

Violence against Women in Colombia

A Report to the Committee against Torture

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1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Committee against Torture forms part of OMCT's Violence against Women programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies.

1.1 Colombia's International and Domestic Obligations

Colombia has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations (7 January 1988). Despite the recommendation of the Committee Against Torture in 1999, Colombia has not made a declaration accepting the competence of the Committee Against Torture to examine communications under Article 21, para.1, relating to State Party claims that another State Party is in non-compliance with the Convention, or communications under Article 22, para.1, by individual victims of torture.

Colombia is also a State party to most of the principal international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). Colombia has also ratified without reservation the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

OMCT notes that although Colombia signed the Optional Protocol to CEDAW on 10 December 1999, it has not ratified it and as a result, Colombia does not yet recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and act upon individual communications or to undertake investigations in cases where serious or systematic violations of the Convention are allegedly occurring. Further, considering the extent to which the current armed conflict in Colombia is affecting children, OMCT notes with concern that while Colombia has signed the two Optional Protocols to the CRC on the Involvement of Children in Armed Conflict and on the Sale of Children,

Child Prostitution and Child Pornography, they have yet to be ratified. Colombia also does not recognise the competence of the Committee on the Elimination of Racial Discrimination to entertain individual communications.

On 5 August 2002, Colombia ratified the Rome Statute of the International Criminal Court. However, by invoking article 124 of the Statute, Colombia does not recognize the jurisdiction of the Court over war crimes committed during a period of seven years following the date of ratification. Thus the ICC's jurisdiction over war crimes committed in Colombia will not take effect until August 2009.

At the regional level, Colombia has ratified several conventions relevant to the eradication of torture and other violence against women including the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Sanction and Eradication of Violence Against Women (the "Belem do Para Convention"). These treaties, taken together, impose an obligation on Colombia to guarantee the enjoyment by women of their equal rights in the civil, political, social, economic and cultural realms as well as to protect women from discrimination of any kind and to protect them from gender specific forms of violence in the public and private spheres.

Article 1 of the Inter-American Convention on the Prevention, Sanction and Eradication of Violence against Women defines violence against women to include "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." Article 7 of the Convention also places specific obligations on States Parties "to prevent, punish and eradicate such violence."

Under Article 93 of the Constitution of Colombia (1991), international human rights treaties have the status of constitutional law and thus, take precedence over national law.¹ Article 93 further provides that the rights and duties enumerated in the Constitution must be interpreted "in accordance with international treaties on human rights ratified by Colombia."

Article 12 of the Constitution provides that "[n]o one shall be subjected to forced disappearance, nor subjected to torture or cruel, inhuman, or

degrading treatment or punishment.” Article 13 guarantees to all individuals equality before the law, equal treatment by authorities, and entitlement “to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.” This article further imposes an affirmative obligation upon the state to “promote the conditions necessary in order that equality may be real and effective.” Pursuant to Article 214, fundamental freedoms enumerated in the Constitution, Colombia’s human rights obligations and obligations under international humanitarian law cannot be derogated from in times of war or states of emergency.²

1.2 General Observations on the Human Rights Situation in Colombia

The human rights situation in Colombia has deteriorated significantly in the past two years in tandem with the intensification of the internal armed conflict between insurgents, paramilitaries and state security forces. Significant increases in the numbers of internally displaced persons (IDPs) most of whom are women and children, in the period 2002-2003 reflect the extent to which the civilian population has been victimised by the conflict.³ UNHCR estimates the IDP population at 195,000 but observers note that the true magnitude of this group may be as much as 2,000,000. The intensification of the fighting as well as the state’s new security policies and expanded powers under the state of emergency declared in August 2002, have resulted in increasingly widespread human rights abuses and violations of international humanitarian law implicating all parties to the conflict. According to the Office of the United Nations High Commissioner for Human Rights (UNHCHR) in Colombia, most affected have been the rights to life, physical integrity, freedom and due process.⁴ Persisting problems in the administration of justice including impunity, corruption and collusion of public officials with right-wing paramilitary organisations and, more generally, the lack of an effective and coherent policy on human rights and international humanitarian law⁵ all contributed to the deterioration of the human rights situation in 2003. Of particular concern is Colombia’s lack specific policies and effective action to protect women from violations of their rights including sexual and gender based violence which is widespread in Colombia.

Historically, Colombia has a long tradition of elected civilian rule unique in Latin America. However, the often less than inclusive policies of the established political elites, exacerbated by deep societal divisions, dramatic economic disparities between rich and poor and associated socio-political disenfranchisement, gave rise in the 1950s and 60s to alternative forms of political mobilization, including armed insurgency.⁶ Colombia's internal armed struggle thus traces its origins to the rise of left wing guerilla groups some 40 years ago, some of which were inspired by the Cuban revolution. Today, the Revolutionary Armed Forces of Colombia (FARC-EP⁷), with as many as 15,000 fighters, and the National Liberation Army (ELN⁸), estimated at about 7,000 fighters are two of the most prominent actors in the conflict. The 1980s and 90s also witnessed the rise of right wing paramilitary organizations partly as a response by wealthy landowners to the threat posed by the guerrillas. The most prominent paramilitary organization is the United Self-Defence Groups of Colombia (AUC⁹), which claims to have as many as 11,000 fighters, but observers suspect this number has increased over the past year. While the historical roots of the current conflict may have had an ideological basis, today the political motivations of armed insurgents have been discredited by their heavy involvement in a variety of lucrative criminal activities including drug trafficking, arms smuggling, abduction for ransom and extortion.¹⁰ Many observers have characterised these activities, especially the illegal narcotics trade as both a cause and a consequence of today's continuing conflict.¹¹

In early 2002, peace talks between the FARC, the ELN and the administration of former president Andrés Pastrana broke down in the face of continuing acts of violence by insurgents including several high profile kidnappings of political figures as well as increased operations by paramilitary groups, which are sometimes tolerated by the higher echelons of the military. Pastrana's ongoing contacts with the paramilitary group AUC similarly yielded no significant results. The demise of peace talks coincided with a pronounced increase in violence by armed insurgents including a concerted effort on their part to disrupt legitimate political processes and destabilise the state through acts of terrorism, indiscriminate violence and intimidation. For instance, the FARC (who has accused Uribe of having links with paramilitary groups) made several attempts to assassinate the newly elected president – Alvaro Uribe – who had campaigned on a political platform known as the “policy of democratic security” which

reflected a strategy of consolidating state authority through more decisive action and direct confrontation with insurgents and paramilitaries. President Uribe, who took office in mid-2002 made it clear from the outset that he would not negotiate with armed insurgent groups unless they met a series of demands including agreeing to a cease fire, cutting all ties with illegal narcotics trade and halting the killings and abductions of civilians. The guerillas are hesitant to lay down their arms without a clear agreement because in 1984 members of the guerilla movement agreed with then-President Betancourt to lay down their arms and form a political party, the Patriotic Union (UP), but on that occasion almost 3,000 of their leaders were subsequently killed.

Through his “policy of democratic security” president Uribe has sought to re-establish effective government control over the country by engaging in direct military confrontation with FARC and ELN, and to some extent AUC and by strengthening numbers and presence of the army and police forces, creating a network of civilian informants, establishing a system for recruiting peasants into the army, and training highly mobile elite forces. In addition, a state of “internal disturbance” was declared shortly after he took office granting expanded powers to state security forces. Under Decree 2002, the government instituted additional measures to restore public order which included the creation of “rehabilitation and consolidation zones” under direct military control, in which freedom of movement, residence, etc became subject to strict regulation. However, several of the measures of Decree 2002, notably those granting the security forces authority to carry out arrests and searches without a warrant as well as the “rehabilitation and consolidation zones” were subsequently declared unconstitutional by the highest court in a holding of 27 November 2002.¹² In April 2003, the government submitted a new anti-terrorist legislation to Congress calling for constitutional amendments once again designed to give the government expanded authorities.

According to Colombian human rights groups certain aspects of the government’s new security policies have contributed significantly to the human rights crisis affecting the country. The army’s part-time recruitment of peasants to serve as a stand-in replacement for regular security forces after they withdraw from a territory as well as the creation of a network of civilian informants has the effect of militarizing civilian populations and exposing them to a heightened risk of violence at the hands of

armed actors.¹³ The government has also engaged in the practice of blockading civilian populations to prevent food, gasoline and other essentials from reaching armed groups¹⁴ and many abuses perpetrated by state security forces have been directly linked to their expanded authorities under the state's new security policies.¹⁵

As pointed out above, the breakdown of peace negotiations in 2002 signalled an appreciable escalation of the conflict which has in turn resulted in immense humanitarian suffering for civilian populations largely caught in the cross fire. Insurgents, especially the FARC, stepped up their attacks on state institutions at all levels and began operating in urban areas resulting in mounting civilian casualties. Colombia's economic infrastructure including oil pipelines, electrical and telecommunication infrastructure, water reservoirs and roads were purposely targeted and severely damaged.¹⁶ The victimisation of civilian population including their forced displacement has become a routine and deliberate strategy of insurgents and paramilitaries in their efforts to assert control over larger swaths of territory especially in strategically located gun and drug running corridors.¹⁷ Landholding has also become an instrument to launder money from the illegal drug trade. Indeed, according to a recent report "[l]andholding is the 'best paramilitary instrument for laundering and saving money,'" and, in line with this, "the most efficient way to build a concentration of wealth is to force people to leave their land."¹⁸ In this context, the AUC has systematically targeted for assassination those who are perceived to pose a threat to their dominance including social and human rights activists, labour and community leaders, women's rights groups as well as other civilians suspected of sympathising with the guerrillas.¹⁹ FARC and ELN have committed similar abuses against civilian populations suspected of association with the paramilitaries or government forces. With respect to the government's rights record, Colombian rights groups have recorded numerous instances of serious abuses including torture, extra-judicial executions, arbitrary detentions and threats.²⁰ There are numerous and credible reports of collusion between state security forces and the AUC. The UNHCHR's Colombia office has described the situation in the following terms: "In their activities, the paramilitaries continued to take advantage of the lack of action, tolerance or complicity shown by public officials in several regions of the country. In many of these areas, the paramilitaries have replaced the

Government in important aspects of public life, including the use of armed force.”²¹

“Plan Colombia,” a multi-billion dollar aid package, has also contributed to the worsening human rights situation in Colombia. Although the plan contains human rights criteria, the United States, in particular, has paid little attention to these important needs, and instead has focused most of its aid on military support. Commentators have noted that this support has direct links with continuing human rights abuses.

UNHCHR notes that increasing incidence of breaches of international humanitarian law and human rights law involving have involved massacres, indiscriminate attacks on civilian populations, acts of terrorism, hostage-taking, disappearances and forced displacement.²² In an incident in May 2002, in the town of Bojayá, a gas cylinder bomb launched by the FARC killed more than 110 civilians who had sought refuge from the fighting in a church. This incident alone resulted in the displacement of approximately 5000 people from Bojayá to Quibdó, the capital of the department.²³ More recently, a bomb exploded, allegedly set by the FARC, in the Southern city of Colombia, Florencia and killed 11 people.²⁴ Reports also indicate that paramilitaries have engaged in enforced disappearance, extrajudicial killings and torture.

Within the wider context described above, violence against women has become pervasive in all sectors of society. Credible reports of the use of rape, abduction and homicide as an instrument of war by armed actors against women are particularly common.²⁵ Rape and sexual violence by all sides of the conflict are reportedly common. Girls are also vulnerable to violence as combatants, both with the conflict and on the part of their co-combatants. Colombian rights groups observe that the government has not taken any specific steps to implement the recommendations of the Special Rapporteur on Violence Against Women which resulted from her mission to Colombia 1-7 November 2001.²⁶ Besides violence against women in the context of the armed conflict, women are also victims of violence in the family and in the community in Colombia.

Violence against women in Colombia is pervasive and widespread. In this regard, OMCT regrets the lack of information on violence against women and girls in Colombia in the Government report and it is also concerned by the absence of any data disaggregated by gender. In light of the

Government report's lack of attention to the manner in which gender shapes the form of torture, the circumstances in which it occurs and its consequences, including the availability and accessibility of remedies, and in line with the objectives of the Violence against Women Programme at OMCT, this report will focus on violence against women in Colombia. The report will begin with a brief description of the status of women in Colombia and then go on to examine violence against women perpetrated by the state and armed combatants, violence against internally displaced women, violence against women in the family, in the community, and finally with respect to their reproductive rights.

2. General Status of Women in Colombia

Article 13 of the Constitution of Colombia provides that "All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights and freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy." Additionally, Article 43 of the Colombian Constitution states that: "Women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination. During pregnancy and after childbirth, women shall enjoy special assistance and protection from the State, and shall receive an allowance from the State if unemployed or without support."

Colombia also has many laws, besides the Constitution, purporting to guarantee equality between men and women and Supreme Court cases in Colombia indicate a commitment to this ideal. Nevertheless, pervasive stereotypes about women persist in Colombia and the reality is that women suffer from discrimination in private and public life. Such discrimination is evident in women's employment opportunities as well as women's participation in politics.

Traditional stereotypes place women primarily in a role as caretakers and value the family over all else. Women are often viewed as sex objects and are taught from an early age to be submissive, objects of desire.²⁷ Additionally, these stereotypes lead to a gendered division of labor at an early age, with girls being tasked with domestic chores in the home and

boys having more time for playing and being away from the house.²⁸

Well, my mom used to tell us that our rights, women's rights, were first of all to respect them (men), know how to treat them with nice words and to obey them. (Testimony as reported in *Mesa de Trabajo, Mujer y Conflicto Armado*, p. 56).

With respect to employment, men generally earn 28% more than women for equal work.²⁹ In rural areas, women are more disadvantaged with respect to work – with 58% of rural women earning less than half of the legal minimum wage (compared with 31% of men earning so little).³⁰ Additionally, the unemployment rates indicate that less women are working, with 24.5% of women being unemployed as opposed to 16.9% of men in 1999. Although it is against the law to fire women for being pregnant, the reality is that many women fear being discriminated against in this manner.³¹

Article 40 of the Colombian Constitution provides that “the authorities will guarantee the adequate and effective participation of women in the decision making ranks of the public administration.” Despite this article, women's participation in public and political life in Colombia is far from their proportion of the population. According to statistics from the Inter-Parliamentary Union, women in Colombia constitute 12% of the lower house (holding 20 out of 166 seats) and 9% of the upper house (holding 9 out of 102 seats). These participations rates lead to an overall rate of 8.8% with respect to women's presence in the legislature in Colombia.³² Also, although women reportedly hold 59% of all posts within the central administration, their presence in decision-making positions is much less, with only 19% of directorships being held by women in 1999.³³ In spite of this clear disparity between women and men's participation in politics, there is reportedly a resistance to instituting affirmative action policies to guarantee women's presence in this sector.³⁴ Women's lack of access to the political sphere in Colombia has been described as a vicious cycle: “Women's inexperience does not allow them to access these spaces and since they cannot access, they cannot gain experience.”³⁵

OMCT is concerned that women affected by the conflict, particularly displaced women, are not represented in peace negotiations in Colombia.³⁶

The importance of including women in peace-building efforts cannot be underestimated, as recognized in the recent report ofn the UN Secretary General on Women, Peace and Security.³⁷

With respect to education, women have made great progress in achieving the same levels of education as men. In 2002, literacy rates in Colombia were reported to be roughly equal, at 92 percent.³⁸ Also, more women are attending secondary school and receiving higher education. However, it must be noted that women continue to be focused in “feminine” areas of study.

The minimum age of marriage is 18 for both boys and girls. However, with parental permission, boys are allowed to marry as young as 14 and girls as young as 12.³⁹ OMCT notes that this exception to the minimum age of marriage is discriminatory towards girls as it provides for different ages at which boys and girls may marry with parental consent.

Discrimination against women also manifests itself in various forms of violence against women. This gender-based violence takes place in different contexts but in all instances, the State is under an international obligation to investigate, prosecute and punish such violence with due diligence.

3. Violence against Women Perpetrated by the State and Armed Groups

It has been reported that in the year from October 1995 to September 1996, socio-political violence killed 172 women and caused the disappearance of 12 women. During the same year, at least 35 women were tortured and another 33 were threatened and harassed.⁴⁰ Another report indicates higher numbers, with a woman being killed every week in combat, every two weeks a woman being a victim of a forced disappearance, and 363 women dying each year because of socio-political violence.⁴¹ Violence against women in the armed conflict in Colombia is committed by members of all sides of the conflict.

The Special Rapporteur on Violence Against Women has reported that “women are targeted for being relatives of the ‘other’ side. Armed factions threaten and abuse women for being in solidarity with their

husbands or partners, or because of the partner they have chosen, or for protecting their sons and daughters from forced recruitment.”⁴²

I am 21 years old and used to work at a bar. One day, a miliciano of the FARC arrived and proposed me and other colleagues to travel and work with the guys. They requested all my documentation, because they decide who goes and who doesn't... they promised me I would earn three million pesos in three months and that after that I could return to Medellín. They sent me by airplane, great, with some others like me... The first day they showed us the place where we were going to live and work, but the thing got complicated when I saw the line of men touching me, dirty and with looks that disgusted me... They forced me to lay with all of them and with those to come. I also had to take part on communitarian working days, that is sweeping the streets, scratching coke, cooking and fucking extra with them, you can't imagine how terrible this was, I'm here because I got ill and they let me go, otherwise I would still be there like the others, they all stayed, poor them! (Testimony as reported in Mesa de Trabajo, Mujer y Conflicto Armado, p. 91).

Although sexual violence by combatants appears to be widespread, such incidents are underreported and the police often fail to adequately investigate these crimes. When women are found raped and murdered, police reportedly only register the murder and not the sexual violence.⁴³ Such practices show a lack of concern about violence against women and may partially explain why many women are hesitant to go to the police concerning sexual violence.

3.1 Violence against Women Human Rights Defenders

The Special Representative on Human Rights Defenders has expressed concern over the murders of several women human rights defenders in Colombia. She also recognized that before human rights defenders are killed, they are often “tortured, raped or mutilated, often atrociously.”⁴⁴

Certain women's organizations have been particularly targeted for threats and violence. One such example is the National Association for Rural,

Indigenous and Black Women in Colombia (ANMUCIC). On July 21, 2000, Marlen Rincón, who was the Departmental President of ANMUCIC in San Juan, was killed, allegedly by paramilitaries who accused her of providing aid to guerillas. Additionally, on September 3, 2002, paramilitaries allegedly killed Gloria Marín de Borrero, another ANMUCIC leader, in the municipality of Zulia.⁴⁵ This organization, in particular its president, Ms. Leonora Castaño, was granted protection by the Inter-American Commission on Human Rights on March 2, 2001.⁴⁶

More recently, another member of ANMUCIC, Mrs. Nhora Cecilia Valasquez Cortes, was taken by armed men, kept overnight, and tortured because of her activities with this organization. They accused her of providing aid to the guerrilla movement. (See OMCT appeal 290703.VAW and its follow up) Mrs. Velasquez and other members of ANMUCIC continue to be harassed and receive threats because of their work.

Women's organizations as well as individual women are put at additional risks because of their role in obtaining food. Paramilitaries reportedly intervene in attempts to collect food, accusing the women of supplying nourishment to the guerrilla movement. One such instance of intervention occurred in August 2002, to a worker with the League of Women Displaced by Violence in Bolívar, which coordinates a food program for displaced persons. When the worker went to receive food under the auspices of the program, she was met by a paramilitary and asked whether she was providing food to the guerrillas. She explained that the food was for displaced people, the paramilitary made a call on his radio, and then he warned her that her organization would be placed under surveillance by his group. Such threats discourage women from continuing their important work in providing food to displaced populations.⁴⁷

Women are also vulnerable to violence in their attempts to mobilize manifestations against the war. For example:

“On July 25th, 2002, the National Women’s Mobilization against the War took place in Bogotá. More than 25,000 women from every city in the country arrived with the collectively-shared proposal to protest against the war and to demand a negotiated political settlement to the Colombian armed conflict. On their return journey to the city of

Cartagena (Bolívar), on July 27th, 2002, members of the Women's League, as well as women from other organizations, were victims of an act of violence on the highway. In the municipality of Río Negro (Antioquia), several armed men detained the caravan of buses in which they were returning to Cartagena from Bogotá. These armed men detained the first of the three buses in the caravan and with small weapons threatened the driver who terrorized, fled and hid himself in the cabin of the bus.

The majority of the women panicked. However, one of the leaders of the Women's League established calm, and from the stairwell of the bus, initiated a dialogue with the aggressors who, after taking down the bus's license plate, allowed them to move on”⁴⁸

3.2 Child Soldiers

It has been reported that both guerilla and paramilitary groups recruit child soldiers and that girls form a significant percentage of those soldiers. It is estimated that between 800 and 1,600 child soldiers in Colombia are girls.⁴⁹

Girls become combatants for various reasons, including the desire to escape sexual abuse at home.⁵⁰ One report indicates that a major reason for girls to decide to join the combatant groups was a strong desire to escape from maltreatment within their family, domestic violence and the extreme burden of domestic work.⁵¹

Older male combatants often form sexual relationships with these girls. These relationships are formed in a context where the girls are underage and the older, higher-ranked men have clear power and authority over them. Because commanders often can offer the girls a certain degree of protection, by giving them safer assignments, the girls frequently agree to sexual relations with the older men. However, there have also been reports of rape within the combating groups.⁵²

The occurrence of rape within the combating groups may be much higher than reported given that rape generally is underreported, and that girls in

armed groups reportedly view sexual abuse as normal. Thus, they rarely speak about such abuse.⁵³

Girl combatants are frequently forced to use contraception, such as intrauterine devices (IUDs) or contraceptive injections, even when they are not a part of a sexually active couple. When girls become pregnant from their relations with the men, they are often forced to have an abortion.⁵⁴

4. Internally Displaced Women

The Representative of the Secretary General on internally displaced persons has noted that internal displacement is a severe problem in Colombia. In particular, he observed that displacement of populations in Colombia has occurred not only as a result of the armed conflict but also as a purposeful strategy of the combatants, who rarely confront each other directly, instead attacking civilians who they suspect of having contacts with the “other” side.⁵⁵

Internal displacement has disproportionately affected women and children, who constitute 80% of the displaced population.⁵⁶ Additionally, reports indicate that over 34,000 women head households that are displaced.⁵⁷

It has been reported that as many as 1 in 5 displaced women have been raped. Additionally, among this population, 8% of minors have been raped before reaching the age of 14.⁵⁸ Another report indicates that 30% of teenage girls who are displaced have children or are pregnant.⁵⁹ Combatants reportedly offer young girls money for sex, and displaced girls, as young as 11, reportedly accept prostitution as a way to support their family.⁶⁰ Similarly, there have been cases where paramilitaries have ask parents to give their daughters to the combatants for a couple days as a “community service.”⁶¹

Not only are displaced women vulnerable to violence from armed groups, but they are also particularly vulnerable to violence within their own families. Interviews with displaced women reveal that they have perceived an increase in domestic violence since their displacement.⁶²

Afrocolombian women face particular problems in displacement. This minority community lives in cocoa growing regions, which are highly desired by the combatants. Thus, they are often displaced and as such, the women face triple discrimination: as women, as Afrocolombians and as displaced persons. Stereotypes categorizing Afrocolombian women as sex objects and more general discrimination against this minority group leads to a situation where they are often targeted for sexual violence.⁶³

5. Violence Against Women in the Family

5.1 Domestic Violence

Article 42 of the Constitution of Colombia provides that “Family relations are based on the equality of rights and duties of the couple and on the mutual respect of all its members. Any form of violence in the family is considered destructive of its harmony and unity, and will be sanctioned according to law.”

Additionally, Law 294 punishes violence in the family, stating “he who maltreats physically, psychically, or sexually any member of his family nucleus, shall incur a prison sentence from 1 to 2 years.” According to this law, maltreatment causing personal injuries is committed when: “he who by means of physical or psychic violence, cruel, intimidating or degrading treatment, should cause damage to the body or to the psychological health of a member of his family group, shall be deprived of liberty for the respective offense, increased by one third to half of the sentence.” The law further defines maltreatment by means of liberty restriction: “he who by means of force and without any reasonable cause restricts the liberty of locomotion of another person of legal age belonging to his family group, shall incur a penalty of 1 to 6 months in prison and a fine of 1 to 16 minimum monthly salaries, if and when this occurrence does not constitute an offense sanctioned with a larger sentence.”

The law punishing violence in the family also provides for court-ordered protection measures where maltreatment of family members has been determined. The punishment for violence in the family can be increased if such violence was perpetrated in violation of a protection order. Law 575

(2000) amended Law 294 by increasing the potential protection measures available.⁶⁴

Before the amendment to Law 294, protection orders could also be obtained through a *tutela* action. This is a procedure whereby a complainant may request immediate protection of fundamental rights against a public authority or against a private person to whom the complainant is subordinate or vulnerable.⁶⁵ At first, courts did not accept the use of a *tutela* action to guarantee protection from domestic violence. However, the Constitutional Court of Colombia has interpreted the function of *tutela* actions broadly and has not limited the definition of fundamental rights to those rights enumerated in the Colombian Constitution. As such, the Constitutional Court asserted that domestic violence constitutes a violation of a woman's fundamental rights to "life and physical integrity" and thus the use of a *tutela* action was wholly appropriate.⁶⁶

With the passage of Law 575 on domestic violence, the Constitutional Court held that *tutela* actions were no longer valid in cases of domestic violence, as the new law provided an alternative mechanism for obtaining protection. However, the lower courts have reportedly not been interpreting the new law in a way that effectively protects women and some observers have commented that the *tutela* action may need to be reinstated as a possible avenue for redress in cases of domestic abuse,⁶⁷ at least until the new law provides adequate protection for women victims of domestic violence. Use of the *tutela* action may be further limited by proposed constitutional amendments that foresee drastic changes in the permissible uses of this judicial mechanism.⁶⁸

Another recent amendment to the law has also clarified that punishments under the law against domestic violence are only to be applied where charges with a more severe punishment do not apply. This amendment has been criticized as the law provides for a minimal punishment for domestic violence by itself, sending a message that such violence is not as serious as other types of violence.⁶⁹

Despite many laws and court cases concerning domestic violence, the overriding view remains that domestic violence should be treated as a "private" matter. Hence, although domestic violence in Colombia is reportedly widespread, this prevailing perspective hinders reporting of the

crime and makes it exceedingly difficult to assess the true magnitude of the problem.

One study indicates that 41 percent of women between the ages of 15 and 49 in Colombia have been victims of physical violence perpetrated by a spouse or partner. The same study reveals that 11% of women in the same age group have experienced sexual violence by husbands or partners.⁷⁰ The National Institute of Legal Medicine and Forensic Science also offers information on the magnitude of the problem of domestic violence in Colombia. In 2002, they received, on average, 178 confirmed reports of inter-family violence on a daily basis. 70% of the violence they documented was between spouses, and 78% of the inter-family violence is directed against women.⁷¹ In 2000, it was reported that there were 73,127 cases of conjugal violence – this leads to the statistics of 200 cases per day, 8 cases every hour.⁷² With respect to violence between spouses, women are the victims in 91% of the cases. Additionally, women are disproportionately victims of violence committed by other family members.⁷³ Another report indicates that 93% of all domestic violence is directed towards women victims.⁷⁴

Although no statistics exist, people in Colombia allegedly report a perceived increase in domestic violence and attribute this increase to the armed conflict.⁷⁵ Violence and aggressiveness are extremely present in Colombian society and these negative aspects in public life are spilling over into family life with more and more frequency. It is important to note, however, that violence against women in the home is a deep-rooted societal problem and the armed conflict is exacerbating a problem which was already existent in more peaceful times.

Domestic violence against internally displaced women is also a serious problem, as mentioned earlier. The poor living conditions and accompanying stress that families endure when they are displaced has reportedly led to an increase in domestic violence amongst this population.⁷⁶

Traditional views which value family cohesion over individual rights create an environment in which it is difficult for women to report domestic violence. Accordingly, it is estimated that 95% of all domestic abuse is suffered in silence.⁷⁷ Another estimate indicates that only 27% of women victims of domestic violence report the crime.⁷⁸ These cultural mores are

often reinforced by police and other officials, who are responsible for responding to cases of domestic violence.⁷⁹

Lack of awareness about rights and remedies is another major obstacle to women fully enjoying their right to be free from violence. Marginalized women, such as internally displaced women and rural women, are particularly unaware of their rights as well as the laws forbidding domestic violence. It has also been reported that culturally ingrained views create a situation where violence against women is seen by women as “normal” and expected.⁸⁰

Additionally, many women do not trust the police and judicial system, thus there is a huge gap between legislation and actual implementation.⁸¹ The lack of trust of the police is particularly evident with indigenous women who are hesitant to present their familial problems to the police, for fear of causing friction within their own community’s fight for recognition and aggravating already existent prejudices against their community.⁸² Besides the lack of trust of the police, there is also a general lack of faith in the law enforcement and judicial systems. Accordingly, if women want to see results from their complaints, they will often report to the paramilitaries or the guerillas before going to the police because the armed combatants will ensure quick action.⁸³

For example, some ill treated women, or those who want their husbands to give them food or something, they won’t go to Bienestar Familiar, nor to the family court, nor to the prosecutor’s office, because they say these institutions will not provide the immediate service. So, what are they doing now? Now they go and ask the paramilitary or the guerrilla, they say they are more effective indeed: “I go to the commander of the paramilitary, tell them my case, they come immediately, they catch him, beat him and next time he knows; that is enough”. (Testimony as reported in Mesa de Trabajo, *Mujer y Conflicto Armado*, p. 59)

Few shelters exist to assist victims of domestic violence, and those that exist are reportedly subject to severe economic constraints.⁸⁴

5.2 *Marital Rape*

In 1996, marital rape was criminalized in Colombia. When this law was originally enacted, it provided for a lesser punishment for rape within the context of marriage than for rape generally. However, the Constitutional Court of Colombia declared this difference in punishments unconstitutional. The new Penal Code has amended the law, providing that rape between spouses, partners or persons who have a child together is now an aggravating factor to rape, warranting a stricter punishment.⁸⁵

Despite this law forbidding marital rape, 5.3% of women in Colombia report having been raped, and in 44% of these cases, the perpetrator was the spouse or the partner of the victim.⁸⁶ Additionally, it is reported that 1 in 5 women who are internally displaced have been raped with a significant proportion of the perpetrators being husbands or companions.⁸⁷

6. Violence Against Women in the Community

6.1 *Rape and Sexual Violence*

The law divides sexual offenses into three general categories: rape, abusive sexual acts, and statutory rape. Under the law for rape, three sub-categories are delineated: violent carnal access, violent sexual act, and carnal access with a person who is incapable of resisting. The punishments for these crimes of sexual violence have recently been amended: violent carnal access is punishable with 8 to 15 years imprisonment (the maximum sentence having been lowered from 20 years); violent sexual act provides for a penalty of 3 to 6 years in prison (changed from 4 to 8 years); and committing a sexual act with someone who is not able to resist is punishable with 8 to 15 years imprisonment (increased from 4 to 8 years).⁸⁸ These punishments can be increased when certain aggravating factors are present, such as multiple perpetrators, the perpetrator has authority over the victim, the crime results in pregnancy or a venereal disease for the victim, the victim is less than 10 years old, or the victim is the spouse, partner of or has a child with the perpetrator.⁸⁹

It is estimated that around 15,000 rapes went unreported in 1999.⁹⁰

Furthermore, reports indicate that 5.3 percent of women report that they have been subjected to forced sexual relations at some point and that in most of these cases, the victims knew their perpetrator.⁹¹ One study also indicates that girls who are between ages 12 and 17 are the most vulnerable to becoming victims of sexual violence – with 41 percent reporting violence in the home and 42 percent reporting violence in public.⁹²

The trauma of rape is exacerbated by cultural views that link women's sexuality to notions of family "honour." Women victims of rape face stigmatization and rejection by their families when they are raped. Particularly, husbands reportedly feel betrayed when their wife is raped, as though she provoked the crime, and it can lead to the breakdown of the marriage.

The AUC (Autodefensas Unidas de Colombia – Paramilitaries), came to Domingó, husbands fled to the fields and 5 to 10 men raped women between 19 and 30 years old. Two married couples have separated since. Husbands felt disappointed of the women that had been raped, they were ashamed. One of them (husband) left. The women felt ashamed. The other women that knew about these rapes didn't want to go to town because they were afraid that the same thing might happen to them. (Testimony as reported in *Mesa de Trabajo, Mujer y Conflicto Armado*, p. 27)

The situation for women who become pregnant from rape is also concerning. In addition to the lack of support and potential rejection they face from their families, women who have been raped face criminal charges if they decide to have an abortion. As described below, the law forbidding abortion only provides for a lessened punishment if the abortion is performed as a result of pregnancy from rape.

It is suspected that rape and other crimes of sexual violence are drastically underreported. Statistics demonstrate that about 775 teenagers are raped each year, while only 17% of the those victims report the crime publicly. Similarly, a 2001 survey of internally displaced women indicated that while rates of sexual violence are high, 84% of the women never sought out assistance after being abused.⁹³

The Supreme Court in Colombia has demonstrated a progressive approach to rape cases. Specifically, it has held that the lifestyle of the victim, the fact that she knew her assailants, and the fact that she accompanied her assailants voluntarily are irrelevant factors in establishing consent. In the same case, the court also held that resistance to rape must only be reasonable to an objective observer.⁹⁴ Despite this important interpretation of the law, the judicial system as a whole has not necessarily adopted the same approach. Many courts reportedly still take into account subjective judgments about a victim's reputation, making her testimony less credible.⁹⁵

When women do come forward to denounce such violence, they are often met with discriminatory stereotypes in the judicial and law enforcement systems that perpetuate notions that the victim is to blame for provoking the violence. Also, it is reported that protection of women is sometimes granted according to opinions of whether a woman is "honest" or not, and that some opinions do not view women as credible witnesses.⁹⁶

Lack of funds is a serious obstacle to women's access to justice in Colombia. Legal services are not readily available free of charge and where they are, the providers have not received gender sensitivity training. Additionally, private lawyers are too expensive for most women. Additionally, the high cost of lab tests from government's forensic medicine department, which are required in order to sustain charges of rape, prevent many women from pursuing a case against their perpetrator.⁹⁷ One interview with a woman revealed the following testimony:

Her brother-in-law raped her 16-year-old sister. They went to the authorities and to the hospital but were not able to pay for the laboratory analysis which cost \$50.00. Without this, the investigation ended. My sister, she said tearfully, is now six months pregnant. (Testimony from Reproductive Health for Refugees Consortium, Displaced and Desperate: Assessment of Reproductive Health for Colombia's Internally Displaced Persons, p. 31 (2003)).

6.2 Trafficking

In the Constitution of Colombia, Article 17 prohibits "slavery, servitude and the slave trade." In June 2002, a new law was introduced to prohibit

trafficking in persons. It provides that:

“anyone who promotes, induces, constrains, enables, finances, co-operates, or participates in a person’s transfer within the national territory or abroad by resorting to any form of violence, ruse or deception, for exploitation purposes, to lead such person to work in prostitution, pornography, debt bondage, begging, forced labour, servile marriage, slavery for purposes of obtaining financial profit, or any other benefit either for himself or for another person, shall incur 10 to 15 years imprisonment and a fine.”⁹⁸

This important law has the potential to be an effective tool in fighting against human trafficking. However, given its recent enactment, the manner in which it is implemented remains to be seen. Colombia has signed but not ratified that Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

Colombia is a country of origin for trafficked women, with trafficking occurring internally, regionally and internationally. Reports indicate that as many as 35,000 women a year are sent abroad for trafficking purposes.⁹⁹ In particular, women from Colombia are trafficked to Japan in large numbers, with estimates claiming that 40% of all trafficked Colombian women are taken to Japan. It is reported that this trafficking route is heavily linked to the Japanese mafia, who also engage in drug and arms trafficking.¹⁰⁰

Over the 8 year period between 1992 and 2000, only 99 cases were filed against traffickers and of those, only 7 actually went to trial. The average punishment was between two and five years in prison, which meant that many of the convicted traffickers were able to go free as two years is the minimum sentence and under the Colombian system these sentences are often not served.¹⁰¹

According to ESPERANZA, a Colombian NGO working on this issue, problems perpetuating the phenomenon of trafficking in women include poverty, lack of education, continuing violence and conflict, lack of awareness in all sectors of society and the lack of prevention mechanisms.¹⁰²

The fact that traffickers have generally received only the minimum sentence in the past has been a discouraging factor for trafficking victims trying to evaluate whether they should file a case. Another obstacle is the long delays in the court system meaning that it may take years to get a judgment against a trafficker.¹⁰³ Many trafficking victims are also fearful of reporting their traffickers because their personal safety may be jeopardized. The police offer no protection to trafficking victims leaving them vulnerable to further contact with the traffickers.¹⁰⁴ Besides the lack of witness protection by the State, social services, such as housing and counseling, are also not provided by the State. The provision of these services falls to NGOs who suffer from a severe lack of resources.¹⁰⁵

7. Reproductive Rights

Undergoing or performing an abortion is a criminal act in Colombia. The punishment is aggravated for persons who perform an abortion without the woman's consent. The penalty is lessened for women who undergo abortions when they are pregnant as a result of nonconsensual sex (rape) or nonconsensual artificial insemination. The new Penal Code adopted in 2000 adds a provision which allows judges to drop all punishment when the "abortion is been performed in abnormal and extraordinary circumstances of motivation." It remains to be seen how this phrase in the Penal Code will be interpreted by the courts.¹⁰⁶

Women's access to contraceptive methods is hindered by traditional views that see the desire to use birth control as a sign of infidelity or "corruption" on the part of the wife. Also, the Catholic Church in Colombia exerts considerable influence in forbidding the use of non-natural birth control methods.¹⁰⁷ It is reported that decisions concerning the number and spacing of children a woman will have are taken almost exclusively by husbands.¹⁰⁸

Despite the prohibition and criminalization of abortion, the practice is reportedly widespread. According to statistics from 1998, 26% of women attending university admitted to having had an abortion. The same statistics reveal that one third of all women who have been pregnant have had an abortion.¹⁰⁹ The illegal nature of the act puts many women's lives at risk as they have abortions performed in clandestine situations with no

medical standards regulating the circumstances. Thus, it is reported that complications from abortions is the second leading cause of maternal mortality in Colombia.¹¹⁰ Reports also indicate that obtaining a safe (although illegal) abortion in Colombia is very much dependent upon the economic status of the woman, with poor women suffering from much more dangerous operations.

8. Conclusions and Recommendations

OMCT is pleased to note that Colombia's Constitution guarantees equality between men and women, and that several high level court cases indicate a commitment by the judiciary to enforce this guarantee. Colombia has also passed many laws attempting to ensure that women are able to fully enjoy their rights. However, the reality in Colombia is that women continue to suffer from multiple forms of discrimination, which often manifests itself through violence against women.

The government of Colombia is strongly urged take measures to guarantee women's equal opportunities in employment. Additionally, more efforts should be made to ensure that women are adequately represented at all levels of government. Women should also be included in peace negotiation efforts.

OMCT is concerned that girls in Colombia may be married as young as 12 and recommends that the government amend this provision so that the minimum age of marriage with parental permission is the same as the minimum age for boys and consider setting the age of marriage at 18 for both girls and boys in all circumstances.

Women in Colombia are particularly vulnerable to violence by armed combatants, both paramilitaries and guerillas, in the context of the internal conflict. OMCT insists on the government's obligations to investigate, prosecute and punish with due diligence all incidents of sexual violence perpetrated by armed combatants. OMCT also recommends that the government establish special support services for women victims of such violence by the armed combatants.

OMCT is deeply concerned for the safety of women human rights defenders. As such, OMCT particularly calls on the government to ensure the

physical and psychological integrity of all such women who are working to provide essential services to the population of Colombia.

OMCT is gravely concerned about the high numbers of children, including girls, among combatant groups. The government should examine the root causes that push children to join such groups and institute adequate programmes and services to address this problem. Also, support services for children who have participated in the conflict should be given priority in an effort to rehabilitate these children. Reports of rape within these groups must be investigated, prosecuted and punished with due diligence. Furthermore, the government should ensure that girls who have been forced to use contraception or forced to undergo abortions receive adequate reparations from these violations of their bodily integrity.

Internally displaced women are also severely at risk of violence both at the hands of armed combatants and within their own families. Protection and social services must be offered to these women. Law enforcement personnel must be trained to respond effectively to internally displaced women taking into account their specific needs arising from their displacement as well as their lower status as women.

Although Colombia has specific legislation outlawing domestic violence, this legislation could be strengthened. OMCT notes that the recent amendment to Law 294 by Law 575, providing that charges of domestic violence are only applied where more severe charges are not applicable sends a message that domestic violence is a less serious crime than other crimes. OMCT is also concerned at the removal of the *tutela* action with respect to domestic violence cases, as this procedure had served as a valuable tool for victims in securing their rights. Given that the alternative mechanisms for providing redress to victims of domestic violence have not fulfilled this purpose, OMCT observes that *tutela* actions should be reinstated as an avenue of protection for victims of domestic violence, at least while the protection measures provided for by law remain ineffective.

Domestic violence is reportedly widespread in Colombia and more efforts must be made to eradicate this violence. This violence, including marital rape, is drastically underreported. Awareness-raising programmes should be instituted to ensure that women are knowledgeable about the law and their rights and to encourage reporting of the crime. Additionally, campaigns to sensitize Colombian society to the gravity of domestic violence

should be embarked upon to overcome stereotypes about women and prevailing opinions classifying domestic violence as a private matter. Training courses for all law enforcement officers, including prosecutors and judicial personnel, should be created in order that these government officials handle cases of domestic violence in a sensitive manner. Additionally, the government should ensure that women victims of domestic violence have access to support services, including shelters, as well as judicial remedies. Furthermore, OMCT insists on the government's obligation to investigate, prosecute and punish domestic violence with due diligence.

Special attention must be paid to marginalized women with respect to violence within the family. These women are often unaware of their rights and they suffer from discrimination in accessing remedies. OMCT recommends that the government establish specific measures intended to reach out to these marginalized populations.

OMCT notes that recent amendments to the penal code have provided lesser punishments for rape. Rape is a particularly concerning crime in Colombia. OMCT is concerned that women are often blamed for having provoked the crime of rape and is alarmed that women victims of rape are sometimes doubly victimized because their families or husbands will reject them on account of the rape. OMCT finds that it is urgent that comprehensive measures be implemented to counteract these traditional views.

Additionally, women victims of rape face serious obstacles in filing a complaint against their perpetrators as all medical examinations must be conducted by the government forensic medicine department and many women cannot afford the attached fees for such an examination. OMCT urges the government to provide free medical examinations to women who have been raped and recommends that social services, such as counseling, be offered to victims.

OMCT is gravely concerned about the high incidence of trafficking in women from Colombia. OMCT further observes that traffickers are rarely prosecuted and when they are, they are often given a minimal punishment. Long delays in the court system and the lack of witness protection to trafficking victims also serve to discourage women from reporting the crime of trafficking. In implementing its recently passed legislation on traffick-

ing, the government of Colombia should ensure that cases are pursued in an efficient manner, that traffickers are punished in accordance with the gravity of their crime and that victims are guaranteed appropriate protection and social services. OMCT also calls upon the government to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

OMCT is deeply troubled by the high rate of death in connection with clandestine abortions and vehemently urges the government to consider legalizing abortion in cases of rape and incest. OMCT also believes that all persons should have the right to decide freely and responsibly about the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence. OMCT would recommend the elaboration of adequate family-planning programmes.

Finally, OMCT would insist on the need to fully implement all provisions of the Convention on the Elimination of Discrimination against Women, the Declaration on the Elimination of Violence against Women as well as the Beijing Platform of Action, in Colombia as these are the most relevant international instruments concerned with all forms of violence against women.

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- 1 Under Article 93 “the international treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency prevail in the national law.” Constitución Política de Colombia de 1991, actualizada hasta la Reforma de 2001, available at www.georgetown.edu/pdba/Constitutions/Colombia/col191.html, (unofficial translation).
 - 2 Constitución Política de Colombia de 1991, actualizada hasta la Reforma de 2001 (unofficial translation).
 - 3 According to the Sistema de Estimación por Fuentes Contrastadas (SEFC) a body set up in 2002 which uses multiple sources (SUR, CODHES, RUT) to generate IDP data, in 2002, 168,951 persons were displaced in Colombia in 2002. *See*

- Mesa de Trabajo: Mujer y Conflicto Armado, *Informe Sobre Violencia Sociopolítica Contra Mujeres, Jóvenes y Niñas en Colombia, Tercer Informe - 2002*, pp. 18-19. See also, International Crisis Group (ICG), Latin America Report N°4, Bogota/Brussels, *Colombia's Humanitarian Crisis*, Bogota/Brussels, 9 July 2003. According to this report the year 2002 “saw the highest absolute and relative increases of internal displacement in the last ten years” in Colombia, p. 3.
- 4 UN Doc. E/CN.4/2003/13, p. 16.
 - 5 *E/CN.4/2003/13Ibid.*, p. 7.
 - 6 See Anders Rudqvist, *Popular Participation in Colombia*, in “Breeding Inequality – Reaping Violence, Exploring Linkages and Causality in Colombia and Beyond,” Collegium For Development Studies, Uppsala (2002)
 - 7 Fuerzas Armadas Revolucionarias de Colombia – Ejército Popular.
 - 8 Ejército de Liberación Nacional.
 - 9 Autodefensas Unidas de Colombia.
 - 10 According to the Colombian prosecutor generals office, the FARC’s annual income from drug trafficking, kidnapping and extortion is estimated to amount to \$2.5 billion annually. Economist Intelligence Unit, *Colombia Country Report July 2003*.
 - 11 See ICG Latin America Report N°5 Bogotá, *Colombia: Negotiating with the Paramilitaries*, Bogota/Brussels, 16 September 2003, Chapter 2c, “Drug Trafficking”.
 - 12 Observatory for the Protection of Human Rights Defenders, OMCT and FIDH, Informe Misión internacional de investigación, Colombia: *¿Administración de la justicia....o de la impunidad?*, March 2003, p. 10.
 - 13 Working Group on Women and Armed Conflict, Bogota, Colombia, October 2002: *Follow-up to the Recommendations of the United Nations Special Rapporteur for Violence Against Women, Its Causes and Consequences*, Ms. Radhika Coomaraswamy – Mission to Colombia (November 1-7, 2001).
 - 14 Working Group on Women and Armed Conflict, *Ibid.*, p. 10-11.
 - 15 See generally UN Doc. E/CN.4/2003/13, *Ibid.*.
 - 16 ICG Latin America Report N°4, Bogota/Brussels, *Colombia's Humanitarian Crisis*, Bogota/Brussels, 9 July 2003., p. 7.
 - 17 “Forced displacement is used by armed actors as a tool to de-populate strategic areas over which they seek control ...” El Desplazamiento Forzado y los DESC de las Mujeres, Una mirada a las vivencias de mujeres colombianas desplazadas y asentadas en el Área Metropolitana de Bucaramanga – Santander (2003), p. 3.
 - 18 ICG Latin America Report N°5, *Colombia: Negotiating with the Paramilitaries*, Bogota/Brussels, 16 September 2003, p.11.
 - 19 ICG Latin America Report N°5, *Ibid.*, p. 7.
 - 20 According to CINEP, security forces (army & police) were responsible for 100 extra-judicial execution, 89 threats, and 49 acts of torture and 1030 arbitrary detentions in 2002. *Banco de Datos de derechos humanos y violencia política*, cited in ICG Latin America Report N°4, Bogota/Brussels, *Ibid.*
 - 21 UN Doc. E/CN.4/2003/13, *Ibid.*, p.14.
 - 22 *Ibid.*, p. 19.

- 23 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.*, p. 19.
- 24 New York Times, *11 Killed in Colombian City Bombing*, September 28, 2003.
- 25 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.* See Aalso, ICG Latin America Report N°4, *Ibid.*, ICG *Colombia's Humanitarian Crisis*, op. cit, p. 5 "The armed groups often force women heads of household to leave their homes because of the prominent role they play in community development."
- 26 Working Group on Women and Armed Conflict, *Bogota, Colombia, October 2002: Follow-up to the Recommendations of the United Nations Special Rapporteur for Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy – Mission to Colombia (November 1-7, 2001)*.*Ibid.*
- 27 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.* , p. 30, 56.
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- 31 *Ibid.*, p. 3.
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- 36 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.*, p. 21.
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- 104 *Ibid.*, p. 191-92.
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- 106 Center for Reproductive Rights, *Women of the World: Colombia*, p. 33 (2001).
- 107 *Alternative Report*, CLADEM, *Ibid.*, p. 41.
- 108 *Ibid.*, p. 57.
- 109 Center for Reproductive Rights, *Women's Reproductive Rights in Columbia: A Shadow Report*, p. 8-9 (1998) (citing article Abortion: Something in Style at the University, *El Tiempo* 6A, (October 6, 1998)).
- 110 *Alternative Report*, CLADEM, *Ibid.*, p. 42.

Committee against Torture

THIRTY-FIRST SESSION – 10-21 NOVEMBER 2003

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE AGAINST TORTURE:
COLOMBIA**

1. The Committee considered the third periodic report of Colombia (CAT/C/39/Add.4) at its 575th and 578th meetings, held on 11 and 12 November 2003 (CAT/C/SR.575 and 578), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Colombia, but regrets that it was submitted on 17 January 2002, five years late. It notes that the report contains little information on the practical application of the Convention over the reporting period. The Committee is, however, grateful for the exhaustive oral replies that the State party's delegation gave to most of its members' questions and for the statistics provided during the consideration of the report.

B. Positive aspects

3. The Committee notes with satisfaction the State party's adoption of a number of domestic laws of relevance to the prevention and suppression of torture and ill-treatment, in particular:

- (a) The new Penal Code (Act No. 599/2000), which defines the offences of torture, genocide, forced disappearance and forced displacement and states that due obedience will not be considered as justifying those offences;
 - (b) The new Military Penal Code (Act No. 522/1999), which excludes the offences of torture, genocide and forced disappearance from the jurisdiction of the military criminal courts and regulates the principle of due obedience;
 - (c) Act No. 548/1999, which prohibits the conscription of persons under 18 years of age;
 - (d) The new Code of Penal Procedure (Act No. 600/2000), title VI whereof provides that illegally obtained evidence will be inadmissible.
4. The Committee also welcomes:
- (a) Act No. 742/2000 approving the ratification of the Rome Statute of the International Criminal Court, the instrument whereof was deposited on 5 August 2002;
 - (b) Act No. 707/2001 approving the ratification of the Inter-American Convention on Forced Disappearance of Persons.
5. Similarly, the Committee expresses its satisfaction at:
- (a) The statement by the State party's representative that there neither has been nor will be any amnesty or clemency in the State party for acts of torture;
 - (b) The positive role of the Constitutional Court in the defence of the rule of law in the State party;
 - (c) The ongoing cooperation between the office in Colombia of the United Nations High Commissioner for Human Rights and the Government of Colombia.

C. Factors and difficulties impeding the application of the Convention

6. The Committee is aware of the difficulties with respect to human rights and international humanitarian law arising from the current complex situation in the country, especially in a context characterized by the activities of illegal armed groups. The Committee nonetheless reiterates that, as stated in article 2 of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

7. The Committee reiterates its concern at the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside armed operations. It also expresses its concern at the high number of forced disappearances and arbitrary executions.

8. The Committee expresses its concern that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture. In this regard the Committee expresses its concern, in particular, at:

(a) The recruitment of part-time “peasant soldiers”, who continue to live in their communities but participate in armed action against guerrillas, so that they and their communities may be the target of action by the illegal armed groups, including acts of torture and ill-treatment;

(b) Constitutional reform bill No. 223/2003, which, if adopted, would seem to confer judicial powers on the armed forces and enable persons to be detained and questioned for up to 36 hours without being brought before a judge.

9. The Committee also expresses its concern at:

(a) The climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts

of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims;

- (b) The allegations of tolerance, support or acquiescence by the State party's agents concerning the activities of the paramilitary groups known as "self-defence groups", which are responsible for a great deal of torture or ill-treatment;
- (c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the "alternative penalties" bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;
- (d) The allegations and information indicating:
 - (i) That some prosecutors in the Human Rights Unit of the Public Prosecutor's Office have been forced to resign and that members of the Unit have been threatened in connection with their investigation of cases of human rights violations;
 - (ii) Inadequate protection against rape and other forms of sexual violence, which are allegedly frequently used as forms of torture or ill-treatment. The Committee further expresses its concern at the fact that the new Military Penal Code does not expressly exclude sexual offences from the jurisdiction of the military courts;
 - (iii) The fact that the military courts are allegedly still, despite the promulgation of the new Military Penal Code and the Constitutional Court's decision of 1997 that crimes against humanity did not fall within the jurisdiction of the military courts, investigating offences that are totally excluded from their competence, such as torture, genocide and forced disappearance in which members of the police or armed forces are suspected of having been involved;

- (iv) The widespread, serious attacks on human rights defenders, who are playing an essential role in reporting torture and ill-treatment; in addition, the repeated attacks on members of the judiciary, threatening their independence and physical integrity;
- (e) The numerous forced internal displacements of population groups as a result of the armed conflict and insecurity in the areas in which they live, taking into account the continuing absence in those areas of State structures that observe and ensure compliance with the law;
- (f) The overcrowding and poor conditions in penal establishments, which could be considered inhuman or degrading treatment;
- (g) The absence of information on the application of article 11 of the Convention as regards the State party's arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment, and the reports received by the Committee to the effect that the State party is failing to discharge its obligations in this respect;
- (h) The lack of satisfactory information concerning the rules in the State party's law for ensuring the application of article 3 of the Convention to cases of refoulement or expulsion of aliens in danger of being tortured in the country of destination.

E. Recommendations

10. The Committee recommends that the State party take all necessary measures to prevent the acts of torture and ill-treatment that are being committed in its territory, and in particular that it:
 - (a) Take firm steps to end impunity for persons thought to be responsible for acts of torture or ill-treatment; carry out prompt, impartial and thorough investigations; bring the perpetrators of torture and inhuman treatment to justice; and provide adequate compensation for the victims. It recommends in particular that the State party reconsider in the light of its obligations under the Convention the adoption of the "alternative penalties" bill;

- (b) Reconsider also, in the light of its obligation to prevent torture and ill-treatment under the Convention:
 - (i) The use of “peasant soldiers”;
 - (ii) The adoption of measures that appear to give military forces powers of criminal investigation under which suspects can be detained for long periods without judicial control;
 - (iii) The judicial reform bill, so as to provide full protection for *amparo* proceedings and respect and promote the role of the Constitutional Court in defending the rule of law;
- (c) Ensure that anyone, especially any public servant, who backs, plans, foments, finances or in any way participates in operations by paramilitary groups, known as “self-defence groups”, responsible for torture is identified, arrested, suspended from duty and brought to justice;
- (d) Ensure that the staff of the Human Rights Unit of the Public Prosecutor’s Office are able to carry out their duties independently, impartially and in safety and provide the Unit with the resources needed to do its work effectively;
- (e) Investigate, prosecute and punish those responsible for rape and other forms of sexual violence, including rape and sexual violence that occur in the framework of operations against illegal armed groups;
- (f) That in cases of violation of the right to life any signs of torture, especially sexual violence, that the victim may show be documented. That evidence should be included in forensic reports so that the investigation may cover not only the homicide but also the torture. The Committee also recommends that the State party provide medical staff with the training necessary to determine when torture or ill-treatment of any kind has occurred;
- (g) Respect the provisions of the Military Penal Code that exclude cases of torture from the jurisdiction of the military courts and ensure that those provisions are respected in practice;

- (h) Take effective measures to protect human rights defenders against harassment, threats and other attacks and report on any judicial decisions and any other measures taken in that regard. The Committee also recommends the adoption of effective measures for the protection of the physical integrity and independence of members of the judiciary;
- (i) Take effective measures to improve conditions in places of detention and to reduce overcrowding there;
- (j) Ensure, so as to preclude all instances of torture or cruel, inhuman or degrading punishment, that persons subjected to any form of arrest, detention or imprisonment are treated according to international standards;
- (k) Report in its next periodic report on the domestic legal provisions that guarantee non-refoulement to another State when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture;
- (l) Make the declarations referred to in articles 21 and 22 of the Convention and ratify the Optional Protocol to the Convention;
- (m) Ensure the wide distribution in its territory of the Committee's conclusions and recommendations;
- (n) Provide to the Committee, within one year, information on its response to the Committee's recommendations contained in subparagraphs (b), (d), (f) and (h) above.

