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Human Rights Committee

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Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Colombia

1. The Human Rights Committee considered the sixth periodic report of Colombia (CCPR/C/COL/6) at its 2721st and 2722nd meetings, held on 15 and 16 July 2010 (CCPR/C/SR.2721 and 2722). At its 2739th meeting, held on 28 July 2010, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of the State party, which provides information on measures adopted by the State party to further the implementation of the Covenant, while observing that the report mainly describes legislative advances without making an assessment of the degree of de facto implementation of rights. It also welcomes the dialogue with the delegation, the detailed written replies (CCPR/C/COL/Q/6/Add.1) submitted in response to the Committee's list of issues, and the additional information and clarifications provided orally. The Committee thanks the State party for having translated its replies to the list of issues presented.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted since the examination of the State party's previous periodic report:

(a) The adoption of Act No. 1257 of 2008, on awareness-raising, prevention and punishment in respect of acts of violence and discrimination against women. This act also amends the Criminal Code, the Code of Criminal Procedure and Act No. 294 of 1996 and introduces new provisions;

(b) The adoption of Act No. 1098 of 2006, enacting the Code for Children and Adolescents.

4. The Committee welcomes the State party's continued collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) since the establishment of an office in the country in 1997.
5. The Committee also considers as positive the State party's cooperation with the special rapporteurs, special representatives and working groups of the United Nations human rights system.
6. The Committee welcomes the jurisprudence of the Constitutional Court and its extensive references to and application of international human rights standards.
7. The Committee welcomes the fact that during the period since it considered the fifth periodic report in 2004, the State party has ratified the following instruments:
 - (a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (ratified on 23 January 2007);
 - (b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratified on 25 May 2005);
 - (c) Inter-American Convention on Forced Disappearance of Persons (ratified on 12 April 2005);
 - (d) International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) (ratified on 28 January 2005).

C. Principal subjects of concern and recommendations

8. The Committee expresses its concern at the lack of significant progress on the implementation of its previous recommendations, including those relating to legal benefits for persons demobilized from illegal armed groups, collusion between the armed forces and paramilitary groups, the failure to investigate serious human rights violations and attacks against human rights defenders. The Committee regrets that many subjects of concern still remain (article 2 of the Covenant).

The State party should take all necessary measures to give full effect to the recommendations adopted by the Committee.

9. The Committee expresses serious concern over Act No. 975 of 2005 (Justice and Peace Act) since, despite the State party's claim (paragraph 49 of the report and in its oral replies) that the law does not allow amnesties for such crimes, de facto impunity exists for many serious human rights violations. The vast majority of the over 30,000 demobilized paramilitaries have not availed themselves of Act No. 975, and their legal situation is far from clear. The Committee notes with serious concern that only two persons have been convicted and that few investigations have been initiated despite the systematic violence highlighted in *versión libre* accounts of the paramilitaries charged. The Committee also notes with concern information to the effect that acts by new groups that have emerged in various parts of the country after the demobilization process began are consistent with the modus operandi of those paramilitary groups. The Committee points out that the adoption of Act No. 1312 of July 2009 on the application of the principle of discretion to prosecute leads to impunity if the waiver of prosecution is applied without regard to human rights standards and represents a violation of the victim's right to full redress. The Committee points out to the State party, in accordance with its general comment No. 31 (CCPR/C/21/Rev.1/Add.13, 2004), that "*the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies ... [and that] the problem of impunity for these violations, a matter of sustained concern by*

the Committee, may well be an important contributing element in the recurrence of the violations” (arts. 2, 6 and 7).

The State party must comply with its obligations under the Covenant and other international instruments, including the Rome Statute of the International Criminal Court, and investigate and punish serious violations of human rights and international humanitarian law with appropriate penalties which take into account their grave nature.

10. The Committee notes that by the end of 2009 there were 280,420 victims registered under Act No. 975 of 2005 and is concerned that to date judicial reparation for victims has been awarded in only one case. The Committee notes the creation and gradual implementation of a programme of individual reparations through administrative channels (Decree No. 1290 of 2008). However, it is concerned that, in spite of the references to the State’s subsidiary or residual responsibility, this programme is based on the principle of solidarity and does not explicitly recognize the State’s duty to guarantee rights. The Committee is also concerned at the discrepancy between normative provisions and their enforcement. In practice, reparation tends to take the form of humanitarian assistance and so far does not provide for full reparation. It is of particular concern to the Committee that Decree No. 1290 does not recognize victims of acts committed by State agents. The Committee regrets that to date no collective reparation measures have been put in place (art. 2).

The State party should ensure that legislation is adopted and should implement a policy that fully guarantees the right to an effective remedy and to full reparation. Implementation of this law must be pursued taking into account the Basic Principles and Guidelines on the right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147, 2006) and taking into account the five elements of that right: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Particular attention should be paid to gender issues and to victims who are children, Afro-Colombians or indigenous people. Resources should be specifically assigned to provide psychological and social care and rehabilitation.

11. The Committee is concerned that the extradition, by order of the executive branch, of paramilitary leaders to the United States to answer charges of drug trafficking has produced a situation that hampers investigations into their responsibility for gross human rights violations. Extradition in those conditions therefore hinders victims’ exercise of their rights to justice, the truth and redress and contravenes the State’s responsibility to investigate, try and punish human rights violations (arts. 2, 6 and 7).

The State party should ensure that extraditions do not hamper the efforts required to investigate, try and punish gross human rights violations. The State party should take steps to ensure that extradited persons do not shun their responsibility with regard to investigations in Colombia into gross human rights violations. The State party should ensure that future extraditions take place within a legal framework that recognizes the obligations imposed by the Covenant.

12. The Committee expresses its grave concern at the persistence of serious violations of human rights, including extrajudicial executions, forced disappearances, torture, rape and recruitment of children for use in the armed conflict. The Committee emphasizes the serious lack of statistics and concise information on the number of cases of torture and related investigations. The Committee notes the particular vulnerability of certain groups, such as women, children, ethnic minorities, displaced persons, the prison population, and lesbian, gay, bisexual and transgender (LGBT) persons. The Committee is concerned at the lack of criminal investigations and the slow progress of existing investigations, since many

of them are still at the pre-investigation stage, thus contributing to continued impunity for serious human rights violations (arts. 2, 3, 6, 7, 24 and 26).

The State party should ensure that prompt and impartial investigations are conducted by the competent authorities and that human rights violations are punished with sentences appropriate to their seriousness. The State should provide the Human Rights and International Humanitarian Law Unit with additional resources in order to speed up its work. The Committee underlines the importance of the cases concerned being assigned to that Unit. The State must also strengthen security measures for justice operators and for all witnesses and victims. The State party should establish a centralized system making it possible to identify all serious human rights violations and to properly monitor their investigation.

13. The Committee recognizes as positive the efforts made by the State party to prevent gross human rights violations through the introduction of the Early Warning System (SAT) of the Ombudsman, designed to prevent displacement and other serious human rights violations. It also takes note of the presence of community defenders in highly vulnerable population groups. However, the Committee is concerned at the increasing number of SAT risk reports which are not converted into early warnings by the Inter-Agency Early Warning Committee (CIAT) and notes that in some cases there are no responses or effective prevention measures, which at times continues to result in massive displacements (art. 2).

The State party must strengthen SAT, ensuring that preventive measures are taken and that the civil authorities at the departmental, municipal and other levels participate in the coordination of preventive measures. The State party must monitor and follow up all risk reports issued, whether or not CIAT converts them into early warnings. Likewise, the State must strengthen the Ombudsman's presence in areas at high risk of violations and extend the scope of the programme of community defenders.

14. The Committee is deeply concerned at the widespread pattern of extrajudicial executions of civilians, subsequently described by the security forces as combat casualties. The Committee expresses its concern at the numerous complaints that the directives of the Ministry of Defence which grant incentives and payment of rewards without internal oversight or supervision have contributed to executions of civilians. The Committee notes the measures taken by the State party to put a stop to extrajudicial executions; it is, however, concerned that there are more than 1,200 cases and that few convictions have been made. The Committee notes with concern that the military justice system continues to assume jurisdiction in cases of extrajudicial executions in which the alleged perpetrators are members of the security forces (arts. 6 and 7).

The State party should take effective measures to discontinue any directive of the Ministry of Defence that can lead to serious violations of human rights, such as extrajudicial executions, and fully comply with its obligation to ensure that serious human rights violations are impartially investigated by the regular justice system and that those responsible are punished. The Committee underlines the responsibility of the High Council of the Judiciary when it comes to resolving conflicts of jurisdiction. The Committee also emphasizes the importance of ensuring that such crimes remain clearly and effectively outside the jurisdiction of military courts.

The State party should guarantee the security of witnesses and their relatives in such cases.

The State party must implement the recommendations issued by the Special Rapporteur on summary, arbitrary and extrajudicial executions following his mission to Colombia in 2009 (A/HRC/14/24/Add.2).

15. The Committee expresses its concern at the high incidence of forced disappearances and the number of corpses recovered from mass graves, a total of 2,901 at the end of 2009. The Committee notes that the graves have been discovered mainly on the basis of statements by demobilized paramilitaries. The Committee notes the efforts made to implement the National Plan for the Search of Disappeared Persons but it regrets the slow pace of implementation and the lack of institutional coordination among the various institutions and with the victims' relatives (arts. 2 and 6).

The State party should take effective steps to allocate sufficient resources to implement the National Plan for the Search of Disappeared Persons, ensuring proper institutional coordination among all competent authorities. The State should guarantee that victims' families and civil society organizations are adequately involved in its development in order to secure prompt identification of the corpses in mass graves. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

16. The Committee notes that various civil servants, including a number of former directors of the Administrative Department of Security (DAS), the intelligence agency that comes under the Office of the President of the Republic, are being investigated for illegal surveillance activities carried out systematically since 2003 against international and regional organizations, human rights defenders, journalists and justice operators. The Committee is particularly concerned at the surveillance and threats to which intelligence agents have subjected judges of the Supreme Court. The Committee notes that the President has ordered DAS to be closed down and a new intelligence agency to be set up (art. 19).

The State party should create robust controls and oversight systems for its intelligence service and establish a national mechanism to purge intelligence files, in consultation with victims and relevant organizations and in coordination with the Procurator-General. The State should investigate, try and punish with appropriate penalties the persons responsible for those crimes.

17. The Committee is concerned at the frequent threats and harassment of human rights defenders, trade unionists and journalists in the performance of their work. The Committee notes the resources assigned to the protection programme of the Ministry of the Interior but considers that the State party has not fully complied with its duty to guarantee the security and safety of witnesses and victims (arts. 6, 7, 17, 19 and 22).

The Committee urges the State party to take effective steps to guarantee the security of human rights defenders, trade unionists and journalists. The State should continue to strengthen the protection programme of the Ministry of the Interior, allocate additional resources, ensure that the protection measures taken are coordinated with the beneficiaries and that intelligence agents are not involved in the programme. The State party should provide the Committee with detailed information on all criminal proceedings relating to threats, assaults and murders of human rights defenders, trade unionists and journalists in its next periodic report.

18. The Committee expresses deep concern about reports of the alarming incidence of sexual violence against women and girls. It is concerned about the number of such violations attributed to members of the Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP) and illegal armed groups that have emerged from the demobilization of paramilitary organizations. The Committee further expresses its grave concern about cases, mostly involving young girls, in which the alleged perpetrators are members of the security forces. The Committee regrets that not all of the necessary measures have been taken in order to make progress in the investigations of the 183 cases of sexual violence referred to the Attorney General's Office by the Constitutional Court. It is also concerned about the failure

of the mechanisms established by Act No. 975 of 2005 to reflect crimes involving sexual violence (arts. 3, 7, 24 and 26).

The State party should adopt effective measures to investigate all cases of sexual violence referred to the Attorney General's Office by the Constitutional Court and should establish a reliable system for documenting incidents of any type of sexual or gender violence.

Acts of sexual violence reportedly committed by the security forces should be investigated, tried and firmly punished, and the Ministry of Defence should enforce a policy of zero tolerance of such violations which provides for the dismissal of the perpetrators.

The State party should increase the resources allocated to the physical and psychological recovery of women and girls who are victims of sexual violence and ensure that they do not suffer secondary victimization in gaining access to justice.

19. The Committee congratulates the State party on its progress in implementing the earlier recommendation made by the Committee in 2004 (CCPR/CO/80/COL, para. 13) through Constitutional Court ruling C-355 of 2006, which decriminalizes abortion in certain circumstances: when the woman is a victim of rape or incest, when pregnancy poses a serious risk to her life or health, and when the foetus displays signs of serious malformations that make its life outside the womb unviable. However, the Committee is concerned that, despite Ministry of Health Decree No. 4444 of 2006, health-service providers refuse to perform legal abortions and that the Procurator-General does not support enforcement of the relevant Constitutional Court ruling. The Committee is likewise concerned that insufficient sex education in the school curriculum and public information on how to gain access to a legal abortion continues to cause loss of life among women who have resorted to unsafe abortions (arts. 3, 6 and 26).

The State party must ensure that health providers and medical professionals act in conformity with the ruling of the Court and do not refuse to perform legal abortions. Further, the State party should take steps to help women to avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that may put their lives at risk. The State party should facilitate access to public information on access to legal abortions.

20. The Committee is concerned about the high incidence of arbitrary arrests and, in particular, the use of preventive administrative detention by the police and mass arrests by the police and the army. The Committee notes that arrest warrants are frequently insufficiently substantiated by evidence and that arrests are used as a means of stigmatizing certain groups, such as community leaders, youth, indigenous people, Afro-Colombians and campesinos (arts. 9, 24 and 26).

The Committee recommends that the State party take steps to eradicate preventive administrative detention and mass arrest and to act on the recommendations made by the Working Group on Arbitrary Detention following its mission to Colombia in 2008 (A/HRC/10/21/Add.3).

21. The Committee notes with concern the high rate of overcrowding and complaints of torture and other cruel, inhuman or degrading treatment or punishment in prisons and places of temporary detention. The Committee is concerned that prolonged solitary confinement is used as a form of punishment. It is concerned at the failure to separate accused persons from convicted persons and at the lack of physical and mental health services for prisoners. Although the Committee notes that the initiative to set up human rights committees in prisons is a positive development, it is concerned that such

mechanisms are supervised by the National Penitentiary and Prison Agency (INPEC) and do not constitute independent preventive mechanisms (arts. 7 and 10).

The State party should adopt effective measures to improve material conditions in prisons, reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty. The use of solitary confinement should be reviewed and restricted. Complaints of torture and other cruel, inhuman or degrading treatment or punishment in prisons and places of temporary detention should be promptly and impartially investigated and brought to the attention of the criminal courts. The Committee invites the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible, the better to prevent violations of the right to integrity of the person.

22. The Committee notes with satisfaction Constitutional Court ruling C-728 of 2009 exhorting Congress to regulate conscientious objection to military service, which represents progress in the implementation of the Committee's earlier recommendation of 2004 (CCPR/CO/80/COL, para. 17). However, the Committee is still concerned by the lack of progress on the introduction of the necessary legislative amendments for recognizing conscientious objection and by the use of "round-ups" as a means of checking who has carried out military service (art. 18).

The State party should, without delay, adopt legislation recognizing and regulating conscientious objection so as to provide the option of alternative service, without the choice of that option entailing punitive effects, and should review the practice of "round-ups".

23. The Committee is concerned at the very high incidence of forced displacement (over 3.3 million persons by the end of 2009 according to the State party) and at the lack of effective measures for prevention and care. The Committee notes with concern that attention to the needs of the displaced population remains inadequate and is marked by an insufficient allocation of resources and the lack of comprehensive measures for providing differentiated care for women, children, Afro-Colombians and indigenous people (arts. 12, 24, 26 and 27).

The State party should ensure the development and implementation of a comprehensive policy for the displaced population that should provide for differentiated care, with the emphasis on women, children, Afro-Colombians and indigenous people. The State party should strengthen mechanisms for ensuring that the land of displaced persons can be restituted. The State should evaluate the progress being made on a regular basis in consultation with the beneficiary population. The State party must also implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons following his visit to Colombia in 2006 (A/HRC/4/38/Add.3).

24. The Committee is concerned about the recruitment of children by illegal armed groups, especially by FARC-EP and the Ejército de Liberación Nacional (National Liberation Army) (ELN). The Committee is also concerned that security forces continue to use children in military civic acts, such as the "Soldier for a day" programme and that children are interrogated in order to obtain intelligence (arts. 2, 7, 8 and 24).

The State party should strengthen all possible measures to prevent the recruitment of children by illegal armed groups and should by no means involve children in intelligence activities or in military civic acts aimed at militarizing the civilian population.

25. The Committee is concerned that the Afro-Colombian and indigenous population groups continue to be discriminated against and to be particularly exposed to the violence of armed conflict. Despite legal recognition of their right to collective land ownership, in practice those population groups face enormous obstacles in exercising control over their lands and territories. The Committee also regrets that no progress has been made on the adoption of legislation to criminalize racial discrimination or on the adoption of legislation for holding prior consultations and guaranteeing the free, prior and informed consent of the members of the relevant community (arts. 2, 26 and 27).

The State party must strengthen special measures in favour of Afro-Colombian and indigenous people in order to guarantee the enjoyment of their rights and, in particular, to ensure that they exercise control over their land and that it is restituted to them, as appropriate. The State party should adopt legislation criminalizing racial discrimination and adopt the pertinent legislation for holding prior consultations with a view to guaranteeing the free, prior and informed consent of community members.

26. The State party should widely disseminate the text of its sixth periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations, as well as among the general public and ensure that they are available in the principal indigenous languages. Copies of those documents should be circulated to universities, public libraries, the parliamentary library and other relevant recipients.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 9, 14 and 16.

28. The Committee requests the State party to provide in its seventh periodic report, due to be submitted by 1 April 2014, specific, up-to-date information on all of its recommendations and on its compliance with the Covenant as a whole. The Committee also recommends that the State party, when preparing its seventh periodic report, consult civil society and the non-governmental organizations operating in the country.