United Nations CAT/C/COL/CO/5/Add.1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
14 October 2016
English
Original: Spanish
English and Spanish only

Committee against Torture

Concluding observations on the fifth periodic report of Colombia

Addendum

Information received from Colombia on follow-up to the concluding observations*

[Date received: 22 September 2016]

* The present document is being issued without formal editing.

Introduction

1. Colombia is a country in progress that is faced with significant challenges and difficulties but has demonstrated its commitment to improving the exercise of and respect for the human rights of the entire population, without distinction. Its efforts should be viewed from the perspective of a nation that has been dealing with a conflict, and the resulting complexities, for five decades. In recent years, Colombia has undergone changes at the policymaking and institutional levels designed to ensure the full enjoyment of human rights and to improve the efficiency and coherence of the State's organization and functioning. The institutional and legislative reforms can be viewed as having two broad goals, namely to safeguard firstly the human rights of the entire population and secondly those of victims in particular, in order to achieve full reparation and reconciliation and thereby pave the way for progress towards ending the armed conflict.

2. Colombia rejects the practice of torture and this is reflected in the country's comprehensive normative and institutional framework to prevent and punish it. The practice of torture is defined as a criminal offence under the section on crimes against individual freedom and other rights of the Colombian Criminal Code (Act No. 599 of 2000). The crime of torture of protected persons is also covered in the section on offences against persons and property protected by international humanitarian law. Colombian legislation provides for prison sentences of between 10 and 30 years for this crime and also establishes aggravating circumstances that increase the punishment when the crime is committed by a public official or individual performing a public function.

3. The definition of torture in Colombia offers a broader level of protection than the provisions of international instruments adopted by inter-American and universal systems, in that, for an act to constitute torture, the perpetrator does not have to have a particular status. In addition, Colombia has developed extensive case law that protects the rights to life and physical integrity of citizens throughout the country.

4. The practice of torture is not State policy in Colombia. However, as there have been cases of torture in the country, it was decided to investigate, prosecute and punish those responsible without regard to their status. The Government has taken measures to address such practices, which violate human rights and international humanitarian law, and to support and provide reparation to victims.

5. Accordingly, the Victims and Land Restitution Act, which provides for support and reparation for victims in the context of an armed conflict, was passed — the only such legislation in the world. As a result of the implementation of the Act, to date, more than 7 million victims have been registered and are in the process of receiving reparation, for which there is a planned budgetary allocation of Colombia US$ 1.2 billion up to 2020. The Act includes torture as a crime for which victims must receive reparation as part of the process of moving towards peace and reconciliation.

6. In-house initial and ongoing training has been provided for public officials as part of an inter-institutional policy intended to improve the State's services and response times.

7. Cognizant of the challenges it faces with respect to the prison system, the Colombian Government has taken a series of legislative and technical steps that have enabled it to define strategies for running the prison system efficiently and in a manner that guarantees human rights.

8. These strategies involve a reform of the country's criminal and prison policy, to strengthen crime prevention and thus avoid disproportionate and unjustified prison terms, and efforts to ensure adequate access to justice and improve material conditions in prisons.

9. In this context, on 20 January 2014 Act No. 1709 of 2014, amending the Prison Code of 1993, was enacted. The Act includes measures at all levels to deal with the situation in the prison system, including the establishment of the National Health Fund for Persons Deprived of Their Liberty, which will be responsible for contracting health service providers for all prisons once the regulatory process has been completed.

10. The Ministry of Justice and Law, in cooperation with the Attorney General's Office, sponsored Bill No. 115 amending Act No. 906 of 2004 — the Code of Criminal Procedure — with respect to the rational use of pretrial detention. As a result, Act No. 1760 of 6 July 2015 was adopted.

11. The Constitutional Court has handed down important rulings in this area and its case law has encouraged a concerted approach by the machinery of State, which has resulted in the adoption of shared, interrelated and appropriate strategies based on practical guidelines and clearly defined responsibilities that guarantee the human rights of persons deprived of their liberty.

12. It must be emphasized that Colombia has always been ready to take the necessary action to prevent any incident that could threaten or violate the fundamental rights of persons deprived of their liberty, and to implement the decisions handed down by the competent authorities.

13. The Government recognizes that challenges remain and monitors them closely, its main objective being to guarantee the effective enjoyment of rights and promote justice. Nonetheless, the Government believes that the observations and recommendations of the Committee against Torture can serve as a tool in its continuing efforts to fully comply with the obligations, and meet the challenges, involved in implementing the Convention.

14. The process of drafting this report was led by the Ministry of Foreign Affairs, with the participation of the government bodies responsible for implementing the recommendations, namely the Ministry of Health and Social Protection, the Ministry of Justice and Law, the Ministry of Defence, the National Prisons Institute (INPEC), the Prison Services Unit (USPEC) and the Comprehensive Victim Assistance and Reparation Unit (UARIV).

Main action taken pursuant to recommendations 16, 17 and 22

15. In accordance with paragraph 28 of the Committee against Torture's concluding observations on the fifth periodic report of Colombia (CAT/C/COL/CO/5), information is provided on action taken pursuant to the recommendations contained in paragraphs 16, 17 and 22.

Paragraph 16: Excessive use of force

> "The State party should ensure that all complaints regarding the excessive use of force by law enforcement officers or military personnel are investigated in a prompt, effective and impartial manner. It should also ensure that persons suspected of committing such acts are brought to trial and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts. Victims or their families should also receive appropriate redress. In addition, the State party should train all of its law enforcement officers in the proper use of force and should regulate the use of firearms by its security forces in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)."

16. Firstly, it should be pointed out that Colombia has a strong legal framework to regulate the use of force by law enforcement officers. The use of force by law enforcement officers to counter public disorder caused by various social groups is regulated by legal

guidelines, in accordance with the international agreements and treaties ratified by Colombia. These guidelines are aimed at the application of transparent procedures and the proper use of anti-riot equipment, primarily by the National Police, for the sole purpose of keeping the peace and restoring public order in a manner that safeguards and is respectful of human rights.

17. In accordance with article 218 of the Constitution, the National Police is a standing civilian armed force of the State, the primary purpose of which is to maintain the necessary conditions for people to exercise their rights and liberties and to ensure the peaceful coexistence of the people of Colombia. The provisions authorizing members of the National Police to use force may be applied during work stoppages and strikes, information meetings, roadblocks, marches, demonstrations, insurrections, invasions, de facto occupations, evictions, mob attacks, riots, rallies or disturbances, provided it is in response to conduct that is illegal or affects public order.[1]

18. The Police Manual on Crowd Management and Control was adopted in 2009 and updated by Resolution No. 05228 of 28 November 2015 with the adoption of the National Police Manual on Dealing with Demonstrations and Riots. These documents set out a series of procedures that incorporate international standards, including the Code of Conduct for Law Enforcement Officials (arts. 1, 2, 3 and 5) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

19. The manual sets out the following fundamental principles for the use of force:

(a) Everyone has the right to life, security of person and not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

(b) Non-violent means should be used in the first instance and force should be used only when strictly necessary for lawful purposes to apply the law;

(c) No exceptions or excuses shall be accepted for the illegitimate use of force. The use of force must always be proportional to the lawful objectives;

(d) The use of force must always be moderate; damage and injuries shall be kept to a minimum;

(e) A variety of means shall be available so as to permit the differentiated use of force. All police officers shall receive training on the use of the various means for the differentiated use of force and on the use of non-violent means.

20. In addition, the legitimate use of force by police personnel is subject to the following rules:

- The use of physical force or weapons by the police can have no other objective than to ensure compliance with the law, maintain public order and protect the legal interests of members of the community, and must under no circumstances violate human rights.
- The permitted use of force must be in line with the principles of necessity and reasonableness, which will depend on the individual situation.
- Reasonable force is force that is proportional in the circumstances, depending on the type of attack on a legally protected interest and the value of this interest. Thus, under no circumstances shall it be legitimate to use or continue to use force when the offender or suspect has already been subjugated.

[1] Chapter II of the 2009 Police Manual on Crowd Management and Control contains a detailed definition of each of the scenarios in which the use of force by the National Police is permitted.

- It should be understood that only the use of reason and acting in a legal, ethical, fair and calm manner in the line of duty can change behaviour and convince people that only illegitimate actions are being dealt with and corrected.
- Before resorting to the use of force, an effort must first be made to find an acceptable solution.
- Failing that, appropriateness, suitability, predictability, moderation and responsibility must be prioritized, and the consequences must be evaluated.
- In exercising the exceptional power to use force to prevent a disturbance of public order or to restore it, the National Police shall use only the means permitted by law, opting for means that, while effective, cause the least damage to the integrity of persons and their property.

21. Annexed to this report is a diagram showing the gradations of the legal use of force as exercised by the National Police of Colombia (annex 1).

Internal provisions regulating the use of force by State agents

- The National Police Code, adopted by Decree No. 1355 of 1970, in particular articles 1, 2, 29, 30 and 104
- Decree No. 2535 of 1993 laying down rules on weapons, munitions and explosives (sect. II, chap. I, art. 8)
- Resolution No. 00912 of 1 April 2009 promulgating the Police Service Regulations
- Resolution No. 04935 of 12 December 2013 promulgating the National Police Logistics Manual
- Resolution No. 00448 of 19 February 2015 promulgating the regulations on the use of force and of non-lethal items, devices, munitions and weapons by the National Police
- Resolution No. 05228 of 27 November 2015 promulgating the National Police Manual on Dealing with Demonstrations and Riots
- Instruction No. 004 of 28 January 2016 on criteria for identifying National Police personnel entitled to carry anti-riot gear
- Instruction No. 005 DISE-UNADI-70 of 17 February 2016 on police action in controlling demonstrations and riots

22. In developing their own operational law, that is, the principles and rules regulating the use of force, the Armed Forces rely on the Operational Law Manual and the Commander's Operational Law Guide, which help guarantee the protection of civilians and the proportionality of the use of force. These publications are already in their second edition, issued by the General Command of the Armed Forces pursuant to Order No. 019 of April 2015.

23. The publications are a compendium of national and international rules of international humanitarian law and human rights and basic operational concepts applicable during military operations. They provide members of the Armed Forces with tools to ensure the legality of military operations, including the application of the two legal frameworks applicable to military operations — the human rights and international humanitarian law frameworks — and establishing the rules on the use of force derived from each.[2]

[2] Operational Law Manual 3-41 of 2009, chaps. II and III.

24. Furthermore, there are instructions and guidelines from the Ministry of Defence, the General Command of the Armed Forces and each branch of the Armed Forces concerning military support for the National Police in restoring public order, taking into account the mission assigned to the Armed Forces by the Constitution.

25. The Colombian police have a mobile anti-riot squad (ESMAD), established by Resolution No. 01363 of 14 April 1999, that is tasked with supporting national units in controlling and neutralizing civilian riots and managing and controlling crowds, within the framework of respect for and protection of the human rights of citizens in the crowd. The aim of interventions by uniformed personnel is to protect the social State governed by the rule of law and to take preventive action when groups of citizens act in violation of the law.

26. The functioning of the mobile anti-riot squad is governed, inter alia, by Resolution No. 05228 of 27 November 2015, promulgating the National Police Manual on Dealing with Demonstrations and Riots, and Resolution No. 00448 of 19 February 2015, regulating the use of force and of non-lethal items, devices, munitions and weapons by the National Police.[3]

27. The National Police Admissions Department is currently drawing up the profile for male and female police officers wishing to join the specialized anti-riot squad of the National Police, in terms of their personal qualities, knowledge and know-how.

Investigation, prosecution and punishment

28. In Colombia, State officials face criminal and disciplinary sanctions for misconduct. Criminal proceedings are conducted by the Attorney General's Office (*Fiscalía General de la Nación*) in the investigation and indictment phases and by judges in the prosecution and punishment phases. The Attorney General's Office is part of the judicial branch and has administrative and budgetary autonomy. Disciplinary proceedings are conducted by the Counsel General's Office (*Procuraduría General de la Nación*).

29. The Directorate of Human Rights and International Humanitarian Law of the Ministry of Defence has liaison officials in each institution in order to extend cooperation to the Attorney General's Office in its investigations of members of the institution for alleged human rights violations and breaches of international humanitarian law. On 20 March 2015, a working group was set up jointly with the Attorney General's Office to cover the procedural requirements of the Armed Forces in criminal proceedings brought against members of the army, the navy and the air force.

30. In addition to being responsible for disciplinary proceedings, the Counsel General's Office represents citizens before the State and ensures respect for their fundamental rights. It is the highest body in the Public Legal Service (*Ministerio Público*), which also includes the Ombudsman's Office and the municipal ombudsman's offices.

31. The Counsel General's Office has administrative, financial and budgetary autonomy in accordance with the Organic Statute of the National Budget. It has an obligation to ensure the proper exercise of the functions assigned by the Constitution and the law to public servants, and does so in three ways:

- **Prevention**: This is considered the primary responsibility of the Counsel General's Office, which is focused on "prevention rather than punishment", monitoring the conduct of public servants and reporting any act that could be in violation of applicable rules, without any joint management or interference in the management of State bodies.

[3] These institutional regulations can be consulted on the Polired website.

- **Intervention**: As a party to the proceedings, the Counsel General's Office intervenes before the Administrative Disputes Division, the Constitutional Court and the various criminal, criminal military, civil, environmental and agricultural, family and labour courts, the High Council of the Judiciary and the administrative and police authorities. Its powers of intervention are not optional and are exercised selectively whenever the Counsel General's Office deems it necessary in order to defend fundamental rights and guarantees.
- **Disciplinary action**: The Counsel General's Office is responsible for initiating, carrying out and adjudging investigations into breaches of discipline by civil servants and individuals who perform public duties or handle public funds, in accordance with the Unified Disciplinary Code (Act No. 734 of 2002).

32. In disciplinary matters, lawmakers have developed a special regime to regulate the conduct of National Police personnel when, in the performance of their duties, they neglect some duty without justification. The regime in question is the National Police Disciplinary Regime (Act No. 1015 of 7 February 2006). In terms of disciplinary action, this regime complements the Unified Disciplinary Code by recognizing individual responsibility for alleged violations of fundamental rights in the use of force or firearms.

33. These regulatory provisions are very strict when it comes to assigning legal responsibility and dealing with senior officers who are called on to exercise command and control when upholding discipline. The following are particularly relevant:

- With respect to forms of conduct, the final paragraph of article 27 of Act No. 734 of 2002, entitled "Action and omission", establishes omission as a form of conduct, as follows: "When a person has a legal duty to prevent the commission of an act, failure to prevent it when in a position to do is tantamount to committing the act."
- With regard to Act No. 1015 of 2006, paragraph 18 of article 34 (entitled "Gross misconduct") includes "causing damage to the integrity of persons or property as a consequence of the excessive use of weapons, force or other coercive methods" in the section on the classification and description of misconduct.
- As a result of consultations with the disciplinary authorities nationwide on decisions in cases where members of the National Police were accused of misconduct related to alleged abuse of authority and physical assault in 2015 and 2016, the following information is available:

Rank	*Dismissal*	*Suspension*	*Fine*	*Reprimanded*	*Case closed*
Major	0	1	0	0	0
Captain	0	2	0	0	5
Lieutenant	0	0	0	0	4
Sub-lieutenant	0	0	0	0	5
Chief Intendant	0	0	0		2
Intendant	0	3	0	1	8
Sub-intendant	0	1	4	0	16
Police officer	9	22	7	0	124
Junior police officer	0	2	1	0	2

Rank	*Dismissal*	*Suspension*	*Fine*	*Reprimanded*	*Case closed*
Assistant police officer	3	1	0	0	0
To be determined	0	0	0	0	61
Total	**12**	**32**	**12**	**1**	**227**

Source: National Police, 21 April 2016.

Training

34. As part of the training of new members of the National Police, the National Directorate of Police Academies provides a range of academic courses on crowd management and control that are in line with international standards on the use of force and respect for human rights.

35. In terms of training on human rights and international humanitarian law, following the model of the national human rights education system, the police education system provides updated academic curricula and organizes face-to-face and distance-learning events, complemented by mechanisms such as mobile police training teams, one-off workshops and online training.

36. The mobile anti-riot squad has a curriculum designed to build the capacity of professional police officers to control crowds and riots. The curriculum has been approved for inclusion in the National Directorate of Police Academies' annual plan for continuing education,[4] which includes the academic events scheduled for the year[5] and modules on the use of force and human rights. The programme is supported by national and international bodies, including the International Committee of the Red Cross, the Counsel General's Office and the municipal ombudsman's offices. Mention should be made of the promulgation of Transitional Directive No. 1, on "Short-term and extracurricular training in 2016 for the Armed Forces and National Police on human rights, international humanitarian law and the use of force, with the support and advice of the International Committee of the Red Cross".

37. The National Directorate's annual plan for continuing education includes the following academic training for members of the mobile anti-riot squad:

- Course on crowd management and control, 10 weeks (768 hours)
- Course for instructors on crowd management and control, 8 weeks (384 hours)
- Seminar on the use of devices, ammunition and non-lethal weapons, 5 days (41 hours)
- Seminars on crowd management and control, 5 days (41 hours)
- Certification course on the use of devices, ammunition and non-lethal weapons, 15 days (91 hours)
- Certification course on non-lethal weapons, 15 days (91 hours)
- Refresher seminar on crowd management and control for 23 mobile units and 67 sections nationwide

[4] See Resolution No. 4223 of September 2015, adopting the National Directorate of Police Academies' curriculum on crowd management and control, and Resolution No. 01525 of April 2014, adopting the National Directorate's curriculum on crowd management and control for instructors.

[5] Academic training includes courses, seminars and certification courses.

38. In 2014 and 2015, training was provided to 8,602 members of the mobile anti-riot squad; disaggregated data are provided in annex 2. In particular, the following training was provided in 2015:

- Training-for-trainers course on human rights, the use of force and policing for seven members of the mobile anti-riot squad (provided by the International Committee of the Red Cross)
- Training on operational police intervention for three members of the mobile anti-riot squad (held in Sweden)
- Course on the appropriate use of force in police operations for 60 members of the mobile anti-riot squad (in partnership with the National Directorate of Police Academies)

39. In 2016, there are plans to run courses, certification courses and seminars for members of the mobile anti-riot squad on specific topics related to crowd management and control, anti-riot planning and tactics, and teaching methods for courses on the use of non-lethal weapons. These are expected to be attended by 4,212 officers (annex 3).

40. A list of the training courses provided to other officials on the use of force in 2015 and 2016, based on information supplied by the National Directorate of Police Academies, is attached in annex 4.

41. The National Police is currently participating in a working group with the Ministry of the Interior to draft a protocol for dealing with social protest. The protocol will define the actions to be taken by the authorities on the basis of an analysis of inputs such as a review of best practice and national and international experiences with existing protocols for dealing with social protest.

Best practice

42. As a corollary to the information presented, the Government submits to the Committee a list of the best practices on the use of force adopted by the National Police:

- Provision of unified command posts at the unit level and in the Directorate-General with a view to monitoring police methods and actions as framed by the Constitution and the law
- Establishment and implementation of a nationwide system for the anticipation and control of internal disturbances, setting out parameters and responsibilities for a better service, based on appropriate planning and implementation of administrative and operational capacity in the areas of prevention, deterrence and control, with the aim of maintaining public order and calm in the community
- Dissemination and implementation of Resolution No. 00448 of 19 February 2015 promulgating the regulations on the use of force and of non-lethal items, devices, munitions and weapons by the National Police
- Follow-up to the report on prevention drawn up in 2014 by the Counsel General’s Office in relation to actions taken by the mobile anti-riot squad
- Preparation by the think tank on policing principles of policies on lessons learned and best practice in relation to the actions of the National Police during the rural workers’ strikes of 2013 and 2014, to serve as teaching tools for studying and evaluating police action during social protests
- Improving training on human rights, international humanitarian law and crowd management and control

- Organization of working groups on prevention in the areas of human rights and technical assistance by the Office of the United Nations High Commissioner for Human Rights (OHCHR), to coordinate follow-up to cases of alleged human rights violations

Paragraph 17: Prison conditions

"The State party should ensure that prison conditions are in line with international standards. In particular, the State party should:

(a) Allocate, without delay, the resources needed to provide prisoners with proper medical and health care;

(b) Adopt effective measures, as a matter of urgency, to reduce prison occupancy rates, primarily by making use of alternatives to deprivation of liberty in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)."

Allocate, without delay, the resources needed to provide prisoners with proper medical and health care

43. Article 66 of Act No. 1709 of 2014[6] introduced a substantive change to the health service model for persons deprived of their liberty, as provided for in the Prison Code (Act No. 65 of 1993). The change involved the establishment of the National Health Fund for Persons Deprived of Their Liberty, which is a special account for collecting and administering the resources for the health system for persons deprived of their liberty.

44. The Fund has a governing council[7] which has been meeting since January 2016 to make recommendations on the contracting of health services in line with demand. At the same time, it has been issuing instructions on the implementation of the care model, following the gradual approach set out in Decree No. 2245 of 2015 and explained in more detail below.

45. The resources available for the National Health Fund for Persons Deprived of Their Liberty amount to 83,898,111,233 pesos (approximately US$ 28 million[8]). This figure was arrived at after taking into account previous studies and the studies on health system costs that the Prison Services Unit considered when drawing it up.

46. On 24 November 2015, the Government issued the aforementioned Decree No. 2245 of 2015, which regulates the system for the provision of health services to persons deprived of their liberty in accordance with Act No. 1709 of 2014 and the legal powers assigned to the National Prisons Institute, the Prison Services Unit, the National Health Fund for Persons Deprived of Their Liberty and other bodies involved.

47. In line with the above, the Health Care Model for Persons Deprived of Their Liberty in the Custody of the National Prisons Institute was adopted by the Ministry of Health in its

[6] This Act amended the Prison Code (Act No. 65 of 1993).

[7] The Fund's governing council is a "collegial body, made up of senior Government representatives and the manager of the fiduciary body responsible for the administration of the Fund, whose main tasks are establishing general policies for the administration and investment of the fund resources, the allocation of these resources, their equitable distribution, and the special duty of reviewing the Fund's budget with a view to having it adopted by the Government."

[8] Based on the representative market exchange rate on 10 May 2016, of 2,969 pesos to the US dollar.

decision No. 5159 of 2015, which is being implemented by the Prison Services Unit in cooperation with the National Prisons Institute, in accordance with Decree No. 2245.

48. In order to implement this model, it was necessary to issue technical-administrative manuals, which, pursuant to Decree No. 2245, must be fully compatible with the Health Care Model for Persons Deprived of Their Liberty and the guidelines drawn up by the governing council of the National Health Fund for Persons Deprived of Their Liberty and will be mandatory for all health-care providers. As many manuals as are required will be produced, taking account of the differences between prisons, and will provide guidance to health-care providers.

49. In order to prepare these manuals, an interdisciplinary team was set up by the Prison Services Unit and the National Prisons Institute, which in December 2015 presented three technical-administrative manuals. The manuals, which are available on the website of the Prison Services Unit, [9] cover the following topics:

- Provision of health-care services
- Public health care and treatment
- Mandatory quality assurance system for prisons

50. The Act provides for the conclusion of a commercial trust contract for the administration of the Fund's resources, to build up assets specifically to meet the health needs of persons deprived of their liberty; the sole purpose of this arrangement is to meet the health needs of this population group.

51. Accordingly, in December 2015 the Prison Services Unit[10] signed commercial trust contract No. 363 with the "2015 Health Care Fund for Persons Deprived of Their Liberty" consortium, which is made up of two trust funds. The Fund operates using the resources that are allocated to the Prison Services Unit[11] for the comprehensive health care of the population in the care of the National Prisons Institute and that are administered by the aforementioned consortium.

52. In keeping with the principle of a gradual approach set out in Decree No. 2245 of 2015,[12] and as services were being provided from the 2015 Health-Care Fund for Persons Deprived of Their Liberty, the Social Security Fund for Communications (Caprecom)[13] was under contract to the consortium to provide health-care services between January and March 2016 under the name "Caprecom EICE en Liquidación" (Caprecom industrial and commercial state enterprise in liquidation), in accordance with Decree No. 2519 of 2015.

[9] https://www.uspec.gov.co/2012-12-03-18-13-01/sistema-de calidad.html?id=342: pro_ges_bienes%20;catid=152:mapa_procesos.

[10] The Prison Services Unit is the body responsible for overseeing the contractual processes aimed at guaranteeing the effective functioning of the prison system.

[11] These are public resources from the national budget.

[12] Pursuant to Decree No. 2245 of 2015 (art. 2.2.1.11.8.1), the system for the provision of health-care services for persons deprived of their liberty was to be implemented gradually over a period of a maximum of eight months as from 1 December 2015.

[13] As the Committee is aware, in 2007 the Government enacted Act No. 1122, article 14 (m) of which requires the prison population to be affiliated to the general social security health-care system. This Act was initially regulated by Decree No. 1141 of 2009, under which underwriting agreement No. 1172 of 2009 was concluded between the National Prisons Institute and Caprecom EPS-S (health insurance provider — subsidized regime), since the Decree in question provided that the prison population in the care of the National Prisons Institute must be affiliated with a national, public subsidized health insurance provider and Caprecom EPS-S was the only body that met those criteria. Accordingly Caprecom EPS-S proceeded to enrol prisoners and provide health-care services.

53. However, in January 2016, Caprecom declared the contract to be inoperative and said it was impossible to continue providing health-care services to persons deprived of their liberty because of its poor reputation and unfulfilled commitments to State-owned social enterprises and health service providers around the country in previous years. For this reason, the model agreed between the Prison Services Unit and the consortium had to be implemented immediately in order to cover the current needs of the national prisons and at the same time to take responsibility for the needs not met by Caprecom.

54. As a result, one of the first steps taken in implementing the model was to order the provision of the necessary in-house staff based on the information provided by the National Prisons Institute. This entailed increasing the number of staff and raising wages in accordance with the guidelines established by the governing council. At the same time, a process of contracting external health services was undertaken with the external health-care network. To this end, the consortium sent letters of intent to the State-owned social enterprises and health service providers in every municipality in the country, seeking offers for the provision of services not covered by primary care units, and proceeded with the contracting of services from interested health insurance providers and health service providers. In addition, the governing council ordered the consortium to begin immediately contracting services in areas such as the supply of medicines, consumables, laboratory work, hospital waste collection and treatment for patients with chronic conditions.

55. In external circular No. 000002 of 2016, the National Health Authority issued guidelines on compliance with legal obligations in relation to health, allocation of resources and provision of health-care services:

- It required health service providers to take all necessary administrative steps to guarantee proper access to health-care services for persons deprived of their liberty in the care of the National Prisons Institute, and to remove all administrative barriers that could prevent their timely access to medical care.
- It requested the Previsora trust fund to report any health service provider that refused, without justification, to contract out the full provision of such services, indicating the reason for the refusal with appropriate supporting documentation.
- It warned institutions that failure to comply with the instructions would be punishable by a fine or successive fines of up to 2,000 times the current monthly legal minimum wage and, in case of a repeat offence, could result in the loss or withdrawal of the entity's registration or certification.

56. Nevertheless, at a meeting of the governing council of the National Prisons Institute on 5 May 2016, the incoming Minister of Justice and Law declared a state of emergency in all of the country's prisons, granting special powers to the directors of the National Prisons Institute and the Prison Services Unit to take the necessary measures to address the situation in prisons by directly negotiating contracts to bring about improvements in health-care facilities, the purchase of medicines and emergency care.

57. Among the first measures adopted were:

- Immediate establishment of health-care teams run jointly and in coordination with a social support network made up of the sectional health divisions of the departments, NGOs and public security forces
- Amendment of the National Prisons Institute's operational manual to enable health-care professionals currently performing administrative tasks to carry out care-related tasks
- Prompt execution of work to maintain, renovate and equip health-care facilities in prisons

58. These immediate measures do not affect the development of substantive solutions, which is under way; on the contrary, they help deal with the current situation and pave the way for the entry into force of the new health-care model.

59. According to information provided by the Ministry of Health pursuant to article 16 of Act No. 1709 of 2014, work is under way on a draft resolution on quality standards in detention facilities for persons who cannot be held criminally responsible owing to a permanent or temporary pathological mental disorder and persons who develop a mental disorder.

Measures to reduce prison occupancy rates, primarily by making use of alternatives to deprivation of liberty

Legislative, administrative and policy measures

60. In line with the new approach taken in the country's prison policy, and in response to the general evaluation carried out by the Advisory Commission on Criminal Policy at the request of the Ministry of Justice and Law and with the support of the European Union, the need to proceed with the establishment of a "stable, consistent empirically based criminal policy that is systematically evaluated"[14] was identified.

61. The reform of Colombian prison policy, one of the most important areas of criminal policy, was part of this effort; the applicable normative provision is contained in the National Development Plan 2014-2018.

62. Mention should be made of National Economic and Social Policy Council document No. 3828 on prison policy, published on 19 May 2015.[15] This document states that one of the objectives of the policy is "to refocus prison policy by coordinating it with a consistent and effective crime policy".[16] The development of such a policy involves not just meeting the demand for prison places but also dealing with the inherent problems in the system and finding comprehensive solutions to them.

63. This public policy document places particular emphasis on the protection of the human rights of the prison population, focusing on a number of key issues that are crucial to achieving the stated objectives, such as "the renovation of sanitary and technological facilities in prisons; the improvement of support, social reintegration and assistance of persons deprived of liberty; and coordination with strategic actors in the private sector and at the local level".

64. The measures and strategies set out in public policy document No. 3828 under the section on "coordination of prison policy and crime policy" seek to rationalize the use of custodial measures and offer solutions to the problems faced by persons in pretrial detention. Another of the objectives of this part of the policy is to improve social reintegration programmes and the efficiency of the prison system in general.

65. Accordingly, the Ministry of Justice and Law, in partnership with the Attorney General's Office, put forward Bill No. 115 with a view to amending Act No. 906 of 2004

[14] See Advisory Commission on Criminal Policy, *Diagnóstico y propuesta de lineamientos de política criminal para el Estado colombiano*, pp. 27 and 76, at: https://www.minjusticia.gov.co/Portals/0/INFO%20POLI%20CRIMINAL_FINAL23NOV.pdf. The document reflects the Government's efforts to identify the root causes of problems and develop achievable solutions.

[15] https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/Pol%C3%ADtica%20penitenciaria%20y%20carcelaria.pdf.

[16] Ibid., p. 3.

— the Code of Criminal Procedure — in respect of the concept and rational use of pretrial detention.

66. As a result, the Government adopted and enacted Act No. 1760 of 6 July 2015 on the rationalization of detention, which has two main objectives: to oblige judicial officials to be much more rigorous when deciding on custodial measures; and to establish the maximum duration thereof.

67. The most relevant points of the aforementioned Act are as follows:

- The duration of pretrial detention may not exceed one year, which may be extended only if the case is being heard by a specialized criminal court, if there are three or more accused persons or if the investigation or trial relates to corruption.
- Judges are obliged to demonstrate that no other precautionary measures would be able to achieve the intended objective.
- Several additional evaluation criteria are added to the requirement that the defendant must be a danger to the community.
- The Act defines the mandatory procedural deadlines between the filing of the indictment and the beginning of the oral hearing, and between the oral hearing and delivery of the verdict, as 120 and 150 days maximum, respectively.

68. The entry into force of article 1, on the duration of pretrial detention, has been postponed until 6 July 2016, since article 5 of the Act provided that entry into force would be deferred until one year after its enactment on 6 July 2015.

Management, refurbishment, maintenance and repair

69. In accordance with the provisions of Act No. 1709 of 2014, the Prison Services Unit has begun work on drafting and publishing a manual on minimum design standards for prisons.

70. Reference material used in drawing up the manual included the basic data provided by the National Prisons Institute, the International Committee of the Red Cross handbook on water, sanitation, hygiene and habitat in prisons, and the technical experience of the Infrastructure Department of the Prison Services Unit gained from interventions and in situ inspections in each of the national prisons.

71. In December 2014, a version of the manual was reviewed by experts from the International Committee of the Red Cross in Colombia and in Geneva. The experts made a series of formal observations which have been incorporated in order to improve the document.

72. Subsequently, with the support of the Office of the Deputy Minister for Criminal Policy of the Ministry of Justice, technical infrastructure committees were set up to enable a confidential dialogue between justice officials and the International Committee of the Red Cross. Meetings of the committees were attended by all stakeholders and chaired by the International Committee of the Red Cross, which also provided support in technical and detention-related matters. The aim was to draft the final version of the manual. Three main thematic areas were addressed by the technical committees: accommodation, social reintegration and the security of persons deprived of their liberty.

73. Once the manual has been fully revised, it will contain general guidelines and set out the minimum standards for the design of detention facilities and the construction of new national prisons in Colombia to accommodate men, women, pregnant women, breastfeeding mothers and vulnerable groups, taking into account the relevant international standards, the relevant rulings of the Constitutional Court, in particular judgment No. 762

of 2015, and the parameters established by the Government for the detention and rehabilitation of persons deprived of their liberty, in the context of guaranteeing their human rights.

74. With regard to infrastructure projects undertaken in existing national prisons, between 2014 and 2015 the National Prisons Institute delivered 3,336 new or renovated prison places, and it expects to deliver a total of 3,881 new places between 2016 and 2017, including three projects to extend independently-run medium-security prisons, which will have sufficient decent accommodation to allow for the social reintegration of prisoners.

Paragraph 22: Redress

> "The Committee urges the State party to provide all victims of torture or ill-treatment with full redress for the harm suffered, which should include fair and adequate compensation and as full rehabilitation as possible. To this end, it should ensure that:
>
> (a) Rehabilitation programmes and services are available to all victims, with no discrimination whatsoever being present in this respect;
>
> (b) Rehabilitation services are comprehensive and include medical and psychological treatment and social services;
>
> (c) Forms of reparation and restitution are determined on the basis of the nature and circumstances of each individual case so that the redress provided is geared to the particular needs of the victim and is commensurate with the gravity of the acts in question.
>
> The Committee draws the State party's attention to its general comment No. 3 (2012), particularly paragraphs 6, 11 through 15, 32 and 39, which provide a detailed description of the nature and scope of States parties' obligation to provide victims of torture with redress and the means for full rehabilitation."

75. The reparation provided for in article 25 of Act No. 1448 of 2011 is comprehensive and transformative for victims of the internal armed conflict. The approach taken is holistic and covers all rehabilitation measures for victims of the conflict, which is particularly important in cases involving torture because of the physical and mental effects of torture on the integrity of the victim. Details are provided below of actions undertaken in the name of rehabilitation in response to the recommendations on the matter contained in the concluding observations on the fifth periodic report of Colombia.

Rehabilitation programmes and services are available to all victims, with no discrimination whatsoever being present in this respect; rehabilitation services are comprehensive and include medical and psychological treatment and social services

76. Act No. 1448 of 2011, the Victims and Land Restitution Act, incorporates all the international guidelines and standards on comprehensive reparation and the obligations on States to provide reparation, as well as a number of international soft law instruments such as the Joinet general principles on reparation, the recommendations of international human rights organizations (United Nations bodies and the Inter-American Commission on Human Rights), and traditional sources of international public law, such as the judgments of international courts such as the Inter-American Court of Human Rights and international human rights treaties.

77. Section I of Act No. 1448 defines victims as "all persons who, individually or collectively, have suffered harm caused by events that occurred on or after 1 January 1985 as a result of violations of international humanitarian law or grave and flagrant violations of international human rights standards during the internal armed conflict". Consequently, any

person who has suffered harm as a result of violations of human rights norms or breaches of international humanitarian law shall be considered a victim, regardless of the perpetrator.

78. Based on this definition of a victim, it has been possible to easily relate public policy to the 7,999,663 victims listed in the Central Register of Victims; as of February 2016, 9,842 of these victims were registered as torture victims.

79. On the basis of article 25 of the Act, on reparation measures, chapter VIII, on rehabilitation measures, and article 135, on rehabilitation, the activities of the Comprehensive Victim Assistance and Reparation Unit are conducted at two levels:

- In its capacity as coordinator of the National System for Comprehensive Victim Support and Reparation, the Unit gives guidelines to the Ministry of Health on the establishment of rehabilitation measures.
- The Unit has worked on the direct implementation of psychosocial programmes since 2012, and these have been added to the general indicators of rehabilitation measures under the new 2015-2018 National Development Plan; it was agreed that the Unit would implement the Group Emotional Recovery Strategy with adults, young people, adolescents and children, while the Ministry would ensure the implementation of individual and family support strategies.

80. The budgetary resources allocated to the implementation of rehabilitation measures by the Ministry of Health range from 20 billion to 25 billion pesos annually (approximately US$ 6 million). The source of the funding is the sub-account for catastrophic events and traffic accidents of the Solidarity and Guarantee Fund and, since 2016, the budget allocated to investment projects for this purpose. The psychosocial assistance provided by the Comprehensive Victim Assistance and Reparation Unit relies on operational resources.

81. The Comprehensive Victim Assistance and Reparation Unit and the Ministry of Health jointly specified that: “Psychosocial measures, as a component of rehabilitation measures under the Public Policy on Comprehensive Reparation for Victims of the Colombian Armed Conflict, are defined as the package of coordinated services offered by the competent government agencies, as set out by law, which aim to facilitate recovery from or to mitigate psychosocial harm, emotional suffering and the effects on the psychological and moral well-being, life project and social interaction of victims and their families and communities as a result of the commission against them of serious human rights violations and infringements of international humanitarian law. The provision of psychosocial support will help to facilitate the implementation of strategies to restore the dignity of victims while respecting the social and cultural framework within which they have developed their concepts of violation, suffering, healing, recovery, balance and relief. In this context, processes will be designed to incorporate psychosocial and differentiated approaches in assistance measures.”

Forms of reparation and restitution are determined on the basis of the nature and circumstances of each individual case so that the redress provided is geared to the particular needs of the victim and is commensurate with the gravity of the acts in question

82. The Comprehensive Victim Assistance and Reparation Unit decided that, in the context of transitional justice programmes, there was a need to build capacity at the State level to deal with the psychosocial consequences of the armed conflict, which could not be addressed using only the resources of the General Health and Social Security System through the Mandatory Health Plan since the professionals involved do not have sufficient training, and the victims — most of them from rural areas — do not have adequate access to such services; as a result, both the Psychosocial Assistance and Comprehensive Health

Care for Victims Programme and the strategies implemented by the Unit are now operated outside the General Health and Social Security System, although they are related to it.

Group Emotional Recovery Strategy

83. This rehabilitation measure was developed by the Comprehensive Victim Assistance and Reparation Unit in October 2012. It is a strategy that deals with the most frequent forms of emotional suffering among victims, which the Unit has grouped together under the concept of "emotional suffering". This strategy does not, however, deal with individual complications that require more complex interventions, which must be provided in the form of clinical psychotherapy.

84. The Group Emotional Recovery Strategy provides a setting for dealing with suffering in a consensual manner in groups of 15 victims, starting with an initial meeting and followed by a further seven; in the month after the eighth and final meeting, the participants have a follow-up meeting to ascertain the extent to which they have maintained progress in terms of their emotional recovery. This strategy is conducted with adults (groups of up to 15 persons), young people and adolescents (groups of up to 10 persons) and children (groups of up to 10 children aged between 6 and 12 years).

85. The cost of the strategy amounts to 234,128 pesos per person (approximately US$ 78); 90 per cent of the victims who start the group recovery process complete it. When compared with the mental health services provided through the General Health and Social Security System, which on average involve five sessions, the Group Emotional Recovery Strategy has more and longer sessions (3.5 hours each on average).

86. According to a survey carried out by the Victims Institutional Strengthening Programme of the International Organization for Migration, 59 per cent of respondents reported that they were satisfied with the Group Emotional Recovery Strategy and 26 per cent said that they were very satisfied.

87. As of 31 December 2015, the Comprehensive Victim Assistance and Reparation Unit had provided assistance to 91,269 persons under the Group Emotional Recovery Strategy, while assistance had been provided to 172,035 persons under the Comprehensive Health and Psychosocial Programme. Together, the two mechanisms had provided assistance to a total of 263,304 persons.

88. Although these strategies have provided support to victims of the various offences recognized by Act No. 1448 of 2011, there is clearly a need for a mechanism to actively seek out victims of torture, since distrust of institutions often deters them from accessing the services available.

89. As far as the group meetings are concerned, it has been found that the best publicity for the psychosocial services under the programme is when victims recommend them to other victims, because people generally trust information received from peers.

90. Approximately 85 per cent of the persons who have received support are the victims of forced displacement, while the remainder are victims of other offences, including torture.

The "Interweaving" strategy

91. As one of the measures aimed at repairing the social fabric, the Comprehensive Victim Assistance and Reparation Unit devised the "Interweaving" strategy, which is a rehabilitation measure for recipients of collective reparation.

92. The strategy's five components are designed to restore confidence and harmonious relations through:

- Collective mourning, to ensure that the pain of losses and deaths that could not be grieved can be processed
- The transformation of physical spaces that had become symbols of terror in communities because they had been the scene of torture or had been used to conceal the bodies of disappeared persons, or were the places where the most serious crimes had been committed
- Social practices, to revive practices of exchange and coexistence in communities that had stopped gathering, meeting or celebrating together
- Social education, to enable and facilitate dialogue among different groups
- The collective imaginary, to invite reflection on the forms of collective thinking that produced narratives that tolerate, normalize or promote practices that lead to victimization

93. The "Interweaving" strategy is currently being implemented with 146 group recipients of collective reparation led by 1,970 "weavers".

94. This strategy also offers assistance in addressing the collective sequelae of violent acts aimed at destroying the fabric of society, such as acts that had traumatic effects not only because of the nature of the crimes themselves but also because of the way they affected codes of collective social and emotional functioning, such as the appropriation of churches, carrying out crimes on dates of religious or cultural significance, or making the excesses of violence and signs of torture public by displaying the corpses of victims in public spaces.

95. In reference to the "Interweaving" strategy, researchers from the University of Harvard noted that: "During the visit by the team of researchers to three communities of victims involved in collective reparation processes in different regions, the persons interviewed unanimously referred to their experience of 'Interweaving' as a very powerful support that had helped them deal with the emotional consequences of massacres and displacement, and enabled them to begin to resume their lives individually and collectively … for the persons interviewed, the 'Interweaving' strategy created by the Victims Unit plays an important role in restoring their mental health and repairing the social fabric of their communities. In this context, they consider 'Interweaving' to be a valuable form of support in the process of community recovery, in terms of both mental health and social life."

96. According to a survey carried out by the Victims Institutional Strengthening Programme of the International Organization for Migration, 53 per cent of respondents were satisfied with the "Interweaving" strategy, and 41 per cent said that they were very satisfied.

Psychosocial Assistance and Comprehensive Health Care for Victims Programme

97. By means of Decree No. 1290 (art. 163), the Victims Act provided for the establishment and design of this programme as the Government's response to the adoption of rehabilitation measures in connection with individual reparation. The Psychosocial Assistance and Comprehensive Health Care for Victims Programme currently provides for three categories of psychosocial assistance strategies: individual, family and community.

98. Average attendance at the psychosocial support sessions varies according to demand in each category, as follows:

- Individual: average national attendance six sessions (out of eight planned) (a. First contact and defining a plan; b. Support; and c. Close)
- Family: average national attendance six sessions (out of eight planned) (a. First contact and defining a plan; b. Support; and c. Close)
- Community: average national attendance five sessions (out of six planned) (a. First contact and defining a plan; b. Support; and c. Close)

99. For the implementation of the psychosocial support component of the Psychosocial Assistance and Comprehensive Health Care for Victims Programme in 2016 for each of the categories (individual, family and community), the cost per person is 234,694 pesos (approximately US$ 79).

100. The Victims Act is thus a law that is in line with international standards on comprehensive reparation for victims of human rights violations and breaches of international humanitarian law, in compliance with the treaty obligations of Colombia and the rights to truth, justice and reparation.