



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

Distr.: General  
4 May 2010  
English  
Original: Spanish

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## Committee against Torture

### Forty-third session

Geneva, 2–20 November 2009

## Consideration of reports submitted by States parties under article 19 of the Convention

### Concluding observations of the Committee against Torture

#### Colombia

1. The Committee against Torture considered the fourth periodic report of Colombia (CAT/C/COL/4) at its 908th and 911th meetings (CAT/C/SR.908 and 911), held on 10 and 11 November 2009, and adopted, at its 925th meeting (CAT/C/SR.925), the following concluding observations.

#### A. Introduction

2. The Committee welcomes the fourth periodic report of Colombia, appreciates the sincere and open dialogue with the delegation of the State party and is grateful for the written replies to the list of issues (CAT/C/COL/Q/4/Add.1), which facilitated the discussions between the delegation and members of the Committee. The Committee also expresses its gratitude for the information supplied to the Committee in 2006 (CAT/C/COL/CO/3/Add.1) and in 2007 (CAT/C/COL/CO/3/Add.2) concerning the implementation of the previous recommendations.

#### B. Positive aspects

3. The Committee notes with appreciation that, during the period since it considered the third periodic report, 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) ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) (ratified on 28 January 2005);

(e) United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (ratified on 4 August 2004);

(f) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified on 11 November 2003).

4. The Committee welcomes the continued cooperation of the State party 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 considers as positive the State party's cooperation with the special rapporteurs, special representatives and working groups of the Human Rights Council and the numerous visits carried out by these human rights mechanisms.

6. The Committee welcomes the jurisprudence of the Constitutional Court and its extensive references to international human rights standards.

7. The Committee considers it positive that the jurisdiction of the International Criminal Court has been accepted without qualification by the State party since 2009.

8. The Committee expresses its satisfaction at the absence of the death penalty in the State party.

9. The Committee notes with satisfaction the efforts being made by the State party to reform legislation, policies and procedures with the aim of ensuring better protection of the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including:

(a) The human rights certification criterion for promotion in the security services, adopted by the Ministry of Defence in November 2008;

(b) The adoption of the National Plan for the Search for Disappeared Persons in 2007;

(c) The Policy to Combat Impunity (CONPES 3411 of 2006);

(d) The organization of training courses on the Istanbul and Minnesota Protocols, with advice from the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime;

(e) The establishment of a special investigation group within the National Human Rights and International Humanitarian Law Unit in the Office of the Public Prosecutor of the Nation on the topic of torture.

## **C. Principal subjects of concern and recommendations**

### **Definition of torture**

10. The Committee notes that the Criminal Code includes a definition of the crime of torture. However, it is concerned that, in practice, a charge relating to crimes of torture does not clearly identify torture as a specific and separate offence, given that it is subsumed under aggravating circumstances relating to other offences regarded as more serious by judicial officials. The Committee is also concerned about the possibility of erroneous definitions that assimilate the crime of torture to other less serious criminal offences such as that of personal injury, which does not require proof of the offender's intention. The

Committee is concerned that these practices result in a serious under-recording of cases of torture and entail impunity for the said crimes (articles 1, 2 and 4 of the Convention).

**The State party should adopt the necessary measures to ensure that crimes of torture are prosecuted as a separate offence and that the charge corresponds to the serious nature of the crime, and should not allow cases of torture to be subsumed under other related offences. Similarly, there is a need to ensure that acts of torture are not defined in terms of a less serious offence, such as the infliction of personal injury. The Committee recommends strengthening the training of prosecutors to ensure that torture is prosecuted in a manner consistent with the State party's international obligations.**

#### **Complaints of torture and impunity**

11. While there has been an overall reduction in the number of complaints of torture since the last periodic review in 2004, the Committee is concerned that the incidence of torture in the State party remains high and shows specific patterns that point to widespread practice. The Committee notes that, while illegal armed groups are to a large extent responsible for such violence, there are persistent complaints about the participation or acquiescence of agents of the State in these acts. The Committee is particularly concerned at reports indicating an increased number of cases in which direct involvement by agents of the State is alleged. It also expresses grave concern at the persistence of serious violations linked to torture, such as extrajudicial execution, forced disappearance, forced displacement, sexual violation and the recruitment of children in the context of armed conflict, and at the vulnerable situation of certain groups such as women, children, ethnic minorities, displaced persons, the prison population and LGBT persons (art. 2 of the Convention).

12. Despite the initiatives of the State party to counter impunity, the Committee finds it to be prevalent in the State party. The Committee expresses serious concern at the lack of reliable information on cases of torture and the stage of proceedings they have reached. It is also concerned at the absence of criminal investigations by the Office of the Public Prosecutor of the Nation, the fact that few cases have come to trial and that not all the cases concerned have been referred to the Human Rights and International Humanitarian Law Unit. It is a matter of concern to the Committee that cases of torture continue to be investigated only by administrative, disciplinary or military, rather than criminal jurisdictions. The Committee is concerned at the discrepancies between the figures provided by the different entities of the State party concerning the number of cases of torture and that the lack of a centralized system for compiling data on cases of torture makes it difficult to be certain how many cases are reported, investigated and punished (articles 2, 4 and 12 of the Convention).

**The Committee calls on the State party to comply with its obligations under the Convention and to investigate and punish acts of torture with appropriate penalties which take into account their grave nature. The Committee underlines the responsibility of the State party for ensuring that investigations are undertaken by the competent authorities, that the investigation is carried out promptly and impartially and that these crimes are punished with appropriate penalties which take into account their grave nature. The Committee urges the State party to allocate additional resources to the Human Rights and International Humanitarian Law Unit in order to speed up its work and underlines the importance of the cases concerned being assigned to that Unit. The Committee recommends that the State party establish a centralized system making it possible to identify all cases of torture and the stage reached in investigating them.**

**Independence of the Office of the Public Prosecutor**

13. The Committee expresses its desire to see the independence of the Public Prosecutor of the Nation strengthened and respected. It is also concerned that prosecutors attached to the Office of the Public Prosecutor are placed within military facilities, since this could compromise their independent functioning (articles 2 and 12 of the Convention).

**The Committee urges the State party to ensure that the Public Prosecutor is appointed on the basis of criteria that guarantee the selection of a professional capable of acting in total and full independence. The Committee also recommends that the practice of placing prosecutors within military facilities be discontinued.**

**Demobilization and de facto amnesty**

14. The Committee is seriously concerned at the lack of an appropriate legal framework for establishing the criminal liability of demobilized members of illegal armed groups, including approximately 30,000 paramilitaries. The legal rights granted by Act No. 975 of 2005 (Justice and Peace Act) and Decree 128 of 2003 do not conform to the principle of the proportionality of the sentence and the lack of convictions points to a de facto amnesty in contravention of international human rights obligations. The Committee is seriously concerned that, despite the systematic violence highlighted in *versión libre* accounts and the statement in Act No. 975 of 2005 that “the provisions of this Act shall be applied in accordance with constitutional norms and the international treaties ratified by Colombia”, there has to date been no conviction for serious human rights violations. The Committee points out that the adoption of Act No. 1312 of July 2009 on the application of the principle of opportuneness 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 (articles 2, 4, 12 and 13 of the Convention).

**The Committee urges the State party to comply with its obligations under the Convention and other international instruments, including the Rome Statute of the International Criminal Court, and investigate and punish crimes of torture with appropriate penalties which take into account their grave nature. In this regard, it points out to the State party, with reference to its general comment No. 2, adopted in 2007 (CAT/C/GC/2), that the Committee considers that amnesties or other impediments which preclude or indicate unwillingness to ensure prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability.**

**Acquiescence and complicity with illegal armed groups**

15. The Committee is concerned at the widespread complicity of public servants and elected representatives with illegal armed groups, as evidenced by the high number of prosecutions for collusion with these crimes. It expresses great concern that Supreme Court judges have been threatened and have had to have recourse to the Inter-American Human Rights System for interim measures of protection. The Committee also expresses its dismay that Supreme Court judges have been harassed, placed under surveillance and have had their telephone calls tapped by intelligence agents of the Administrative Department of Security (DAS) (art. 2 of the Convention).

**The Committee notes the efforts of the State party to prosecute public servants and elected representatives for complicity with illegal armed groups and urges the State party to guarantee fully the integrity and security of persons working in agencies concerned with the administration of justice. The Committee urges the State party to take immediate steps to discontinue the harassment and surveillance of judges by**

intelligence agents (the DAS) and to punish those responsible for threatening the independence of the judiciary.

#### **Military justice and extrajudicial executions**

16. The Committee is seriously concerned at the widespread pattern of extrajudicial executions of civilians, subsequently described by the security forces as deaths in combat (“false positives”). The Committee reiterates its concern that the military justice system continues to assume jurisdiction in cases of gross human rights violations, including extrajudicial executions carried out by the security forces, thereby undermining the impartiality of those investigations (articles 2, 12 and 13 of Convention).

**The State party should put an immediate stop to these crimes and comply fully with its obligation to ensure that gross human rights violations are investigated impartially under the ordinary court system, and that the perpetrators are punished. The gravity and nature of the crimes clearly show that they fall outside military jurisdiction. The Committee underlines the responsibility of the High Council of the Judiciary for resolving conflicts of jurisdiction. The Committee also emphasizes the importance of ensuring that initial investigations, the collection of evidence and the recovery of corpses are the responsibility of the civil authorities.**

#### **Forced disappearances**

17. The Committee expresses its serious concern at the widespread practice of forced disappearances (28,000 officially recognized in the National Registry of Disappeared Persons) and the number of corpses recovered from mass graves – 2,778 to date according to the State party’s figures. The Committee notes that the graves have been discovered mainly on the basis of statements by demobilized paramilitaries and that the vast majority of victims were tortured before being executed, as evidenced by the corpses found bound and dismembered. The Committee regards as positive the adoption in 2007 of the National Plan for the Search for Disappeared Persons, but is concerned at the slow pace of implementation and the lack of institutional coordination with the Office of the Public Prosecutor. The Committee regrets that the Executive has opposed a bill aimed at clarifying forced disappearances and identifying corpses in mass graves (art. 2 of the Convention).

**The Committee urges the State party to take effective steps and allocate sufficient resources to implement the National Plan for the Search for Disappeared Persons, ensuring that victims’ families and organizations are suitably involved and that there is proper institutional coordination among all the competent authorities. The Committee recommends that support be given to legislative initiatives to promote clarification of forced disappearances, the rights of victims and early identification of corpses in mass graves. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.**

#### **Prevention of acts of torture**

18. The Committee acknowledges the efforts made by the State party to prevent gross human rights violations through the introduction of the Early Warning System (SAT) and the presence of community defenders in highly vulnerable population groups. It is, however, concerned that the human and financial resources allocated to these initiatives are insufficient and that the Inter-Institutional Early Warning Committee (CIAT), responsible for issuing early warnings, does not seem to act promptly and adequately (art. 2 of the Convention).

**The Committee recommends that the State party strengthen the Early Warning System in order to prevent displacement and other gross human rights violations, ensuring that it is allocated sufficient human and financial resources, that warnings are issued in good time, and that the civil authorities at the departmental, municipal and other levels participate in the coordination of preventive measures. Given their valuable role in preventing violations, the Committee recommends that the State party allocate more resources to community defenders attached to the Ombudsman's Office and extend the scope of the programme.**

#### **Extradition**

19. The Committee is concerned that the extradition of paramilitary leaders to the United States of America to answer charges of drug trafficking has produced a situation that hampers investigations into their responsibility for gross human rights violations. The lack of an effective legal framework for guaranteeing the obligations entered into under the Convention hinders victims' access to justice, the truth and redress and contravenes the State's responsibility to investigate, try and punish crimes of torture (articles 6 and 9 of the Convention).

**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 cooperate in 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 Convention.**

#### **Arbitrary detentions**

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 peasants (art. 2 of the Convention).

**The Committee recommends that the State party take steps to eradicate preventive administrative detention and mass arrests, and 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).**

#### **Conditions in detention**

21. The Committee remains concerned about conditions in detention in the light of persistent overcrowding and continuing complaints of torture and other cruel, inhuman or degrading treatment in prisons and places of temporary detention. The Committee is concerned that prolonged solitary confinement is used as a form of punishment. It has received reports of inhuman or degrading treatment in the Valledupar high- and medium-security prison and the Bellavista prison in Medellin. The Committee is concerned that complaints about cases of torture and inhuman treatment tend to be dealt with through disciplinary proceedings alone, and that it has rarely been possible to carry out investigations. The Committee is also concerned about the military nature of the prisons and the scant availability of mental health services for prisoners (articles 11 and 16 of the Convention).

**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 in prisons and places of temporary detention should be promptly and impartially investigated and brought to the attention of the criminal courts.**

#### **Optional Protocol**

22. The Committee takes note of the State party's decision to reject ratification of the Optional Protocol to the Convention and its claim that this role is already performed by the human rights committees constituted by the Office of the Ombudsman and prisoners, on the grounds that the internal regulations (resolution No. 5927/2007) of the National Penitentiary and Prison Agency (INPEC) provide a mechanism to guarantee the human rights of prisoners by means of a consultative and decision-making process within the committees of each prison, in which prisoners and the offices of the Public Prosecutor and the Ombudsman participate directly. 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 INPEC and do not constitute an independent preventive mechanism as provided for by the Optional Protocol (art. 2 of the Convention).

**The Committee recommends that the State party ratify the Optional Protocol to the Convention as soon as possible, the better to prevent violations of the Convention.**

#### **Human rights defenders**

23. The Committee reiterates its concern about the stigmatization of human rights defenders and their families, the high incidence of threats, the frequent attacks on their safety and the lack of effective protection measures. The Committee is concerned that they have been placed under surveillance and have had their telephones tapped by Administrative Department for Security (DAS) agents, as have other actors in civil society such as trade unionists, non-governmental organizations and journalists (art. 2 of the Convention).

**The Committee urges the State party to put an immediate end to the harassment by DAS agents of human rights defenders and other civil society actors upholding human rights, and to punish those responsible for practices stigmatizing human rights defenders. The State party should ensure that effective protection is made available for human rights defenders and others whenever they have been threatened on account of their activities.**

#### **Witness protection**

24. The Committee is concerned about the frequent threats made against witnesses in cases involving torture and other cruel, inhuman or degrading treatment. The Committee is particularly concerned about the harassment and murders of witnesses and victims who have taken part in trials held under Act No. 975 of 2005. In spite of the protection programmes in place, the Committee considers that the State party has not fully complied with its duty to ensure the safety and integrity of witnesses and victims (art. 13 of the Convention).

**The Committee urges the State party to adopt effective measures to guarantee the safety and integrity of witnesses and victims and to strengthen protection programmes with additional resources. The Committee urges the State party to pay special attention to the protection and interim measures issued by the Inter-American Human Rights System and to take immediate and effective measures to ensure compliance with them.**

**Full redress**

25. The Committee is concerned about the lack of redress available for victims of torture and other cruel, inhuman or degrading treatment. It notes that to date there are 250,000 victims of the armed conflict and that Act No. 975 of 2005 and Decree No. 1290 of 2008 make provision for redress for the victims of violations committed by illegal armed groups. Article 42 of Act No. 975 of 2005 assigns liability for redress to armed groups that have been convicted by the courts, a provision so far rendered inoperative by the lack of any convictions. The Committee acknowledges the efforts made by the State party to establish a programme to provide individual administrative redress via Decree No. 1290 of 2008; it notes, however, that in spite of the references to the “State’s subsidiary or residual responsibility”, the programme is based on the principle of solidarity rather than on the State’s duty to guarantee rights. Given that the State party is responsible for violations committed with the consent or complicity of, or through omission by, agents of the State, the Committee is seriously concerned that the responsibility of the State is not clearly defined and that current legislation may lead to discrimination among victims (art. 14 of the Convention).

**The State party should fully guarantee the right of victims of torture and other cruel, inhuman or degrading treatment to redress and ensure that this right is established without discrimination in national legislation, and is enforced in practice. Implementation of this right 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, adopted on 16 December 2005, attached as an annex) and take into account the five elements of that right; restitution, compensation, rehabilitation, satisfaction and guaranteed 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.**

**Restitution**

26. The Committee is concerned about the threats against victims of forced displacement who have asked for the return of their land. It notes that those mainly affected are peasants, Afro-Colombians and indigenous people. The Committee is concerned that land belonging to displaced persons has been seized by illegal armed groups and in some cases sold to third parties for monocultivation and exploitation of natural resources (art. 14 of the Convention).

**The Committee urges the State party to adopt effective measures to ensure the return of land to victims of displacement and to respect the land ownership of peasants, Afro-Colombians and indigenous people.**

**Right to truth**

27. The Committee is concerned that the mechanisms established by Act No. 975 of 2005 fail fully to guarantee the right to truth, in spite of the references made thereto by the Act, and that this right is in practice restricted to procedural truth. While acknowledging the work carried out by the National Commission for Compensation and Reconciliation, the Committee notes that the Commission is mainly made up of State bodies (art. 14 of the Convention).

**The Committee recommends that the State party adopt effective measures to guarantee the right to truth and that it consider establishing an autonomous, independent truth commission.**

### Sexual violence

28. The Committee is concerned about the high incidence of sexual violence and about its use as a weapon of war. It regrets the failure to take all necessary measures to ensure compliance with Constitutional Court order 092 of 2008, and the lack of information on the relevant investigations. It expresses concern about the rapes reportedly carried out by the security forces, noting the lack of firm action, and the absence of investigations to identify the perpetrators. It is also concerned about the failure of the mechanisms established by Act No. 975 of 2005 to reflect crimes involving sexual violence and by the fact that they are not always documented in forensic reports, despite the instructions that have been issued (articles 2 and 16 of the Convention).

**The State party should adopt effective and urgent measures to eradicate sexual violence, particularly when used as a weapon of war. In particular, the State party should comply with Constitutional Court order 092 of 2008 and investigate the relevant cases. Sexual violence reportedly committed by the security forces should be investigated, tried and firmly punished. Measures should be implemented to ensure the full and systematic application of the instructions requiring signs of torture or sexual violence to be documented in forensic reports.**

### Child soldiers

29. The Committee is concerned about the continued recruitment and use of children by illegal armed groups. The Committee recognizes the efforts made by the State party through the establishment, in December 2007, of the Intersectoral Commission to prevent the unlawful recruitment of children and adolescents by illegal organized groups; it notes that according to the State party, it has been possible to break the grip of such groups on some 3,800 children. The Committee does, however, regret the lack of information on the criminal liability of persons responsible for recruiting children. It is concerned that such children are not given sufficient support to ensure their physical and mental rehabilitation and recuperation, that different levels of protection are offered depending on whether the children are demobilized from guerrilla or other illegal armed groups, and that when children are taken captive by the security forces, they are not always handed over to the civil authorities within the 36-hour legal deadline. The Committee is also concerned that the security forces use children for intelligence purposes, occupy schools in areas of conflict and organize “military days” in schools throughout the country (articles 2 and 16 of the Convention).

**The State party should strengthen measures to prevent the recruitment of children, provide proper support to ensure their physical and mental rehabilitation and recuperation and prosecute through the criminal courts those who have recruited them. The security forces should refrain from jeopardizing the neutrality of schools and comply with standards relating to the return to the civil authorities of children who have broken away from illegal armed groups or been captured. The Committee recommends that the State party extend its full cooperation to the Special Representative of the Secretary-General for Children and Armed Conflict in order to progress with the implementation of Security Council resolution 1612.**

### Non-refoulement

30. The Committee notes that Decree No. 2450 of 2002 “which lays down procedures for establishing refugee status” contains provisions that do not fully comply with the obligations laid down in article 3 of the Convention and in the 1951 Convention relating to the Status of Refugees. The Committee nevertheless takes note that approval of a new decree on this matter, which includes the principle of non-refoulement, is pending (art. 3 of the Convention).

**The State party should expedite the adoption of new legislation that includes the principle of non-refoulement. In order to ensure that the guarantee of non-refoulement is implemented in practice, training on this obligation should be given to immigration officials and the police.**

31. The Committee invites the State party to submit the core document in conformity with the requirements for a common core document laid down in the harmonized guidelines on reporting under the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.6, chapter I.

32. The Committee recommends that the State party consider the possibility of making the declarations provided for under articles 21 and 22 of the Convention.

33. The Committee requests that the State party provide information, within one year, on the measures taken in pursuance of the Committee's recommendations as set forth in paragraphs 12 to 17 above.

34. The Committee recommends that the State party take all appropriate steps to implement these recommendations, including conveying them to the members of the Government and Parliament so that they may be considered and the necessary measures taken.

35. The State party is encouraged to disseminate widely its report submitted to the Committee and the Committee's concluding observations, through official websites, the media and non-governmental organizations.

36. The Committee requests the State party to include in its next periodic report detailed information on the steps it has taken to comply with the recommendations contained in these concluding observations.

37. The Committee invites the State party to submit its fifth periodic report by 20 November 2013 at the latest.

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