



**COLOMBIAN COALITION AGAINST TORTURE**

**ALTERNATE REPORT TO THE 4th PERIODIC REPORT  
OF THE COLOMBIAN STATE  
TO THE COMMITTEE AGAINST TORTURE**

**EXECUTIVE SUMMARY**

**OCTOBER 2009**

In this report, the Colombian Coalition against Torture (the Coalition)<sup>1</sup> provides an analysis of the situation of torture and ill-treatment in Colombia since November 2003, date of the last review by the Committee against Torture (the Committee) of the Colombian State's report.

## **I. Overview of the situation of torture and ill-treatment in Colombia (Article 1)<sup>2</sup>**

### **1. Widespread and systematic nature of torture and ill-treatment<sup>3</sup>**

Between July 2003 and June 2008, at least 899 persons were victims of torture, 229 of whom survived, 502 were killed, and 168 victims of psychological torture. Out of the total number of registered cases where the gender is known (793 victims) 86.3% (685) were men, and 13.6% (108) were women. Of the cases where the age of the victim is known (296 victims), 30.4% (90) were children, and 26.3% (78) were young people (between 18 and 25). Of all the cases where the alleged perpetrator is known (666 victims), in 92.6% of the cases the State's responsibility is involved: 50.6% (337 victims) due to direct perpetration by State actors and 42% (280 victims) due to omission, tolerance, acquiescence, or support of violations committed by paramilitary groups. 7.4% of the total number of cases (49 victims) are attributed to guerrilla groups.

During the same period, the number of victims of torture dropped by 43.56% compared to the cases registered between July 1998 and June 2003<sup>4</sup>. However, the increase by 80.2% in the number of registered cases directly attributed to the Armed and Security Forces (Army and Police- *Fuerza Pública*) is worrying. Indeed, between July 2003 and June 2008, 337 cases were registered compared to 187 cases registered between July 1998 and June 2003.

In addition to the situation of the prison population who is particularly vulnerable and who systematically endures torture and cruel, inhumane or degrading treatment (see chapter II), violations of the physical integrity also affect many other particularly vulnerable groups. This is the case, among other sectors, of women and girls victims of sexual violence, of children generally, and of the LGBT population, whose grave situation will be presented specifically in chapter VI of this report.

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<sup>1</sup> The following organizations are part of the Colombian Coalition against Torture: Asociación de Familiares de Detenidos-Desaparecidos – ASFADDES, Asociación MINGA, Colectivo de Abogados José Alvear Restrepo, Comisión Colombiana de Juristas (CCJ), Corporación AVRE– Acompañamiento Psicosocial y Atención en Salud Mental a víctimas de violencia política, Corporación REINICIAR, Fundación Comité de Solidaridad con los Presos Políticos (FSCPP), Organización Mundial Contra la Tortura (OMCT), Terre des hommes-Italy and the Corporación Vínculos.

<sup>2</sup> This chapter was written by the Comisión Colombiana de Juristas (CCJ) and the Fundación Comité de Solidaridad con los Presos Políticos (FSCPP).

<sup>3</sup> Where not indicated otherwise, the numbers of this section are taken from the database of the CCJ. The figures presented here should be taken as the minimum evidence of the situation of torture in Colombia. The CCJ does not investigate the situation in prisons. Therefore, many of the violations committed in this environment have not been included in its databases. The statistics on sexual violence are not included in these figures and will be presented separately in chapter VI.

<sup>4</sup> Between July 1998 and June 2003, approximately one person was the victim of torture every day whereas between July 2003 and June 2008 one person was the victim of torture every two days.

Based on this analysis we can assert that torture in Colombia remains a systematic practice perpetrated by all armed groups and against a large number of different social groups. In addition to being systematic, torture in Colombia is also widespread, as cases have been documented throughout almost all the national territory (30 of the 33 Colombian departments).

## **2. Patterns of perpetration of torture**

The Coalition has identified, based on the victim's identity, the perpetrator's intention, and the context of the crimes, the following patterns related to the perpetration of torture in Colombia: torture as a means of political persecution; torture carried out while under arrest; torture with the purpose of obtaining a confession or information; torture as a means to oppress the prison population; torture as a mechanism to discriminate on ethnic, political, gender, sexual orientation or age grounds; torture as a form of social control, to instill fear in communities and an instrument to repress social protest (use of violence in public demonstrations), torture as a method of oppression against kidnapped persons, and finally torture as part of the training of members of the Armed and Security Forces<sup>5</sup>.

## **II. Situation of the prison population (Article 11)<sup>6</sup>**

First of all, it is of serious concern that Colombia's prisons are increasingly militarized. Indeed, the majority of prisons visited by the Fundación Comité de Solidaridad con los Presos Políticos (Comité de Solidaridad) are under the command of high-ranking members of the military and police forces, either retired or active, and lack the skills necessary to manage a prison<sup>7</sup>.

### **1. Torture and ill-treatment in prisons**

The National Penitentiary Institute's (INPEC) office for internal disciplinary control has documented 79 disciplinary infringements for physical and/or verbal abuse against prisoners between January 2007 and June 2008. Of these infringements, fractures, punches, application of the “scorpion” (handcuffed with both hands and feet), death threats, obligation to undress, denial of access to medical service, sexual harassment, and verbal aggressions stand out. In only two of these cases have disciplinary investigations been undertaken. The Inspector General's Office (*Procuraduría General de la Nación*) has registered 198 cases of against INPEC officials between January 2007 and April 2008, for, among others, different categories of inhumane, cruel and degrading treatment.

Between April and June 2008, the Comité de Solidaridad carried out a survey in which 54% (125/230) of the prisoners said that they had been tortured at least once. It is noteworthy that 46% (106/230) of the prisoners did not answer the question of whether they had been tortured, perhaps

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<sup>5</sup> In the long version of this report you will find cases for each of the patterns presented in this subchapter.

<sup>6</sup> This chapter was written by the Fundación Comité de Solidaridad con los Presos Políticos (FSCPP).

<sup>7</sup> In its report *“Política preventiva de la Procuraduría General de la Nación en materia de derechos de las personas privadas de la libertad”* (2006), the Inspector General's Office warns about the risk of militarizing the prisons, a risk particularly acute in countries such as Colombia which live an internal armed conflict.

due to fear of retaliations<sup>8</sup>. 86% (198/230) of those interviewed said that they had been victims of psychological torture, such as isolation, threats, pressure on relatives, and simulated executions.

In many cases these forms of torture are combined. In the majority of cases, those responsible are INPEC guards and officials, although cases are also known where Army and Police officials have carried out such acts of torture.

In addition to aggressions against individuals, INPEC officials also carry out collective punishment on the prisoners. 48% (11/230) of prisoners have endured collective punishment including: restrictions to water, electricity and food supplies; limited use of the telephone; reduced access to cells; inspections where guards abuse their authority against prisoners; imposed extensive physical exercise; and abuse against visitors.

One of the most worrying cases at present is the situation of detainees in the High and Medium Security Prison in Valledupar (department of Cesar) whose physical integrity has been repeatedly violated. As a result of these violations, the Comité de Solidaridad has requested the Inter-American Commission on Human Rights to grant precautionary measures in this case.

## **2. Practices that violate the prisoners' right to participation**

Based on the severe conditions of detainees in Colombia, various countries recommended on 10 December 2008 during Colombia's Universal Periodic Review that the Colombian State ratify the Optional Protocol to the Convention against Torture. However, the Colombian Government did not accept this recommendation, arguing that "*Internal Directives of the National Penitentiary Institute-INPEC- (Resolution 5927/2007) provide a mechanism that guarantees prisoners' human rights through a discussion and decision-making process within committees in each penitentiary establishment, with direct participation of detainees and the Office of the Procurator (Fiscalía) and the Ombudsman.*"<sup>9</sup>

Unfortunately, in practice the mechanism constituted by the "human rights committees"<sup>10</sup> does not guarantee the detainees' participation in a way that would allow them to claim their rights. In fact, the creation of these committees was promoted by the Ombudsman Office (*Defensoría del Pueblo*) in 1993 "*with the purpose of providing the prisoners with a participation tool that would allow them to participate regularly to define and agree on ideal mechanisms and actions to prevent or overcome the violations of their rights that they may be victims of*"<sup>11</sup>. Nowadays, the way these committees are established and composed is under the supervision of the Director of the prison,

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<sup>8</sup> The survey was carried out by the Comité de Solidaridad who sent a questionnaire answered by 230 prisoners in Colombia's main prisons including Cóbmita (Boyacá), Vistahermosa in Cali (Valle del Cauca), Palogordo in Girón (Santander), Bellavista en Bello (Antioquia), Valledupar (Cesar) and the women's prison "El Buen Pastor" (Bogotá).

<sup>9</sup> Report of the Working Group on the Universal Periodic Review, Colombia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/10/82/Add.1.

<sup>10</sup> In Colombia there are 113 human rights committees for 141 prisons. Although these committees have been assigned a quota of 590 prisoners, only 284 prisoners (48% of the quota) participate in them.

<sup>11</sup> Office of the High Commissioner for Human Rights in Colombia and Defensoría del Pueblo, "*El derecho a la participación de las personas privadas de la libertad. Comités de derechos humanos en centros de reclusión*", Bogotá, febrero de 2006, pág.10, disponible en: <http://www.hchr.org.co/publicaciones/libros/comites/EI%20derecho%20a%20la%20participacion.pdf>.

which considerably limits their autonomy and independence and disregards the Ombudsman's historical role in favour of the rights of prisoners and the jurisprudence of the Constitutional Court on this matter<sup>12</sup>.

### **3. Lack of guarantees for the defense of detainees' human rights**

The permanent stigmatization of human rights defenders by the Colombian President and high Government officials makes them vulnerable to attacks against their physical integrity by different armed groups<sup>13</sup>. Furthermore, the authorities do not facilitate the work of human rights organizations as is the case within the prisons of the Comité de Solidaridad. In practice, the INPEC has made access to prisons difficult through the imposition of a series of administrative measures, actions, routine practices and unlawful interpretations of the norms related to the prison system. This has been an obstacle for the Comité de Solidaridad to carry out its work to prevent human rights violations and assist victims of torture and ill-treatment.

### **4. Impunity for cases of torture aggravates detainees' conditions**

As will be further documented in chapter III of this report, in Colombia the rate of impunity in torture cases is very high. This impunity also exists in cases of violations against detainees, a situation which contributes to the perpetuation of torture and ill-treatment in Colombia's prisons. In addition to the obstacles to an effective investigation of torture which will be described in the following chapter, the Comité de Solidaridad has identified the following problems with regards to torture and ill-treatment cases within prisons: inadequate or/and non-existent evidence gathering and lack of impartiality of the officials who investigate this offence. Indeed, it is the INPEC's office of internal control, which deals with the first stages of investigations, even in cases where those responsible are INPEC officials. This has prevented exams by independent medical authorities of physical and psychological injuries caused by torture, which would constitute fundamental evidence of this offence.

## **III. Torture as a criminal offence and its investigation (Articles 4 and 12)<sup>14</sup>**

### **1. The criminal offence of torture in Colombian legislation**

In Colombia, torture has been criminalized since 1980. Nowadays, the Criminal Code (Law 599 of 2000) includes two legal categories of torture: a general one and one concerning persons protected by international humanitarian law<sup>15</sup>. Despite this, the results in terms of investigation and

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<sup>12</sup> In its judgment T-219 of 1993, the Constitutional Court ruled that “*there is no law or regulation with legal basis that authorizes the General Prison Management to establish, at its discretion, criteria for the prisoners to be part of the Human Rights Committee.*”

<sup>13</sup> For more information about the situation of human rights defenders in Colombia, see the report written by Colombian human rights coalitions, “*Graves ataques a la labor de las y los defensores de derechos humanos en Colombia*”, Bogotá, September 2009.

<sup>14</sup> This chapter was written by the Comisión Colombiana de Juristas and the Corporación para la defensa y promoción de los derechos humanos Reiniciar.

<sup>15</sup> Law 599 of 2000, Articles 137 and 178.

prosecution are very few, considering that torture is systematic.

## **2. Absence of thorough investigations of torture in the civilian justice system**

The National Direction of the Prosecutor General's Office<sup>16</sup> is currently carrying out 10,545 investigations for the offence of torture, 99.3% (10,471) of which correspond to the general category of torture and 0.7% (74) to the category applicable in the context of an armed conflict. Despite requesting detailed information from the Prosecutor General's Office about the state of these investigations and the time period in which these offences were carried out, up to now we have not received any answer<sup>17</sup>.

As of May 2009, the National Unit of Human Rights and Humanitarian Law of the Prosecutor General's Office carried out 38 investigations for the offence of torture for facts that occurred between 1986 and 2008 in 17 Colombian departments<sup>18</sup>. With regard to these investigations, only 8 convicting sentences have been pronounced. In these sentences, the responsibility has been attributed to the Public Security Forces (3 cases), to paramilitary groups (3 cases) and to guerrilla groups (2 cases).

These scarce results in the investigation of torture as an "autonomous offence" are due to factors such as: the tendency to investigate the crime considered more serious (cases of homicide in which torture was committed); the fact that the crime of torture is subsumed within the aggravating elements of other crimes; that acts of torture are charged under the offence of "personal injuries"<sup>19</sup> as this offence does not require evidence of the perpetrator's intentionality.

As regards psychological torture, despite the fact that it has also been criminalized since 1980, we only know of one case in which charges have been brought for this offence: the case of retired Colonel Alfonso Plazas Vega for forced disappearances committed during the attack against the Palace of Justice on 6 and 7 November 1985<sup>20</sup> and the impact caused on the relatives who, in the great majority, still do not know the whereabouts of their beloved ones after more than 23 years.

## **3. The military justice system continues to investigate torture cases**

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<sup>16</sup> The National Direction of the Prosecutor General's Office (*Dirección Nacional de la Fiscalía General de la Nación*) is responsible for the coordination of the activities developed by the Sectional Directions, which in turn are responsible for the investigation of all the crimes established in the Penal Code.

<sup>17</sup> The request for information was sent on 29 April 2009. The legal deadline to answer a request of information is 10 working days after the date of presentation. The Prosecutor General's Office answered our request partially on 1 June 2009, expressing its intention to send the missing information at a later stage. However, to the publication date of this report there has been no answer.

<sup>18</sup> Fiscalía General de la Nación, Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario, Answer to a request for information sent by the Comisión Colombiana de Juristas, Bogotá, 26 May 2009.

<sup>19</sup> In Article 111 of the Colombian Penal Code, the offence of "personal injuries" is attributed to the person "causes harm to another person in body or health".

<sup>20</sup> On 6 November 1985, a unit of the guerrilla group "Movimiento 19 de abril (M-19)" invaded the Palace of Justice in Bogotá. Army and Police forces organized an operation against this incursion at the end of which at least 11 persons were reported as forcibly disappeared by members of the Armed Forces. Due to this operation, 43 civilians, among them 11 judges, were killed.

Although the jurisprudence of the Constitutional Court establishes that the military justice system has no jurisdiction over cases of human rights violations, it continues to investigate cases in which torture was committed or might have been committed. Indeed, between 2003 and 2007, the Higher Council of the Judiciary resolved, in at least eight jurisdiction conflicts between the civilian and military justice systems in criminal proceedings for torture<sup>21</sup>. Furthermore, it is worrying that the military justice system continues to exercise its jurisdiction over serious human rights violations which could have included the perpetration of torture or ill-treatment, such as in the cases of extrajudicial executions. The United Nations Special Rapporteur Philip Alston, when he ended his mission to Colombia on 18 June 2009, pointed out that “*in some areas military judges ignore the rulings of the Constitutional Court and do all in their power to thwart the transfer of clear human rights cases to the ordinary justice system*”<sup>22</sup>.

#### **4. Worrying reforms of the military justice system**

In addition to the above-mentioned, it is worrying that although the Colombian legislation prohibits military forces from carrying out judicial police activities, this guarantee is threatened by the current reform to the Military Criminal Code which proposes the creation of a Technical Investigation Force. The bill explicitly states that this body would carry out its functions “*only and exclusively within the military justice system*” and that it therefore would not grant “*judicial police powers to the military forces*”<sup>23</sup>. However, it is very concerning that, given the fact that the military justice system tends to investigate cases of human rights violations, even if the investigations were later transferred to the ordinary justice system, the preliminary investigations and evidence gathering would be in charge of this new military investigation body. This reform to the Military Criminal Code is currently awaiting the President’s approval.

#### **5. Lack of sanctions in disciplinary investigations for torture**

As of 8 June 2009, the Inspector General’s Office had undertaken 223 disciplinary investigations for the offence of torture for facts that occurred between 2002 and 2009 in 31 of the 33 departments of Colombia. In the cases where the alleged institution can be identified (203/223), 49.8% (101 cases) are attributed to the National Army, 39.4% (80 cases) to the National Police, 6.4% (13 cases) to the INPEC, and 4.4% (9 investigations) to other institutions<sup>24</sup>.

As of June 2009 and according to the Inspector General’s Office own figures, in only 12 cases (5.5%) was a ruling in first instance about to be pronounced.

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<sup>21</sup> This information was obtained in answer to a request for information sent by the Comisión Colombiana de Juristas to the Higher Council of the Judiciary of Bogotá on 15 July 2009.

<sup>22</sup> Press statement of the UN Special Rapporteur on extrajudicial executions, Mission to Colombia 8-18 June 2009: <http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/relatores.php3?cod=2&cat=80>.

<sup>23</sup> Congress of the Republic, Gaceta del Congreso, Senate of the Republic, “Informe de ponencia para primer debate al proyecto de ley número 111 de 2006 Senado y 144 de 2005 Cámara, por la cual se expide el Código Penal Militar”, Año XV, Number 624, Bogotá, 6 December 2006, Título VIII, Técnicas de indagación e investigación de la prueba y el sistema probatorio, page 8.

<sup>24</sup> Within this category are included cases of torture where the alleged responsibility is attributed to the Navy, the Technical Body of Investigations, and other public institutions.

## 6. Invisibilization of torture in the context of the application of law 975 of 2005

In Colombia the levels of impunity in cases of human rights violations, including torture, have always been very high, as shown throughout this chapter. However, this situation has become considerably worse from 2003 onwards because of a *de facto* amnesty (by means of the decree 128 of 2003) which has benefited more than 30,000 paramilitaries, and through the application of law 975 of 2005, better known as the “Justice and Peace Law”<sup>25</sup>. The law 975 establishes a special criminal proceeding, which grants legal benefits (principally lower sentences) to members of “*illegal armed groups*” who have committed serious crimes, in exchange for their demobilization and effective contribution to the victims’ rights to truth, justice and comprehensive reparation.

After four years of implementation of this law, we deplore that these rights have not been guaranteed, as up to now there has not been a single guilty verdict reached. We also deplore that the Colombian Government has extradited since May 2008 18 paramilitary leaders to the United States to be tried there for drug trafficking, which has almost completely prevented the continuation of current proceedings under law 975 for crimes against humanity committed in Colombia. One of the extradited, known by the *alias* “HH”, is one of the few paramilitaries who has contributed to clarifying the truth around the extent of the links between paramilitary groups and the Security and Armed Forces and the State. He also confessed to acts of torture although he has always denied that torture was a policy of paramilitary groups<sup>26</sup>.

In the few cases where the perpetration of torture by paramilitary groups has been proved, the response of the judicial authorities has not been efficient, as the Prosecutor General’s Office has not requested to tell the circumstances of these acts, or it has omitted to counter-interrogate the witness about the acts of torture documented in specific cases. As is happening under the ordinary justice system, the prosecutors try to investigate and to bring charges for homicide, thus excluding the offence of torture, which leads to a lack of adequate evidence and to the failure to carry out rigorous examinations of bodies, which would enable the appropriate judicial process. In spite of this, there are a few successful experiences where the judicial authorities took into account the versions of the victims and brought torture charges.

With regards to exhumations, the Prosecutor General’s Office has not handled them adequately either. Indeed, it is common that when bodies are exhumed they present signs of torture, evidenced in cases where the bodies are tied up, dismembered or decapitated. However, in many instances the Prosecutor General’s Office does not take photos of the area or of the location of the parts of the bodies which would help the documentation of torture.

Finally, the participation of victims in the proceedings under law 975 has not been guaranteed due

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<sup>25</sup> When the Committee reviewed the last report on Colombia in 2003, this law was still a bill known as “bill on alternative penalties” and about which the Committee recommended to the Colombian State to “reconsider in the light of its obligations under the Convention the adoption of the “alternative penalties”, CAT/C/CR/31/1, para. 10 a).

<sup>26</sup> According to the National Unit of Prosecutors for Justice and Peace, until 30 April 2009, 14 paramilitaries revealed acts of torture in their testimonies (*versiones libres*), and 8 confessed to them. Fiscalía General de la Nación, Unidad Nacional de Fiscalías para la Justicia y la Paz, Answer to a request for information sent by the Comisión Colombiana de Juristas, Bogotá, 29 May 2009.



to different legal decisions and resolutions of the Prosecutor General<sup>27</sup> and a clear lack of protection. Indeed, according to the National Commission of Reparation and Reconciliation, as of July 2007, paramilitary groups had killed at least 15 persons who participated in these proceedings and threatened at least 200<sup>28</sup>. Due to this situation, in May 2008 the Constitutional Court ordered the Government to modify the existing program of protection for victims and witnesses of the law 975 by incorporating a gender perspective and offering effective means of protection. More than a year later, the order of the Court has not been fulfilled and the victims continue to be threatened and, in some cases, killed.

#### **IV. The right to comprehensive reparation for the victims of torture (Article 14)<sup>29</sup>**

##### **1. Decree 1290: a reparation program contrary to international standards**

On 22 April 2008, the Government issued decree 1290 “through which a program of individual reparation by administrative means for the victims of illegal organized armed groups is created”. This decree does not fulfill international standards on the right to reparation for, among others, the following reasons: it is based on the “principle of solidarity of the State with the victims”, in clear disregard of the State’s obligation to compensate, and it excludes the victims of state actors from the beneficiaries of the program. Additionally, even though the decree contemplates a set of reparation measures, its content is essentially compensatory and the available amounts are excessively low: in cases of torture, the “*solidarious indemnization*” amounts to 30 minimum wages<sup>30</sup>, which equates to around 7,500 US dollars.

##### **2. The Victims bill**

Since October 2007, the Congress had discussed a draft legislation known as “the Victims bill”, which tried to create reparation measures for the victims of all actors of the armed conflict, including state officials, as a first step in the adoption of a policy that would guarantee their rights. In June 2009, when this bill was about to be approved in Congress, the President of the Republic requested it to be archived, arguing budgetary reasons and that, in recognizing the rights of victims of state officials, “*it would equate state officials to terrorists*”<sup>31</sup>. A few hours after issuance of the President’s press release, the bill was rejected in Congress. By doing so, the Government ignored both its international obligations with regard to the right to reparation, and the large deliberative process which accompanied the bill not only in Congress but also in the nine public hearings held in different departments of Colombia, in which more than 4500 victims participated and made proposals.

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<sup>27</sup> Resolutions 0-3998 of 2006 and 0-0387 of 2007.

<sup>28</sup> “*Nueva rebelión de los ex ‘paras’ profundiza rezagos en reparación*”, newspaper *El Tiempo*, 25th of July 2007, pages 1-2.

<sup>29</sup> The present chapter was written by the Corporación para la defensa y promoción de los derechos humanos Reiniciar and the Mesa del Encuentro de Víctimas pertenecientes a Organizaciones Sociales.

<sup>30</sup> For the year 2009 the minimum wage equals 497.000 pesos a month.

<sup>31</sup> See press release N°305 of the President of the Republic, 18 June 2009, <http://web.presidencia.gov.co/comunicados/2009/junio/305.html>.

### **3. The tribute to the victims of forced disappearance bill**

This bill, adopted by Congress on 16 June 2009, despite some deficiencies, pays tribute to the victims of forced disappearance and establishes mechanisms to find, identify and hand over the human remains of disappeared persons, and includes assistance to the families during this process. This law could also benefit victims of torture, in that various persons who were disappeared were also victims of torture, and the planned procedures could make this crime more visible.

The President of the Republic has also opposed the adoption of this bill because of budgetary reasons. The bill is currently being reviewed by the Constitutional Court.

### **V. Psychosocial impact of torture: Hidden and silenced suffering<sup>32</sup>**

Torture and cruel, inhumane or degrading treatments have impacts on people in all dimensions of their lives: emotionally, physically and socially. Torture causes emotional and psychosocial impacts on victims, their families and their social environment such as: anxiety, panic, depression, and psychosis; feelings of rage, sadness, despair, blame, mistrust, and powerlessness; multiple mourning; problems with family relations; break down of social relationships and organizational processes.

The Center of Psychosocial Assistance of Terre des hommes-Italy reported, for the year 2007, 668 victims of torture who were remitted for attention.

This situation and the silence surrounding the crime of torture has created in Colombian society a general affectation which can be seen in the fragmentation of the social and community relationships, naturalization or justification of violence, and the legitimization of violent and authoritarian solutions to the armed conflict. In this aspect, the discourse of “redeeming violence” has penetrated all spaces and is accepted as a valid means of effective management of conflicts.

### **VI. Situation of some especially vulnerable groups<sup>33</sup>**

#### **1. Non-compliance of the Committee’s recommendation on sexual violence<sup>34</sup>**

In its Auto 092 of 2008, the Constitutional Court has described sexual violence against women as “*a common, extended, systematic and invisible practice in the context of the Colombian armed*”

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<sup>32</sup> These reflections are the result of the psychosocial and mental health accompaniment to victims of political violence carried out by Terre des hommes-Italy and the Corporación AVRE.

<sup>33</sup> In this chapter, the Coalition included material of organizations such as the Mesa de Trabajo “Mujer y Conflicto Armado”, la Corporación Vínculos and the organization Colombia Diversa, all specialized on the topics included in this subchapter. The Coalition gives a special thanks to the Mesa de Trabajo “Mujer y Conflicto Armado” and the organization Colombia Diversa, who, although not part of the Coalition, did not hesitate to contribute to this report with the drafting of these articles.

<sup>34</sup> Document written by the Comisión Colombiana de Juristas in the context of its joint work with the Mesa de Trabajo “Mujer y Conflicto Armado”.

*conflict*”<sup>35</sup> which remains in “*almost absolute impunity*”<sup>36</sup>.

The non-governmental organizations which constitute the Mesa de Trabajo “Mujer y Conflicto Armado” (Round Table on Women and Armed Conflict) share this description and consider the use of sexual violence as a means of social and political persecution and as a weapon of war used by all armed groups. According to the Prosecutor General’s Office and the National Institute of Forensic Medicine (*Instituto Nacional de Medicina Legal*), the group with the largest number of registered cases of sexual violence are the Armed and Security Forces. Additionally, it is worrying that between January 2003 and June 2008 the number of cases attributed to the Armed and Security Forces has tripled compared to the five and a half years before (July 1997 to December 2002)<sup>37</sup>.

In its Auto 092, the Constitutional Court ordered that sexual violence against women be prioritized to the highest level on the official agenda of the Nation. It also reported in annex to this decision 183 recent cases of sexual violence to the Prosecutor General’s Office so that this office ensure, autonomously and independently, that the ongoing investigations be speeded up<sup>38</sup>.

In spite of this order, the Prosecutor General’s Office does not have to date an adequate strategy to guarantee access to justice for women victims of sexual violence, and it has not given it the priority it should have in the official agenda. Therefore, the justice system has not made significant progresses, not even with regard to the 183 cases listed in the annex of Auto 092. As a consequence, the majority of offences relating to sexual violence against women remain in impunity.

In conclusion, it is clear that the Colombian State has not complied with the recommendation of the Committee to “*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*”<sup>39</sup>.

## **2. Involvement of children in the Colombian armed conflict<sup>40</sup>**

Although there is no clarity about the numbers of children and young people recruited and

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<sup>35</sup> Constitutional Court, Auto 092 of April 2008, Presiding Magistrate: Manuel José Cepeda Espinosa (para. III. 1.1.1.).

<sup>36</sup> Ibid. (para. III. 1.1.6.).

<sup>37</sup> Database of the Comisión Colombiana de Juristas.

<sup>38</sup> The Court also ordered the Director of *Acción Social*, the Government department responsible for the assistance of the displaced population in Colombia, to create 13 programs, one of which is the *Program for the Prevention of Sexual Violence against Displaced Women and for Integral Assistance of its Victims*. See more in: Mesa de Trabajo “Mujer y Conflicto Armado”, *Informe para el Relator de Naciones Unidas sobre Tortura y otros tratos o penas crueles, inhumanos y degradantes*, June 2008, Document written for the Mesa by the Corporación Sisma Mujer.

<sup>39</sup> Conclusions and recommendations of the Committee against Torture: Colombia, CAT/C/CR/31/1, para.E e).

<sup>40</sup> Document written by the Corporación Vínculos. The ideas contained this article are based on reflections derived from the work of the Corporación Vínculos regarding the psychosocial accompaniment of victims of political violence and of investigations about how to prevent the involvement of children in the armed conflict in the Colombian departments of Meta, Antioquia and Cauca.

involved in the armed conflict<sup>41</sup>, the Constitutional Court stated that the perpetration of this war crime is systematic and usual<sup>42</sup> on the part of all of the armed groups.

The Colombian military forces have designed different strategies in the context of the “democratic security” policy in order to involve children in the armed conflict, in violation of Colombian domestic legislation and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict which prohibits the recruitment of persons aged under 18. Strategies include civilian-military actions, the implementation of programs such as the Youth Police, the creation of networks of informants, the construction of military installations next to schools, military presence in schools and the presence of members of the armed forces in municipal towns or small districts where they build up relations with women and girls.

These practices violate the principle of distinction and expose the children to situations of risk and vulnerability, not only due to their use by the Armed Forces as a means of war, but also because this makes them targets for attacks by other armed groups<sup>43</sup>.

The guerrilla and paramilitary groups continue to forcibly recruit children as combatants, informants, or for logistic support. Furthermore, although in the paramilitary demobilizing process the “justice and peace” law required the release of these children as a condition to be eligible for benefits, up to date the large majority has not been released and the crime of recruitment remains in impunity.

In conclusion, the Colombian State continues to ignore its international obligations to protect children from violations to their physical integrity through different forms of involvement in the conflict by the Armed Forces; the absence of means to effectively prevent recruitment by other armed groups; and the impunity for the crime of recruitment that leads to the repetition of these violations.

### **3. Torture against LGBT persons<sup>44</sup>**

In Colombia, lesbians, gays, bisexuals and transsexuals (LGBT) are victims of human rights violations, especially the right to personal integrity. In 2006 and 2007, Colombia Diversa registered 67 homicides of LGBT persons<sup>45</sup> and acts of torture and/or cruel, inhuman or degrading

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<sup>41</sup> In 2006, this number was estimated between 8,000 and 13,000 children. For 2009, there is a supposed increase and the number would be between 14,000 and 17,000, with an average age of entry of 13.8 years in 2002, which, according to the Office of the High Commissioner for Human Rights in Colombia, has been reduced to 11.8 years in 2009.

<sup>42</sup> Constitutional Court, Auto 251 of October 2008.

<sup>43</sup> See Committee on the Rights of the Child, Concluding observations, 08/06/2006, CRC/C/COL/CO/3, paras. 76 j) and 77 j).

<sup>44</sup> This document was written by Colombia Diversa. Colombia Diversa is a non-governmental organization which works to promote the rights of lesbians, gays, bisexuals and transgenders in Colombia and which has as its mission the aim of promoting the full inclusion, respect for comprehensive rights, the recognition and mobility of LGBT people in the economic, social, political and cultural spheres, with the purpose of contributing to the creation of a democratic, modern society with social justice. For more information, see [www.colombiadiversa.org](http://www.colombiadiversa.org).

<sup>45</sup> United Nations High Commissioner for Human Rights, “Report on the Human Rights Situation in Colombia”, A/HRC/7/39, 28 February 2008, para. 89.

treatments in contexts of: a) abuse by the police, b) prisons, and c) particularly in cases of homicides of gays, which will be described below.

**a) Police abuse against LGBT people**

Since 2005, Colombia Diversa has reported facts that constitute police abuse against LGBT people, particularly against transvestites who work in prostitution and against gays. In some cases, human rights defenders and witnesses of such abuses have also become victims of police abuses.

Despite the recommendation of the Committee against Torture in 2004 that cases of police abuse committed against LGBT people be investigated, Colombia Diversa reports that of 31 reported cases, only 17 have been investigated.

**b) Situation of LGBT persons in prisons**

Between 2005 and 2007, the situation of LGBT people in prisons was characterized by: (i) overcrowding conditions and physical and psychological violence; (ii) a state of vulnerability as prisons are socially marked by prejudices and the logic of male chauvinist domination and homophobia; (iii) a lack of measures to fully guarantee their rights on the part of the prison authorities; (iv) cases of human rights violations related to sexual abuses, cruel, inhuman and degrading treatments, repression of the sexual identity, and arbitrary restrictions to intimate visits of couples of the same gender; (v) prison norms and practices openly opposed to the rights of LGBT prisoners, especially related to the respect that their transvestite identity deserves in prison; (vi) the ignorance on part of the prison authorities around problems or deficiencies in guaranteeing the fundamental rights of LGBT people in the prisons. This is the case even though the Inspector General's Office, some regional ombudsman's offices, the local governments of Bogotá and Medellín, and some prisons consider that special protection and prevention measures are necessary and that the prison system must be adapted in order to protect and preserve the rights of LGBT persons in prisons.

**c) Homicides of gays**

Between 2005 and 2007, Colombia Diversa reported a series of homicides of gays where the following patterns could be identified: the apparent reason is theft; the body of the victim is found naked, with evidence of sexual activity; the victim's profile corresponds to an adult man with economic stability; the victim is found in his residence; death was caused by suffocation through strangling; the traumas and injuries give evidence of extreme violence at the moment of the crime. These characteristics coincide with those identified in 2005 by an expert of the Institute of Forensic Medicine referring to the homicides of gays reported in Bogotá<sup>46</sup>.

In spite of this evidence, the investigations take on the hypothesis of a crime of passion or personal revenge and exclude the hypothesis of homicide on homophobic grounds. Silence and omission about this topic impedes measures, which could prevent the occurrence of similar acts.

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<sup>46</sup> Colombia Diversa, *Human Rights Report 2005*, Bogotá, pages 14-16: <http://www.colombiadiversa.org/dmdocuments/Informe%20DH%20LGBT%20Colombia%20-%202005.pdf>.

## **Conclusions and recommendations**

Based on the reliable information that torture continues to be systematic and widespread in Colombia, we request the Committee to make an inquiry under the terms defined in article 20 of the Convention, which should include the aspects of sexual violence as a form of torture against women and girls.

## **Recommendations**

1. The State must consolidate a unified system of information about cases of torture with information from institutions in charge of the documentation, investigation and punishment of this offence. Such a system should include aspects that allow the identification of violations and risk factors which could harm the personal integrity of vulnerable sectors of the population. The development of such a system would enable the real dimension of torture in Colombia to be better understood, and, based on this analysis, develop and consolidate a public policy of prevention, assistance, punishment and eradication of cases of torture.
2. The State must strengthen adequate mechanisms of prevention and punishment of torture perpetrated within prisons. In order to do so, it should guarantee the composition of democratic and participatory Human Rights Committees. In addition, it must put an end immediately to the obstacles that restrict the work of those who defend the human rights of detainees and give them full guarantees to carry out their work.
3. The President of the Republic, as Commander in Chief of the Armed Forces, must issue a Directive, which clearly rejects practices that violate the right to integrity and dignity within the Armed and Security Forces. The judicial and disciplinary authorities must investigate and punish these acts when they occur.
4. The State must investigate, through all competent institutions, torture as a systematic and widespread offence, making use of interdisciplinary work that includes medical, forensic, psychosocial and judicial perspectives, and that incorporates a gender focus including the LGBT population.
5. The judicial authorities must investigate acts of psychological torture, beyond both its occurrence in the context of physical torture and as an impact derived from other human rights violations. They must accept the criteria that torture, independent of its kind, can cause psychosocial effects even when it does not cause physical pain or suffering.
6. The Higher Council of the Judiciary should create a monitoring mechanism to identify cases of human rights violations tried under the jurisdiction of the military justice system, and order their immediate transfer to the ordinary justice system.
7. It must be guaranteed that the draft legislation reforming the military justice system comply with the Constitution and Colombia's international obligations.

8. The Inspector General's Office must investigate these crimes and punish them in compliance with its disciplinary function and inform the Prosecutor General's Office about them so that the corresponding criminal investigations can be carried out.

9. In the context of the application of the law 975 of 2005, the authorities must increase their efforts in the investigation, documentation and punishment of the crime of torture. The investigation protocols must be adapted to better establish when torture was committed in conjunction with other human rights violations. Additionally, victims who use this legal proceeding must be granted psychosocial accompaniment.

10. With regards to exhumations carried out by the National Unit for Justice and Peace, it is important to train adequately members of the judicial police, forensic anthropologists and prosecutors, as well as scientific and forensic staff who take part in the analysis of the human remains. The possibility to prosecute these acts as torture largely depends on the success of these proceedings.

11. The State must adopt all necessary measures to reactivate the proceedings under law 975 with regard to the paramilitaries extradited to the United States, and guarantee in all cases the participation of the victims.

12. The State must guarantee the right to comprehensive reparation for all victims of human rights violations without discrimination, including the victims of torture. These measures of comprehensive reparation must include compensation, medical and psychological rehabilitation, indemnization and guarantees of non-repetition. The Government must commit itself not to hinder the adoption of legislation in favor of guaranteeing this right.

13. The State must comply with the orders of the Constitutional Court in Auto 092 of 2008 as a crucial mean for the eradication of sexual violence.

14. The Colombian State must make the declarations referred to in articles 21 and 22 of the Convention and ratify the Optional Protocol to the Convention as its implementation would guarantee the establishment of prevention monitoring mechanisms of torture and ill-treatment in places of detention.