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HUMAN RIGHTS COMMITTEE

Eightieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

COLOMBIA

1. The Committee considered the fifth periodic report of Colombia (CCPR/C/COL/2002/5 and HRI/CORE/1/Add.56) at its 2167th and 2168th meetings (CCPR/C/SR.2167 and 2168), held on 15 and 16 March 2004, and, at its 2183rd meeting (CCPR/C/SR.2183), held on 25 March 2004, adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the fifth periodic report submitted by the State party and is grateful for the detailed information provided during the consideration of the report concerning the implementation of the Covenant in Colombia. However, the Committee regrets that the report does

not contain complete information on the implementation of the concluding observations made following consideration of the fourth periodic report of Colombia in 1997. Furthermore, the Committee regrets that the report was not prepared in conformity with the guidelines, in particular as regards its length and certain aspects of the information provided.

B. Factors and difficulties affecting the implementation of the Covenant

3. The continuation of the internal armed conflict in Colombia remains a great hindrance to respect for and protection of human rights in the State party. The Committee regrets to note that the human rights situation in Colombia has not improved.

C. Positive aspects

4. The Committee takes note of the establishment (in 2000) of a Unit for Human Rights and International Humanitarian Law in the Ministry of External Relations, with important functions, such as that of following up on the international commitments assumed by the State party.

5. The Committee welcomes the open invitation extended by the State party to all special mechanisms of the Commission on Human Rights. The Committee also welcomes the agreement between the State party and the United Nations High Commissioner for Human Rights to extend the presence of the office in Colombia to October 2006.

6. The Committee notes with satisfaction the efforts of the State party to maintain democratic institutions through free elections in 2002 and 2003.

D. Subjects of concern

7. The Committee sees as a positive development the establishment of an internal mechanism to implement the decisions of international bodies such as the Human Rights Committee. However, the Committee notes that putting this mechanism into operation includes modalities that could hamper or delay the full implementation of the Committee's observations in respect of the Optional Protocol.

The State party should promote the expeditious and effective use of the machinery established under Act No. 288 of 1996 so as to ensure the full implementation without delay of the observations of the Human Rights Committee in respect of the Optional Protocol.

8. The Committee has taken note of the efforts by the State party to encourage members of illegal armed groups to lay down their arms and rejoin civil society. In this context, mention has been made of the so-called "draft act concerning alternative penalties", which seeks to offer certain legal benefits, such as the suspension of punishments involving imprisonment, to members of illegal armed groups who lay down their arms. The Committee is concerned that such benefits may extend to persons responsible for war crimes or crimes against humanity.

The State party should ensure that the proposed legislation on alternative penalties to imprisonment does not grant impunity to persons who have committed war crimes or crimes against humanity (art. 2).

9. The Committee notes with concern that the so-called "anti-terrorist statute" (draft legislative act No. 223 of 2003) was adopted as an act of the Republic in December 2003. This act makes provision for granting to the armed forces the powers of judicial police, and also authorizes searches, administrative detention and other measures without a prior judicial order. It also places restrictions on the right to privacy and the right to apply for remedies. Those provisions do not seem to be compatible with the guarantees set forth in the Covenant (arts. 9 and 14).

The State party should ensure that, in the application of this act, no breaches of the guarantees laid down in the Covenant (arts. 2, 9, 14 and 17) occur.

10. The Committee expresses its concern with regard to draft legislative act No.10 of 2002, which seeks to amend certain provisions of the Political Constitution dealing with the administration of justice. This draft act proposes modifications to *amparo* proceedings, rendering them inadmissible for reviews of certain judicial decisions. Furthermore, the draft proposes to eliminate constitutional controls on the declaration of states of emergency.

The State party should take into consideration the fact that some of the provisions of this draft act would be in clear contradiction with provisions of the Covenant, in particular articles 2, 4 and 14. If it were to be adopted, such fundamental remedies as *amparo* proceedings could be jeopardized.

11. The Committee is concerned about the fact that a significant number of arbitrary detentions, abductions, forced disappearances, cases of torture, extrajudicial executions and murders continue to occur in the State party. The Committee is also concerned that such practices as the arrest of election candidates continue, and that murders of legislators dating from earlier years remain unpunished. Human rights defenders, political and trade union leaders, judges and journalists continue to be targets of such actions. The abduction of presidential candidate Ingrid Betancourt in February 2002 continues to be of concern to the Committee, as do the other abductions. The Committee is also disturbed about the participation of agents of the State party in the commission of such acts, and the apparent impunity enjoyed by their perpetrators.

The State party should take immediate and effective steps to investigate these incidents, punish and dismiss those found responsible and compensate the victims, so as to ensure compliance with the guarantees set forth in articles 2, 3, 6, 7 and 9 of the Covenant.

12. The Committee also expresses its concern about links involving extensive violations of articles 6, 7 and 9 of the Covenant between elements of the armed forces and State security forces, on the one hand, and illegal paramilitary groups on the other.

The State party should take effective measures to terminate the links between elements of the security services and illegal paramilitary groups.

13. The Committee notes with concern that the existence of legislation criminalizing all abortions under the law can lead to situations in which women are obliged to undergo high-risk clandestine abortions. It is especially concerned that women who have been victims of rape or incest or whose lives are in danger as a result of their pregnancy may be prosecuted for resorting to such measures (art. 6).

The State party should ensure that the legislation applicable to abortion is revised so that no criminal offences are involved in the cases described above.

14. The Committee reiterates its concern about the high levels of violence to which women are subjected. The Committee is particularly disturbed about the limited number of investigations into cases of domestic violence and sexual violence experienced by women during the internal armed conflict and by internally displaced women. The Committee also continues to be concerned about the current rules for prosecuting cases of rape, which require the consent of the victim in order to proceed further.

The State party should strengthen existing measures aimed at protecting women against all types of violence, especially domestic violence. Furthermore, it is recommended that the State party should periodically monitor the number of investigations and convictions for such crimes compared to the number of complaints received. The State party should also revise its legislation on investigations into cases of rape with respect to the role of consent of the victim in the process (arts. 3, 7 and 26).

15. The Committee notes allegations that the Office of the Public Prosecutor has not pursued with appropriate diligence members of the armed forces and security forces suspected of perpetrating

criminal violations of human rights, notably torture, enforced disappearances and summary and arbitrary executions (arts. 6, 7 and 9, together with art. 2).

The State party should ensure that these cases are investigated, whoever the alleged perpetrators may be, and guarantee to the victims the full exercise of the right to an effective remedy, as stipulated in article 2 of the Covenant.

16. The Committee is concerned that military tribunals are continuing to investigate crimes committed by military personnel involving torture, enforced disappearances and summary and arbitrary executions, despite their previous inefficiency in solving such crimes and the decision of the Constitutional Court assigning jurisdiction over such crimes to the ordinary courts (arts. 6, 7 and 9, together with art. 2).

The State party should ensure that the ordinary courts investigate and

adjudicate such crimes and that all elements of the armed forces cooperate

with the proceedings in question. Individuals under investigation for such crimes should be suspended from active duty during the investigation and trial.

17. The Committee notes with concern that the legislation of the State party does not allow conscientious objection to military service.

The State party should guarantee that conscientious objectors are able to opt for alternative service whose duration would not have punitive effects (arts. 18 and 26).

18. The Committee deplores information received regarding actions taken against human rights defenders, including intimidation and verbal and physical attacks originating at the highest political and military levels, as well as the interception of communications. Such acts constitute restrictions of their rights to freedom of expression and association.

The State party should halt such practices, and should also strengthen the protective measures that already exist in Presidential Directive 07 so that human rights defenders may fully enjoy the rights to freedom of expression and association recognized in articles 19 and 22 of the Covenant.

19. Although the Committee has taken note of the information provided by the State party on the reduction in the number of internally displaced persons in 2002 and 2003, it remains concerned about the continued high number of displaced persons in Colombia and the lack of socio-economic assistance provided by the State party to these people, especially in fields such as the education of children and medical care. The Committee also expresses its concern regarding the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote.

The State party should intensify programmes aimed at providing economic and social assistance to internally displaced persons so that they may, in conformity with article 26 of the Covenant, enjoy as many of the benefits provided by State institutions as possible. It should also take the necessary steps to ensure that displaced persons are able to exercise the rights guaranteed in article 25.

20. The Committee expresses its concern about the continued discrimination against indigenous and minority communities. The Committee is also concerned about the lack of forums for consultation with representatives of the communities with regard to the distribution of land to the indigenous peoples. The Committee is also concerned about the lack of guarantees with respect to the exercise by the indigenous communities of the right to property, given the existence of projects to develop and exploit resources that could affect those communities.

The State party should guarantee the full enjoyment of the rights of persons belonging to minorities which are set out in the Covenant, in particular with respect to the distribution of land and natural resources, through effective consultations with representatives of the indigenous communities.

21. The State party should disseminate widely the text of its fifth periodic report and the present concluding observations. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year information on the implementation of the Committee's recommendations in paragraphs 10, 11 and 18 above. The Committee requests the State party to provide, in its next periodic report, due for presentation on 1 April 2008, information on the other recommendations made and on the implementation of the Covenant as a whole.



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