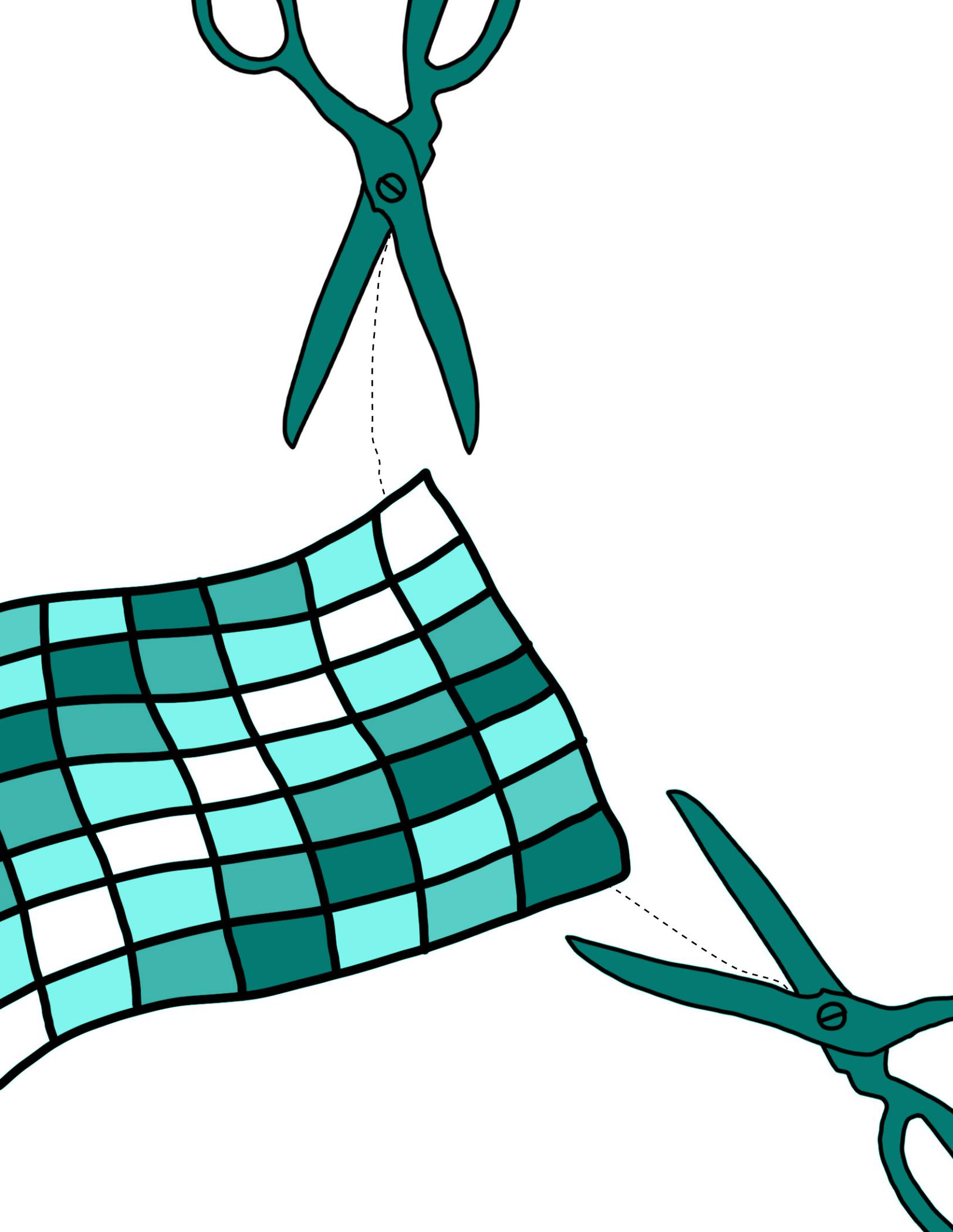


Pattern 3: Criminalisation, stigmatisation and detention

The criminalisation and prosecution of indigenous human rights defenders occurs throughout the Latin American region.

The report shows multiple cases where indigenous leaders and communities are constantly attacked in order to prevent them from advancing in the strengthening of their organisational and political autonomy. This also includes stigmatisation, as a way of giving third parties carte blanche to attack or harm an indigenous person or community in any way. To brand an indigenous person or group of people as terrorists or enemies of the state is also to legitimise violence against those against whom it is directed.

These behaviours against indigenous persons defending their lands and territories not only have negative impacts on physical integrity, but also threaten the psychological, moral, emotional and spiritual integrity, not only of the indigenous persons who suffer them directly, but also of their entire community, collectively.



Patter 4: Conditions of detention

The imprisonment of indigenous leaders on false charges and their persecution in the workplace has been documented, and often included acts of physical and psychological torture during their detention.

Prison appears to be a torturous environment that in itself specifically affects indigenous people, not only because of the poor detention conditions, but also due to the failure to respect specific aspects of their traditions and worldview while they are in detention. In fact, despite the existence of tools and procedures intended to prevent discrimination and acts of torture against indigenous people, in practice, they are prosecuted without taking into account their customs and traditions, their language, their culture or the rights protecting them. In many cases, safeguards are not observed at the outset of their detention. In a context of racism and ill-treatment by State security forces, this poses a significant problem which leads in some cases to individuals unintentionally incriminating themselves due in some cases to their lack of a full command of Spanish, coupled with a lack of access to interpretation/translation and other serious infringements of their rights.

The Report uses a number of examples from Argentina, Chile, Mexico and Nicaragua, to highlight that the torturing through imprisonment of an indigenous spiritual leader not only affects the leader and their family, but also on the entire community to which they provide their knowledge. Such action often seeks to discourage indigenous peoples from making demands and exercising their rights, both individually and collectively. In addition, when acts of torture are carried out on detained leaders, the resulting irreparable harm also affects their community, by breaking their spiritual connection with the leaders.



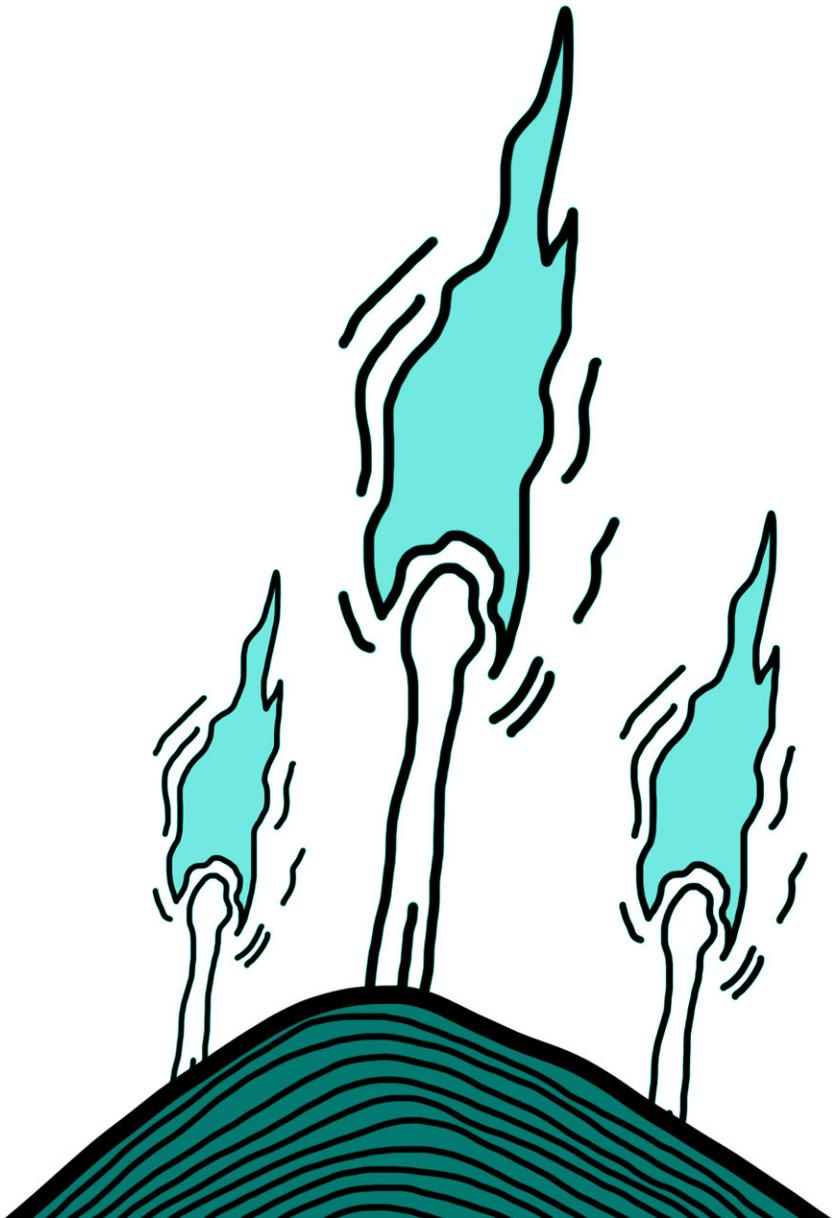
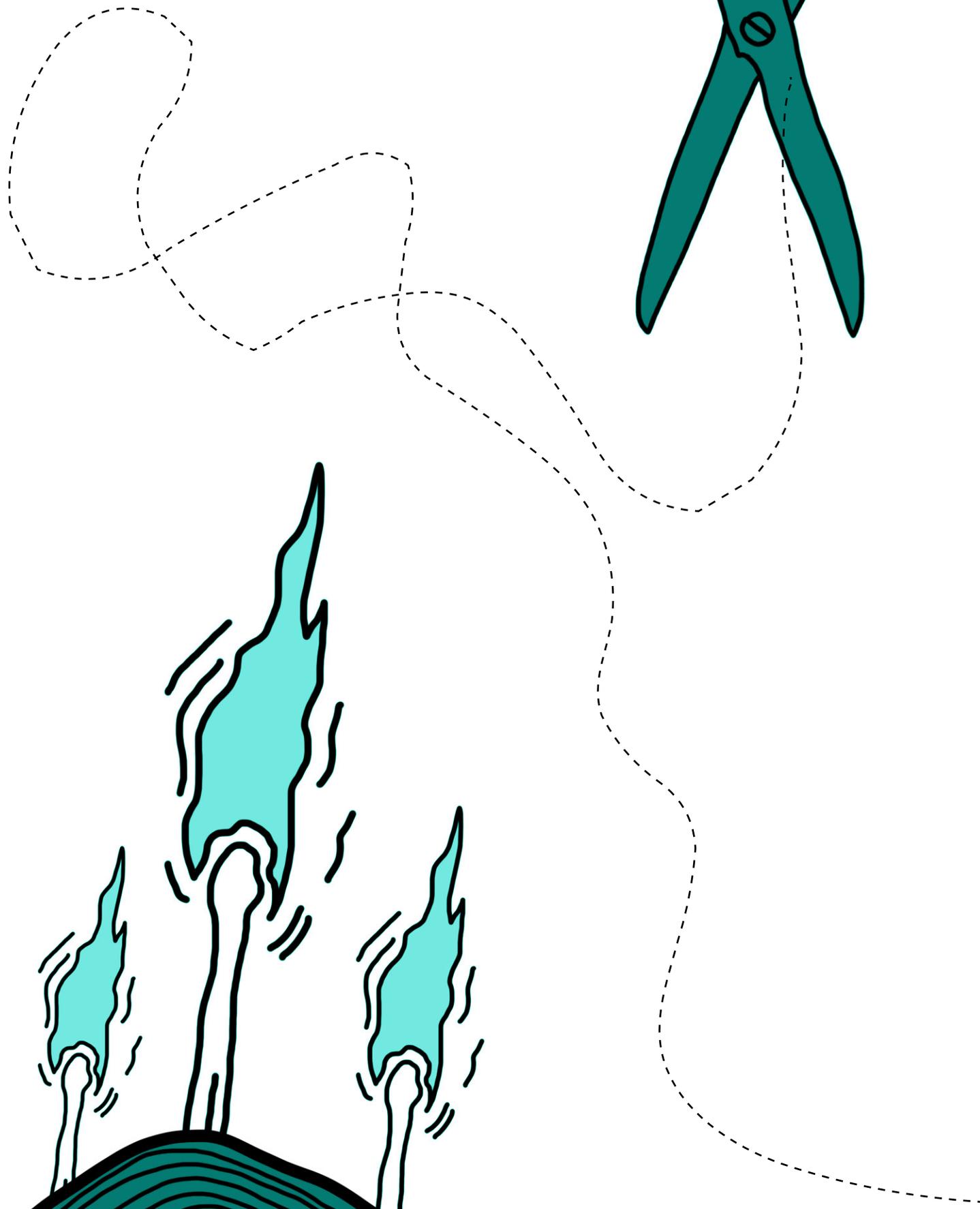
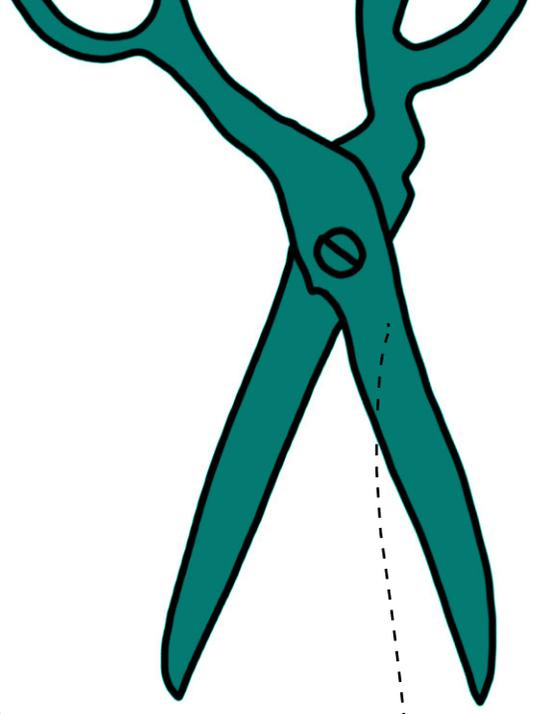
Pattern 5: Sexual and gender-based torture

Indigenous women face high rates of sexual and gender-based violence, not only due to the patriarchal and sexist culture that prevails to a greater or lesser degree in all Latin American countries, but also because they face elevated rates of ethnic-, linguistic- and class-based discrimination. This also hinders their access to justice and means that most abuses against them go unpunished.

For example, rape is often used by the security forces as an intimidation strategy against indigenous organisation and to humiliate indigenous women and men. Sexual and gender-based torture is sometimes carried out during detention, and may include beating sensitive parts of women's bodies, groping, forced nudity and sexual violence being inflicted as a form of punishment and discrimination for being indigenous, for being women, for their leadership role or for having exercised their right to peaceful social protest.

The Report demonstrates the urgent need to confront the patriarchal and racist structures on which States are built, and that it is necessary to raise the awareness of all civil servants on the human rights of women and indigenous peoples to put an end to acts of violence and abuse against them and allow them access to justice.

Additionally, *...So, it is Torture!* highlights States' obligations to offer protection against acts of torture and other CIDTP committed by private actors, while highlighting the particular impacts of impunity on indigenous peoples. The Report also emphasises how impunity and its effects have become a structural scourge that can be seen as a continuation of the historical discrimination against indigenous peoples.



Conclusions and recommendations

Racism remains deeply rooted in the judicial, political and social systems of Latin American countries and, consequently, any measures taken at the national, regional and international level to prosecute violations of the absolute ban on torture and other cruel, inhuman and degrading treatment of indigenous peoples must begin by targeting this racism.

The continuous violence that has been inflicted on the bodies and territories of indigenous peoples is having multiple impacts on them and is placing their very survival at risk. This violence reflects a persistent practice of torture against the indigenous peoples of the region in line with individual economic interests, which is perceived as a way of incapacitating and gradually extinguishing these peoples and their communities.

The Report finds that countries and authorities in the region need to urgently apply international and national frameworks for the prevention and eradication of torture and other ill-treatment to protect indigenous peoples, whose personal and collective integrity is routinely violated with impunity. With this in mind, it suggests advancing international standards on the rights of indigenous peoples from a holistic and cosmogonic perspective, which would render visible crimes such as torture against a collective subject (i.e., indigenous peoples).

Finally, it ends with specific recommendations for the human rights mechanisms of the United Nations and the Inter-American System, the States in general, the individual States, and the human rights movement against torture. These recommendations include:

- (i) The need to criminalise torture and other ill-treatment at the national level in accordance with international standards, in particular, by including the motive of discrimination as one of the basic elements of the definition of torture;
- (ii) The need to ensure that indigenous peoples are heard, and that there is a plurality of voices, experience and representation of indigenous youth, women and men in all anti-torture spaces and mechanisms; and
- (iii) The need to elaborate general observations or substantive reports at the level of the United Nations and the Inter-American system on the specificities of torture among indigenous peoples, analysing the obligations of States to guarantee prevention, protection and reparation for acts of torture from a collective, differentiated and cultural perspective.



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