

# The Movement in Resistance against Eye Aggressions by MOCAO as a social movement for justice, reparation and the right to peace and freedom in Colombia

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1 MOCAO

## Summary

The collective action of MOCAO, *Movimiento en resistencia contra las agresiones oculares del ESMAD* (Escuadrón Móvil Antidisturbios) is a social strategy to demand access to justice and the fulfilment of guarantees of reparation and non-repetition in Colombia. A brief account of significant events in our trajectory as a social movement is presented, together with our letter of petitions to the national government as victims and survivors of ocular aggressions in the framework of police violence. Although ESMAD today has been reformed under the name of the Unit for Dialogue and Maintenance of Order (UNDMO), we consider that there have not yet been structural changes to ensure that its function is related to protecting the constitutional right to social protest.

**Keywords:** Collective action, social movement, police, torture, Colombia, reparation.

## Introduction

In this article we propose to address, from our experience as victims and survivors of eye trauma, the actions carried out by the Mobile Anti-Riot Squadron (ESMAD) of the national police in Colombia through an analysis of its trajectory as an agency attached to the Ministry of Defence of the nation.

The ESMAD was established as a body of the National Police specialised in agglomerations, and has now been renamed as the Unit for Dialogue and Maintenance of Order (UNDMO)<sup>1</sup>. According to the website of the Colombian National Police, the functions of the new UNDMO include “guiding the deployment of police activity to control disturbances, riots or

any other criminal, violent or anti-coexistence activity resulting from the agglomeration of people, with the aim of maintaining or restoring conditions of public order, security and coexistence” and “guiding the application of human rights standards, within the framework of the mission of the Dialogue and Maintenance of Order Unit”. UNDMO was created in 2023 as an initiative of the new government of Gustavo Petro, driven by an idea of renovation and modernisation of the police force, based on the peaceful treatment of social protest and respect and care for human rights. However, civil society organisations have expressed their concern that these changes are only rhetorical and are not reflected in a change in the treatment of social protest. Thus, in a June 2023 communiqué from the *Mesa por la Reforma Policial* (MFP) (2023), of which Mocaio is a member, we expressed deep concern “*about the internal transformation process of the National Police, which has been characterised as endogenous and cosmetic, and which does not favour integral transformations and real debates about the role of the police in our democracy and in peace-building scenarios*”.

According to Resolution 1091 that established the UNDMO, the main difference between the UNDMO and the ESMAD is that the former will have dialogue units that seek to mediate with the population during the course of anti-riot operations. As of the date of this article, the presence of such a dialogue group has not yet been manifested in any police action. To the contrary, the violent actions of the former ESMAD have been systematic, with practices of physical violence and acts of torture, as reflected in the reports of human rights organisations<sup>3</sup>. It is worth highlighting the reports of national

1 Ministry of Defence Resolution 1091/2023

2 Bogota. MFP. 13 June 2023. <https://ddhhcolombia.org.co/2023/06/14/transformacion-esmad-no-fue-estructural/>

3 Temblores ONG, PAIIS Uniandes (2021). *Shots fired. Traumas to the eyes during the national strike*. <https://www.temblores.org/publicaciones>

Inter-American Commission on Human Rights (2021)	The Inter-American Commission expresses its firm condemnation and rejection of the high levels of violence registered in the context of social protest, both that caused by the excessive use of force by the public security forces and that provoked by groups outside the protest itself.(...) The IACHR noted with concern that cases related to alleged human rights violations committed by the police, particularly by the ESMAD, are being heard by the military criminal justice system, as they are considered to fall under the notion of “acts of service”.
Human Rights Watch (2023)	“Police committed serious human rights violations in response to largely peaceful protests in Colombia since 2019. Efforts to investigate and prosecute those responsible have been limited. Human Rights Watch examined evidence linking police to 25 killings of protesters and bystanders, as well as dozens of injuries and arbitrary arrests, in the context of peaceful demonstrations in 2012. As of October 2022, four police officers have been charged and five others charged in connection with the killings. No one has been charged in relation to the injuries or arbitrary arrests.”
Amnesty International (2022 -3)	“In May, Indigenous leader Luis Tombé was shot dead during an environmental protest in the town of Miranda, Cauca department, when members of the Mobile Anti-Riot Squad (ESMAD) opened fire on protesters calling for the release of colleagues who had been detained by the police. In June, the civil society platform Campaña Defender la Libertad criticized the excessive use of force against demonstrators by ESMAD, which had caused eye trauma to one person at a protest at the District University of Bogotá calling for more resources and improvement of the university’s infrastructure.”

organisations such as Temblores ONG which have documented systematic practices of violence in social protest scenarios. On the one hand, 103 acts of eye trauma were documented in the context of the national strike of 2021, and 40 homicides allegedly committed by the National Police were identified<sup>5</sup>. The following table reflects particularly relevant excerpts from reports by international organisations.

### Political and Legislative Context

The 1991 Constitution represented a significant advance in terms of rights and the exercise of freedoms in Colombia. Social protest as a right is included in Article 37 of the Constitution: “*Any part of the people may assemble and demonstrate publicly and peacefully. Only the law may expressly establish the cases in which the exercise of this right may be limited*”. However, in 1999, the General Directorate of the Police created the ESMAD<sup>4</sup>. Since its creation, murders, torture and disappearances have been attributed to them. The report *Silencio Oficial*<sup>5</sup> by Temblores ONG documented at least 34 homicides allegedly committed by the ESMAD in its first 20 years of existence, a figure that does not include homicides committed during the social

unrest. The research *Represión en la Mira (2021)* by Defender la Libertad, Mocoa and CAPS describes how since the creation of ESMAD in 1999, until June 2022, 169 cases of eye injuries have been documented in the context of social protests in Colombia. It is important to mention that the patterns identified in the cases documented in 2021 are an extension and maximisation of what happened from 1999 to 2020, i.e. previously existing patterns that are reproduced. In 82% of the cases in which the age was known, these were young people from popular sectors who exercised their right to social protest.

In Colombia, both denunciation and access to justice are difficult due to fear of reprisals and the encounter with a legal system that does not respond to social, administrative and constitutional compliance needs<sup>6</sup>. This leads to many cases that have not yet been clarified. However, there are some notable

<sup>4</sup> Transitional Directive 0205 of 24 February 1999

<sup>5</sup> Temblores ONG (2020). *Official Silence: a stunned cry for justice on the occasion of 20 years of ESMAD's existence*. <https://tembloresong.gumroad.com/l/silencio-oficial?layout=profile>

<sup>6</sup> These cases must be seen in the context of overall police violence and impunity. The report *Bolillo, Dios y Patria* by Temblores ONG (2024) documents 350 homicides by the security forces between 2020 and 2022. In the first half of 2023 alone, there were 68 cases of physical violence, 12 cases of homicidal violence, and 5 cases of sexual violence. More than 40% of cases of physical violence by the police occur in everyday contexts, such as moving around and inhabiting public spaces. Sexual violence by the police is registered in detention centres, such as the Police's Immediate Attention Centres (CAI). In the face of all this, the same report states that impunity for all types of police violence stands at 96%, and in the specific case of physical and sexual violence, impunity is 100%.

cases that have been prosecuted, such as that of Nicolás Neira<sup>7</sup>, who was murdered by the Squadron in 2005 during a demonstration commemorating Workers' Day in Bogotá. These isolated cases should not be misleading with regard to the cycles of impunity and repetition of victimising acts by the National Police and ESMAD / UNDMO. Thus, for example, the death of Dilan Cruz on 23 November 2019<sup>8</sup>. The various evidence, including a detailed analysis by the organisation Forensic Architecture, shows that Manuel Cubillos, captain of ESMAD killed Dilan in a premeditated manner, with a cold-blooded shot against a young man who, with his back turned, was seeking refuge from a group of police officers who were attacking a demonstration by residents. However, to this day, the case of Dilan Cruz has still not had a single criminal conviction for the responsibility of the State in these events.

Against this background, it is necessary to read the way in which this squadron, and the National Police, gave war-like treatment to social protest in the years of the social outbreak of 2021 and all the deaths and eye mutilations that ensued. As the IACHR points out in its report, the ESMAD acted without control, without any mechanism to verify its actions and with total impunity (IACHR, 2021).

### **The organising process, the notion of victim and survivor and the importance of collective action and social mobilisation.**

MOCAO emerged on the 9<sup>th</sup> of April of 2021 in the midst of the protests that took place in the country over the various tax reforms proposed by the government of Ivan Duque. Since its foundation, its work has focused on the recognition that victims and survivors of ocular aggression deserve from the Colombian State. From being a small group, MOCAO has today become a broad territorial network that encompasses and supports young people in a large part of the country.

As a result of the dirty and brutal war that has ravaged Colombia for years, social movements have been persecuted, attacked, threatened, singled out and been targeted for stigma-

tisation, destruction and assassination. All these violent actions against human rights defenders and civil rights defenders are framed in a notion of a violent society and a dispute for power, where some economic and military elites can use the state, society and the community according to their particular interests. The national strike of 2021 was initiated, among many things, because of an unfair and arbitrary tax reform that benefited the economic elites of the country. The main characteristic is that although there may be some relatively institutionalised structures (such as the National Strike Committee) it was a systemic movement, which shook all sectors and social strata: social and popular movements, youth, peasants and workers, including trade unions, territorial movements, indigenous and Afro-Colombian peoples, Raizal and Palenquero, and urban communities and neighbourhood organisations, and, from there, the points of resistance were key, as well as the feminist and transgender movement, among others.<sup>9</sup>

The cruel and significant displays of violence exercised in the 2021 demonstrations by the security forces against civil society, which went around the world, marked a turning point in the public recognition and visibility of the violent treatment given to social protest in Colombia. Media pressure, the use of social networks and the support of the international community have led to progress in, for now, the recognition of these acts as crimes against humanity. Some of the people who make up this movement state that before the events of the social outbreak of 2021, exposing and denouncing the ESMAD and the police forces was a motive for forced disappearance, torture, harassment and persecution<sup>10</sup>. This is why the work of social organisations, human rights defenders and civil society in general who seek justice, peace, freedom and constitutional guarantees is so significant, considering that the State has the obligation to provide security in the exercise of collective actions. The coordination and support of international organisations is, in this sense, fundamental.

It is in the face of this reality that the notion of victim and survivor takes on a very significant relevance. Contrary to what some sectors in the country may believe, the victim is also a victim of police forces, which makes them a victim of the state,

7 The case of Nicolás Neira is one of the most significant in the struggle for human rights in Colombia. His case is currently being sought to be recognised as a crime against humanity. In 2011 the 37<sup>th</sup> Administrative Court of Bogotá condemned the State for action and omission, and ordered financial reparation for his family. Source: "Nicolás Neira 16 years in your memory". <https://www.justiciaypazcolombia.com/nicolas-neira/>

8 *Four years after Dilan Cruz was shot: Colombia looks in a broken mirror* (2023), El País. <https://elpais.com/america-colombia/2023-11-23/cuatro-anos-del-disparo-a-dilan-cruz-colombia-se-mira-en-un-espejo-roto.html>.

9 Estrada Álvarez, Jiménez Martín and Puello Socarrás (2023) *La rebelión social y popular de 2021 en Colombia, elementos para su comprensión*. Pg 30

10 Yuri Neira, Nicolás Neira's father, had to flee the country due to threats received as a result of seeking justice for the murder of his son. *Yuri Neira: A face of the struggle of victims of state crimes* (2018). El Espectador. <https://www.elespectador.com/colombia-20/conflicto/yuri-neira-un-rostro-de-la-lucha-de-las-victimas-de-crimenes-de-articulo-articulo/>

which failed in its work and caused them significant harm. This is evident in the cases of Daniel Bernal and Cristian Zárate, members of MOCAO who have been formally recognised that ESMAD acted unlawfully and recklessly. However, it could be positive for the victim that this classification always contains the nuance of “survivor”, since surviving implies an active action of overcoming the adverse situation. In this way, MOCAO is a social movement of victims who survived, who have been overcoming and are increasingly overcoming their difficulties in a more significant way, weaving networks within and outside their territories and the country.

We do not want to end this section without mentioning the importance of exercising the right to social protest: expressing one’s voice, denouncing what is illegal and fighting against what is unjust cannot and should never have a fatal outcome. And, in turn, it is the obligation of states to guarantee access to these rights and to assume their responsibilities towards their citizens.

Currently MOCAO continues to work on actions based on the demand for access to justice, respect and care for human rights, historical memory, art and culture. In 2023, we held the first national meeting on Eye Trauma Victims in the city of Bogotá and we are currently working on the organisation of the first international meeting of Victims and Survivors of Eye Aggression. We are also carrying out memory and theatre work<sup>11</sup>.

### **Progress, initiatives and difficulties in the psychosocial treatment of victims, survivors and their families.**

Police violence and eye assaults are events that, due to their magnitude, cause after-effects that accompany the affected individuals and their families for the rest of their lives. The consequences of shootings, attacks, sexual abuse, discrimination and other forms of violence affect both in physical terms, due to injuries, and in terms of psychosocial development, due to the impact on the life project.

These difficulties are exacerbated by the situation of mental health and access to health in Colombia, with overcrowded hospitals, state-run medical services with a very low level of efficiency in medical care, and daily inequalities, violence and corruption. In the face of all this, it is the initiatives of the surviving victims and their families, together with the support of some organisations that, out of good will and vocation, defend and care for rights, that make it possible to move forward in such challenging scenario. Eye injuries leave a series of sequelae that in most cases are progressive and worsen when there is

poor attention and care of the pathologies. The after-effects are multiple: cognitive, psychological, physiological, motorical, and social. The surviving victims live their lives, but they are burdened with the after-effects of torture. Many testimonies of victims/survivors of eye assault and police violence report symptoms of anxiety, post-traumatic stress disorder, panic, social isolation and apathy, sometimes in all areas of life, but often specifically with regard to social and collective mobilisation. In many cases, this transcends into the most intimate spheres, hindering contact with family and friends, as well as a negative impact on self-perception, developing intense feelings of sadness, anger or shame. Therefore, the consequences of these acts of torture also represent public health issues.

But beyond this, we consider that the ocular aggressions are acts of torture outside of detention<sup>12</sup> (MOCAO, 2023) since we observe intentionality in the injuries and the production of severe physical and psychological suffering by agents of the State. As collectives that have been victims of torture by the police, we ask that the State guarantee the rehabilitation and reparation of victims/survivors with models that are comprehensive, not revictimising, promoted by institutions that value diversity, respect human rights and comply with constitutional guarantees. These are fundamental elements if progress is to be made in terms of peacebuilding in the face of the crimes committed by the Colombian State forces. Likewise, the culture of “justification” of the violence exercised by official bodies must be exposed and denounced, since the media constitute spaces where stigmatising messages against youth and the right to protest are disseminated, and which also affect the way in which they must deal with the aftermath and their mental health.

Psychosocial treatment must also include guarantees of non-repetition, a progressive modification and eventual dismantling of ESMAD/UNDMO and the construction of a society that, from the grassroots, does not act aggressively in the face of protests and demands from the population.

### **Context of actions in legal terms and the worrying impunity in criminal matters**

One of the great current legal challenges in relation to eye assaults is the significant number of cases that reach the military criminal justice system<sup>13</sup> in Colombia, which not only are met

11 Teatro la Candelaria under the direction of Patricia Ariza, Gabriela Pardo, Franko Vidal and Nohra González Reyes.

12 CSPP, MOCAO, CAPS (2022). <https://defenderlalibertad.com/wp-content/uploads/2023/03/Represion-en-la-mira-final-1-1.pdf>.

13 In Colombia, the National Police is part of the security forces and crimes committed by the security forces are tried by the military criminal justice system. Many cases of human rights violations committed by the National Police are understood

with impunity, but in the majority of cases, the files get lost or disappear. This is despite the fact that, according to the Constitution, the police is a civilian body<sup>14</sup>. However, the police is attached to the Ministry of Defence, as is the army, which has led to its covert militarisation. The IACHR has repeatedly recommended that it be attached to another Ministry in order to guarantee a civilian and human rights approach and to avoid any possibility of military perspectives in police actions, applying the so-called criminal law of the enemy or the principles of war to the citizenry. MOCAO, together with other international organisations and human rights organisations, insist that cases of eye assaults be dealt with in the ordinary justice system and not in the military criminal justice system.

In criminal proceedings, impunity is absolute. In a few cases the evidence has been so clear that the justice system has had to recognise the responsibility of the ESMAD, as in the aforementioned case of Daniel Antonio Bernal<sup>15</sup>, injured in 2016, shot with a tear gas grenade in his face directly, at a distance of less than three metres, causing him to lose sight in his left eye<sup>16</sup>. Subsequent to this ruling that same year, a judge of the same administrative circuit recognised the right of Cristián Zárate<sup>17</sup>, injured in similar circumstances at the National University in 2019. It is important to point out that as a result of these sentences, there were sectors of society that justified the ESMAD, revictimising and judging both survivors. In Daniel's case, he was the target of insults and threats on social networks which lead to him leaving the country for own protection.

In social terms, the sentences did not represent a significant advance in the perception of demonstrators in social media and by certain sectors, nor on the need to educate on the right to protest.

Currently, several members of the movement, whom we do not mention here out of respect for their privacy and for security reasons, are taking legal action against the State, but they all conclude that criminal action against the agents is null and void

or impossible due to impunity and the danger it poses to their own security because of the connections between the police forces and paramilitarism in Colombia. According to the international mission of SOS Colombia, the paramilitary groups “in some cases, acted in collusion with the security forces” and there were armed civilians who perpetrated violent actions. These connections put the victim at risk when denouncing the aggressions<sup>18</sup>. The support of the international community and the coordination between social organisations in legal actions and mutual support is fundamental in this sense.

### Findings and requests from the movement.

MOCAO is made up of young people from the social outburst. However, there is also a wide diversity of people in our movement who are affected by this type of violence in other contexts. Young people are more likely to be violated by law enforcement. This makes the cycle of violence, repetition and re-victimisation very difficult to break. For this reason, MOCAO demands that the Colombian State<sup>19</sup>

1. The immediate cessation of human rights violations by the National Police and ESMAD / UNMDO against citizens in the context of social protest, especially eye injuries.
2. Issue a public apology and generate commitments regarding the non-repetition of human rights violations and eye injuries.
3. Implement the necessary measures to guarantee justice and reparation for all victims of human rights violations in social protest, and especially for victims of eye injuries.
4. Carry out due investigations of members of the National Police, ESMAD / UNDMO agents and armed civilians, taking into account the chain of command in the exercise of their functions
5. Promote a structural reform of the National Police, with the binding participation of civil society, and especially of the victims of violence exercised by National Police agents. Ultimately, dismantle the ESMAD / UNDMO, as it is a special unit that has historically violated the human rights of the Colombian population.
6. We ask the Colombian State to abide by the recommendations issued by the Inter-American Commission on Human Rights on 7 July 2021, which address issues such as the disproportionate use of force and the use of “less lethal” weapons, ensuring compliance with the principles of pro-

as “acts of service” (see Temblores ONG “El Estado de la Impunidad” <https://tembloresong.gumroad.com/l/el-estado-de-la-impunidad?layout=profile>).

14 Article 218 of the Constitution

15 <https://www.eltiempo.com/justicia/cortes/esmad-policia-debera-responder-por-estudiante-que-perdio-u-n-oculo-760092>

16 The Bogotá circuit administrative court ordered compensation and the 2023 ruling is considered the first in Colombia in which a judge clearly held Captain Julian Cetina Rodríguez and the ESMAD responsible for actions that violated the principles of precaution and proportionality, and whose actions were excessive, unjust and imprudent.

17 <https://twitter.com/ZarateRudolf/status/1704227601424814577/photo/1>

18 <https://www.swissinfo.ch/spa/polic%C3%ADa-colombiana-dio-a-protesta-social-tratamiento-de-war-dice-misi%C3%B3n/47010722>

19 Full text in the report “Repression in the Spotlight”.

portionality, legality and necessity that obey international regulations.

7. Inform citizens about the protocols for action and the possible health impacts of the use of “less lethal” weapons during protests and withdraw weapons that put the lives and integrity of demonstrators at risk.
8. Creation of a specialised programme focused on the care of victims of eye injuries, with a non-revictimising and humanising character, and with adequate funding. In this aspect we insist on a differential programme to PAPSIVI<sup>20</sup>(as this focuses on victims of the armed conflict) that treats victims of police violence -victims of the State, the Police and ESMAD.

Furthermore, it is necessary to improve the coordination of organisations within Colombia, but above all to articulate international response networks given that there are situations of eye injuries in many countries globally.

Finally, it is also important to call on society in general not to discriminate against victims of eye injuries and any other aggression that has caused them medical and psychosocial damage. It is necessary to strengthen actions to raise social awareness on this issue.

### Conclusions

The aim of this text is to delve into ocular aggression as a practice that is part of the phenomenon of police violence, a state crime that involves acts of torture with serious psychosocial consequences for the surviving victims and their families, as well as for society in general. In addition to this, the dimension of the victim-survivor has been explored through the empowerment that social, justice and memory processes produce in civil society with repercussions for the transformation of the state and police forces. In this regard, strategic litigation has been fundamental to the demand for rights and to establish points of rapprochement to the seemingly impregnable structure of impunity with which police forces still operate in Colombia. It is clear that urgent reform is needed to guarantee the security of citizens, access to and full exercise of rights, guarantees of reparation, memory and non-repetition, and open dialogue between the security forces and citizens. In this, social movements and

groups of victims and survivors play a fundamental role and it is crucial that their work is adequately protected.

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20 Programme of Psychosocial Care and Comprehensive Health Care for Victims of the Ministry of Health and Social Protection.