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**Executive Summary: Temblores ONG, Indepaz and PAIIS Report to IACHR on the systematic violation of the American Convention and the jurisprudential scope of the Interamerican Court of Human Rights (IACHR) with respect to the use of public force against the civil population in Colombia, during the protests that took place between April 28 and June 26 of 2021.**

## **Introduction**

There have been mass protests in Colombia since April 28, 2021. This document summarizes the violent acts that have occurred during such protests in the hands of the Public Forces, which are against the American Human Rights Convention, and analyses the State's actions and omissions, which have generated a proper environment for the violation of the right to protest and the associated violation of many rights.

The events that are detailed in this report have been triangulated, verified and systematized from the complaints that have been reported at the GRITA platform from Temblores ONG, the Human Rights observatory from Indepaz and the Action Program for Equality and Social Inclusion from the Universidad de los Andes (hereafter PAIIS). Once the complaints are received, our investigators do the following: (i) establish contact with the victim or witness, (ii) verify the context of the complaint by reviewing the existing database collected during previous years by GRITA and Indepaz, (iii) triangulate the complaints that are received through a process of contrasting of sources and (iv) record the complaints in the GRITA and Indepaz database.

This executive summary has some considerations on the non-compliance of the Colombian State with the Interamerican Court of Human Rights with regards to the social protests and how this non-compliance has materialized into nine systematic violent practices from the Public Force against the protesters. Some recommendations and conclusions will be presented later on.

**Non-compliance of the Colombian State of the norms and pronouncements of the IHR system during the protests that took place between April 29 and June 26, 2021.**



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This section is divided into two parts. The first part contains some observations on how the Colombian State has not followed the standards of the Interamerican Court of Human Rights. The second part will show how the non-compliance of such standards has materialized into nine systematic violent practices from the Public Force against the protesters.

#### **A. Observations on how the Colombian State has not followed the standards of the Interamerican Court of Human Rights with regards to social protests.**

During this National Strike the Colombian State has consistently not met its obligation to protect human rights in the framework of exercising the right to peaceful protest, as well as the standards of the Interamerican Court of Human Rights on (i) regulation, (ii) control and (iii) follow-up of the use of the Public Force in the social protest context. As it will be explained shortly, this can be observed even in the enforcement of the “Statute of reaction, use and verification of the State’s legitimate Force and protection of the citizenship’s right to a peaceful protest” by the Decree 003 from 2021, which was issued in January this year in compliance with the judicial decision of the Supreme Court of Justice in second instance on September 22, 2020.

This new norm has a series of principles, definitions, coordination spaces and some duties of the Public Force which lead to the compliance of the judicial order to generate protocols for the preventive, concomitant and posterior actions related to the protests. This Decree aims at restructuring the guidelines on the use of Force so that it respects, among others, the jurisprudence of the Interamerican Court of Human Rights and the UN’s recommendations. Hence, we can observe that the Government knows that there is a need to take this type of measures.

However, Temblores, Indepaz and PAIIS worry about many points regarding the specific responsibilities of the Public Force concerning the compliance of certain measures, which are not stated properly, or there is no evidence that they are being complied with. Such points are briefly mentioned, as follows:

1. The Decree does not establish the renovation of the training programs for Human Rights for the Public Force, nor the duty (only the ability) to join other institutions or training centers which have experience with this matter.



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2. Even though the Decree recognizes that the control of the protest must have proper planning to guarantee human rights, it does not establish criteria or parameters that generate the necessary conditions to guarantee them.
3. Even though the coordination spaces between the civil and military authorities, control entities and some civil society organizations are described in the norms through the creation of unified command posts and specific responsibilities were established, there are still systematic violations of human and fundamental rights.

Therefore, we have two possible scenarios: there is either a disconnection between the command posts and the police officers, ESMAD and army, which are in the field during the protests; or orders that are against the protection of human rights and the rights of the protesters are issued from these command posts. Having said this, there is no traceability and transparency in these spaces, which would allow, in the event of disproportionate use of force, to identify the causes and responsibilities.

4. The formulation of commands from the authorities is ambiguous. As per article 3.a. of said Decree, the civil authorities of the department (Governor) or the municipality (Mayor) are the first Police authorities. However, major confusion is observed in reality, as it is not clear who is giving such commands to the police officers and the ESMAD agents who are present during the protests and who are the main actors violating human rights.
5. Article 32 includes the integrity of properties as a reason for using force, whereas for the Interamerican Court of Human Rights, this reason alone is not enough to justify such actions: force can be used against people only when they are a threat to the life and integrity of others.
6. Even though article 35 of the Decree totally and explicitly prohibits the use of firearms, this norm is constantly violated, as it can be verified through the data relating to injuries and deaths from firearms, which contradicts the legality, necessity and proportionality principles, and in most cases, can be highly discussed.



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7. Regarding the actions following protests, the Interamerican Court of Human Rights indicates the need to the need to effectively, promptly and independently investigate the events. However, Decree 003 completely fails when it comes to providing tools and means to facilitate the investigation after events of violence, as well as the sanctions to those responsible. The Decree only states that the administrative and police authorities will do a joint analysis, moreover, the commanders will prepare reports for their immediate superior, who will decide whether or not send such reports to the judicial or police authorities. It is concerning that this information does not have automatic follow-up from control entities and that the Police itself has the discretion to decide if it leaves the institution or not.

## **B. Systematicity of the violence from the public force**

In this report we talk about *systematicity* in reference to recurring practices that the Public Force follows during the protests. This qualification does not have a judicial pretension, for this is a competence of the respective authorities. The aim is to recognize a series of characteristics that the violent repression of the social protest from the Police has had, based on the criteria that international jurisprudence and doctrine (Interamerican Human Rights System and International Criminal Court) have established as indicative of such systematic practice, applied to the particular current Colombian context.

The context in which the violation of human rights referred to in this report occurs indicates their systematicity: they always occur as per action or omission from the police and always against the protesters and using similar means or methods. The context, location and period in which multiple human rights violations have occurred against a specific part of the population, in considerable numbers as it is stated here, shows that there is a policy of violent repression during the protests that have taken place nationwide since April 28, 2021 and have resulted in homicide, injuries, arbitrary arrests and disappearances among other practices. The violent acts that have occurred share characteristics of mode, time and place, which shows that there is an unspoken policy of ignoring the right to protest as one that must be guaranteed; on the contrary, it denotes a training of the public force according to the armed conflict logic, under the doctrine



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of an *internal enemy*. Such identification is given to the protesters, which then are turned into legitimate targets of the violent acts of the State.

Through our joint work among Temblores ONG, Pairs and Indepaz, we have been able to recognize the systematic actions of nine violent practices from the public force which have taken place during the Colombian National Strike in 2021. Such practices are evidence that there is an intention to violate and punish people who have gone out to the street to protest, exercising their right to do it peacefully. Moreover, these show that the actions of members of the Public Force systematically violate the internal protocols of the use of Force and the international standards for the protection of human rights.

The main practices of violence by the Public Force are:

### ***I. Indiscriminate, excessive and disproportionate use of firearms against the protesters by the Public Force***

When the police fire weapons within the protests, not only are they putting the physical integrity of the protesters at risk in the face of a possible violation of the right to life, they are also violating the principles of proportionality, legality and necessity of force. The use of force to dissolve protests is outside the local and international framework and it has had lethal and tragic consequences during the National Strike this year. Complaints that police officers have fired arms against protestors have been recorded and systematized.

From April 28 until June 26, within the National Strike, we have a record that there have been at least 228 instances in which the Police have fired weapons during the protests. In such instances, 110 people have been hit by weapons and have been injured. That is, at least 48.2% of the shots have been aimed directly to the bodies of those who are protesting. Moreover, we documented 20 cases of weapons fired in residential areas in which minors, seniors, and families in general were put at risk. We have also recorded that at least 33 people have died from impacts from firearms fired by the National Police during the National Strike.

### ***II. The use of reduced lethality weapons against the bodies of the protesters to dissolve the peaceful protests.***



According to the protocols that have been established for the use of the so-called reduced lethality weapons, such devices must be fired in a parabolic way and not horizontally against the bodies of those protesting. However, we have seen that the Public Force systematically violates such protocols, which increases the risk of causing permanent and lethal injuries to the protesters.

Different records made during the National Strike show that in some instances the weapons have been fired from distances shorter than 5 meters, in other instances, the shots have been fired directly to people who were not armed and had their hands up. We have documented that the items that are activated against the bodies of the protesters are: tear gases, stun guns, rubber bullets, pellets, reduced lethality grenades and marbles. The repeated occurrence of these situations shows an intention of causing permanent damage when these weapons are used.

The aforementioned has put the lives of the people who have been affected by such practices at high risk, as they have had injuries in different parts of the body such as: head, nose, mouth, eyes, chest, legs and back, and in some cases, disfigurements have occurred. This is evidenced by the 258 cases recorded from the use of weapons against the bodies of the protesters between April 28 and June 26. In such situations, 207 people have been injured, which is to say, there has been a direct effect in 80% of the cases. In the cases of direct shots, we found that 70 people have sustained eye injuries due to this practice and 79 people have had injuries in other parts of their face. Moreover, four homicides have occurred due to this practice.

### ***III. Horizontal firing of long-range Venom weapons against the protesters and in residential areas***

The weapon known as “Venom” started being used by the ESMAD during the National Strike in 2021. This is a device that shoots multiple projectiles, it has a capacity for 30 cartridges, it is placed at the top of the tank and it can fire a larger quantity of projectiles faster. In a statement given by the National Police, it was indicated that the use of the Venom weapon is part of the international legal framework established by UN and that its risk is reduced due to the height from where it is fired. However, we have documented at least 5 cases in which the Venom weapon has been fired from the ground and directly against the bodies of the protesters, thus



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increasing its lethality and violating all operating protocols. Moreover, our GRITA platform has recorded 9 cases of the Venom weapon being fired in residential areas. The complaints made, which have mostly occurred at night, record the horror endured by those living in the areas where the Venom projectiles have exploded, in many instances close to their windows and roofs. This not only puts families at risk of sustaining physical injuries, but also has severe psychological effects due to the noise and the closeness of the projectiles that are being fired. It is important to note that within the homicides that we have been able to verify, there are 3 in which the Venom weapon was their cause.

#### ***IV. Throwing tear gas and stunners inside houses and in residential areas***

The indiscriminate firing of stunners and tear gases from the ESMAD in residential areas and inside homes has affected those who are protesting in public places or doing some other activities, as well as those who are taking cover inside their homes. In general, this practice takes place during violent interventions from the Public Force, which have gone inside the residential areas to control and suppress the protesters in disproportionate and indiscriminate manner and without taking into account the possible effects on the health of those that live in such areas.

These firings have had fatal effects and have differentially affected vulnerable age groups, such as seniors and minors. From April 28 until June 26, 2021, we have recorded two homicides related to this practice; in this case the victims were seniors who were taking cover inside their homes and died as a result of inhaling the tear gases after the intervention of the Public Force in residential areas.

Since the start of the National Strike, we have recorded 109 violent interventions related to firing of stunners and tear gases. From those, 103 have been against homes, 4 against hospitals and 3 against public transportation vehicles.

#### ***V. Violation of the publicity principle of the police actions***

***The principle of publicity implies that judicial and administrative authorities have the duty to disclose the acts related to the exercise of their functions that imply the creation,***



*modification or extinction of a right or the imposition of sanctions, obligations or fines.*<sup>1</sup> Moreover, the Police Code, in its article 21, states that all police procedures can be recorded.<sup>2</sup> However, since it became effective, and especially during the days of protests, we have been able to document that the publicity principle of police procedures is systematically violated in at least three specific practices: (i) the concealing or erasing of the ID badges of police officers, which prevent citizens from identifying them, (ii) the harassment of those who record police procedures or violent police actions and (iii) aggression, harassment and arrests of journalists who are doing their job of press coverage in the field, which is a right that is included and recognized in the Colombian Political Constitution.<sup>3</sup>

Such practices go against press freedom, which poses a risk against democracy and contributes to the fact that systematic police violence is not punished nor recognized in the spheres of the public debate.

Between April 28 and June 26, we have registered a total of 188 cases in which the publicity principles of police procedures were violated. Among these, there are 90 cases of harassment, aggression and arrests of press members, 38 harassment cases of civilians for recording police procedures and 60 cases in which there was at least one police officer without any ID.

#### ***VI. The imposition of paralegal requirements and measures to people who have been arbitrarily arrested by the National Police in exchange for their release.***

The Police Code from 2016 states the *transfer for protection figure* in article 155 as a transitory measure to protect the people who are at risk by being out in public or that are a threat to other people. As per this article, no person is transferred for the purpose of prosecution, since the transfers are due to behaviors that affect coexistence and not due to crimes stipulated in the penal code. However, this figure has been arbitrarily used to justify indiscriminate arrests legally and administratively, hence violating the rights of the protesters.

Moreover, it has been recorded that among arrest procedures, a series of paralegal measures have been applied, such as beatings and tortures, some of which have caused the death of

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<sup>1</sup> Constitutional Court, Sentence C-341 de 2014. Proponent Magistrate: Mauricio González Cuervo.

<sup>2</sup> Law 1801 de 2016. Whereby the National Code of Police and Coexistence is issued. July 29, 2016.

<sup>3</sup> Political Constitution of Colombia [Const]. Art 20. July 7 de 1991 (Colombia).





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protesters. Finally, the use of infrastructures that are not created to be retention centers, like warehouses and public transportation stations, for massive retention of people that were protesting concerns us. There have been 2005 arbitrary arrests recorded from April 28 to June 26 within the social protest, and as a result of these, two people have been murdered.

### ***VII. Gender-based sexual violence towards the protesters***

*We define* sexual violence as any sexual action that violates the physical privacy of the victim without their consent or in a coercive manner. Within the sexual violence category, we have recorded: forced stripping, fondling, forced prostitution, and rape. On the other hand, gender-based violence is a wider category which corresponds to violent acts due to the victim's gender and it can include physical, verbal, economic or sexual violence. Examples of this are: verbal sexual harassment, discrimination and sexual violence threats.

Within the National Strike the following patterns have been observed, which show evidence of the systematicity of these practices: (i) the events have occurred in enclosed premises that are property of the Public Force, such as CAI, URI, police stations and vehicles; (ii) the victims are separated from the group they are in and are taken to these places where they are victims of violence; (iii) the violent acts are carried out simultaneously by many members of the Public Force; (iv) the actions have been registered in conjunction with other police violence acts, such as arrests, physical aggression, harassment and verbal violence; (v) most victims are women and feminized people; (vi) the age range of the victims is between 17 and 30; (vii) most of the actions have taken place between 4:00 pm and 10:00 pm. In total, Temblores ONG has recorded 28 instances of sexual violence and 9 acts of gender-based violence against protesters caused by the Public Force.

### ***VIII. Eye trauma against protesters***

*The face* lesions that protesters have undergone, particularly in the eyes, are mainly caused by the inappropriate and deliberate use of the reduced lethality weapons by the Public Force. Among the types of trauma that such weapons can cause there is: destruction of the iris, retinal detachment, vitreous hemorrhage and trauma to the eye and orbit; all these cause temporary or permanent damage to the victims and can lead to alteration in their daily lives.



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The excessive use of force aimed at producing injuries to the face of the people protesting and exercising their legitimate right to protest, and even more, to their eyes, has a connotation that goes beyond the traditional discourse of human rights. Indeed, this type of brutality produces the violation of the right of every person to their personal integrity and leads to the production of a disability to the person who is the victim of such aggression.

In cases of injuries of this type, it can be observed that, through the victimizing action at the hands of State Forces and under a logic in which social protest is associated with an action of war, disability becomes a weapon used by the Public Force to confront a constructed enemy. The way and time in which the disability is acquired have a determining impact on the way this condition is assumed, as the perception is very different when the disability is produced by a victimizing event than when it is not. Indeed, the social approach to disability, which understands it as a form of human diversity that enriches us and should be celebrated on the basis of values such as material equality, non-discrimination, solidarity and plurality, is not applied when disability is the product of a violent action. Therefore, the social movement agenda of people with disability falls short to address the natural negative connotation of acquiring a disability in such a context, since the identity of a person with a disability is rejected because of its association with violence.

The GRITA platform of Temblores ONG was able to verify that from April 28 to June 26, 2021, there were at least 82 cases of eye injuries against protesters, and there are surely many more unrecorded, hence we cannot consider these as isolated or accidental events. .

### ***IX. Forced disappearance of protesters.***

Article 165 from the Colombian penal code understands forced disappearance as subjecting "another person to deprivation of his or her liberty in any form whatsoever, followed by concealment and refusal to acknowledge such deprivation or to give information as to his or her whereabouts". In the context of the current demonstrations, as of June 22, there are 77 active Urgent Search mechanisms.

### **Conclusions**



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The repression with which the State has decided to face the claims from the citizens has sadly left a total of at least 4,687 victims of violence in the hands of the Public Force, distributed as follows: 1,617 victims of physical violence, 44 homicides presumably perpetrated by the Public Force, 2005 arbitrary arrests against protesters, 748 violent interventions of peaceful protests, 82 victims of eye aggressions, 228 cases of firing of weapons, 28 victims of sexual violence and 9 victims of gender-based violence.

The practices aforementioned are those on which we have been able to establish systematicity patterns. However, those are not the only violent acts perpetrated by members of the Public Force. Within the framework of the National Strike, we have recorded cases of forced disappearance of those arrested by police officers, complicity of Public Force agents with the civilians that fired weapons; break-ins and judicial staging against social leaders, students and young people, threats against families who are victims of homicides so that they do not press charges or publish anything on social media, and other practices that have left a considerable number of people physically and psychologically affected.

We believe that, in addition to medical care and justice for the victims of physical aggressions, the psychosocial consequences of the people and communities that have experienced this violation of their human rights must be repaired, for which a series of actions of reparation and reconstruction of the social fabric are necessary.

This report shows evidence of the systematicity and intention of the violent acts of the State, the Public Force and its officials. Hence, it is a call for this type of acts to have exemplary sanctions and for a comprehensive and structural Police Reform that contributes to de-escalate State violence, which would allow the consolidation of a National Police that does not commit violence against citizens and that, following its Constitutional mandate, watches over the rights and liberties of all citizens.

## **Recommendations**



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- ❖ Include a verification mission from the UN in the unified command posts created by the Decree 003 from 2021, to verify the command chain and the commands that are issued from there during the protests.
- ❖ Have a local visit from IACHR to conduct a thorough investigation in which it is possible to clarify the violent actions perpetrated by the Public Force during the Colombian National Strike in 2021.
- ❖ Include the information on the data presented in this report in the annual report that IACHR sends to the countries, as well as its use to elaborate recommendations directed to the Colombian State.
- ❖ Recommend to the Colombian State to strengthen the institutions that are in charge of investigating in a non-biased way the presumed violations of human rights and IHR by the Public Force members, making a specific mention of the evaluation of the ways in which the investigation and evaluation of the Public Force members is done through a criminal military jurisdiction.
- ❖ Indicate to the Colombian State the need to do complete, transparent and constant education on updates related to fundamental rights, human rights and IHR, which in order to verify its belonging to the citizens and have them oversee it, for it to be verified by members of the public or non-government organizations.
- ❖ Encourage the Colombian State to respect the separation of power, as it is one of the pillars of the Social Status of Rights predicated since the carta magna, hence give a recommendation to completely and not selectively comply with the commands issued in the court's rulings, especially those related to the protection of rights.
- ❖ Elaborate protocols, that are highly distributed until they become public knowledge, on the use of reduced lethality weapons by the Public Force, as well as the total ban and/or suspension of those reduced lethality weapons that have been used for torture and homicides allegedly perpetrated by members of the Public Force.



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- ❖ Have IACHR inquire about the existence of an incentive program and/or arrest, judicialization and transfers for protection quota in Exchange for promotions within the Public Force.
  
- ❖ Conduct a structural reform of the police to bring it in line with international human rights standards. It must be a civilian force that does not continue to act under the logic of the armed conflict and the war against drugs. This implies training with a human rights approach and a differential perspective and the elimination of violent forms of handling social protest.
  
- ❖ Totally and immediately prohibit the use of those so-called “non-lethal weapons” or “reduced lethality weapons” which have the potential to cause the harm described here.