



INFORME IPRI COLOMBIA 2022

# VIOLENCE, IMPUNITY AND CRIMINALIZATION

## against indigenous peoples in COLOMBIA



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BOGOTA, DECEMBER 2022



IPRI COLOMBIA REPORT 2022

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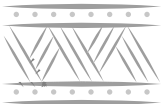
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# PRESENTATION





The organization's current efforts are focused on Colombia, Mexico, Brazil, the Philippines, India and the Democratic Republic of the Congo, countries with a high incidence rate of these problems.

This report is a product of IPRI's ongoing work in Colombia. It identifies the features and patterns of violence, impunity, and criminalization that Indigenous Peoples have historically suffered in this country, focusing on the period 2021-2022.

This report does not purport to be an academic paper. Its purpose is to encourage collective reflection and highlight under-represented perspectives. The report gathers qualitative and quantitative data produced by the Colombian government, multilateral human rights organizations, research centers, Indigenous organizations, and non-governmental organizations (NGOs). The report also provides a brief outline of the national situation in Colombia to provide context for the facts and cases under analysis.

This report calls attention to the ways that the Colombian State continues to violate the fundamental human rights of Indigenous Peoples by action and omission.<sup>1</sup> We reference verifiable cases that shed light on an unfortunate reality in Colombia: Indigenous leaders and communities suffer when they engage in social causes (including their own defense) while those who perpetrate violence against them are protected by impunity. It describes the phenomena of impunity and criminalization, critical topics that researchers and even those in the Indigenous movement have neglected despite their relationship to multiple forms of violence.

This report also calls attention to the distinctive ways that violence is experienced in accordance with ethnicity and culture. While Indigenous leaders and community members experience violations individually, there is also the collective subject that experiences irreparable harms: the Indigenous community. Accordingly, Indigenous Peoples count on legally recognized collective rights to sustain the vitality of their culture as expressed in diverse manifestations of Indigenous space, spirituality, and law.<sup>2</sup>

Presently, Indigenous Peoples are constrained in their rights and in opportunities to exist as cultural distinct Peoples due to the pervasive violence and oppression they experience in Colombia. This includes distinct, documentable acts such as homicides, massacres, mutilations, forced displacement, and

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<sup>1</sup> Supreme Court of Justice of Colombia. Order No. 31539 of July 31, 2009. MP Augusto Ibáñez Guzmán.

<sup>2</sup> Constitutional Court Magistrate Manuel José Cepeda Espinosa recognized the risk of extermination of Indigenous communities in Decree 004 of 2009.

forced confinement as well as less tangible aggressions such as racism, exclusion, and the lack of recognition for their values and culture. The pervasiveness and continued nature of this violence demands the effective implementation of human rights protections for Indigenous Peoples in Colombia in accordance with international law.

The author-consultants of this report express their gratitude to IPRI representative in Colombia Leonor Alabama for the trust that she placed in this project, the Indigenous People that attended the in-person event in Bogotá for their valuable and informative contributions, and Sonia Catalina Fracica for her support and expertise.







# NATIONAL CONTEXT





The patterns of violence, impunity and criminalization suffered by Indigenous peoples in Colombia throughout history have not gone away. Context-specific, factors may change, but the killing of Indigenous persons, the presence of armed groups, and wanton natural resource extraction is still pervasive in their territories.

The period after the signing of the FARC Peace Agreements has been no exception to this pattern of violence. The outcomes of demobilization have varied by region. In some areas, the post-Peace Accord arrangements have yielded favorable conditions, but these represent the exceptions, not the norm. Indeed, the Departments of Nariño, Chocó, Cauca, Valle de Cauca, Antioquia, Arauca are worse off today than before the demobilizations. This is because the dissolution of the Revolutionary Armed Forces of Colombia in 2016 only created a space for different armed (sometimes criminal) groups to inhabit and compete over. The armed occupation of towns and the kidnapping have gone away but the assassination of Indigenous persons, including indigenous political leaders, and now, practices of forced confinement and displacement, inflict damages against Indigenous Peoples.

More recently in Colombian history, the presidential campaigns and the unprecedented election of a president from the political left, Gustavo Petro, have brought about unexpected and unprecedented reforms for the military and drug policy, and a government-backed programs for achieving “total peace.” The success of the new proposals will depend on difficult processes of negotiation and compromise as well as the direction that demobilizations take. In the case of the latter, transitional justice mechanisms may be used to encourage violent groups to abandon criminality. These would enable the government to levee mitigated punitive measures for offenders that collaborate with the government and contribute to the truth process. In a best-case scenario, violence, impunity, and criminalization against Indigenous peoples could decrease.

#### **a. Contextual Considerations: Noncompliance with State Responsibilities**

Under national and international law, the Colombian State is responsible for the obligation to protect human rights and prevent human rights violations. This includes the duty to guarantee to full exercise of rights for all individuals, legal subjects, and collectives, and, in cases where this does not occur, to deploy the necessary resources to rectify the situation.<sup>3</sup> In the case of Indigenous peoples, the Colombian state has the obligation to guarantee their ability to exist as ethnically and culturally unique communities

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<sup>3</sup> Pueblo Bello Massacre Case. Inter-American Court of Human Rights. <https://tinyurl.com/bddy8hfj>

with collective rights. Furthermore, the State must abide by the lawful determinations of national and international courts.<sup>4</sup>

As of today, the Colombian state stands in clear dereliction of these duties and responsibilities. This becomes evident when examining the processes of Colombia's Constitutional Court. In recent years, the number of formal appeals for the protection of ancestral territories by Indigenous has surged. This development is, in part, an outcome of government proposals to update the country's land registry system. In many cases, Indigenous Peoples saw the reforms as a legal mechanism to dispossess Indigenous communities of their territories. Accordingly, Indigenous organizations have demanded that the State reassess and approve Decree 2333 of 2014 for the protection of ancestral territories.

For its part, the National Commission of Indigenous Territories (CNTI) has submitted over 170 protection claims to the National Land Agency since 2013. However, the government's response to this has been to recognize claims at the rate of one claim per year. This includes a determination favoring the Emberá Katio people and the Jai Dukama territory, which took nine years.

Another area of little progress concerns Indigenous Peoples' ability to exercise the right of political participation. This was a central theme in the 2016 Peace Accord document, which is indicative of Colombia's long and complicated history of political violence. The document establishes the goal that, "by 2027, the ethnic groups of Colombia will be able to engage in political participation with guarantees of safety." As this date approaches, the active development of genuinely democratic, inclusive, inter-ethnic and intercultural Colombia is still a vision. Indigenous grassroots organizations, community members, and leaders—and the Indigenous political movement as a whole—are regularly exposed to persecution and threats of violence for engaging in legal political actions.

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<sup>4</sup> According to Constitutional Court ruling T-063 of 2019 the duties of the Colombian State regarding in relation to ethnic groups are to "(1) recognize, respect and protect ethnic and cultural diversity, including the subsistence economies of Indigenous Peoples; (2) promote the social, economic and cultural rights of Indigenous peoples, respecting their customs, traditions and institutions; [and] (3) *adopt special measures to guarantee these communities the enjoyment of their rights and real and effective equality for the exercise thereof*; Accordingly, they must be protected against violations of their rights and have access to effective legal procedures. (emphasis ours)



The Peace Accords also made way for the established of the Comprehensive Security System for Political Participation (SISEP) in 2017.<sup>5</sup> SISEP is commissioned with identifying political participation issues and increasing safety and protection for political actors and participants, including those engaged in the defense of human rights. Unfortunately, this initiative has not ushered any clear process as far as the especially recognized ethnic peoples in Colombia are concerned. Indigenous and Afro community leaders continue to die as a consequence of political violence in Colombia.

## **b. Obstacles to Justice:**

### **A Reflection on identity and Legal Recognition**

It is extremely concerning that in the 21st century the existence of some Indigenous Peoples is debated, and the formal recognition of their collective rights is so often denied. This generalized and pervasive denial of Indigenous Peoples is fertile ground for criminalization processes that suppress ethnic peoples.

For centuries, Indigenous Peoples have suffered from essentializing, developmentalist, and racist discourses about the the nature of “original peoples” Written from a Eurocentric perspective, these discourses posit Indigenous Peoples as a radical “other,” normalize disdain directed against them, and posit Indigenous culture and practices as inferior. At the level of state operations, they facilitate the creation of laws and policies designed to “manage” Indigenous peoples and debilitate their culture.

Historical, these discourses have been the State’s most effective tool to dissolve ethnic communities in Colombia. They have been produced without Indigenous People ever having the opportunity to present themselves or propose the criteria that might be used to determine identity. Accordingly, the most obvious criteria of Indigenous Peoples’ own self-awareness of themselves as members of a culturally unique group or community hasn’t even been considered until recent decades. The criteria that have been historically privileged by the Colombian state largely restricted to “objective” physical markers and visible practices such as the ability to speak in an Indigenous language, dress, and the distance that a person has moved from a home territory. This method of “tallying-up” Indigenous culture also brings judges, administrators, and legal counsel to engage in comparisons of a court subjects’ exposure to “traditional culture” to their exposure to “exogenous (non-Indigenous) culture” in order to determine whether their indigeneity has “faded” or been “stamped out.”

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<sup>5</sup> SISEP is a set of national and territorial bodies charged with reducing the risks of political participation of in Colombia, which is regulated through Law 895 of 2017.

The “Indigenous identity debate” thus work against the permanence of Indigenous Peoples in Colombia since it relies on physical objects and visible manifestations that are naturally disposed to change and modification over time. It predicates formal recognition and constitutional protections for Indigenous Peoples on a process that has historically excluded Indigenous voices and puts culturally specific customs, traditions, and practices in the hands of the State.<sup>6</sup> Once Indigenous identity is reduced to checklists and purity test, it becomes much easier for state actors to disqualify Indigenous Peoples from social opportunities, legal processes, representation roles, legal exemptions, or benefits that could otherwise help their communities.

This is a stultifying dynamic that grants the State a disproportionate amount of powers vis a vis the Indigenous People in the country. In some cases, proceedings will play out as an assessment of an Indigenous communities attained level of “civilization” or “evolution.” Court experts will speak to the person’s process in the journey from “savage” to “semi-savage” to, finally, “civilized.” They will speak to the person’s degree of awareness concerning what is proper in society and the way they’ll be judged, or their ability to conclude that it is in their best interest to adapt and try to qualify for government programs.<sup>7</sup>

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<sup>6</sup> Protection Order T-593 of 1997 includes the commentary of Carlos Gaviria against restrictive legal definitions for cultural practices, noting that “tradition cannot be understood as practices and procedures that are done in the same way as ancestors, since the law of the Indigenous communities (like any legal system) are dynamic”.

<sup>7</sup> Protection Order T-254 of 1994 provides a helpful summary of the legal arguments that support restrictive or essentialist characterizations of Indigenous identity and counterarguments supporting more inclusive and dynamic characterizations of Indigenous identity.









**VIOLENCE**  
against indigenous  
peoples in COLOMBIA





In August 2021, the Commission for the Clarification of Truth (CEV) released an extensive report concerning the violence and damage that has been inflicted against Indigenous Peoples in Colombia over the country's half-century-long armed conflict.<sup>8</sup>

<sup>8</sup> Global Initiative. Cuaderno de trabajo del índice global de crímenes organizados. En red: <https://tinyurl.com/3rvemb4n>

In what follows, we call attention to three of the report's findings:

- All seventeen geographic corridors of armed conflict in Colombia coincide with Indigenous territories.
- The violence faced by Indigenous peoples is quantitatively and qualitatively under-investigated and generally unknown to the broader society.
- The systematic continued violence that is perpetrated against Indigenous peoples involves cultural subjugation and territorial dispossession that accelerates a process of ethnic, physical, and cultural extermination.

Recent denunciations by Indigenous authorities in Antioquia, Cauca, Nariño, and Chocó, as well as official statistics on violence against Indigenous Peoples in 2021 and 2022, also indicate that processes of ethnic extermination are persistent and becoming more severe.

Part of the problem lays in the Peace Agreements, which failed to address the unique needs of members of Indigenous sections in the FARC that would be demobilized and face special challenges. These challenges include difficulty or impossibility of accessing land, exposure to violence; inconsequential judicial actions for human rights violations against them; conflicts with development project in their communities (that are often established without the community's free, prior, and informed consent); and impunity for those that perpetrate human rights violence against them.

More broadly, the ongoing violence is linked to the dramatic rise of new criminal organizations, which challenge each other for control of resources and the local economy. The latest biennial report of the Global Initiative against Transnational Organized Crime identifies 52 recently established crime organizations in Colombia,<sup>9</sup> which operate in 250 municipalities and numerous geographic corridors. Seventeen of these organizations fight for regional dominance in the Department of Nariño, alone, a region that is also the site of ancestral Indigenous territories.<sup>10</sup> To add to the turmoil, the insurgent National Liberation Army (ELN) also continues to be active.<sup>11</sup>

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<sup>9</sup> According to INDEPAZ, narco-paramilitarism is on the rise in Colombia. Narco-paramilitary activity was registered in 332 municipalities in 2021, and in 345 municipalities in the first quarter of 2022, alone. This report, "Challenges to Total Peace: What the Government of Gustavo Petro Inherited" (Desafío a la paz total. Lo que recibió el gobierno de Gustavo Petro) is available at: <https://tinyurl.com/2xrm6jbt>

<sup>10</sup> "Ariel Ávila covers the Criminal Map of Colombia" (video), Cambio. December 2022. Available at: <https://tinyurl.com/3aj8ezw2>

<sup>11</sup> This report, "Global Organized Crime Index Workbook," is available at: <https://tinyurl.com/3rvemb4n>

From 2021 through 2022, Indigenous peoples were subjected to forced displacement, forced confinement, the assassination of leaders and traditional authorities, massacres, threats, the forced recruitment of their children and adolescents of both sexes; antipersonnel mines, sexual violence, forced disappearance, and other serious human rights violations (as defined by international humanitarian law) in Colombia. This pervasive violence has a negative impact on the autonomy and self-determination of Indigenous communities; it violates their territories and strikes at their diverse culture.

In what follows, we focus on four forms of violence that impact Indigenous Peoples in Colombia (forced displacement, forced confinement, massacres, and homicides). Throughout the following sections we also call attention to the conditions in which Indigenous youths experience violence and the importance of generations for the Indigenous communities.<sup>12</sup>

### **a. Forced Displacement**

The figures concerning forced displacement in Colombia are alarming. In the last five years Twenty-seven Departments have been impacted by forced displacement, with a disproportionate number of victims being from the Departments of Nariño (3,441), Chocó (2,420), Córdoba (1,090), Antioquia (737), Putumayo (494), and Valle of Cauca (353).

In 2021, 15,404 Indigenous persons were displaced from their ancestral territories (with 7,843 of these victims being from Chocó, Nariño, Córdoba, and Antioquia, alone). Within this number, 7,176 (46.5%) were minors under the age of 18. In the period January–November of 2022, the number of forcibly displaced Indigenous persons rose to 11,090, with 4,531 (40.8%) being minors.

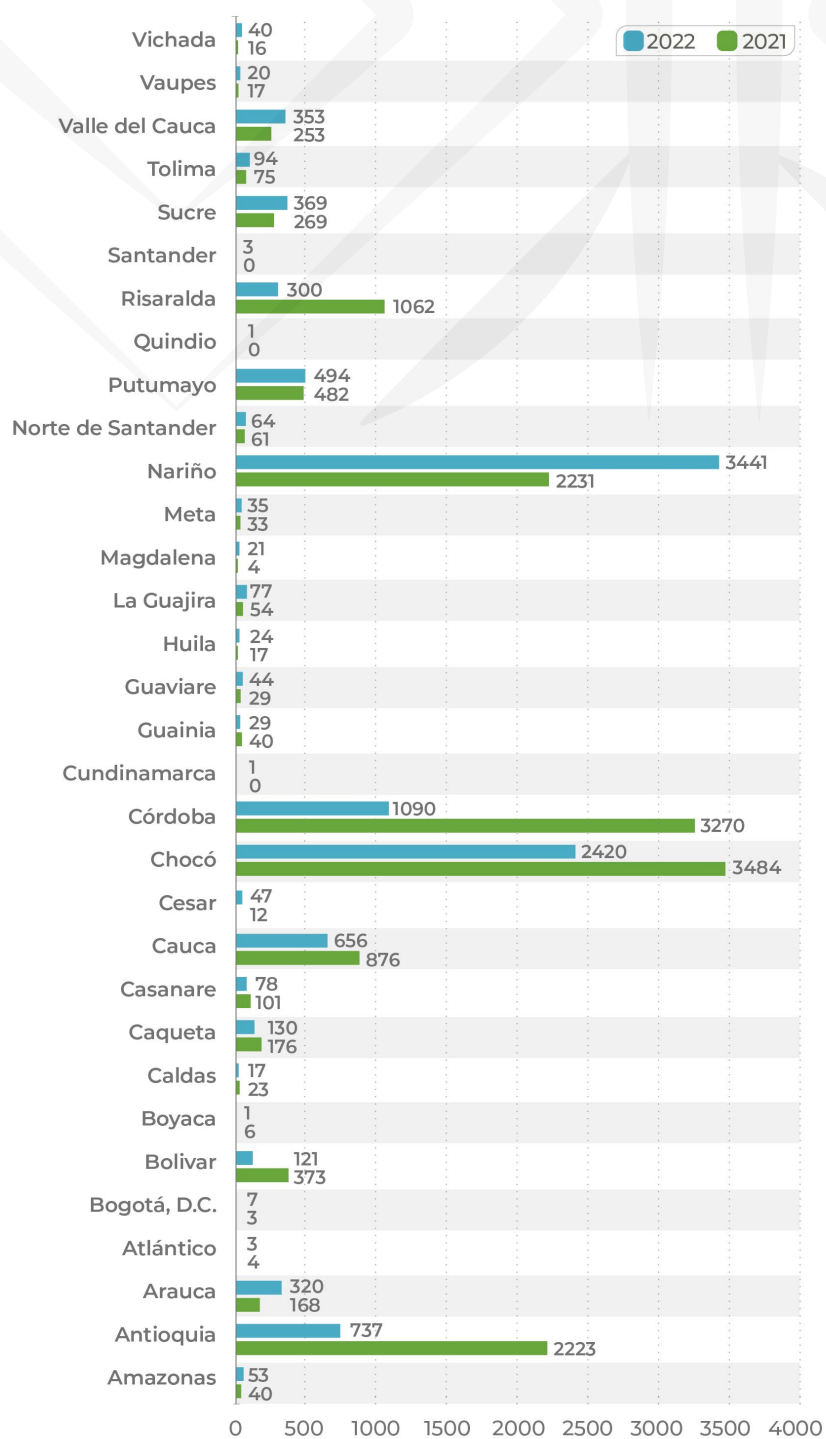
Faced with the impossibility of returning to their ancestral territories out of fear or continued violence and persecution, Indigenous communities often opt to establish themselves in urban or semi-urban areas. In these locales, Indigenous people feel pressured to “camouflage” themselves as mestizos and take other degrading measures to avoid ethnic discrimination. Furthermore, Indigenous persons must adapt to a new social environment that is ready to exploit their labor, turn them into sex workers, and expose them to human trafficking, drugs, and more armed groups.

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<sup>12</sup> It is important to note that databases on violence and human rights violations in Colombia generally do not provide disaggregate data concerning ethnicity. The statistics given in this section are drawn from the Unique Victims Registry (RUV) and two NGOs: Indepaz and the Colombian Commission of Jurists (CCJ).



## FORCED DISPLACEMENT



Source: Unique Victims Registry (RUV). The 2022 data does not include the month of December.

As these populations are subjected to psychosocial, spiritual, and physical harms, the resulting damages can become irreparable, particularly since there exist no care and rehabilitation mechanisms that respond to the magnitude of the crises that Indigenous persons and groups endure. In urban areas, Indigenous community members can lose access to their traditional doctors, elders, and culturally significant practices and spaces, which might otherwise support them. In the medium- and long-term, persons become fractured as individuals and as members of a cultural community.

This experience is particularly impactful for Indigenous children and youths, who experience a radical sense of physical and mental dislocation amidst new overcrowded and abject conditions. The conditions brought upon by forced displacement hampers their development and constrains the direction of their entire lives. This in turn, weakens the cohesion of entire communities. As Magistrate Manuel José Cepeda Espinosa explains, “the degenerative impact of forced displacement [on minors] is projected and multiplied into the future” to the point that a community disintegrates as a result of not having a younger generation to propagate their cultural existence into the future.<sup>13</sup>

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<sup>13</sup> See Constitutional Court degree 251 of 2008

## **b. Behind the Walls of War: Forcibly Confined Indigenous Communities**

Situations of forced confinement occur regularly in Colombia and limit Indigenous Peoples ability to engage in identity-bolstering cultural practices. To give just two examples, since November 20 until the time of writing this report, twenty-five Indigenous and Afro communities in the upper and middle sections of the Tamañá River in Chocó have been confined to their homes as a result of armed clashes between illegal armed groups.<sup>14</sup>

**“There are communities where the people do not go out to fish or farm. What are they supposed to eat? Now, they don’t go outside at all. If they do, it is only to flee to another community, where they will also be constrained.”**

*– Emberá Indigenous Leader  
Alberto Áchito*

Similarly, since September of 2022, more than 2,000 Emberá Katio Indigenous people in the municipality of Urrao, Antioquia, have been confined to their homes as a result of confrontations between the Gulf Clan narco-paramilitary group and the ELN.<sup>15</sup> These humanitarian crises have not been resolved, and Emberá Katio communities continue to have limited access to food and other necessities.

According to the Unit for the Comprehensive Care and Reparation of Victims (UARIV), 15,511 Indigenous persons were subjected to confinement in Colombia in 2021, a figure that includes 7,868 minors (i.e., 50.7% of the total forcibly confined Indigenous population). However, the Office of the United Nations High Commissioner for Human Rights (OHCHR) puts the same figure at 35,559, a number that surpasses the national count by 20,000 and reflects the State’s

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<sup>14</sup> “Humanitarian Situation Alert: 25 Afro-Descendant and Indigenous Communities Confined in the Municipality of Nóvita (Chocó)” (Alerta de situación humanitaria: Confinamiento de 25 comunidades afrodescendientes e indígenas en el municipio de Nóvita), United Nations Office for the Coordination of Human Affairs (OCHA), December 1, 2022. Available at: <https://tinyurl.com/5n9yh6ts>

<sup>15</sup> “Close to 2,000 Indigenous people are confined in the territories of Urrao, Antioquia, due to confrontations between groups outside the Law.” (Cerca de 2 mil indígenas están confinados en territorios de Urrao, Antioquia, por confrontaciones de grupos al margen de la Ley). *Semana*. September 16, 2022. Available at: <https://tinyurl.com/ms8trwbp>



tendency to minimize the number of victims.<sup>16</sup> A disproportionate amount of forced confinement incidents occurred in the departments of Chocó, Nariño, Antioquia, Valle del Cauca, and Risaralda.

In the period January–November 2022, UARIV registered 12,564 Indigenous persons in forced confinement in Colombia, with 6,630 (52.7%) of these being minors. This situation varies by region. According to URIV data, the number of persons that experienced confinement decreased slightly in the departments of Nariño and Pasto, while there was a dramatic increase in the Department of Arauca, the location of an ongoing humanitarian crisis.

As previously noted, UARIV data must only be taken as an indicator of the problem of violence impacting Indigenous Peoples in Colombia. This is particularly so with the phenomenon of forced confinement since it is often seen as a secondary aspect of a broader act of violence and is therefore underreported. In the following quote, Emberá authority Alberto Áchito explains the reasons why forced confinement is so difficult to quantify:

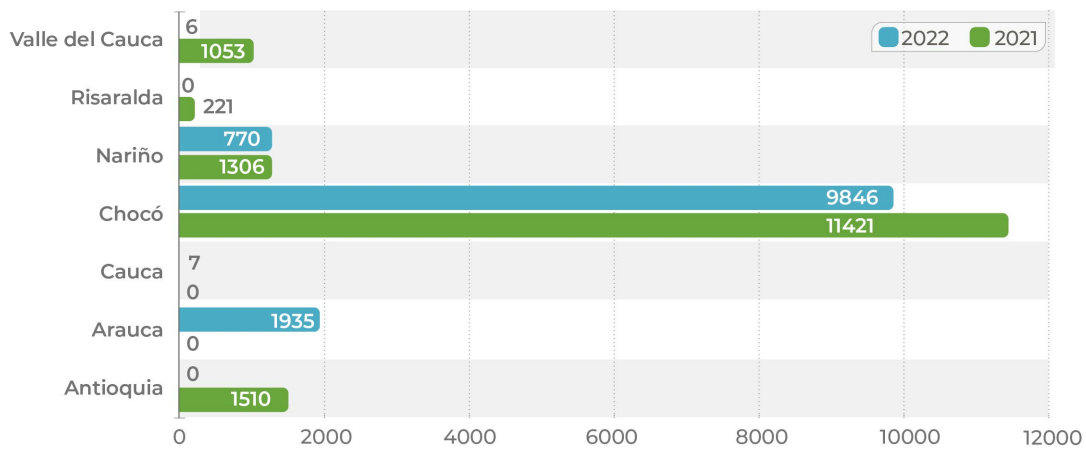
**We are talking about communities that are confined for days on end and cannot communicate throughout that time. It may be that the only place where they access cell phone service has been intercepted and tapped or that someone warned not to even go there. So, you can't do anything [about the confinement], and when you finally see that it's changing, it's because you see a group going down-river to other communities, where they will stay in schools or someone else's home and finally have a chance to eat. None of that goes into the government records or is picked up by the press, the United Nations, or anyone else that is there to denounce the situation. A Victims' Unit may activate humanitarian response missions, but these do not reach people in confinement, whose number can be in the thousands.<sup>17</sup>**

<sup>16</sup> "Colombia: Confinements" (factsheet), United Nations High Commission on Refugees (UNHCR), February 15, 2022." Available at: <https://tinyurl.com/4up9et68>

<sup>17</sup> IPRI-Colombia Meeting, November 19–20, 2022, Bogotá, Colombia.

Like forced displacement, confinement also impacts the entire Indigenous community. In both cases, the inability to interact with the territory and to carry out traditional practices generates irreparable cultural. It is the territory, after all, that determines Indigenous communities' mode of production and general way of life. Even in cases where Indigenous communities can return to their lands after displacement, it is often very difficult for the collective to reestablish the collective bonds that give life to Indigenous culture and sustain identity.

Thirteen years have passed since the Colombian Constitutional Court warned that forced confinement and displacement constitute factors for the cultural and physical extermination of Indigenous peoples in the country (Order 004 of 2009). In all this time, the Colombian State has failed to guarantee Indigenous Peoples' right to remain in, make use of, and freely occupy their territories.<sup>18</sup>



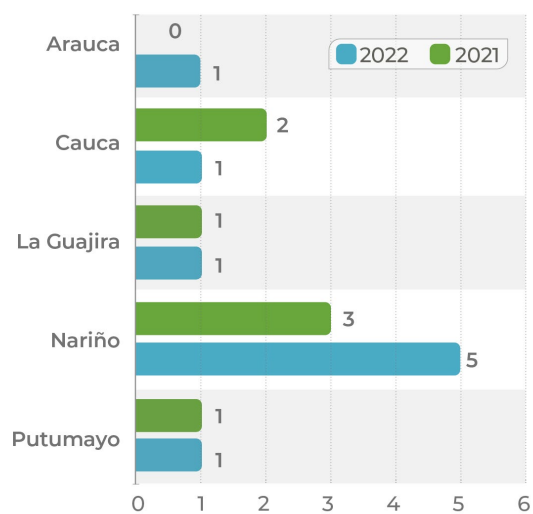
<sup>18</sup> The comments expressed at the Constitutional Court twelve years ago are still applicable to the situation of Indigenous communities in Colombia today: "All parties that have taken part in this armed conflict—guerrilla and paramilitary groups, but also, on verified occasions, the national military, as well as criminal groups—have contributed to this complex war pattern that, by force of arms, has entered the ancestral territories of Indigenous Peoples in the country, and which creates certain and imminent danger for the very existence of these groups. [...] [And yet] while Indigenous groups continue to be attacked, displaced, and disintegrated throughout the country [...] the Colombian State and Colombian society continues to pride itself on its multiculturalism, its ethnic diversity, and other aspects of national Indigenous culture."

### c. “They are Killed for Defending their Territory”

“They are killed for defending their territory and for raising awareness about our right to self-governance. The displacement and threats against our leaders are endless. They opened fire against a humanitarian mission [and] no arrests came out of the [investigation of that] massacre. Now, the armed groups operate out in the open. No one has been held accountable for what happened.”

*Indigenous woman authority of the Awá People*

On July 3, 2022, Acting-Governor of the Awá Inda Sabaleta Reservation in Tumaco, Nariño Juan Orlando Moreano was killed in a massacre, which also caused the death of two other community members and one injury. This was the eighth massacres perpetrated against the Awá in the last two years. This incident contributes to a pattern of constant assassinations against Indigenous communities. In fact, the year 2021 had the highest rate of massacres against Indigenous peoples (seven incidents) since the signing of the signing of the FARC Peace Agreement, but only until this year, which has already registered nine massacres, according to CNTI.<sup>19</sup>



Source: Indepaz. The 2022 data does not include the month of December.<sup>20</sup>

<sup>19</sup> “The Eternal Return of Political Violence Against Indigenous Peoples in Colombia” (El eterno retorno de la violencia política contra los pueblos indígenas en Colombia), National Commission of Indigenous Territories (CNTI), October 2022. Available at: <https://tinyurl.com/2hrhzbew>

<sup>20</sup> “Massacres in Colombia in 2020, 2021 and 2022,” Indepaz. Available. October 2023. Available at: <https://tinyurl.com/3vdce4xy>

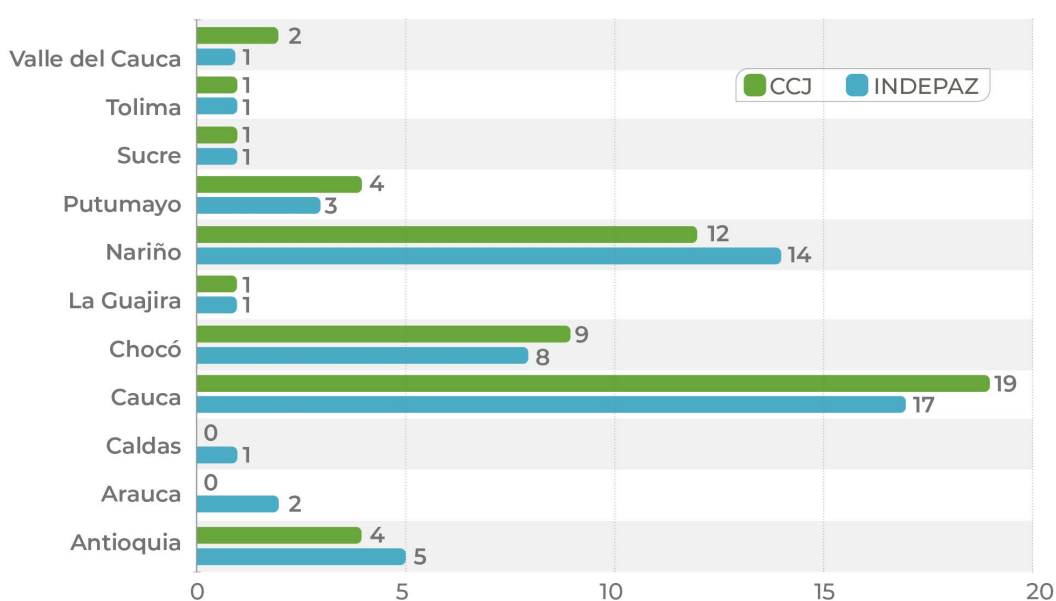


In terms of generalized homicides, 487 Indigenous persons were killed because of armed conflict in 2021, according to UARIV. Of these deaths, 61 victims were between the ages of 0 and 11, 50 victims were between the ages of 12 and 17, and 128 victims were between the ages of 18 and 28, for a total of 239 deaths of youths and minors (49% of the total annual number). In what has transgressed of 2022, 254 Indigenous deaths have been registered, with 31 victims being between the ages of 0 and 11, 31 victims between the ages of 12 and 17, and 56 victims between the ages of 18 and 28, for a total of 118 deaths of youths and minors (46.4% of the total annual number).

#### d. Homicide of Indigenous Human Rights Defenders

As concerns homicides committed against Indigenous human rights defenders in Colombia, this number is difficult to ascertain, especially since the government’s own Unique Victims Registry (RUV) does not collect this data. We thus turn to figures provided by two NGOs that specialize in recording these such cases: Indepaz and the Colombian Commission of Jurists (CCJ).

According to these organizations, 54 homicides of Indigenous human rights defense workers were committed in 2021. The regions with the highest rates of homicide for this group were Antioquia, Cauca, Chocó, and Nariño, and Antioquia.<sup>21</sup> For the period January–November of 2022, 42 homicides were carried out, according to Indepaz figures.



<sup>21</sup> “Social leaders, Human Rights Defenders, and Peace Accord Signatories Killed in 2022” (factsheet), Indepaz, December 2022. Available at: <https://indepaz.org.co/lideres-sociales-defensores-de-dd-hh-y-firmantes-de-acuerdo-asesinados-en-2022/>

A disproportionate number of homicides have occurred in the southwest of Colombia, which is home to Awá, Nasa, and Emberá peoples. These communities have endured different forms of structural violence and injustices for decades, including poverty and restrictions on the rights to the territory, self-governance, and autonomy.

In many cases, these homicides are directly linked to territorial clashes among criminal organizations, the ELN, and FARC dissident groups for control of the territory, land use, and local economies. Many of the territories where these homicides are committed are also the site of economic projects such as oil extraction, logging, and mining. More recently, the impacted areas are also the site of Indigenous land restitution and carbon credit initiatives, which merit special attention.













# IV

## **THE IMPACTS** of impunity on indigenous peoples in COLOMBIA



Scholars and organizations concerned with human rights have generally neglected the issue of impunity and its impacts on Indigenous Peoples in Colombia. As such, there is a void of data on the subject.



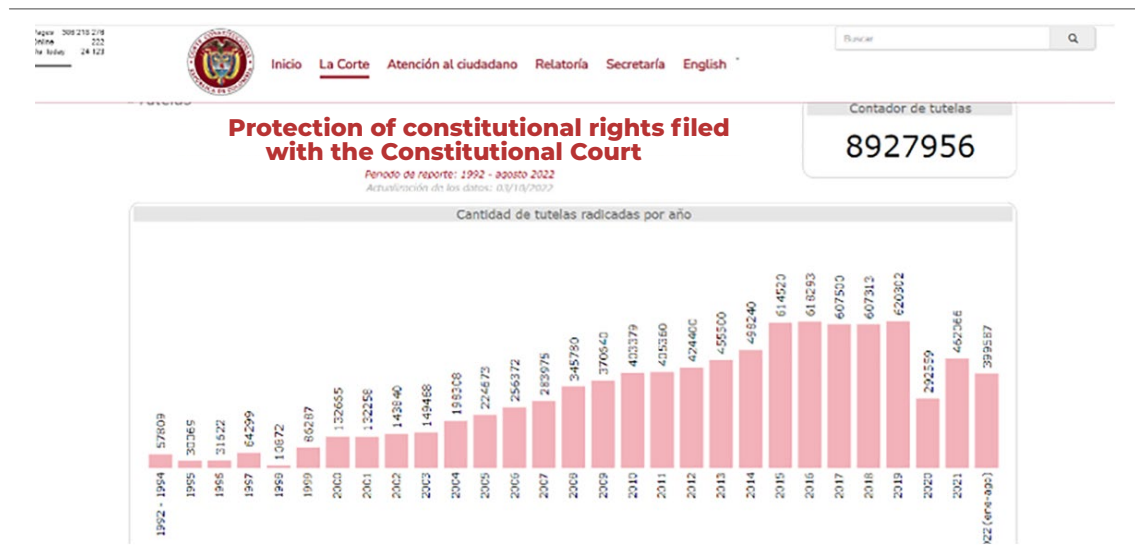
The scant information that is available permits the following assumptions: first, impunity is a major problem in Colombia, and second, the conditions that enable impunity in Colombia are present at all levels of government.

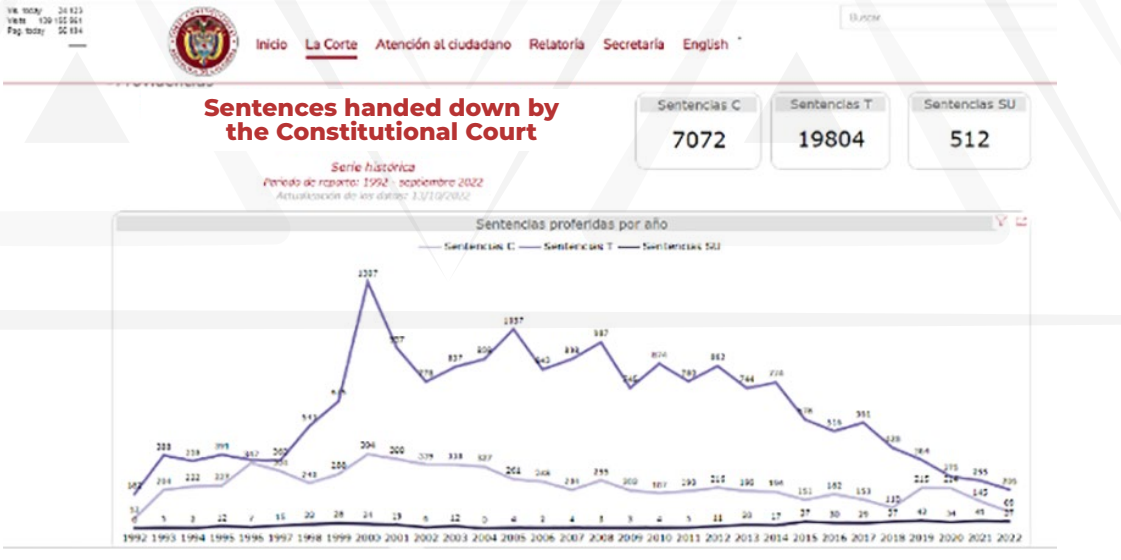
In what follows, we analyze compliance and non-compliance issues related to legally authorized protection orders, Special Jurisdiction of Peace (JEP) determinations, and state investigations of murders of Indigenous leaders and authorities in 2021 and 2022 to cast light on the structural problem of impunity.

### a. Compliance/Noncompliance with Protective Rulings of the Constitutional Court

Between 1992 and August 2022, the National Constitutional Court received 8,927,956 protection order requests.

Since 2014, the annual number of requests have increased annually, reaching an average the rate of 610,000 protection orders requests per year). The annual number of requests decreased in 2020 to 292,559 (a rate similar to that of 2007) but then went back up in 2021 (462,506 protection orders), and in the period January–August of 2022, 399,587 requests have already been submitted to the Court.





Regarding the number of punitive sentences related to these protective orders, in 2000, 1,307 sentences were handed out, making this year the highest in terms of respective sentences. After that, the figures begin to decrease of sentences decreased, with only 774 sentences handed out in 2014 (the lowest number of sentences handed out in the thirty years). However, by 2020, and 2021, this figure plummeted to 275 and 255 sentences, respectively. In the period of January–September 2022, only 206 sentences have been issued.

Meanwhile, the number of protective decrees issued by the Constitutional Court has been increasing. In 2021, 1141 orders were handed out (the highest number in three decades), and in the period January–September of 2022, 1,100 decrees have been handed out (the second highest number in this period).



There exists no clear explanation as to why the number of protective orders requests and sentences meted out by the Constitutional Court has decreased in recent years, while the number of decrees has increased significantly.

These figures are indicative of the overall ineffectiveness of the federal protection system. The Ministry of Justice has noted that 45% of the protective sentences of 2018 were unfulfilled and that this resulted in only one charge of contempt for those that were responsible for the noncompliance. In 2019, the rate of noncompliance rose to 51% and then decreased in 2020, likely as result of the COVID-19 pandemic. In 2021, the noncompliance rate increased to over 50%.<sup>22</sup> This situation, and particularly the fact that contempt orders are essentially never handed for noncompliance, has contributed to high levels of frustration on the part of the general public. It is a dynamic that reflects the generalized impunity that reigns in the country.

Constitutional Court ruling T-302 of 2017, referencing the Department of La Guajira, presents the State's incapacity to guarantee legal recourse for Indigenous Peoples and punitive measures for violators thusly

*The widespread, unreasonable, and disproportionate violation of the fundamental rights of children of an Indigenous ethnic group resulting from structural failures of national and local entities constitutes an unconstitutional state of affairs requires a coordinated solution by the State, particularly since the dignity of life and the integral development of children is at stake (due to lack of water, food, and health) and, by extension, the very existence of the Indigenous group, as well.*

Despite the lack of data concerning impunity, specific cases and incidents demonstrate the extreme difficulty for Indigenous Peoples to find recourse in the national legal system. The following case documents speak to this unfortunate scenario:

- Court Sentence 025 of 2004, which declares high levels of victimization experienced by
- Indigenous Peoples and other groups to be unconstitutional insofar as it indicates the failure of State institutions to provide effective responses to these issues and their underlying structural causes.
- Degree 004 of 2009, which requires the development of protection plans for 34 Indigenous Peoples that are at risk of disappearing due to inten-

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<sup>22</sup> "Ministry of Justice Concerned Due to Noncompliance of Protective Orders in the Country" (Minjusticia alerta por incumplimiento de sentencias de tutela en el país"), *Legis*, September 23, 2022. Available at: <https://tinyurl.com/zdf26h9u>

sive and pervasive nature of armed conflicts in the country. To date, the development phase for these plans, alone, has far exceeded the required 6-month period for completion.<sup>23</sup>

- Decree 173 of 2012, which requires the creation of an Urgent Provisional Response and Contingency Plan to respond to the humanitarian needs of forcibly displaced Jiw and Nükak Indigenous communities. This order was only partial fulfillment and has now been effectively forgotten.
- Decree 266 of 2017, which recognizes that the unconstitutional state of affairs noted in Court Order 025 of 2004 has not been resolved. This Court determination mandates that all protective orders required by The Victims' Law of 2011 be integrated into public policy. Here too, the matter still sits in noncompliance.

Ironically, there also exists in Colombia a series of Court determinations that respond to the problem of noncompliance, itself. Here too, noncompliance with these determinations appears to be the norm.

All this makes impunity a systematic, frustrating, and ever-present fact of life in Colombia. Interestingly, the only exception to this dynamic concerns claims concerning violations in prior consultation processes. This is likely because irregularities in this area can threaten the economic interests and reputations of companies and the fact that these companies generally possess the resources to comply with court determinations.<sup>24</sup>

## **b. Transitional justice: The Comprehensive System for Truth, Justice, Reparations, and Non-Repetition (SIVJRNR)**

In 2017, the Colombian government established the Comprehensive System for Truth, Justice, Reparations, and Non-Repetition (SIVJRNR) in accordance with the terms of the FARC Peace Accords to oversee cases that fell outside of the JEP charter. These were cases involving 1,350,181 members of specially recognized ethnic groups, who were victimized by armed conflict from 1964 (the start of armed conflict) through 2016.

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<sup>23</sup> The ruling required “the Director of Social Action and the Ministries of the Interior and Justice, with the participation of the Director of the ICBF, the Ministries of Education, Social Protection, and Defense, and the Director of the Comprehensive Action Program against Antipersonnel Mines [...] to formulate and implement ethnic protection plans in response to the armed conflict and forced displacement for [the identified Indigenous Peoples],” with the condition that “the legitimate authorities of the Indigenous Peoples” actively participate in this plan.

<sup>24</sup> Between 1992 and 2021, the Constitutional Court issued 66 rulings for the requirement of informed consultation processes.



In 2018, SIVJNR initiated court proceedings to try the accused (including members of FARC, the military, and the State) and determine punishments. However, cases involving Indigenous victims did not commence until the second half of 2022. These cases (collectively known as Macro-case 09) concerned forced displacement (the most common charge), homicide (the second-most common charge), and forced disappearance, as well as 14,261 cases of sexual violence.

The SIVJNR's dealt with cases of macro-criminality in the following three categories

- Non-pardonable acts perpetrated by FARC that were geared to exert social and territorial control and that injured ethnic territories and ethnic peoples' capacity for self-determination as well as their physical, cultural, and spiritual existence.
- Non-pardonable acts perpetrated by and the military state actors, and paramilitary groups intended to deprive ethnic peoples of their fundamental individual, collective, and territorial rights and thereby consolidate territorial control or strengthening insurgents.
- Non-pardonable acts perpetrated by the military and FARC that injured ethnic peoples' physical, cultural, spiritual, and territorial integrity within the context of armed confrontation and other hostilities.

Eight indicators were utilized to track the progress of the macro-cases, although these have not yet been applied to Macro-case 9. (see Table below)

### PROGRESS IN MACRO CASES

Cases	Versions made		Diligences of dialogical construction of the truth and interjurisdictional coordination and intercultural dialogue	Determination of Facts and Conduct Orders (ADHC)	Resolution of conclusions	Apparants linked by writ of summons	Collective subjects accredited as victims	Individuals deemed to make up the collective subject victims	Accredited individual victims	Total individual victims credited (sum of the two previous columns) <sup>a</sup>
	Versions	People								
01 <sup>1</sup>	75	316	-	1	1 <sup>15</sup>	114	-	-	3.235 <sup>8</sup>	3.235
02 <sup>1,9</sup>	211	79	82	-	-	79	11	105.110	187	105.297
03 <sup>4</sup>	508	508	7	4 <sup>11</sup>	1	508	-	-	1.444	1.444
04 <sup>1,5</sup>	203 <sup>2</sup>	144 <sup>2</sup>	23 <sup>2</sup>	1 <sup>11</sup>	-	316	116	44.993	340 <sup>8</sup>	45.333
05 <sup>2</sup>	96	87	26 <sup>3</sup>	-	-	148	138	178.149	145	178.294
06 <sup>3</sup>	23	30	23	-	-	30	4	N.D.	293 <sup>8</sup>	293
07 <sup>1</sup>	42	41	7	-	-	93	5	-	478	478
08 <sup>1</sup>	-	-	-	-	-	-	-	-	-	-
09 <sup>1</sup>	-	-	-	-	-	-	-	-	-	-
10 <sup>1</sup>	-	-	-	-	-	-	-	-	-	-

Source: JEP, covering the period through December 9, 2022.

The SIVJNR model for justice allows ex-combatants to qualify for impunity or mitigated sentencing in exchange for confessions and contributions to the peace process and includes restorative justice measures that seek to improve victims' life conditions. Unfortunately, with only eight years remaining before this process must come to a finish, tangible results and transformations have yet to be seen. Clearly, a process extension needs to be approved.<sup>25</sup> Without this and the State's commitment to prioritize this process, impunity is likely to prevail again, and Colombia will enter its newest chapter of failed justice for Indigenous peoples.

### **c. The Impacts of Noncompliance with Court Sentences**

As previously noted, the fact that Colombia's National Court rules in favor of protecting fundamental rights does not mean that its rulings are implemented or enforced. For Indigenous Peoples in Colombia, noncompliance means that they are still just as vulnerable to violation and injury today as they were before the Peace Accords. Regional and national Indigenous organizations, as well as Indigenous communities themselves, have denounced this situation tirelessly, pointing out the ways that systematic noncompliance increase the likelihood of human rights violations.

Indigenous Peoples have the legitimate expectation that sentences pronounced in their favor will be carried out by the State in good faith within a reasonable period. Unfortunately, Indigenous Communities frequently find that they cannot count on the good-faith application of judicial orders and decisions and that state actors employ various tactics to manipulate the system and make it nonresponsive to Indigenous Peoples' legal claims.<sup>26</sup> This includes the excuses of (1) lack of economic resources to enable compliance, (2) hermeneutical issues that prevent a clear understanding of the Court order; and (3) institutional or regulatory incapacities that limit action.

In Colombia, these excuses are proffered regularly despite the fact that public servants and judicial administrators are formally charged with respecting and abiding by all laws, regulations, and judicial orders (CP, Art. 123), which includes recognizing Indigenous Peoples as subjects of law and protecting their rights. By not keeping this commitment, public servants not only betray the principles of due process, but they also transform rights into, as the Constitutional Court put it, "hollow aspirations without substance."<sup>27</sup>

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<sup>25</sup> An initial process extension was approved in 2011 through Law 1448.

<sup>26</sup> Multiple documents of jurisprudence in Colombia note the fundamental elements of the right to due process. Court determination C-980 of 2010 [and/or T-295 of 2007] enumerate them thusly: "the right to jurisdiction, which in turn implies the rights to free and equal access before judges and administrative authorities; the right to obtain procedural resolutions and determinations within a reasonable period; the right to appeal the latter before higher-level authorities; and the right to effective compliance of court rulings.

<sup>27</sup> T-554 of 1992.



# THE CRIMINALIZATION of indigenous peoples in COLOMBIA





Criminalization occurs when specific human conditions or behaviors are presented through state mechanisms and infrastructures as being wrong or illegal even when they are not. The term also categorizes situations where a person or group is made to face trial as a result of misapplied regulations or laws. Presently, both forms of criminalization impact Indigenous Peoples in Colombia, resulting in harms and violations. These are dynamics that require urgent attention.



The Inter-American Commission on Human Rights (IACHR) refers to a specific form of criminalization in its the observations and recommendations report, although not this term.

Focusing on the Colombian national strike of 2021 and its repression, it expresses concern for the State's use of ethnic and racial profiling in its response to social protests.<sup>28</sup> The report shows how a state-sponsored incident of racial profiling (as well as the general presentation and coverage of that incident for a broader publics) help sustain discriminatory beliefs about ethnic groups among the broader national populations, including the categorization of Indigenous people as transgressors that should be the targets of punitive justice. When these broad social dynamics intertwine with institutional dynamics, it then becomes possible for society to respond to Indigenous persons and their actions from the perspective of crime preventions and risk management.

In the judicial arena, criminalization occurs through lawsuits that target Indigenous people's ability to enact autonomous jurisdictions, claim lands, and engage in traditional practices (such as farming, hunting, fishing, etc.), even when there are national and international laws to guarantee these rights. In the political arena, criminalization plays out through the repression of political protests, the prosecution of Indigenous leaders, and the production of negative portrayals of Indigenous Peoples and groups.

Although acts of criminalization may be directed toward specific Indigenous organizations or individuals, these can ultimately impact entire communities as they engender collective traumas, internal tensions, disrepute, and negative stereotypes. Furthermore, criminalization generates a social environment where Indigenous Peoples become vulnerable to harm or injury for engaging in legitimate practices, such as the defense of rights, opposing development projects, or being politically active.

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<sup>28</sup> Follow-Up of Recommendations: Colombia 2021 Field Visit – First Report” (Seguimiento de recomendaciones. Visita de trabajo a Colombia 2021 – Primer Informe), Inter-American Commission on Human Rights (IACHR), January 25, 2023. Available at: <https://tinyurl.com/mu6j3ft5>

## a. Indigenous People and the Prison System

Having established that criminalization contributes to the prosecution of indigenous persons and groups, in this section we focus on Indigenous populations and the prison system in Colombia.

Incarceration criminalizes the person that is incarcerated. Criminalization can thus serve as tool to silence and stigmatize Indigenous leaders. Not incidentally, indigenous persons being remanded to prolonged periods of pre-trial “preventive detention” are common in the country.<sup>29</sup> Scholars and investigators have largely neglected the topic Indigenous prisoners in Colombia. The limited available data, however, is sufficient to demonstrate that Indigenous People in Colombia experience considerable suffering and deprivations as prisoners.

According to the Statistical Bulletin of the National Penitentiary and Prison Institute (INPEC), in the period January–October 2022, 23% of all new persons deprived of liberty in Colombia were Indigenous—that’s 1,510 new prisoners of Indigenous ethnicity in Colombian jails. Within this number, specific indigenous ethnicities make up a disproportionate number of incarcerated. It is estimated that of this total number of new Indigenous inmates, 1,049 are from the country’s western and central regions, including a disproportionate number of Nasa People.

Differential Approach	Central	Western	North	East	Northwest	Viejo Caldas	Total	Percentage	
ETHNIC	Indigenous	464	585	208	39	71	143	1,510	9,4%
	Afro-Colombian	1,140	2,259	222	215	629	305	4,770	29,7%
	Black	6	44	0	0	0	1	51	0,3%
	Raizal	15	7	36	2	8	2	70	0,4%
	Romani or Gypsy	15	3	1	1	2	2	24	0,1%

Source: INPEC, 2022

According to INPEC data, Indigenous men are most frequently incarcerated for the crime of homicide, followed by trafficking, manufacture, or possession of narcotics. Indigenous women are most frequently incarcerated for narcotics-related offenses.<sup>30</sup>

<sup>29</sup> 228 Indigenous persons could be identified to be this situation in 2016.

<sup>30</sup> “Report on the Indigenous and Afro-Colombian Prisoner Population” (Caracterización de la Población Reclusa Indígena y Afrocolombiana a cargo del INPEC), National Penitentiary and Prison Institute, 2016, pg. 31–32. Available at: <https://tinyurl.com/tadb8sh2>

The Inter-American Court of Human Rights has called attention for “the need for Indigenous representatives and authorities to actively participate in the development, implementation, and evaluation of criminal policy in States and to establish dialogue and cooperation among these authorities and the conventional justice system.”<sup>31</sup> It specifically encourages States to adhere to the principles set forth in the Organization of American States’ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, noting that “when legal criminal sanctions are imposed on members of Indigenous peoples, preference should be given to sanctions other than imprisonment in accordance with [Indigenous] customary law.”<sup>32</sup> This recommendation is designed to sustain subjects’ vital relationships to their culture, community, and territory, whose disruption can entail “cruel, inhumane, or degrading treatment, even rising to the level of torture.”<sup>33</sup>

At present, there is no way to determine whether Indigenous prisoners in Colombia ever counted on any such procedural guarantees or exceptions during their litigation process. We do know they are prevented from accessing the support of their traditional authorities and healers and from engaging in cultural practices. Even in cases where an Indigenous person transgress the law, the consequences should not entail having to abandon your ethnic identity and culture.

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<sup>31</sup> “Advisory Opinion Oc-29/22 of May 30, 2022 Requested by the Inter-American Commission On Human Rights: Special Considerations Concerning Differentiated Human Groups Deprived of Liberty” Inter-American Court of Human Rights (Opinión consultiva Oc-29/22 de 30 de mayo de 2022 solicitada por la Comisión Interamericana De Derechos Humanos: Enfoques Diferenciados Respecto De Determinados Grupos De Personas Privadas De La Libertad), IACHR, 2022. Available at: <https://tinyurl.com/3hudwen9>

<sup>32</sup> “Principles and Good Practices, Supra, Principle III-1” (Principios y Buenas Prácticas, Supra, Principio III-1), IACHR.

<sup>33</sup> Cf. SPT, Sixth annual report, CAT/C/50/2, Supra, para. 93.









 **VI**  
**CONCLUSIONS**





Under present social and political conditions, Indigenous Peoples in Colombia continue to be vulnerable to acts of violence, criminalization, and the impacts of impunity. With every act of violence, forced displacement, forced confinement, or other violation perpetrated against Indigenous communities, their risk for physical and cultural extermination increases.

We witness the intensification of violence that results from armed contestations over territorial control, illegal rents, and natural resources and the State's failure to guarantee the rights of indigenous Peoples. We witness the ways that armed actors treat Indigenous Communities as an obstacle to the development of illegal economies and target these with violence. We are confronted with the ways that Indigenous communities are confined and murdered for the simple act of staying in their territory and deploying their own defense.

We thus call for measures that increase the capacity of judges and other public servants to advance legal processes (including criminal investigations) in culturally competent ways. Furthermore, we call for the establishment of effective assistance programs that respond to the impacts of criminalization on the Indigenous Peoples in Colombia.









IPRI COLOMBIA REPORT 2022

**VIOLENCE,  
IMPUNITY AND  
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Bogota, December 2022  
INDIGENOUS PEOPLES RIGHTS INTERNATIONAL



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