



Addressing the economic, social and cultural root causes of violence

OMCT ACTION FILE (COL 190210.DESC)

Colombia: new health decrees jeopardise the life and health of millions of Colombians

The International Secretariat of the World Organisation Against Torture (OMCT), is seriously concerned that the recent emergency revision of the Colombian healthcare system by drastically reducing the number of persons benefiting from free health care and by imposing additional healthcare costs on those least able to pay will jeopardise the lives and the access to health of millions of Colombians.

Last 23 December 2009 the national Government of Colombia declared a social emergency to cope with the financial crisis of the country's healthcare system. The measures adopted by the emergency health provisions will prevent the large majority of Colombians from enjoying a number of healthcare treatments that fall outside the Obligatory Health Plan (POS, Plan Obligatorio de Salud). In addition, new decree 128 provides that all persons shall pay their health assistance treatments that fall outside the above-mentioned POS through their own financial means, including through bank loans. The new policy will in particular have a discriminatory impact between those who can afford to pay medical treatments and those who cannot.

OMCT is deeply concerned that the new policy will put millions of Colombians trapped in the vicious cycle of poverty and disease, before the dilemma of choosing between their health and their daily livelihoods. OMCT is further concerned that the emergency rules limiting access to public healthcare will provoke fierce reactions from society and that this will give rise to serious violence across the country.

OMCT recalls that the International Covenant of Economic, Social and Cultural Rights, "recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" And that the Colombian Government has an international legal obligation to protect the lives, health, integrity and dignity of all their nationals, irrespective of their financial condition. OMCT calls upon the Government of Colombia to revise this emergency policy and find different solutions to cope with financial crisis of health system. In particular OMCT calls upon the Government of Colombia to ensure that the poor and most vulnerable sectors of society are granted full access to health.

Denials of right to health in Colombia – Legal background

To overcome financial failures of the current system, the Government of Colombia is undertaking a policy of financial rescue. The healthcare system alone needs approximately 400 million USD to be restored and to get back to efficiency.¹ The Government is taking measures that limit access to health for all Colombians, aimed at coping with financial crisis and escaping financial collapse. As a matter of fact, the social emergency rules prevent Colombians from accessing medical services that are not covered by the Obligatory Health Plan (Plan Obligatorio de Salud, POS). The new health policy redefines the concept of POS, prioritises general cares and allows specific medical cares only following a scientific assessment and only if cost/benefit efficient. The new rules will also sanction up to 50 times the minimum monthly salary those doctors that fail to apply the criteria and standards strictly set out in the new POS.

More specifically, OMCT is particularly concerned at three decrees that include dubious provisions as concerns access to health. The key points of the controversial emergency decrees are:

Decree 128

It changes a number of ordinary medical cares into exceptional cares. It states that all medical services outside the POS will be considered “exceptional medical cares” that need to be examined and authorised by a technical committee. Currently, these medical services fall within the ordinary cares covered by POS. Decree 128 also states that exceptional medical performances shall be financed, totally or partially by requesting parties, taking into account their incomes and financial situation. As concerns patients without financial means, they will be able to meet their financial obligations through other means including bank loans and pension savings. For those who lack financial means, there is the creation of a Exceptional Fund (Fondo de Prestaciones Exceptional en Salud, Fonpres) that will support the lack of means. However, Fonpres will only cover these costs so long as there will be resources.

Decree 131

It creates a new technical and scientific health system aimed at setting common standards on health services. To ensure the strict application of these scientific criteria, the Decree creates a technical body composed by the Minister of Social Protection, the Minister of Enterprises, the Director of the National Research Institute (Colciencias), and by three professional researchers on health and economic affairs. The standards adopted by this scientific body will be binding for all actors involved in the health system. Furthermore, Decree 131 draws attention to disease prevention and allows special cares only as long as these are scientifically proven and if cost/benefit efficient. To this purpose, decree 131 sets clear limits to access to healthcare, and it takes into account the financial means of the State and the socio-economic situations of persons. Collective needs will be regarded as priority compared to individual needs. According to Decree no. 131, special care and treatment will fall outside the POS and thus these costs will be exclusively upon the patient's financial resources.

Decree 133:

It sets clear standards on payments between those who offer medical services and payers. Payers must pay at least the 60 percent of the cost within 15 days following the medical service.

¹ Colombia Reports, Thursday, 24 December 2009 07:27

The POS encompasses a list of medicines, interventions, procedures, and medical material. Persons will be able to access these services only if there will be clear references based on medical assessment. The POS shall only be updated, taking into account science advancement and the financial situation of the country. It will also be up-to-date once per year by the Health Committee (Commission de Regulacion de la Salud).

OMCT is extremely concerned that this policy undeniably represents a step back in the Colombian healthcare system. Indeed, in reducing the number of services included in the ordinary public healthcare, the Government will necessarily increase the number of health services that will not be covered by the POS and this is at the expenses of millions of Colombians that are in need of healthcare.

These provisions have already raised strong reactions and criticism in terms of negative impact on the right to health of every Colombian, especially the poorest who are the large majority in Colombia. In this respect, OMCT is also concerned that the emergency rules limiting access to public healthcare will provoke fierce reactions from society and that this risks giving rise to serious violence across the country.

The national social context

Colombia is a country marked by consistent social inequalities and high levels of violence. It is worthwhile to recall that the country is currently facing its fifth decade of internal conflict. This conflict has worsened in 2009 and this has increased the humanitarian crisis.

Due to conflict and violence waves across the country, more than three million people have been displaced. People in conflict zones are forced to live in hardship, are often isolated and cannot access basic health care services. According to reports from Doctors Without Borders, even in medical emergencies, it is extremely for persons living in conflict regions to seek healthcare outside their villages. This led thousands of Colombians to seek shelter in overcrowded informal settlements outside of largest urban centres. Here they face extreme poverty, inhuman living conditions and are systematically exposed at the risk of disease outbreaks. This condition is coupled by already poor access to medical services.²

In addition, during the first half of 2009 more than 350,000 persons were displaced and/or affected by natural disasters, including flooding, landslides or violent storms. According to reports from UNICEF,³ children, particularly those from marginalized populations such as the Afro-Colombians and indigenous peoples, are amongst those most severely impacted by these ongoing crises.

Furthermore, according to the report of Follow-up Commission on public policies on forced displacement of January 2008, the situation of internally displaced persons remains unsatisfactory.⁴ Many displaced people suffer from illnesses or are at risk of contracting one. They are still unable to access adequate health care, including medical, preventive, and mental health services.

² Violence in Colombia Isolates Millions from Health Care, Doctors Without Borders, July 2, 2007

³ http://www.unicef.org/har2010/index_colombia.php

⁴ Comision de Seguimiento a la Política Publica Sobre el Desplazamiento Forzado, Proceso Nacional de Verificación de los Derechos de la Poblacion Desplazada, pp. 66-74.

International human rights standards and Economic, social and cultural rights

OMCT is concerned that, in the context of national social emergency, the Government of Colombia is failing to meet its obligations to protect the economic, social and cultural rights of the Colombians, and in particular to ensure access to healthcare.

OMCT recalls that every human being has the right to enjoy of the highest attainable standard of health and that health is a fundamental human right indispensable for the exercise of other human rights. OMCT also emphasises that the human right to health is clearly recognized in numerous international instruments; Article 25.1 of the Universal Declaration of Human Rights affirms that "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services".

Furthermore, OMCT recalls that by virtue of article 12.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", and article 12.2 enumerates, by way of illustration, a number of "steps to be taken by the States parties ... to achieve the full realization of this right".

OMCT also recalls that according to General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.⁵ - The Committee in that General Comment states that the right to health in all its forms and at all levels contains interrelated and essential elements, including the elements of *Availability* and *Accessibility*.⁶

The principle of *Availability* should be understood as the "functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party."⁷

The element of *Accessibility* should be understood as health facilities, goods and services that have to be accessible to everyone without discrimination, within the jurisdiction of the State party. The principle of non-discrimination applied to the right to health involves, amongst others, that:

- Health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.⁸
- Health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer

⁵ The right to the highest attainable standard of health.: 11/08/2000. E/C.12/2000/4. (General Comments)

⁶ The right to the highest attainable standard of health.: 11/08/2000. E/C.12/2000/4. (General Comments)

⁷ The right to the highest attainable standard of health.: 11/08/2000. E/C.12/2000/4. (General Comments)

⁸ <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

households should not be disproportionately burdened with health expenses as compared to richer households.⁹

Recommendations

*Please write to the **Government of Colombia** asking it to:*

- Suspend the implementation of the Decrees 128, 131 and 133.
- Revise the controversial parts that will have a negative effect on the realisation of the right to health of all Colombians.
- Set up an independent and technical committee that will analyse and examine the procedures by which the Government is envisaging to cope with the financial crisis in the health sector.
- The Committee should consult a wide range of expert, including international experts.
- The Committee should propose a revised version of the Decrees, taking into account international human rights standards, including right to health as described by the ICESCR and by the General comments to Article 12 of the ICESCR.
- Request technical assistance from specialised UN bodies, such as the World Health Organisation, the Office of the High Commissioner for Human Rights and the Special Rapporteur on Right to Health to help ensure that the work carried out by the technical committee is in conformity with international standards.
- Ensure that future reforms of the health system are made in strict accordance with the Constitution and international standards relating to the right to health.

OMCT also asks the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to closely monitor developments on health reform in Colombia.

⁹ <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

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