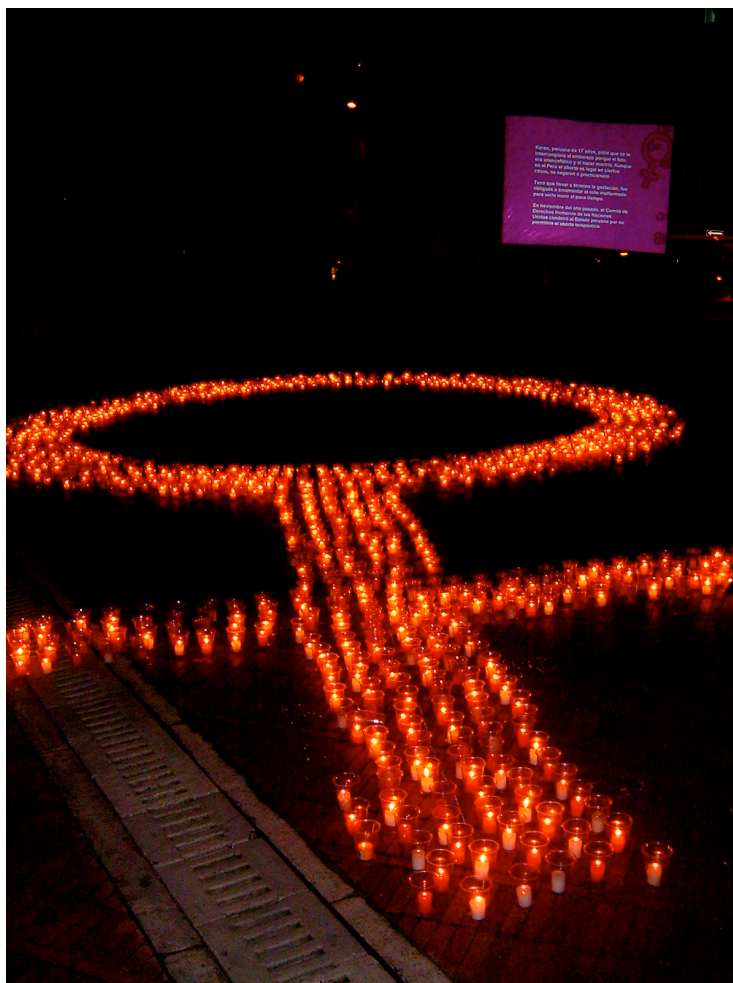


**UNITED NATIONS HUMAN RIGHTS COMMITTEE**  
**99<sup>th</sup> Session, Geneva, Switzerland**  
**July 12-30, 2010**

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**REPORT ON VIOLATIONS OF  
WOMEN'S HUMAN  
RIGHTS**



**In response to the**  
**SIXTH PERIODIC REPORT**  
**OF COLOMBIA**

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**In response to the  
SIXTH PERIODIC REPORT  
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---

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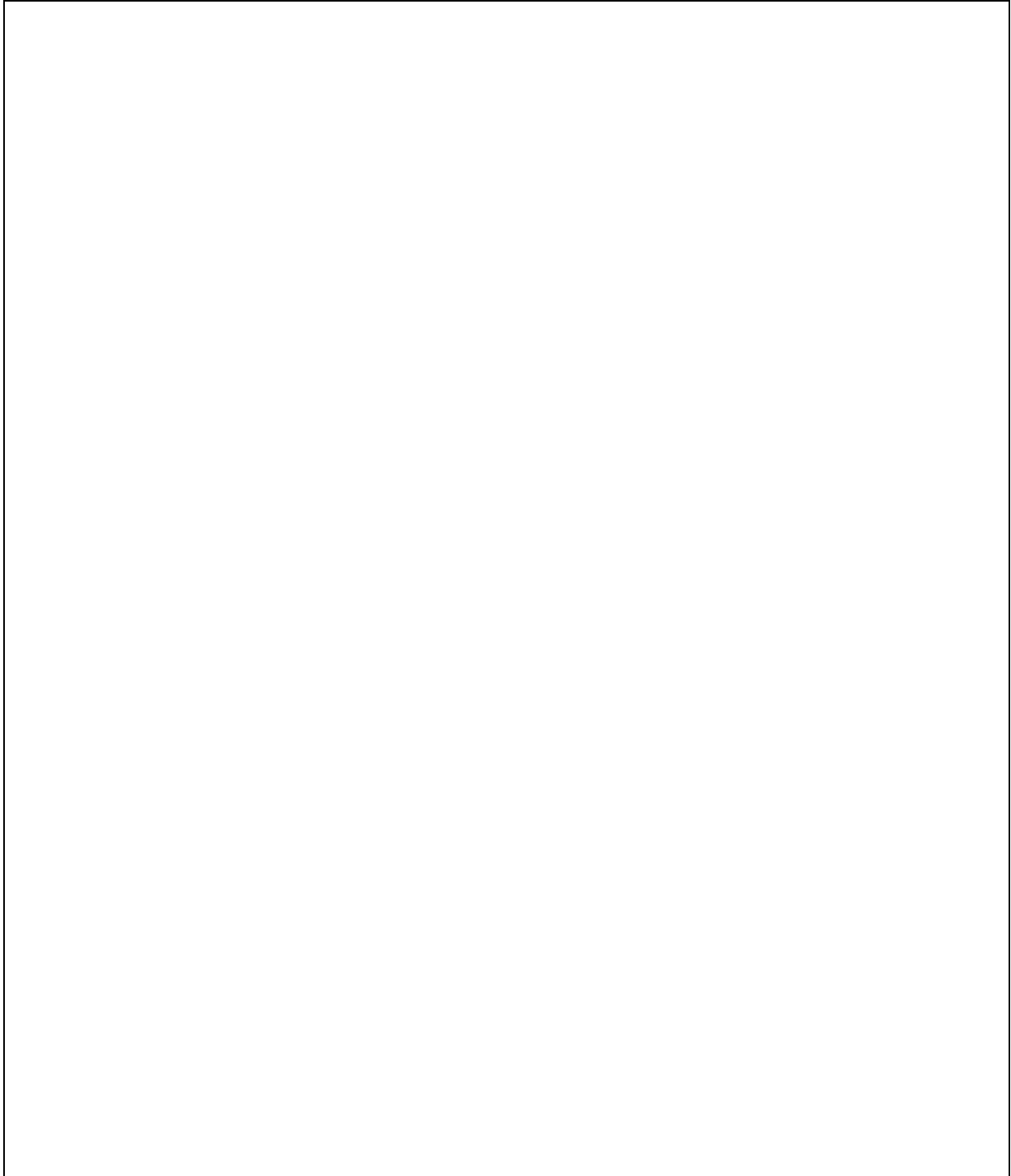
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# Colombia

## Political Map\*



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\* Derived from HUMAN RIGHTS FIRST: BASELESS PROSECUTIONS OF HUMAN RIGHTS DEFENDERS IN COLOMBIA

## **List of Acronyms**

ANTHOC	Colombia Health Worker's Trade Union
AUC	United Self-Defense Forces
CAT	Committee Against Torture
CCJ	Colombian Commission of Jurists
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIVIPAZ	Citizens Community for Life and Peace
CODHES	Consultaría para los Derechos Humanos y el Desplazamiento
CRC	Convention on the Rights of the Child
ELN	National Liberation Army
FARC	Revolutionary Armed Forces of Colombia
FENSUAGRO	National Trade Union of Agricultural Workers
GAULA	Joint Action Units for Personal Liberty
HRC	United National Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MOVICE	Movement of Victims of State Crimes
OHCHR	Office of the High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women

## **Acknowledgements**

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### ***Remembering Rhonda Copelon***

This report would not have been made possible without the insight and guidance of Professor Rhonda Copelon of the International Women's Human Rights Clinic (IWHRC) at CUNY School of Law. Rhonda brought many of the participating Colombian women's organizations together on the collaboration of this report. Her legal strategic brilliance, unwavering political courage, and deep commitment to a women's human rights vision will forever inspire and guide our work.

## Introduction

Colombians are enduring an armed conflict that has lasted over 50 years, but only in the past 10 years has this civil war been examined through a lens of gender justice, and the work of community-based women's rights organizations been made visible. In this report, six organizations, local and international, document the various ways in which Colombia's conflict and the actions (or lack thereof) by state and other entities, erode women and girls' rights.

This report is intended to supplement, or “shadow,” the report of the government of Colombia to the Human Rights Committee (“the Committee”). As Committee members have expressed, NGOs can play an essential role in providing credible and reliable independent information regarding the legal status and the real-life situation of reporting countries. Reports such as this can also assess efforts made by the ratifying governments to comply with the provisions of the International Covenant on Civil and Political Rights (“ICCPR”). The Committee's recommendations thus can focus on the most pressing issues for the population of a given country, providing NGOs with valuable tools with which to pressure their governments to enact or implement legal and policy changes.

Currently, the Fuerzas Armadas Revolucionarias de Colombia (FARC) (Revolutionary Armed Forces of Colombia) and the Ejército de Liberación Nacional (ELN) (National Liberation Army) are the two guerrilla groups that remain active in the country. The 1980s and 1990s witnessed the rise of right-wing paramilitary organizations—partly in response to the threat posed by the guerrillas to wealthy landowners—of which the most prominent paramilitary organizations are the Autodefensas Unidas de Colombia (AUC) (United Self-Defense Groups of Colombia) and the Águilas Negras (Black Eagles). There are credible reports of collusion between state security forces and the AUC.<sup>1</sup>

As part of their strategy to assert control over territory, especially in strategically located areas rich with natural resources or roadways, armed actors routinely and deliberately commit grave human rights violations. These include forced displacement, the recruitment of children as soldiers, and harassment and sexual violence towards women and girls. These groups systematically target for assassination those who are perceived to pose a threat to their dominance, including social and human rights activists, labor and community leaders, and women's rights groups. With respect to the government's human rights record, Colombian women's organizations and grassroots groups have recorded numerous instances of serious abuses, including torture, extra-judicial executions, arbitrary detentions and threats.

Colombia's international obligations to protect women and girls' rights are reiterated year after year by UN agencies and treaty bodies. In addition to ratifying the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, Colombia is also a State party to most of the principal international human rights treaties including 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). Despite the continued efforts to ensure compliance with Colombia's international human rights obligations, the situation remains critical with a persistent lack of accountability for continuous violations and an absence of truth, justice and reparations for victims.

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<sup>1</sup> See *Colombia's Human Rights Record: Did It Improve? Here's The New Face of Violence in Colombia*

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 as well as to protect women from discrimination of any kind and to protect them from gender specific forms of 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. 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.” 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... and shall receive an allowance from the State if unemployed or without support.”

Despite such Constitutional protections, violence against women in Colombia remains pervasive and widespread. Rape and sexual violence by all sides of the conflict are commonly reported. Girls are also vulnerable as combatants, and face violence both in the broader conflict and on the part of their superiors and co-combatants. Women face specific forms of violence directly linked to the nature of Colombia’s war, such as social control and recruitment by armed actors. Additionally, existing gender inequities are exacerbated by the war, as in the cases of sexual violence and feminization of poverty. Although sexual violence by combatants appears to be widespread, such incidents are underreported and the police often fail to adequately investigate these crimes. Colombian rights groups observe that the government has not taken any significant steps to implement the 2004 recommendations of the Committee.

This shadow report highlights five main areas of concern: forced displacement of women, child recruitment by armed groups, violence against women, the persecution of women human rights defenders, and violation of women's sexual and reproductive rights. The information contained in this report was provided in collaboration with MADRE and local Colombian organizations Taller de Vida, LIMPAL, CODHES, Humanas, and Women’s Link Worldwide. In addition, information was gathered through interviews, field visits, and documentation of personal testimonies conducted in Colombia. Because of the risk of danger to those who contributed to this report, including interviewees, activists, and local Colombian organizations, the various armed groups in Colombia are not specifically identified but instead referred to as “armed actors” and the interviewees are given pseudonyms.

This report specifically documents how Indigenous and Afro-Colombian communities face the extermination of their culture and loss of their lands because of forced displacement; how women who have been subjected to sexual violence see their rights violated by authorities who block their access to lawful abortion services; how sexual violence is used as a weapon of war and how it increases among displaced populations; how boys and girls are recruited to bear arms, be in combat and face exploitation; and how women human rights defenders are constantly threatened and attacked. Our hope is that the Committee examines in detail the specificities of the gender-related aspect of Colombia's current armed conflict. We hope that the findings in this report will be useful to the Human Rights Committee, as well as serve as a catalyst for future advocacy efforts.



## **Article 1: Self-Determination in connection with Article 27: Rights of Minorities**

### **I. State-Recognized Collective Land Rights of Indigenous Peoples and Afro-Colombians**

The ability to own and maintain land is a fundamental requisite for the enjoyment of the right of self-determination. Article 1 of the Covenant enshrines this right, providing that all peoples have a right to self-determination, which includes the right to “determine their political status and freely pursue their economic, social and cultural development.”<sup>2</sup> General Comment No. 12 on article 1, requests that States parties provide information regarding “the constitutional and political processes which in practice allow the exercise of this right.”<sup>3</sup> General Comment No. 12 further states that under article 1(2), States parties should “indicate any factors or difficulties” limiting “free disposal of their natural wealth.”

The Committee also recognizes under article 27 the need to ensure “the survival and continued development of cultural, religious and social identity” of minorities, which enriches all of society.<sup>4</sup> To this end, this Committee concluded in *Kitok v. Sweden* and *Ilmari Lämsman v. Finland*, that “the right to enjoy one’s own culture in community with the other members of the group cannot be determined in abstract but has to be placed in context,”<sup>5</sup> which would require consideration of rights under article 27 to include collective interests.

Under Colombia’s 1991 Constitution, Indigenous Peoples enjoy constitutional recognition of the autonomy of their collective rights, including the right to land and to their own autonomous, traditional authorities. Similarly, Afro-Colombians enjoy the right to collective ownership under law of the territories they have traditionally occupied. Transitional article 55 of the Constitution and Law 70 of 1993 recognize the right to and establish the process for adjudication of collective lands to Afro-Colombian communities.

However, these communities have long suffered sizable losses of lands from forced displacement caused by the internal armed conflict and denial of the right to prior consultations for megaprojects relating to infrastructure and natural resource exploitation. This practice violates Indigenous Peoples’ enjoyment of their rights under articles 1 and 27 of the Convention.

#### ***a. Legal rights of Indigenous Peoples and Afro-Colombians***

Article 246 of Colombia’s Political Constitution recognizes and protects the autonomy and the right of Indigenous authorities to exercise judicial functions within their land, in accordance to their own normative system. Under articles 63 and 329, these reservations are “inalienable, imprescriptible and unseizable.” Moreover, articles 286 and 287 grant Indigenous lands the status of territorial entities, guaranteeing autonomy and the right to legally manage their interests, within the boundaries of Colombia’s law. About 28% of the Colombian national territory has been recognized as property of the different Indigenous Peoples, granting collective title of ownership and rights to private property.<sup>6</sup>

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<sup>2</sup> International Convention on Civil and Political Rights (ICCPR), Article 1(1) (1976).

<sup>3</sup> ICCPR, General Comment No. 12, The Right to Self-Determination of Peoples (Art. 1) ¶ 5 (1984) UN Doc. 13/03/84.

<sup>4</sup> ICCPR, General Comment No. 23, The Rights of Minorities (Art. 27) ¶ 9 (1994) UN Doc. 08/04/94.

<sup>5</sup> *Kitok v Sweden*, Communication 197/1985 ¶ 9.3 (1988) UN Doc. CCPR/C/33/D/197/1985; *Ilmari Lämsman et al v Finland*, Communication 511/1992 ¶ 9.3 (1994) UN Doc. CCPR/C/52/D/511/1992.

<sup>6</sup> UNICEF, *Los Derechos Humanos de los Colombianos Desplazados por Violencia (2004)* <http://www.unicef.org/colombia/>

Although the traditional authorities of Afro-Colombian communities do not have recognition of their right to self-government explicitly under law, the Colombian government has recognized their right to self-determination.<sup>7</sup> The most important example of this is Law 70 of 1993, which protects the rights of Afro-Colombian communities to collective ownership of the territories they have traditionally occupied. Law 70 was recognized by the Colombian government as a major step “towards cultural self-determination and protection of Afro-Colombians.”<sup>8</sup> This policy of collective entitlement for Afro-Colombian communities was intended to recognize and protect the ethnic and cultural diversity of these communities—as guaranteed under article 7 of the Constitution—as well as to ensure their autonomy. It was also intended to promote community control of the natural resources on these territories to create economic sustainability.

### ***b. Forced displacement of Indigenous Peoples and Afro-Colombians***

Armed groups in Colombia have long sought control over the lands of Afro-Colombians and Indigenous Peoples for military and economic reasons,<sup>9</sup> forcing Indigenous groups and Afro-Colombian communities to either collaborate with the armed groups or abandon their lands. Most often the latter is the case, either out of fear of retaliation in the case of refusal, or fear of violence from other armed forces in case of compliance.

In 2007, the UNHCR reported that between 2004 and 2007 near 30,000 Indigenous Peoples were forcibly displaced from their territories are thought to be at risk of being destroyed altogether<sup>10</sup> because of the armed conflict and the resulting forced displacement. In light of this and other factors, in a 2009 ruling, (Order 004) the Colombian Constitutional Court warned that at least 34 Indigenous groups “are in danger of cultural or physical extermination due to the internal armed conflict, they have been victims of serious violations of both their individual and collective fundamental rights as well as International Humanitarian Law.”<sup>11</sup>

In Order 005, the Court also noted the grave situation of forced displacement caused by armed groups interested in using territories that rightfully belong to Afro-Colombians through issued collective property deeds.<sup>12</sup> According to estimates by the Commission for the Monitoring of Public Policy In Regards to Forced Displacement, of the total number of reported displaced persons in December 2007 (2,359,838 persons) at least 500,286 were Afro-Colombians and 249 were Indigenous, of which 137 persons were women. About 79% of Afro-Colombians that are registered as eligible for the right to collective land interest have been forcibly displaced.<sup>13</sup> In total, internally displaced persons have lost over 5 million hectares of land.<sup>14</sup>

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<sup>7</sup> World Directory on Minority and Indigenous Communities, <http://www.minorityrights.org/5373/colombia/afro-colombians.html> (last visited May 1, 2010).

<sup>8</sup> An example of this is the government recognition of political processes such as *peace communities or community councils* organized by Afro-Colombian communities in order to protect their rights to autonomy and self-determination as a people. *See, for example*, the Official Statement of the Embassy of Colombia, Washington DC, (July, 22, 2008), [http://www.colombiaemb.org/docs/Progress\\_of\\_Afro-Colombian\\_Communities\\_\(ENG\).pdf](http://www.colombiaemb.org/docs/Progress_of_Afro-Colombian_Communities_(ENG).pdf).

<sup>9</sup> *See, for example*, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, *Mission to Colombia*, (2007) U.N. Doc A/HRC/4/38/Add.3.

<sup>10</sup> U.N. High Commissioner for Refugees, spokesman Ron Redmond, *Briefing Notes: More Indigenous People Uprooted in Colombia*, (Mar. 17 2009), available at <http://www.unhcr.org/49bf80142.html>.

<sup>11</sup> Constitutional Court Order 004 of 2009.

<sup>12</sup> Constitutional Court Order 005 of 2009.

<sup>13</sup> César Rodríguez-Garavito, et al, RACIAL DISCRIMINATION AND HUMAN RIGHTS IN COLOMBIA: A REPORT ON THE SITUATION OF THE RIGHTS OF AFRO-COLOMBIANS 35 (2008) (citing Afrodes y Global Rights, (2007)), available at <http://odr.uniandes.edu.co/pdfs/DerHechos/inglesinformeodr.pdf>.

<sup>14</sup> U.N. High Commissioner for Refugees, 2009 Global Annual Update: Colombia Situation (Dec. 1, 2009).

### *c. The right to prior consultation*

**In the 2004 Concluding Observations for Colombia, the Committee expressed its concern about the continued discrimination against Indigenous and minority communities.<sup>15</sup> Specifically, the Committee noted the critical lack of forums for consultation with representatives of the communities with regard to the distribution of land to Indigenous Peoples.<sup>16</sup>**

In 2009, the CERD Committee, echoed this concern stating, “the right to prior consultations and consent is frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation, such as mining, oil exploration or mono-cultivation.”<sup>17</sup>

Article 7 of the Colombian Constitution as well as Law 70 and Law 99 of 1993 recognize the Afro-Colombian population as an ethnic group and therefore entitled to prior consultation, a right guaranteed to ethnic groups.<sup>18</sup> Article 330 of the Colombian Constitution specifically recognizes this right in the use of natural resources in Indigenous territories. Under the International Labour Organisation (ILO) Convention 169—ratified by Colombia in 1991—Afro-Colombians are also entitled to this same right, since they are recognized as a tribal group.<sup>19</sup>

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#### **The Embera Katío People\***

One paradigmatic case involves the building of the Urrá dam in the territory of the Embera Katío people. The Urrá dam was built without adequate consultation of the Indigenous Peoples, with serious effects on their culture and traditional subsistence practices and directly threatened their survival as an ethnic group. The Embera Katío communities were displaced from their zones of habitation and resettled in places where they found it impossible to continue with their subsistence practices, such as fishing and hunting. These impacts were demonstrated during the *tutela*<sup>1</sup> brought before the Constitutional Court, which then decreed settlements and damage mitigation actions on behalf of the Embera people. The state and private actors involved were made to set up a committee to follow up on those obligations and on measures to enable re-adaptation by the Indigenous people.

\* Reprinted from the Program on Global Justice and Human Rights of the Universidad de Los Andes, et al, ALTERNATE REPORT TO THE FOURTEENTH REPORT PRESENTED BY THE COLOMBIAN STATE TO THE COMMITTEE FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION ¶ 62 (2009).

<sup>1</sup> Under article 86 of the Colombian Constitution, every person has the right to file a writ of protection (called a *tutela*) before a judge, for the immediate protection of his/her fundamental constitutional rights, when that person fears the latter may be violated by the action or omission of any public authority.

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<sup>15</sup> CERD Committee, Concluding Observations, Colombia, ¶ 19 (2009) UN Doc. CERD/C/COL/CO/14.

<sup>16</sup> Human Rights Committee, Concluding Observations: Colombia, ¶ 20 (2004) UN Doc. CCPR/CO/80/COL.

<sup>17</sup> *Id.* at ¶ 20.

<sup>18</sup> *Id.* at ¶ 20.

Further, Article 19 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples acknowledges the right to prior consultation for all Indigenous peoples stating that all “States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>20</sup>

However, Colombian authorities have consistently violated the right to prior consultation, specifically in projects involving infrastructure or natural resource exploitation, threatening the survival of minority groups’ cultural identities. One case that illustrates these violations suffered by the Afro-Colombian population is that of the resource exploitation in the Curvaradó and Jiguamiandó river basins in the Chocó department (see box below). In 2009, the CERD

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### **The Curvaradó and Jiguamiandó River Basins\***

One case that illustrates the constant violations to this right suffered by the Afro-Colombian population is that of the Curvaradó and Jiguamiandó river basins in the Chocó department. Since the late 90s, these communities have denounced the entry of investors and palm plantations in their territories without the required prior consultations having been held. This phenomenon of territorial dispossession has been accompanied by harassment and threats against the population to the point where many families have been forcibly displaced from their territory. After many years of violence and efforts to gain recognition of the territory, in 2001 the Colombian State awarded collective title to the communities of Curvaradó and Jiguamiandó.

In 2005 the Incoder (Colombian Rural Development Institute) issued two resolutions to mark the boundaries between the collective property and private property belonging to private individuals. However, as of December 2008, those resolutions had not led to the material handing over of nearly 8000 hectares that had been usurped from the Black communities of the municipality of Carmen del Darién in the Curvaradó and Jiguamiandó river basins.

This occurred even though in 2007 the ILO established that the right to prior consultation had been violated along with the right to cultural integrity and the right to territory. The ILO asked the Colombian State to carry out the consultation with these communities and guarantee restitution of the lands.

However, many of the families have been unable to return to their territory due to the continuing presence of paramilitary groups, the lack of guarantees for a safe return and the harassments that have continued unabated, as verified by the Constitutional Court in 2009.

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\*Reprinted from the Program on Global Justice and Human Rights of the Universidad de Los Andes, et al, ALTERNATE REPORT TO THE FOURTEENTH REPORT PRESENTED BY THE COLOMBIAN STATE TO THE COMMITTEE FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION ¶¶ 65-66 (2009).

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Committee expressed its concern that the State party had not complied with the related decisions of the Inter-American Court of Human Rights nor the recommendations of the Committee of Experts on the Application of Conventions and Recommendations of the ILO.<sup>21</sup>

## II. The Colombian Government's Response

**In its 2004 Concluding Observation for Colombia, the Committee recommended that the State party, “should guarantee the full enjoyment of the rights of persons belonging to minorities which are set out in the Covenant, in particular with respect to the distribution of land and natural resources, through effective consultations with representatives of the Indigenous communities.”<sup>22</sup>**

Additionally, General Comment No. 12 on article 1 calls on reporting States parties to “indicate any factors or difficulties” limiting “free disposal of their natural wealth.”<sup>23</sup> It goes on to say that States should indicate any factors or difficulties that prevent self-determination. However, the Colombian government's periodic report fails to provide any information about the land lost by Indigenous and Afro-Colombian peoples due to forced displacement from the internal conflict.<sup>24</sup> In par. 658, the government acknowledges that the personal and territorial integrity of ethnic groups is threatened by illegal armed groups but does not describe any specific measures the government has taken to address this concern.

In paragraph 658 of its report, the Colombian government states that in 2007, Congress passed Law 1152, or Rural Development Statute, which defined the organizational structure of Indigenous reservations and rural institutions for Indigenous and Afro-Colombian communities. Nevertheless, the law received strong criticism on the part of Indigenous rights organizations and grassroots groups.<sup>25</sup> The Colombian Commission of Jurists challenged the constitutionality of the law<sup>26</sup> and on March 18, 2009 the Constitutional Court declared the law unconstitutional in its entirety because the government breached its obligation to conduct a previous consultation with Afro-Colombian and Indigenous communities in violation of the Colombian constitution.<sup>27</sup>

With respect to the Indigenous peoples, the government's response to forced displacement has been limited to issuing certain regulatory documents, which make limited reference to the obligation to adopt measures for prevention and accountability. Specifically, in paragraphs 371 and 372 of the report, the government mentions the National Plan for Comprehensive Care of the Population Displaced by Violence, which outlines the government's general policy and plans of action to prevent and respond to internal forced displacement. The State report also refers to the issuance of Directive 06 of 2005 to comply with Constitutional Court's decision T-025/04. It is important to note that the Constitutional Court has issued subsequent decisions recognizing that the government has not fulfilled its obligations under this decision (Orders 092/08, 237/08, 266/09). Additionally, in paragraph 618 the State report mentions Decision No. 03 of 2006 adopted by the National Council for Comprehensive Care of the Displaced Population

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<sup>21</sup> CERD Committee, Concluding Observations, Colombia, ¶ 19 (2009) UN Doc. CERD/C/COL/CO/14.

<sup>22</sup> Human Rights Committee, Concluding Observations: Colombia, ¶ 20 (2004) UN Doc. CCPR/CO/80/COL.

<sup>23</sup> ICCPR General Comment No. 12, The Right to Self-Determination of Peoples,

<sup>24</sup> Human Rights Committee, Colombia Periodic State Report, ¶¶ 103-105 (2009) UN Doc. CCPR/C/COL/6.

<sup>25</sup> See, for example, Article by Red Juvenil: “Ley 1152 de 2007. Una estrategia de legalización de predios para la perpetuación de la concentración” (*Law 1152 of 2007: A strategy for the legalization of lands to perpetuate concentration of wealth*), available at: <http://www2.redjuvenil.org/content/view/full/620/86/> (last visited 01/10/10).

<sup>26</sup> Comisión Colombiana de Juristas, [http://www.coljuristas.org/documentos/documentos\\_pag/Demanda%20contra%20el%20Estatuto%20de%20Desarrollo%20Rural1.pdf](http://www.coljuristas.org/documentos/documentos_pag/Demanda%20contra%20el%20Estatuto%20de%20Desarrollo%20Rural1.pdf) (last visited 01/10/10).

<sup>27</sup> Colombia Constitutional Court, Decision C-175 of 2009, Justice Luis Fernando Vargas Silva wrote the opinion.

(CNAIPD), “which defines actions to ensure the right of the displaced population to be protected against discriminatory practices”.

With respect to the right to prior consultation of ethnic minorities, the Colombia State report notes Constitutional Court Ruling C-169 of 2001, which addresses the subject of consultation with Indigenous communities, and asserts that truly representative and participatory democracy is one in which the formal and material make-up of the system corresponds to these and other minority communities and allows for their participation in all decision-making that concerns them. In addition, the State report highlights the creation of a forum for consultation and specific recommendations for measures to protect ethnic communities called the Regulatory and Risk Assessment Committee with an ethnic approach (ETNOCRER). This forum was initiated in 2004 by the Victim Protection Programme under the Ministry of the Interior and Justice, with the participation of Indigenous and Afro-Colombian communities.

Despite the creation of these national policies, in a February 2010 visit to Colombia, Gay McDougall, the UN Independent Expert on Minority Issues concluded that while Colombia has proactive legislation aimed at recognizing the rights of Afro-Colombians, many of these laws are rarely implemented or enforced.<sup>28</sup> “Despite the granting of collective titles to some 90 per cent of Afro-Colombian ancestral lands, many communities are displaced, dispossessed and unable to live on or work their lands.”<sup>29</sup>

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### III. Recommendations

- Implement the necessary legislative measures to allow for direct restitution of properties to the victims of forced displacement. The State should comply with the recommendation of the Committee on the Elimination of Racial Discrimination (CERD) (CERD/C/COL/CO/14, para. 19) and ensure that collective land ownership of Afro-Colombian communities and Indigenous Peoples is recognized and respected as required under law. Additionally the state should comply with the decisions of the Inter-American Court of Human Rights and the recommendations of the CEACR of the ILO in relation to the communities of Curvaradó and Jiguamiandó to ensure non-repetition of similar cases.
- Respect the right to prior consultation and consent in conjunction with megaprojects relating to infrastructure and natural resource exploitation, such as mining, oil exploration or monocultivation. The State party should comply with the CERD Committee recommendation of 2009 (CERD/C/COL/CO/14, para. 20) and recommend that the State party revise and implement legislation, which regulates the rights to prior consultation in accordance with the ILO Convention No. 169, in order to ensure all prior consultations are undertaken in a manner that respects the free and informed consent of minority communities. Additionally, the State party should comply with the mandate issued by the Constitutional Court in regard to prior consultation.
- Intensify efforts to ensure the practical and timely implementation of the National Plan of Attention for Displaced Population. The State should also pay particular attention to the rights of Afro-Colombian and Indigenous Peoples, ensuring that these policies are

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<sup>28</sup> *UN Human Rights Expert Spotlights Enduring Plight of Afro-Colombians*, UN News Centre (Feb. 15 2010), <http://www.unhcr.org/refugees/news/2010/02/20100215.html>

sufficiently funded and implemented at both the departmental and municipal level and that the safe return for displaced peoples to their original lands is facilitated promptly and with care.

- Comply with Colombia's Constitutional Court Orders 004 and 005 of 2009. The State party should fulfill the Constitutional Court's Orders requiring the implementation of policies and programs designed to promote and protect the constitutional rights of Indigenous and Afro-Colombian people who are displaced.
- Collect disaggregated data on the ethno-racial and gender diversity of Colombia's internally displaced population—specifically land lost by Indigenous and Afro-Colombian peoples due to forced displacement from the internal conflict. The government should also provide detailed information on the places that displaced groups have moved to, and measures being taken to improve current living conditions.

## **Article 2: Obligation to Enforce Covenant Rights in connection with Article 26: Right to Equality Before the Law and Equal Protection**

### **I. The new Colombian *Procurador General de la Nación*, Alejandro Ordoñez, Refuses to Comply with the Constitutional Court's Order to Duly Investigate Officials Who Have Violated a Woman's Legal Right to Access Therapeutic Abortion**

Article 2(1) requires States parties to ensure that rights are protected without discrimination. Article 26 furthers this concept by entitling all persons to equality before the law, prohibiting any discrimination under the law, and guaranteeing all persons equal and effective protection against discrimination on any ground, including sex.<sup>30</sup> The refusal of the Procurador General to investigate human rights violations, hold accountable all those found responsible for human rights violations, and the refusal to grant compensation to the victims, infringes on the right to an effective remedy set forth in article 2 of the Covenant.<sup>31</sup> Furthermore, the practice of some judges in refusing to settle cases related to abortion or denying the protection of women's rights on the grounds of conscientious objection is also in violation of article 26

General Comment No. 31 on article 2 states that if a State party permits or fails to take appropriate action to exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities that they may be in violation of article 2(3).<sup>32</sup> The Comment explicitly provides that “[a]ll branches of government... and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State party”<sup>33</sup> to abide by article 2 of the Covenant.

Colombia's Procurador General is the government agency in charge of enforcing judicial decisions and ensuring the effectiveness of human rights. The Procurador has the powers of the criminal judicial police and is authorized to take necessary measures. Among his duties are discharging from office any public official who violates the law. It is the duty of the Procurador to exercise due diligence to prevent, investigate, prosecute and punish health care providers and other officials who have violated a woman's right to access safe and legal abortions.

On May 10, 2006, through decision C-355/06, Colombia's Constitutional Court partially decriminalized abortion, recognizing it as a sexual and reproductive right when it occurs in one of three circumstances: (1) The pregnancy is a result of rape and the woman files a report; (2) The pregnancy poses a risk to the life or health (physical or mental) of the woman and a doctor certifies the condition; (3) The fetus presents grave malformations that make its life unviable outside of the uterus and a doctor certifies the condition. The Colombian Constitutional Court should be congratulated for this decision.

Since the 2006 Court decision, the exercise of “conscientious objection”<sup>34</sup> by medical personnel and health care institutions has been misused resulting in the mistreatment, discrimination and unjustified delays of women seeking reproductive health services, including therapeutic

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<sup>30</sup> ICCPR, Article 26, (1966) UN Doc. A/6316.

<sup>31</sup> Human Rights Committee, Concluding Observations, El Salvador, 61 ¶ 84(6) (2003) UN Doc. A/58/40.

<sup>32</sup> ICCPR, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (Article 32) 175 ¶ 8 (2004) UN Doc. A/59/40.

<sup>33</sup> *Id.* at ¶ 4.

<sup>34</sup> The Court found that Conscientious Objection is a Constitutional right, meaning that people directly involved with the abortion procedure are subject to providing it. However, conscientious objection is subject to a procedure that...



abortion. Even more concerning is that judges have argued conscientious objection to refuse to decide cases related to abortion.

Medical conscientious objection has been recognized as a right by Colombia's Constitutional Court in the case of abortion. Nevertheless, as an exception to the legal duty to provide medical services, the exercise of conscientious objection is clearly limited. It cannot be exercised collectively or by institutions, but instead by individual doctors or medical personnel who are directly involved in the procedure. Some clinics have made their doctors sign template declarations of conscientious objection and some institutions have attempted to refuse providing abortion services altogether.

Under Colombian law, abortion is within the list of mandatory services that health care services must provide and the right to Conscientious Objection is an individual—not an organizational—right. Health care institutions mandating that doctors sign conscientious objections to providing abortions, or denying these services altogether is a violation of women's human rights both under the Covenant and Colombian law. Furthermore, individual doctors who object to performing abortions have the legal duty to refer the woman to a doctor who will perform the abortion. Furthermore, a physician cannot claim conscientious objection if he or she is the only one available to do the procedure.

In response to complaints filed by women advocates, the Constitutional Court issued various decisions reaffirming that conscientious objection can only be exercised by medical personnel directly involved in the procedure and not by institutions, and much less by judges.<sup>35</sup>

The Constitutional Court has ordered the *Procurador* to initiate disciplinary investigations against health care providers and other public officials who have violated a woman's right to access safe abortions. The *Procurador* has reacted favorably to the use of conscientious objection by judges, despite the fact that this use has been explicitly prohibited by constitutional law of precedent in cases of abortion. General Procurador Ordóñez objects to the investigations against those health providers who have misused conscientious objection to refuse access to legal abortions. Recently, the *Procurador* has requested that the Constitutional Court declare void the judgement that ordered the investigation of a doctor who refused to carry out a legal abortion on conscientious motives and did not refer the woman to another doctor. This investigation marks the first instance in which a sanction has been placed upon a doctor who has denied access to a legal abortion.<sup>36</sup>

*Procurador* Ordóñez, has stated in the past his positions against the very existence of sexual and reproductive rights:

“The right to make any act (whether it be of a State or individual character) count as a right – even if it is sometimes limited – would lead to absolute relativism. Anyone could have even the strangest, most contradictory and absurd things count as a right.... This is in fact the ideological basis for the right to personal drug use, suicide, abortion, homosexual union... recognized by different international treaties and by the vast majority of national legal norms and [facilitated] through constitutional court decisions relating to the free development of personhood. Losing its moral dimension, the State becomes a clear promoter of chaos.”<sup>37</sup>

<sup>35</sup> See, Decisions T-209/08, T-988/07, T-388/09, A-279/09.

<sup>36</sup> Memo to the Constitutional Court May 10<sup>th</sup> 2010, available at <http://www.procuraduria.gov.co/descargas/Concepto%2010%20de%20mayo.pdf>.

<sup>37</sup> Ordóñez Maldonado, Alejandro. *El nuevo derecho. El nuevo ordenamiento jurídico colombiano*.

His intention not to uphold the Court's mandate is also apparent in his choice of appointees. In 2008, Ordoñez appointed Ilva Myriam Hoyos as Delegate Procuradora for the Defense of the Human Rights of Children, Adolescents and the Family—a post directly in charge of enforcing women's sexual and reproductive rights. As a result of pressure from anti-choice organizations and Hoyos' personal appeal, Mayor Salazar of Medellín opted to eliminate abortion from the list of services to be offered at a new clinic being built. (See box on page 28 under article 3, for more information).

When States fail to bring perpetrators to justice and society explicitly or tacitly condones such violations, impunity not only facilitates further abuses, it also normalizes gender discrimination and contributes to a culture of impunity. The lack of accountability results in further endangerment of women. Furthermore, women lose faith in the justice system as prevailing gender inequalities are reinforced. By refusing to uphold the Constitutional Court's mandate and investigate and punish with due diligence health care providers and officials who have violated a woman's right to access safe and legal abortions, the Colombian government is in violation of article 2 of the Covenant.

## **II. The Colombian Government's Response**

The Colombian government refers to the “acción de tutela” as an effective mechanism to protect fundamental rights<sup>38</sup>. Despite the importance of this mechanism in general terms, its efficacy is less when used for the protection of the reproductive right to access legal abortions, because of the misuse of conscientious objection by judges. The Constitutional Court has established that judges can not use conscientious objection to avoid the resolution of a case in which access to a legal abortion is denied, and has ordered the investigation of some of these cases. However, until now judiciary organs charged with investigating the conduct of judges (Consejos Seccionales y Consejo Superior de la Judicatura) have not sanctioned even one of the judges who have refused to comply with their legal responsibilities.

The illegal conduct of judges has been encouraged by the Procurador who is tasked with promoting human rights. The Procurador is aware of the ruling established by the Constitutional Court by which public servants may not use conscientious objection in cases of legal abortion. However, he has addressed a petition to the Constitutional Court in an effort to invalidate the tutela judgment on the grounds that prohibiting judges from using conscientious objection implies persecution on the basis of religion.

In this context, the access to health care services that are required only by women continues to be denied not only by the health care system but also by the judicial system. In abortion cases, tutela has been used by the health care system as a means to deny or delay abortions, even if judicial authorization is not required according to the C – 355, and some judges charged with the protection of fundamental rights have refused to comply with this duty misusing conscientious objection.

Furthermore, the comprehensive regulation on sexual and reproductive health services related to abortion issued by the Ministry of Health (Decree 4444 of 2006) has been suspended by the highest administrative Colombian court (Consejo de Estado) pending a challenge against it brought by one of Ms. Hoyos' close allies. This suspension has added to the confusion of health care providers and women, and has served as a barrier to providing health services such as

abortion, even when the legal right to interrupt a pregnancy exists in certain circumstances, as noted in C – 355 judgment.

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### **III. Recommendations**

- We congratulate the Constitutional Court for its 2006 decision legalizing therapeutic abortion and for reaffirming the reproductive rights of women. The *Procurador General* should immediately and effectively comply with the Constitutional Court's Order and conduct prompt and impartial investigations into health care providers, and their institutions, and other officials who have violated a woman's right to access safe and legal abortions. The state *Procurador General* should prosecute and punish the perpetrators of these rights violations.
- Judges who have used conscientious objection to avoid their constitutional responsibility to resolve cases of legal abortion must be impartial and promptly investigated by *Consejos Seccionales de la Judicatura* and *Consejo Superior de la Judicatura*.
- We congratulate the Ministry of Health for the regulation of sexual and reproductive health services. However, we express our concern for the pervasive consequences of its suspension by the Consejo de Estado. The Colombian government must ensure the provision of quality services of legal abortion for Colombian women, despite the suspension of this regulation.

### **Article 3: Obligation to Ensure Equal Rights of Men and Women in connection with Article 26: Right to Equality Before the Law and Equal Protection**

Article 3 requires “States to provide for equality between men and women in the enjoyment of all Covenant rights.”<sup>39</sup> Moreover, in General Comment No. 28, the Committee highlights the indivisibility of all human rights by declaring the “important impact of this article on the enjoyment by women of the human rights protected under the Covenant.”<sup>40</sup>

Similarly, 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.” Enshrining these rights is article 13 of the Colombian Constitution which provides, “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.”

#### **I. Forced Displacement of Women**

General Comment No. 28 holds that “discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>41</sup> Displaced persons nearly always suffer severe discrimination,<sup>42</sup> and Human Rights Treaty bodies have long supported this conclusion, highlighting rights violations specifically for internally displaced women.<sup>43</sup>

Colombia is no exception. Discrimination against displaced women occurs within the larger context of widespread gender and other inequities. Of Colombians living under the poverty line, 51% are women, and they compromise 45% of the homeless population, whereas men represent 42%.<sup>44</sup> In its Concluding Observations on Colombia, the CESCR Committee found that “internally displaced persons come from the most disadvantaged and marginalized groups, predominantly women and children, peasants and members of the country's Indigenous and Afro-Colombian community who have been driven out of their areas by violence and armed conflict.”<sup>45</sup>

Despite some progress made by the Colombian government on meeting the needs of internally displaced people, in 2007 the CEDAW Committee found that these women and their families “continue to be disadvantaged and vulnerable in regard to access to health, education [and]

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<sup>39</sup> ICCPR, Article 3, (1966) UN Doc. A/6316.

<sup>40</sup> ICCPR General Comment No. 28, Equality of Rights Between Men and Women ¶ 1 (2000) UN Doc. CCPR/C/21/Rev.1/Add.10.

<sup>41</sup> ICCPR, General Comment No. 28, Equality of Rights Between Men and Women, *supra* note 40.

<sup>42</sup> UN Office for the Coordination of Humanitarian Affairs – OCHA Online, Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng, *Guiding Principles on Internal Displacement, Introductory Note* (1999), available at [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html).

<sup>43</sup> *See, for example*, Concluding Observations for: CEDAW Committee, Sri Lanka, 31 ¶¶ 298, 299 (2002) UN Doc. A/57/38 part I; CEDAW Committee, Angola, (2004) 118 ¶¶ 148-149 UN Doc. A/59/38 part II; CRC Committee, Niger, 37 ¶ 187 (2002) UN Doc. CRC/C/118; CRC Committee, Nigeria, 135 ¶ 727 (2005); UN Doc. CRC/C/146; CESCR Committee, Colombia, 110 ¶¶ 760, 771, 792 UN Doc. E/2002/22; CESCR Committee, Azerbaijan, 59 ¶ 482 (2004) UN Doc. E/2005/22.

<sup>44</sup> UNIFEM, Fondo de Desarrollo de las Naciones Unidas para la Mujer, POBREZA Y TRABAJO 26 (2005), available at [http://www.unifem.org/Files/Books/26/2000\\_26.pdf](http://www.unifem.org/Files/Books/26/2000_26.pdf).

social services ... as well as at risk of all forms of violence.”<sup>46</sup> Most displaced families end up in overcrowded and precarious accommodation, in slums or shantytowns.<sup>47</sup> The vast majority is deeply impoverished. Recent surveys conducted at the request of the Constitutional Court, indicated that 98.6% of internally displaced households fall below the poverty line and 82.6% fall below the indigence line.<sup>48</sup> Approximately half of displaced households are headed by women with 86% of those households falling below the indigence line.<sup>49</sup>

In 2009, the CERD Committee expressed its concern about “continued large numbers of massive and individual displacements and the disproportionately high and increasing numbers of Afro-Colombians and Indigenous Peoples among the displaced.”<sup>50</sup> The Special Rapporteur on the Rights of Women of the Inter-American Commission for Human Rights (IACHR) has noted that displaced Afro-Colombian women “suffer acts of racism, ridicule and stigmatization by the receiving communities.”<sup>51</sup> Their ability to access support from State institutions is limited by prejudices within those institutions, which often treat them “like beggars or criminals.”<sup>52</sup>

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### Testimonies from Displaced Afro-Colombian Families\*

*“My husband was taken by the armed groups and killed, so I fled to Pereria with my six children. When I first came here I had to beg on the streets. I am now living in Tokyo, a neighborhood of displaced people. Most of us here are Black and come from the same region [Chocó]. Most people who live here have nothing.”*

*“We have been discriminated against for being displaced. Companies don’t want to hire you once they find out you’re displaced. They think you have bad habits. We have been treated like we are members of the guerillas.”*

*“Our life in Chocó was really good. We used to sell what we caught. We had a very good life. We could buy food and other things, but now it is a bitter life that we live.”*

\*Testimonies taken from Afro-Colombian families living the neighborhood Tokyo in Pereria in government housing. Provided through Taller de Vida.

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<sup>46</sup> CEDAW Committee, Concluding Observations, Colombia, ¶ 12 (2007) UN Doc. CEDAW/C/COL/CO/6.

<sup>47</sup> International Displacement Monitoring Center, *Colombia: New Displacement Continues, Response Still Ineffective* ¶ 37 (2009), available at [http://www.internal-displacement.org/8025708F004.BE3B1/\(httpInfoFiles\)/5BCA28006BF\\_AA8ADC12575E8005CBF23/\\$file/Colombia+-+July+2009.pdf](http://www.internal-displacement.org/8025708F004.BE3B1/(httpInfoFiles)/5BCA28006BF_AA8ADC12575E8005CBF23/$file/Colombia+-+July+2009.pdf).

<sup>48</sup> CODHES, EL DESPLAZAMIENTO FORZADO EN EL CASO DE LAS COMUNIDADES INDÍGENAS 61 (2007).

<sup>49</sup> See, CODHES Bulletin No. 72, (2009) available at, <http://www.codhes.org/images/stories/pdf/resumen%20codhes%20informa%2076.pdf>; International Displacement Monitoring Center, *Colombia: New Displacement Continues, Response Still Ineffective* ¶ 28 (2009), available at [http://www.internal-displacement.org/8025708F004.BE3B1/\(httpInfoFiles\)/5BCA28006BF\\_AA8ADC12575E8005CBF23/\\$file/Colombia+-+July+2009.pdf](http://www.internal-displacement.org/8025708F004.BE3B1/(httpInfoFiles)/5BCA28006BF_AA8ADC12575E8005CBF23/$file/Colombia+-+July+2009.pdf).

<sup>50</sup> CERD Committee, Concluding Observations, Colombia, ¶ 16 (2009) UN Doc. CERD/C/COL/CO/14.

<sup>51</sup> Inter-American Commission on Human Rights (IACHR), *Violence and Discrimination against Women in the Armed Conflict in Colombia*, ¶ 102 (2006) Doc. OEA/Ser.L/V/II.

<sup>52</sup> Marino Cordoba, AFRODES USA, *Special Situation of Afro-Colombian IDPs: A Call for More International Solidarity* ¶ 1 (Apr. 20 2009), available at <http://www.unhcr.org/refugees/pdf/Marino%20Cordoba%20AFRODES>.

Women constitute about 50% of the displaced Afro-Colombian population.<sup>53</sup> Difficulty finding work, together with lack of access to food, housing, health care and education, entrenches poverty and social exclusion among both displaced Indigenous and displaced Afro-Colombian women. They face racism, as well as low levels of education and poverty. This threatens their access to work, pursuit of cultural practices, participation in community life and safety from gender violence.<sup>54</sup> Furthermore, displacement cuts off access to traditional foods and medicines for Indigenous women. Traditional organizational processes, languages, practices and teachings are “weakened and in some cases lost.”<sup>55</sup>

In many cases, “losing their territory and moving into the entirely foreign environment of the cities threatens the very survival of the group and its individual members.”<sup>56</sup> The CEDAW Committee urged the Colombian government to increase its efforts to meet the specific needs of internally displaced women and children to ensure equal access to social services as well as protection from all forms of violence, including domestic violence.<sup>57</sup>

The highest rates of displaced women serving as household heads are among Indigenous women at 49% and Afro-Colombian women at 47%.<sup>58</sup> Almost 60% of displaced women have no job or income and, of those who do work, 60% work in the informal sector<sup>59</sup> and 20% in domestic service, with longer hours and lower benefits than those associated with work in the formal economy.<sup>60</sup> In 2008, studies reported that in larger cities, 60% of all displaced households are experiencing or are at risk of food insecurity, and in smaller cities the rate rises to about 71%.<sup>61</sup>

## II. Violence Against Women and Girls

**In its 2004 Concluding Observations, the Committee expressed concern about the high levels of violence and vulnerability to which women are subjected in Colombia—particularly internally displaced women.**<sup>62</sup>

General Comment No. 28 makes special note of women’s heightened vulnerability during times of internal armed conflicts, stating that State parties “should inform the Committee of all measures taken during these situations in order to protect women from rape, abduction and other forms of gender-based violence.”<sup>63</sup>

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<sup>53</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, ¶ 79, *supra* note, 51.

<sup>54</sup> IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights after the Visit of the Rapporteurship on the Rights of Afro-Descendants and Against Racial Discrimination to the Republic of Colombia*, ¶¶ 87-88 (2009) Doc. OEA/Ser.L/V/II.134.

<sup>55</sup> Gimena Sánchez-Garzoli, WOLA, *Special Concerns of Indigenous IDPs*, ¶¶ 1-2 (Apr. 30 2009), available at [http://www.wola.org/media/GS\\_Special%20Concerns%20of%20Indigenous%20IDPs\\_043009.pdf](http://www.wola.org/media/GS_Special%20Concerns%20of%20Indigenous%20IDPs_043009.pdf).

<sup>56</sup> U.N. High Commissioner for Refugees, spokesman Ron Redmond, *Forced Displacement Devastating Colombia’s Indigenous People*, (Aug. 8, 2008), available at <http://www.unhcr.org/489c1a4b7.html>.

<sup>57</sup> *Id.* ¶ 13.

<sup>58</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, ¶ 115, *supra* note 51, (citing COHDES).

<sup>59</sup> Informal sector of the Colombian economy refers to people who work without benefits, formal labor contracts, such as street vendors.

<sup>60</sup> International Displacement Monitoring Center, *Colombia: New Displacement Continues, Response Still Ineffective*, ¶ 44 (2009), available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/5BCA28006BFAA8ADC12575E8005CBF23/\\$file/Colombia+-+July+2009.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/5BCA28006BFAA8ADC12575E8005CBF23/$file/Colombia+-+July+2009.pdf), (citing Comisión de Seguimiento, Garantizar la Observancia de los Derechos de la Población Desplazada, ¶ 206 (2009)).

<sup>61</sup> World Food Programme, *Protracted Relief and Recovery Operation in Colombia* ¶10 (Jan. 16, 2008) Doc. WFP/EB.1/2008/9/2, available at [http://one.wfp.org/operations/current\\_operations/project\\_docs/105880.pdf](http://one.wfp.org/operations/current_operations/project_docs/105880.pdf).

<sup>62</sup> Human Rights Committee, *Concluding Observations: Colombia*, ¶ 14 (2004) UN Doc. CCPR/CO/10/CO/

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### Testimony of an Indigenous Woman\*

*On the Tacueyó reserve in the municipality of Toribío, two soldiers approached two Indigenous women and asked them if they had seen a woman with a tattoo pass by. The women did not know what a tattoo was. They told the soldiers this and answered that they had not seen a woman pass by. After this response the soldiers forced the women to undress, under the pretext of searching for the tattoo, and proceeded to touch the women's breasts. While the soldiers did this, the women's two nieces, ages 13 and 14, arrived and the soldiers subjected them to the same treatment.*

\*Testimony provided by the National Indigenous Organization of Colombia (ONIC).

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In 2006, the Committee on the Rights of Children echoed this concern noting that the widespread discrimination that exists in Colombia towards certain vulnerable groups—namely women—puts them at greater risk of recruitment by armed forces as well as sexual exploitation, internal displacement and continued violation of their rights.<sup>64</sup>

Since the beginning of this century, human rights and women's organizations have made considerable efforts to consistently denounce the effects of the Colombian armed conflict on the lives and security of women.<sup>65</sup> The violence women face in armed conflict is also an exacerbation of gender-based violence that has historically affected women.<sup>66</sup> The war has repeated forms of violence as well as created new ones. This creates a continuum of violence that affects women in times of peace as well as war, where the common denominators are their subordination and the discrimination against them. The Inter-American Commission on Human Rights (IACHR) Rapporteur states:

Colombian women have suffered situations of discrimination and violence because they are women since they were born, and the armed conflict has worsened and perpetuated this history. The violence and discrimination against women is not solely the product of the armed conflict—they are fixtures in the lives of women during times of peace that worsen and degenerate during the internal strife.<sup>67</sup>

A socio-judicial analysis of the conflict in Colombia has provided legally irrefutable evidence that sexual violence as a war tactic is a systematic or generalized practice. However, the State's response to this crime in regards to prevention and sanctions has been insufficient. Women

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<sup>64</sup> Committee on the Rights of Children, Concluding Observations, Colombia, ¶ 35 (2006) UN Doc. CRC/C/COL/CO/3.

<sup>65</sup> Since 2000, the Committee for "Woman and Armed Conflict" report has begun to document and report the effects of the Colombian armed conflict on women—especially sexual violence—as it is the most common form of victimization among women. These reports prompted the UN Special Rapporteur on Violence Against Women to visit Colombia in November of 2001. The reports are available at, [www.mujeryconflictoarmado.org](http://www.mujeryconflictoarmado.org)

<sup>66</sup> According to the 2008 Forensic Report by the Instituto de Medicina Legal y Ciencias Forenses (Institute of Legal Medicine and Forensic Science), in 2008 in Colombia, 21, 202 forensic reports were made. This is a 4.3% increase from 2007, which might be a result of an increase in the number of cases reported. Out of the total number of cases, 75% were of sexual abuse and 15% were of sexual assault. 84% of the reports are about women, with girls aged 10-14 being the most affected. The ratio of cases involving girls as opposed to boys is 4.2:1 and the ration of those involving girls as opposed to adults is 5.8:1. 62% of the attacks took place in the victim's home and the majority of

victims of these acts have yet to have their rights to truth, justice, and reparation restored. Both the UN Special Rapporteur on violence against women and the Special Rapporteur on the Rights of Women for the Inter-American Commission on Human Rights (IACHR) have reported on the incidence of violence against women in the Colombian armed conflict. As the UN Special Rapporteur on Violence Against Women reports:

[V]iolence against women, particularly sexual violence by armed groups, has become a common practice within the context of a slowly degrading conflict and a lack of respect for international humanitarian law. Women have been abducted by armed men, detained for a time in conditions of sexual slavery, raped and made to perform domestic chores. Women have been targeted for being the female relatives of the “other” side. After being raped some women have been sexually mutilated before being killed. Furthermore, survivors explain how paramilitaries arrive in a village, completely control and terrorize the population, and commit human rights abuses with total impunity. The Special Rapporteur also highlights the particular experience of female combatants in the warring factions who suffer sexual abuse and infringements of their reproductive rights and finally the appalling situation faced by female internally displaced persons.<sup>68</sup>

Women become victims of sexualized violence by Colombian armed groups for a wide range of reasons: “for defying prohibitions imposed by the group; for transgressing gender roles; for being considered a useful target for humiliating the enemy, or for sympathising with the enemy. The goal can be torture, punishment or social and political persecution.”<sup>69</sup> In her 2007 report, the Special Rapporteur on the Rights of Women for the IACHR reports that women in the Colombian armed conflict are more likely to be victims of diverse forms of physical, psychological, and sexual violence. Common forms of this violence include sexual abuse, forced recruitment and prostitution, and unwanted pregnancies (October 2006).

A socio-legal analysis by two women’s organizations<sup>70</sup> has established that these acts of sexual violence have principally occurred in the following four situations: in situations of attack, territorial control (resulting in forced displacement), within the ranks (violence against women who are members of an armed group at the hands of their fellow members) and deprivation of liberty. The analysis has also established that the purpose of sexual violence can be to dominate, regulate, silence, obtain information, punish, expropriate, exterminate, compensate members of an armed group, or to intimately bond victims or their relatives to an armed group.

#### ***a. Sexualized violence against internally displaced women***

Sexualized violence is one of the primary causes of the forced displacement of women in Colombia. It is estimated that two out of every ten women are forced to leave their homes because of gender violence. More than half of all known displaced women have reported experiencing some kind of gender-based violence.<sup>71</sup>

In 2008, Colombia’s Office of the Human Rights Ombudsman released a special report on

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<sup>68</sup> Special Rapporteur on Violence Against Women, *Colombia: “Scarred Bodies, Hidden Crimes”: Violence Against Women in the Armed Conflict*, 2, U.N. Doc. E/CN.4/2002/83/Add.3 (Oct. 13, 2004).

<sup>69</sup> Oxfam International, *SEXUAL VIOLENCE IN COLOMBIA: A WEAPON OF WAR*, 2 (2009), available at <http://www.oxfam.org/sites/www.oxfam.org/files/bp-sexual-violence-colombia.pdf>.

<sup>70</sup> Analysis based on 276 cases found in, CORPORACIÓN HUMANAS, *GUÍA PARA LA LLEVAR CASOS DE VIOLENCIA SEXUAL (BOGOTÁ, 2009)* (Humane Corporation, A Guide for Handling Cases of Sexual Violence).

<sup>71</sup> U.N. High Commissioner for Refugees, *International Women’s Day: UNHCR Update Colombian Victims of*



sexual violence in the context of the conflict and found that there is a “serious impact on the sexual and reproductive rights of the displaced population, particularly for women and children, the main victims of displacement.”<sup>72</sup> Moreover, Indigenous and Afro-Colombian women have faced double discrimination based on their race and gender and have faced additional burdens even compared to the precarious position of displaced women in general.<sup>73</sup> Aggravated in the context of armed conflict, these women are made significantly more vulnerable to abuse and mistreatment by armed groups.

The Constitutional Court’s 2008 Order 092 remits to the Attorney General 183 cases of sexual violence against women and stresses that the impact, frequency, and gravity of these cases increases substantially among Indigenous and Afro-Colombian women who find themselves in a situation of defenselessness and vulnerability, and who suffer these crimes at the hands of armed actors. The order points out recent cases of sexual violence perpetuated against women, adolescents, and children of the following ethnic groups: Betoye (Arauca), Embera (Antioquia and Chocó) and Nasa (the regions of Alto Naya, Putumayo, and Cauca).<sup>74</sup>

However, the Colombian Justice Department response to sexual violence has been insufficient. According to a 2008-2009 Attorney General report, cases of sexual violence as a result of the conflict were assigned to the National Unit for Human Rights and International Humanitarian Law. As of April 2009, of the 183 cases remitted by the Constitutional Court to the Attorney General for investigation, only 72 cases had been assigned to the Unit, of which 55 cases were still under preliminary investigation, 2 were in court proceedings and only 1 has resulted in a guilty verdict.<sup>75</sup>

Although sexual violence against displaced women is a growing issue of concern, there is a dearth of information on the number of incidents. Walter Kälin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, specifically recommended the Colombian government conduct a systematic study and analysis of sexual and gender-based violence issues for internally displaced women and girls and implement a comprehensive policy for these women.<sup>76</sup>

### ***b. Sexual violence and exploitation of girl-child soldiers***

Girl members of illegal armed groups are particularly vulnerable to grave sexual violence. They are forced to use inadequate and often harmful methods of contraception and forced to have an abortion if they become pregnant.<sup>77</sup> According to the Colombian Constitutional Court, sexual violence is “a habitual, extended, systematic and invisible practice in the context of armed conflict perpetrated by the illegal armed groups, and in isolated cases, by individual agents of the national armed forces.... [C]hildren account for an exceedingly high proportion of the total

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<sup>72</sup> According to article 282 of the Colombia Constitution, the Ombudsman's Office of Colombia (*Defensoría del Pueblo*) is in charge of supervising the promotion, exercise, and publicizing of human rights.

<sup>73</sup> OXFAM INTERNATIONAL, *SEXUAL VIOLENCE IN COLOMBIA: A WEAPON OF WAR*, 16-19, *supra* note 68; AMNESTY INTERNATIONAL, *EVERYTHING LEFT BEHIND: INTERNAL DISPLACEMENT IN COLOMBIA*, 6, 12 (2009), available at <http://www.amnesty.org/en/library/asset/AMR23/015/2009/en/6022342b-845a-4079-96da-14b3aa41b331/amr230152009eng.pdf>.

<sup>74</sup> COMMITTEE ON WOMEN LABOR AND ARMED CONFLICT, *IX REPORT ON SOCIOPOLITICAL VIOLENCE AGAINST WOMEN, ADOLESCENTS, AND GIRLS IN COLOMBIA* (2009).

<sup>75</sup> *Id.* at 41.

<sup>76</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, *Mission to Colombia*, ¶ 82(a) (2007) U.N. Doc. A/HRC/4/38/Add.3.

<sup>77</sup> Security Council Report of the Secretary-General on Children and Armed Conflict in Colombia ¶ 20 (2009) UN

cases of known victims.” The Committee on the Rights of the Child has echoed similar concerns regarding the increasing number of girls who are subjected to sexual violence and the numerous reports of rapes committed by members of the military and recruitment of children by illegal armed groups for sexual slavery.<sup>78</sup>

From 2006 to 2009, there have been a growing number of reports and testimonies of child soldier recruitment in Colombia. The Office of the High Commissioner for Human Rights, (OHCHR) Colombia received numerous complaints that guerrilla groups were still recruiting children in several departments including Antioquia, Arauca, Caquetá, Norte de Santander, Putumayo, and Valle de Cauca.<sup>79</sup> Similarly, the IACHR Rapporteur received grave testimonies of girls recruited by the AUC on the Caribbean coast, especially in the neighborhoods of Montería, such as Canta Claro, Unión, El Dorado, Santa Fe, Robinson Pitalua, La Turbina as well as in Quibdó.<sup>80</sup>

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### Sexual Servitude of Girl Child Soldiers

*One day the commanding officer came and rounded up all the girls in the camp. He told the virgins to step forward. There were six of us. We were then taken away and forced to have sex with the commanding officers. A commander says to you ‘you’re my partner from now on’ and that’s the way it is until he decides he is done with you.\**

*The girls don’t think about it as sexual servitude. They see it as survival. Many girls cannot survive without a partner. Many girls who are recruited by the armed groups have told us that they are forced to have abortions at very young ages, sometimes as young as 14. In some cases, the armed group leaves them behind and they are forced to survive and care for their child on their own.\*\**

\*Testimony from a former girl child soldier, provided through Taller de Vida. \*\*Testimony of Stella Duque, Director of Taller de Vida.

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The 2006 report of the IACHR Rapporteur confirmed testimonies of women and girls being forced into sexual slavery, raped by members of the armed groups, forced to use contraceptives and forced to have abortions<sup>81</sup> for which government-run health institutions are not equipped to provide the necessary sexual and reproductive health services.<sup>82</sup> In the Cauca region, AUC paramilitary leaders have forced girls as young as 14 to provide them with sexual services and domestic chores. One testimony received recounted a case of a pregnant girl who tried to escape and was subsequently murdered, with her fetus removed and displayed in order to discourage

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<sup>78</sup> Committee on the Rights of the Child, Concluding Observations: Colombia, ¶¶ 50, 80(a) (2006) UN Doc. CRC/C/COL/CO/3.

<sup>79</sup> Office of the High Commissioner for Refugees, *Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, ¶ 90 (2009) U.N. Doc. A/HRC/10/32.

<sup>80</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, ¶ 90 *supra* note, 51.

<sup>81</sup> *Id.*, ¶ 90 *supra* note, 51.

other girls from attempting to flee. In other cases, paramilitary members were reported to have taken women from towns to their camps at night and sexually assaulted them.<sup>83</sup>

### *c. State-perpetuated impunity*

In General Comment No. 28 the Committee explains that “[t]he right to equality before the laws and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields.”<sup>84</sup> Citing both articles 3 and 26 together, the Committee has also urged State parties to “sensitize the population... by eradicating all traditional and stereotypical attitudes that deny women equality.”<sup>85</sup>

Comment No. 28 states “Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious **attitudes.**” **Moreover, the Committee has concluded that, “prevailing social attitudes cannot justify the failure by the State party to comply with its obligations.”**<sup>86</sup>

Regarding intrafamily violence, there has been a continuous increase in the number of statistics showing how women can be victims of physical and permanent psychological abuse in both familial spaces and in romantic relationships. The most reliable and up to date figures on intrafamily violence come from the Forensic Report from the National Institute of Legal Medicine and Forensic Science (Instituto Nacional de Medicina Legal y Ciencias Forenses): In 2009, 93,862 cases were documented. There were 61,139 cases of violence between couples, being women the main victims with 88,8% of the victims being women between 20 and 29 years old.<sup>87</sup>

Furthermore, the National Institute of Legal Medicine and Forensic Science found that in the last six years, the number of records, the age range (between 25-29), sex (women) and etiology (partner abuse) have all remained constant.<sup>88</sup> The Institute also reports that between 2004 and 2008 the majority of the victims were women who had completed elementary or high school but did not have higher education and that the majority of reported incidents occurred in urban areas.<sup>89</sup> The Institute does not offer statistics segregated by ethnicity (for example: Indigenous groups, Afro-descendants).

Although intra-family violence is a criminal act that can present itself as both physical and psychological abuse, the report from the Institute does not take into account or present statistics on psychological abuse. This is a result of the current procedural nature of the penal system, which emphasizes physical evidence.

In 2008 in Colombia, 21,202 forensic reports were published. This is a 4.3% increase from 2007, which might be a result of an increase in the number of cases reported. Of the total number of cases, 75% were of sexual abuse and 15% were of sexual assault. 84% of the sexual forensic scientist reports are about women, with girls aged 10-14 being the most affected. The ratio of cases involving girls as opposed to boys is 4.2:1 and the ratio of those involving girls as

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<sup>83</sup> *Id.*, at ¶ 92.

<sup>84</sup> ICCPR, General Comment No. 28, Equality of Rights Between Men and Women ¶ 31 (2000) *supra* note 40.

<sup>85</sup> Human Rights Committee, Concluding Observations, Kyrgyzstan, ¶ 13 (2000) UN Doc. CCPR/CO/69/KGZ.

<sup>86</sup> Human Rights Committee, Concluding Observations: Poland, ¶ 133, (1992) UN Doc. CCPR/A/47/40.

<sup>87</sup> INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES, VIOLENCIA INTRAFAMILIAR. COLOMBIA, 2009. NIÑOS, NIÑAS, ADOLESCENTES Y MUJERES, LAS VÍCTIMAS DE LA VIOLENCIA INTRAFAMILIAR.

<sup>88</sup> INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES, Revista Científica at 100, *infra* note 89.

<sup>89</sup> INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES, *Maternidad: Mujeres sus riesgos la mala mamá*

opposed to adults is 5.8:1. A total of 62% of the attacks took place in the victim's home and the majority of aggressors knew their victim.

Despite the magnitude of the statistics above from the National Institute of Legal Medicine and Forensic Science, especially the conclusion that 58 sexologist reports are conducted every day in Colombia, experts and reports agree that these figures only represent a small percentage of cases, due to the fact that many remain a secret. PROFAMILIA offers numbers that better reflect reality in their 2005 National Demographic and Health Survey (Encuesta Nacional de Demografía y Salud de 2005) which points out that: "*in this country, close to 722,000 girls and women, between the ages of 13-49, have been raped one or more times throughout their life...half of the women affected were already victims of sexual abuse by the time they were 15....*"<sup>90</sup>

Several obstacles to women victims' rights to justice exist in Colombia's current criminal accusatory judicial system in regards to accusations of gender-based violence. Evidence has shown that "in the cases observed in this investigation where the women were victims of gender based violence, the women were not able to exercise their right to access to justice. Despite the virtues of the new system, the justice system's mechanisms, tools, and practitioners are not gender-sensitive. In other words, they do not take into account relationships of power between men and women in the analysis of social realities. Access to justice, which these women, as discriminated victims, have a right to, is not fully guaranteed in Colombia. This is in spite of the legal order of this country which upholds the principle of equality before the law."<sup>91</sup>

Among the indicated problems of access to justice for women victims of gender-based violence<sup>92</sup>; one can conclude that the accusatory system is designed to guarantee the rights of the accused over the rights of the victim, since the informed presence of the accused and their defense is considered indispensable. In cases of sexual violence, victim's right to privacy is violated for the sake of the public transparency of the process. The penal process is oriented towards a policy of judicial decongestion, under which crimes historically considered to be of minor importance, such as intra-family violence, are put aside. Legal practitioners work more to get a case through the system as quickly as possible rather than guarantee a verdict that protects a victim's rights. In regards to probative value, physical evidence has more weight, which in cases of gender-based violence is usually controversial and at the cost of the victims. Moreover, the right of a victim to seek reparations is not enforced by any procedural guarantee.

### **III. The New Colombian *Procurador General de la Nación*, Alejandro Ordoñez, has Obstructed Women from Accessing the Constitutionally-Protected Right to Abortion**

Article 3 requires "States to provide for equality between men and women in the enjoyment of all Covenant rights."<sup>93</sup> Under General Comment No. 28, this Committee underscores that article 26 requires parties to "review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields."<sup>94</sup>

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<sup>90</sup> El Tiempo, *Cifras Vergonzosas*, Oct. 23, 2007 ("Embarrassing Statistics" article from the newspaper, El Tiempo).

<sup>91</sup> CORPORACIÓN HUMANAS, LA SITUACIÓN DE LAS MUJERES VÍCTIMAS DE VIOLENCIA DE GÉNERO EN EL SISTEMA PENAL ACUSATORIO 58 (2008) (Humane Corporation, The Situation of Women Victims of Gender-Based Violence in the Criminal Justice System).

<sup>92</sup> *Id.* at 59-62.

<sup>93</sup> ICJHR, *Artículo 2 (EQUIDAD)*, A/C21/L

In concert with this, article 12 of the CEDAW Convention provides that “States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”<sup>95</sup> General Recommendation No. 24 explains, “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.”<sup>96</sup>

The Colombian Constitutional Court, in its decision C-355 of 2006, recognized women’s sexual and reproductive rights by decriminalizing abortion in certain circumstances. This decision allows women to interrupt pregnancies without fear of prosecution when their life or health (physical or mental) is in danger; when the pregnancy was a result of rape or incest; or where there is a fetal malformation, which makes life outside the womb unviable. The decision also ensures that women who decide to voluntarily interrupt their pregnancies have the right to use the public health system for services that are necessary to carry out the abortion in safe and dignified conditions. **The Colombian Constitutional Court should be congratulated for this decision.**

Since taking office in January 2009, the *Procurador General*, Alejandro Ordoñez, has used his official power to undermine sexual and reproductive rights, especially the right to abortion. Ordoñez, who is charged with promoting and protecting these rights for Colombian citizens has stated that, “The objective of the cultural revolution today is to undo the principals and values that are the basis of a Christian family... by allowing for, divorce, the use of contraception, abortion and homosexual marriage; a first phase that is almost complete.” Specifically, the *Procurador General* Ordoñez has ordered public officials to restrict the interpretation of the norms granting access to abortion services and has effectively halted the Court-mandated dissemination of sexual and reproductive health materials.

#### ***a. Legal Background on the Procurador General***

Colombia’s *Procuraduría General* is the government agency in charge of enforcing judicial decisions as well as the promotion and protection of human rights. The *Procurador* has no hierarchical superior and is not controlled by any State agency. Additionally it has disciplinary authority over public officials. Under articles 277 and 278 of the Colombian Constitution, the *Procurador General* is, among other tasks, mandated to: supervise compliance with the Constitution, the laws, judicial decisions, and administrative decrees; protect human rights and ensure their effectiveness; to defend the interests of society; initiate the appropriate investigations and impose the appropriate sanctions in accordance with the law.

In December of 2008, Mr. Ordoñez was appointed *Procurador*. On several occasions, both in interviews with the media and in several publications, Mr. Ordoñez has adamantly expressed his opposition to divorce, contraception, same-sex marriage, and even masturbation, because they go against “God’s law” and what he calls “the natural order.”<sup>97</sup> He has also called the UN human rights system and CEDAW, “a tragedy.”<sup>98</sup>

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<sup>95</sup> CEDAW, Article 12, Violence Against Women (1984) U.N. Doc. A/34/46.

<sup>96</sup> CEDAW General Recommendation No. 24, Women and Health, ¶ 11 (1999) UN Doc. A/54/38.

<sup>97</sup> Comunicado de 11 de mayo de 2006 de la Red Futuro Colombia, organización presidida por Ilva Myriam Hoyos Castañeda.

<sup>98</sup> Ordoñez Maldonado, Alejandro, *El mundo después: El mundo entendiendo mundialmente la revolución cultural*.

Mr. Ordoñez appointed Ms. Ilva Myriam Hoyos as Delegate *Procuradora* for the Defense of the Human Rights of Children, Adolescents and the Family, a post directly in charge of enforcing women's sexual and reproductive rights. Ms. Hoyos was the main opponent of the lawsuit that resulted in the liberalization of abortion laws in Colombia. She submitted 47 *amici* opposing the challenge, published books, requested the decision to be declared void, and publicly announced that she would take it upon herself to undermine the decision.<sup>99</sup>

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### The Abortion Clinic that Never Was\*

Two fundamentalist organizations began campaigning against plans to construct a new clinic in Medellín designed to specifically meet the health care needs of women, including mental health, domestic violence and sexual and reproductive health. The Network Future Colombia (Red Futuro Colombia) and the webpage *Estoesconmigo.org*, two anti-choice organizations, together sent thousands of emails to Mayor Alonso Salazar of Medellín, requesting that the clinic be stopped from providing abortion services. They termed it the “clinic of death.”

Ilva Myriam Hoyos is a harsh opponent of sexual and reproductive rights, and was appointed as delegate for Children, Women and the Family by *Procurador General* Ordoñez. Hoyos is closely linked with these groups; she was the founder and President of Red Futuro Colombia, although she did not declare herself unable to discharge her functions as *Procuraduría* due to bias as required by law.<sup>1</sup> Instead, she personally visited Mayor Salazar to announce a government investigation into the activities of the clinic, which had yet to come into existence, an act unprecedented in the history of the *Procuraduría*. The groups argued the clinic should not perform legal abortions—not even as allowed by law—and used memo 030 from the *Procuraduría* to argue for such demands.

As a result of this pressure from her civil society groups and Hoyos' personal appeal, Mayor Salazar opted to eliminate interruption of pregnancy from the list of services to be offered at the clinic. This first “successful” campaign primarily affects women who have been raped in the context of armed conflict in Medellín.<sup>3</sup>

\*Provided by Women's Link Worldwide.

<sup>1</sup> According to Constitution, public function has to be executed in an impartial form (article 209). The disciplinary code for public servants (734 of 2002) establishes that every public official who has a private interest that clashes with the public interest as mandated by his or her post, must recuse her or himself (article 40).

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Both Mr. Ordoñez and Ms. Hoyos pose a grave threat to acquired sexual and reproductive rights of Colombian women as they are in charge of enforcing human rights recognized in judicial decisions and the Constitution.

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<sup>99</sup> Ordoñez Maldonado, Alejandro. *El nuevo derecho. El nuevo ordenamiento mundial y la revolución cultural*. Ediciones Destino, S.A. Bogotá, 2007. Págs. 46 – 47. *Identities de Cámara Utrera Trujillo y Subramániam*

***b. Mr. Ordoñez issued Memo 030, ordering public officials to ignore the Constitutional Court’s decision and deny women life and health-saving abortions.***

The Committee has concluded that States parties’ obligations under the treaty require them to “refrain from obstructing action taken by women in pursuit of health goals” including the imposition of barriers to women’s access to appropriate health care such as “laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”<sup>100</sup>

Similarly, ICESCR General Comment No. 14 of the ICESCR, emphasizes that “equality cannot be achieved without the implementation of strategies that address the specific health needs of women.... [It] requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”<sup>101</sup>

Mr. Ordoñez issued Memo 030, ordering public officials to ignore the Constitutional Court’s decision and deny women life and health-saving abortions—procedures protected under both the Covenant and Colombian law.<sup>102</sup>

Memo 030 discriminates punitively against women who exercise their right to make reproductive decisions, and to decide to terminate a pregnancy even in situations allowed by Colombian law. Additionally, it has the practical effect of deterring and obstructing women from receiving treatment for abortion and pregnancy-related complications, including life-threatening situations. For example, when a 13-year old girl was raped and as a result became pregnant, seven different health care providers denied her an abortion. The girl ultimately was forced to carry out a high-risk pregnancy and suffered permanent health consequences as a result (see box on page 42 under article 6 for more details).

*Procurador General* Alejandro Ordoñez’s conduct is detrimental to sexual and reproductive rights, and stands in sharp contrast to the work done by his predecessor, Edgardo Villazón Maya, who filed a brief before the Constitutional Court in support of abortion rights and on July 28, 2008 issued Memo 038, which sets guidelines and instructions for all members of the *Procuraduría* to make women’s sexual and reproductive rights effective in accordance to decision C-355 and Decree 4444 of 2006.

***c. Mr. Ordoñez requested that the Court decision mandating dissemination of educational materials about sexual health and reproductive rights be declared void.***

This Committee has emphasized numerous times that States parties should ensure accurate and objective sexual education in schools<sup>103</sup> as well as access to contraceptives<sup>104</sup> and non-discriminatory access to all methods of family planning.<sup>105</sup> While reviewing Ecuador’s Periodic

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<sup>100</sup> *Id.* ¶ 14.

<sup>101</sup> ICESCR General Comment No. 14, The Right to the Highest Attainable Standard of Health, ¶ 21 (2000) UN Doc. E/C.12/2000/4.

<sup>102</sup> Constitutional Court, Decision C-355/06 of 2006.

<sup>103</sup> See, for example, the Human Rights Committee, Concluding Observations: Poland, 40 ¶ 85(9) (2004) UN Doc. A/60/40; Lithuania, 52 ¶ 71(12) (2004) UN Doc. A/58/40; Mali, 47 ¶ 81(14) (2003) UN Doc. A/58/40.

<sup>104</sup> See, for example, the Concluding Observations for, the Human Rights Committee, Poland, 40 ¶ 85(9) (2004) UN Doc. A/58/40; Hungary, 60 ¶ 80(11) (2002) UN Doc. A/58/40; Morocco, A 24 ¶ 101 (2000) UN Doc. A/58/40; Georgia, 40 ¶ 239 (1997) UN Doc. A/58/40; and, CESCR Committee, Poland, 54 ¶ 369 (2002) UN Doc. E/2003/22;

<sup>105</sup> For example, Human Rights Committee, Concluding Observations, Poland, ICCPR, 65 ¶ 344 (1999) UN Doc. A/58/40; See also, Poland, ¶ 85(9) (2004) UN Doc. A/58/40; Lithuania, 52 ¶ 71(12) (2004) UN Doc. A/58/40; Mali, 47 ¶ 81(14) (2003) UN Doc. A/58/40.

State Report, the Committee recommended that “All necessary legislative and other measures should be adopted to assist women, and particularly adolescent girls, faced with the problem of unwanted pregnancies to obtain access to adequate health and education facilities.”<sup>106</sup>

Both the CESCR and CEDAW Committees have also continuously recommended to states parties to widely promote sex education, specifically targeting adolescents, and to take the necessary measures to guarantee effective access of women to sexual and reproductive health-care information and services—especially young women, women from disadvantaged groups and rural women.<sup>107</sup>

On November of 2009, Procurador Ordoñez filed a formal petition to nullify the Constitutional Court’s ruling (decision T-388 of 2009) that mandates the inclusion of information on abortion in the sexual education national plans.<sup>108</sup> Procurador Ordoñez’s request to declare void the Constitutional Court’s decision mandating dissemination of educational materials about the rights of women to voluntarily interrupt their pregnancies in certain legally permissible circumstances goes against the fundamental principles of human rights protected by the Covenant.

#### IV. The Colombian Government’s Response

**In its Concluding Observations on Colombia in 2004, the Committee observed, “The State party should intensify programs aimed at providing economic and social assistance to internally displaced persons so that they may, in conformity with article 26 of the Covenant, enjoy as many of the benefits provided by State institutions as possible.”<sup>109</sup>**

In its report, the Colombian government cites the Constitutional Court’s Order 092 of 2008,<sup>110</sup> which represents a great advancement towards the protection of displaced women. The Order was issued as a follow up to decision T-025/04, which acknowledged the rights violations against displaced populations.

Colombian women’s human rights organizations have called this ruling a milestone in Colombia’s recent history. **Colombia’s Constitutional Court should be congratulated for this decision.** This decision mandates that the government adopt key measures to fill in gaps in public policies; establishes two constitutional presumptions to protect displaced women; and adopts individual orders to protect 600 displaced women. It also mandates that the government communicate to the Attorney General about acts of sexual violence committed within

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(2002) UN Doc. A/58/40; Argentina, 38 ¶ 74(14) (2001) UN Doc. A/58/40; Mongolia, 49 ¶ 323 (2000) UN Doc. A/58/40; Morocco, 24 ¶ 101 (2000) UN Doc. A/58/40.

<sup>106</sup> Human Rights Committee, Concluding Observations, Ecuador, ¶ 284 (1998) UN Doc. A/53/40 vol. I 43.

<sup>107</sup> See, for example, the Concluding Observations, for the CESCR Committee: Guatemala, 59 at ¶ 435 (2003) UN Doc. E/2004/22; Benin, 34 ¶ 196 (2002) UN Doc. E/2004/22; Jamaica, 130 ¶ 953 (2000) UN Doc. E/2004/22; The CEDAW Committee, Brazil, 93 ¶ 127 (2007) UN Doc. A/58/38; Benin, 116 ¶ 158 (2005) UN Doc. A/58/38; Dominican Republic, 141 ¶ 309 (2004) UN Doc. A/58/38; Costa Rica, 86 ¶¶ 68, 69 (2003) UN Doc. A/58/38; Congo, 29 ¶ 174 (2003) UN Doc. A/58/38; Peru, 212 ¶ 483 (2002) UN Doc. A/58/38; Suriname, 82 ¶ 64 (2002) UN Doc. A/58/38; Russian Federation, ¶ 400 (2002) UN Doc. A/58/38.

<sup>108</sup> Espectador.com, *Procurador insiste en nulidad de sentencia que insta a cátedra del aborto*, Oct. 29, 2009, <http://www.elespectador.com/noticias/judicial/articulo169352-procurador-insiste-nulidad-de-sentencia-instacatedra-del-aborto>.

<sup>109</sup> Human Rights Committee, Concluding Observations, Colombia (2004) 35 ¶ 19 (2004) UN Doc. CCPR/CO/80/COL.

<sup>110</sup> Sixth Periodic Report of Colombia to the Human Rights Committee, ¶ 122 (2000) UN Doc. CCPR/C/CO/16/



Colombia's armed conflict for prosecution. Although the government of Colombia has taken steps to address the 600 individual cases, it lacks a general approach to the issues faced by displaced women as a whole.

The Court's Order 092 also requires the government to implement 13 programs designed to address abuses and protect human rights of displaced women. The programs include redressing violence against women, and ensuring health care, educational services, employment opportunities, and land title rights, as well as meeting specific needs of Afro-Colombian and Indigenous women. The rationale of the Court is that displaced women face a heightened risk of abuse because of their gender.

However, Colombia's periodic report fails to account for any steps taken by the government to implement the thirteen programs ordered by the Court. Moreover, the State report fails to mention Order 237/08 of the Constitutional Court, in which the Court found that the government had not fulfilled the mandates of Order 092/08, and called on the government to implement, evaluate and report back to the Court on the progress of the programs.<sup>111</sup> In 2009, the CERD Committee highlighted this concern stating that "humanitarian assistance and protection measures for displaced populations remain inadequate and that compliance with the Constitutional Court decision T-025 of 2004 has been insufficient and unduly delayed".<sup>112</sup> Ultimately, the Colombian government has not shown the necessary political will to comply with the Court's orders.

In Colombia's Periodic Report, the government refers to the development of a guideline for providing assistance to the displaced population with a gender perspective.<sup>113</sup> The guideline has the goal of promoting the inclusion of a gender perspective into policies, programs and projects aimed at improving the living conditions of the displaced population. With this guideline, the government is seeking to ensure psychosocial services for displaced women that helps them adapt to a new environment and takes into account that women are subjected to sexual abuse, forced recruitment, forced prostitution, early pregnancies and the loss of their loved ones. According to women's groups, the government has announced the issuance of this guideline since 2006. To date there is no information as to whether the guideline has been implemented or integrated into existing policies and programs.

The State party also reports signing an agreement with UNHCR to design a guideline for the prevention of displacement, and for provision of socioeconomic stability of the displaced population.<sup>114</sup> However, the State also fails to report on the status of this agreement.

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## **VI. Recommendations:**

- The State party should comply with the recommendation of the Committee on the Elimination of Racial Discrimination of 2009 (CERD/C/COL/CO/14, para. 16) and allocate additional human and financial resources in order to immediately comply with the Constitutional Court decision T-025 of 2004 and the follow-up orders (*Auto 092 of 2008, Autos 004 and 005 of 2009*).

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<sup>111</sup> Constitutional Court of Colombia, Order 237, Sept.19, 2008.

<sup>112</sup> CERD Committee, Concluding Observations, Colombia, ¶ 16 (2009) UN Doc. CERD/C/COL/CO/14.

<sup>113</sup> Sixth Periodic Report of Colombia to the Human Rights Committee, ¶ 284 (2009) UN Doc. CCPR/C/COL/6

- The State party should ensure that national policies are implemented to protect displaced women—especially Afro-Colombian and Indigenous women—and ensure the safe return to their original lands. While recognizing efforts by the State party, such as the adoption of a National Plan of Assistance for the Displaced (*Decreto 250 de 2005*), the State party should intensify these efforts to ensure the practical implementation of the Plan, and that it pay particular attention to the rights of Afro-Colombian and Indigenous women and children.
- The State party should address the root causes of violence against women and increase their access to justice and protection programs. While noting the State party's efforts to support internally displaced women and children, these groups—specifically female heads of households—continue to be disadvantaged and vulnerable. The State party should increase its efforts to meet the needs of internally displaced women and children to ensure their access to health, education, social services, employment and other economic opportunities, as well as assistance and protection from risk of all forms of violence.
- The State party should comply with the recommendation of Walter Kälin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. The Colombian government should conduct a systematic study and analysis of sexual and gender-based violence issues for internally displaced women and girls, disaggregated by ethnicity, in order to develop a comprehensive policy for addressing violence against women.
- The State party should fulfill their obligations with due diligence to investigate, prosecute, and punish perpetrators of sexual violence and establish and fund special support services for victims of such violence. The government should design a national plan of action in order to strengthen prevention and response strategies to sexualized violence as well as promptly investigate and prosecute perpetrators. The State party should ensure the safety of women human rights defenders.
- The State party should intensify its efforts in addressing the large-scale recruitment of children by illegal armed groups for combat purposes and sexual abuse. The State party should substantially increase the resources for social reintegration, rehabilitation and reparations available to demobilized child soldiers—with special attention given to sexual violence victims.
- The State party should take immediate measures to guarantee effective access of women to sexual and reproductive health-related services including the right to safe and legal abortion to ensure that women are not forced to carry pregnancies to term in violation of the rights guaranteed by the Covenant and Colombia Law.
- The State party should adopt programs and policies to increase awareness of and access to contraceptive methods, including emergency contraception, bearing in mind that family planning should be the responsibility of both partners. The State should implement mass educational campaigns on sexual and reproductive rights as mandated by Colombia's Constitutional Court in decision T-388 of 2009. Additionally, the State should ensure the inclusion of all available contraceptive methods in the public health care coverage system, available to all persons regardless of income.
- The State Party should adopt measures that tend to guarantee the protection of women, adolescents, and girl in armed conflict, recognizing their particular vulnerability to this

**Article 6: The Right to Life in connection with Article 7: The Right to be Free from Torture and Article 9: The Right to Liberty and Security of Person**

**I. Threats, Injuries, and Executions Committed against Women Human Rights Defenders**

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*Women human rights defenders are constantly threatened and face sexual violence. They have been burned with cigarettes, raped, and killed by armed group members. Sometimes their breasts are cut off or arms or legs. Or, [armed actors] insert objects into their vaginas.*

– A Woman Human Rights Defender

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In 2004, this Committee noted its concern about the fact that “a significant number of arbitrary detentions, abductions, forced disappearances, cases of torture, extrajudicial executions and murders continue to occur in the State party.... Human rights defenders, political and trade union leaders, judges and journalists continue to be targets of such actions....” in violation of articles 6, 7 and 9 of the Covenant.

The Committee has broadly defined the right to life under article 6(1), requiring States to prevent arbitrary killings whether committed by the State or by individuals. In connection with this, article 9(1) of the Convention protects the right to personal security; the Committee has clarified that the interpretation of article 9 does not allow the State to ignore threats to personal security of non-detained persons subject to its jurisdiction.<sup>115</sup>

Elaborating on the rights protected under article 9(1), the Committee has held that the State has an obligation to protect the life of an individual whose life is threatened—even when that person is not being detained.<sup>116</sup> This was demonstrated in *Vaca v Colombia*, when the Committee held that the Colombian government had a positive duty to investigate threats made against the life of the petitioner and to provide him protection.<sup>117</sup>

In violation of the Covenant, patterns of threats and harassment against human rights defenders, and often their families, continue to worsen in Colombia. Journalists, trade unionists, magistrates, lawyers, student and youth activists, women defenders, Indigenous and Afro-Colombian leaders, suffer physical violence and threats because of their legitimate efforts to uphold human rights and fundamental freedoms.<sup>118</sup> Human rights defenders and community leaders have reported being directly threatened by all the armed actors and fearing “summary

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<sup>115</sup> See, for example, Human Rights Committee decisions: *Njaru v Cameroon*, Communication 1353/2005 (2007) UN Doc. CCPR/C/89/D/1353/2005; *Rajapakse v Sri Lanka*, Communication 1250/2004 (2006) UN Doc. CCPR/C/87/D/1250/2004; *Chongwe v. Zambia*, Communication 821/1998 (2000) UN Doc. CCPR/C/70/D/821/1998; *Dias v. Angola*, Communication 711/1996, UN Doc. CCPR/C/68/D/711/1996 (2000).

<sup>116</sup> Human Rights Committee, *Vaca v Colombia*, Communication No. 859/1999, ¶¶ 7.2-7.3, (2002), UN Doc. CCPR/C/74/D/859/1999.

<sup>117</sup> *Id.* See also, *Jayawardena v. Sri Lanka*, Communication No. 916/2000, ¶ 7.3, (2002) UN Doc. CCPR/C/75/D/916/2000. The Committee determined that Sri Lanka’s failure to investigate threats made against the petitioner violated his right to security of person protected by Article 9(1).

<sup>118</sup> High Commissioner for Human Rights, *Statement of the Special Representative on the Situation of Human Rights*

executions, arbitrary detentions, forced disappearances, limitations to freedom of movement, or unfounded criminal charges brought against them”<sup>119</sup> forcing them to flee their homes. In testimonies gathered by MADRE and Taller de Vida, community leaders and their families shared stories of harassment and threats made against their life ranging from all armed factions, against their lives, forcing them to flee their homes, on little or no notice, leaving everything they own behind.<sup>120</sup>

When community members are perceived to sympathize with adversary groups, often simply for not showing resistance against them in the past, they are punished by paramilitaries and guerrilla groups. Punishments range from selective assassinations to massacring vulnerable populations by using heinous methods—specifically against Afro-Colombian and Indigenous peoples—often in areas where strategic resources are found.<sup>121</sup>

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### Testimonies of Displaced Afro-Colombian Families\*

*I became a community leader to help improve things in my community. When the armed group took over, they told me I had to go to the Mayor's office and apply for contracts to build roads and then give the money for the contracts to them. I told them I didn't want to get involved and they told me I couldn't refuse. They slipped letters under my door stating that if I wasn't with them then I was against them. My family and I were forced to flee. We had to leave our land and almost everything we owned behind.*

*My husband was killed by the armed group. He was cut into pieces and thrown into the river. Then, they placed a piece of paper under my door that said we had 15 minutes to leave so I fled with my children. They killed many other men like that. He had done nothing wrong.*

\*Testimonies taken from Afro-Colombian families displaced from Chocó, residing in government housing in the neighborhood Tokyo in Pereria and provided with the help of Taller de Vida.

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On 27 January 2010, the women's rights organization SISMA MUJER received a bulletin from the right-wing paramilitary group, Black Eagles, which issued threats against a detailed list of human rights defenders that work with internally displaced peoples.<sup>122</sup> A large percentage of the people threatened are women associated with the Observatory of Women's Human Rights in Colombia (Observatorio de los derechos humanos de las mujeres en Colombia) and the National Roundtable for the Strengthening of Organizations of Internally Displaced Persons (Mesa Nacional de Fortalecimiento a Organizaciones de Población Desplazada).

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<sup>119</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, *Mission to Colombia*, ¶ 14 (2007) U.N. Doc A/HRC/4/38/Add.3.

<sup>120</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, *supra* note, 51.

<sup>121</sup> *Id.*

<sup>122</sup> Letter from Águilas Negras to SISMA MUJER (Jan. 27, 2010), *see, e.g.* Human Rights First, *Stop Paramilitary Death Threats to Colombian Women's Rights Leaders*, (Feb. 12, 2010),

<http://www.humanrightsfirst.org/defendants/aguilas-negras-paramilitary-death-threats-to-women-12-2010/>

The bulletin also promised the “annihilation” of various organizations in civil society, including SISMA MUJER. The gravity of threats such as these undermine the efforts to politically empower groups of internally displaced persons and protect their rights as set forth by the Constitutional Court of Colombia and the UN High Commissioner for Refugees.

*a. Arbitrary and extrajudicial killings of women human rights defenders and their families*

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**Gender-Based Violence to Suppress Peaceful Community Resistance\***

*In the department of Arauca an Indigenous community there was resisting forced displacement by paramilitaries. An Indigenous woman who was pregnant was taken by the paramilitaries. They cut her open and took out the fetus while she was alive and threw it into the river.*

\*Testimony taken from a Woman Human Rights Defender with SISMA MUJER.

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The Committee has made clear in its jurisprudence and in General Comment No. 6 that the protection against arbitrary deprivation of life is of “paramount importance.”<sup>123</sup> Comment No. 6 holds that “States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.

Extrajudicial executions have been a widely documented practice committed by military units across the country. According to OHCHR Colombia, in 2008 alone, the Attorney-General’s Office initiated 716 cases related to over 1,100 victims of alleged extrajudicial executions,<sup>124</sup> 51 of whom are children<sup>125</sup>, and is investigating 1,636 cases of children who have disappeared since 2000, 187 of which took place in 2008.<sup>126</sup>

Following a fact-finding mission to Colombia in June 2009, Phillip Alston, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, expressed his concern that guerrillas and paramilitary groups continue to carry out arbitrary killings against human rights defenders to overtly intimidate and surreptitiously hinder social justice activism.<sup>127</sup> Specifically, extrajudicial killings of women activists are used “especially in order to control and instill fear in rural populations, to intimidate elected officials, to punish those alleged to be collaborating with the government, or to promote criminal objectives.”<sup>128</sup>

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<sup>123</sup> ICCPR, General Comment No. 6: Right to Life (Article 6), ¶ 3, (1994) UN Doc. HRI/GEN/1/Rev.1; *See, for example*, Human Rights Committee, *Páez v. Colombia*, Communication No. 195/1985 ¶ 5.6, (1990), U.N. Doc. CCPR/C/39/D/195/1985; *Barbato v. Uruguay*, Communication No. 84/1981 ¶ 10(a) (1982), UN Doc. CCPR/C/17/D/84/1981; *Chongwe v. Zambia*, Communication No. 821/1998 ¶ 5.2 (2000), UN Doc. CCPR/C/70/D/821/1998.

<sup>124</sup> Report of the Working Group on Arbitrary Detention, Mission to Colombia, ¶ 12, (2009) UN Doc. A/HRC/10/21/Add.3.

<sup>125</sup> Report of the Secretary-General on children and armed conflict in Colombia ¶ 34 (Aug. 2009).

<sup>126</sup> *Id.* at ¶ 42.

<sup>127</sup> General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, ¶ 11

Feb. 20 2009, UN Doc. A/64/187.

## ***b. Excessive use of force by the government***

In *Camargo v. Colombia*, the Committee concluded that an excessive or disproportionate use of force by State security forces constitutes an arbitrary deprivation of life under article 6(1).<sup>129</sup> Similarly, the killing of Edwin Legarda by the Colombian government is in violation of both articles 6(1) and 9(1) in both the disproportionate use of force by Colombian security forces and intent to unlawfully kill Mr Legarda's wife, Indigenous human rights defender Aída Quilcué (see box below). While the military has labeled Edwin Legarda's death as an accident, this killing represents a larger trend of politically-motivated assassinations of human rights defenders and Indigenous peoples in Colombia.

### **The Attempted Execution of Women's Human Rights Defender Aída Quilcué and the Death of Her Husband Edwin Legarda\***

On December 16, 2008, Edwin Legarda, the husband of Indigenous human rights defender Aída Quilcué, was killed by Colombian army personnel when they fired 17 shots upon the vehicle he was driving. Legarda was driving the official car, clearly marked for the use of Mrs Quilcué. Army officials claimed that Mr Legarda failed to stop at a military checkpoint, leading to soldiers opening fire on his car.

Mrs. Quilcué had recently testified before the Universal Periodic Review at the Human Rights Council meeting in Geneva about the violence against Indigenous Peoples in Colombia during the third session of the Working Group on the Universal Periodic Review (December 2008). Many believe—including Aida Quilcué—that the attack was a premeditated killing meant for her, as the Cauca Regional Indigenous Council (CRIC), and a key organizer in the mobilizations by Indigenous communities.

Mrs. Quilcué has openly criticized the government's indifference towards violence against Indigenous community members and the refusal of the government to hand over ancestral lands the Indigenous communities are entitled to under Colombia's Constitution. On the day Edwin Legarda died, he was on his way to pick up Aída Quilcué and bring her to the Togoima reservation, where she was going to give a report-back on her participation at the Human Rights Council meeting.

The only witness to Edwin Legarda's death has been subject to harassment by men refusing to identify themselves and asking for the whereabouts of Mrs. Quilcué. Aída Quilcué is now in hiding and lives in fear for her life.

\*Provided by MADRE. *See also*, Int'l Lawyer's Delegation to Colombia, FOLLOW-UP REPORT, 7 (2009).

<sup>129</sup> Human Rights Committee, *Camargo v. Colombia*, Communication No. 45/1979 ¶ 13.3 (1982), UN Doc. CCPR/C/15/D/45/1979. In *Camargo*, the police shot and killed, without warning, suspected kidnappers. Their actions were considered justifiable under Legislative Decree No 0070. The Committee determined that this use of force was "disproportionate" under the circumstances, constituting an arbitrary deprivation of life under article 6(1) and that the authorizing legislation should be amended to prevent future such occurrences. *See also Burrell v. Jamaica*, Communication No. 546/1993, ¶ 9.5 (1982) UN Doc CCPR/C/15/D/45/1979. In *Burrell*, following the rescue operation from a heister taking the offender, Mr. Burrell, was shot unprovokedly. The Committee concluded that

The attempted attack on Aída Quilcué's life and subsequent killing of her husband is an example of a growing pattern of harassment and killings of women human rights defenders. While the court found six of the seven military personnel implicated in this assassination guilty, documented cases of threats, injury, attempted assassinations and enforced disappearances continue to grow. Recent examples include:

- On June 14<sup>th</sup>, 2010, at 1:00am and 8:00am, **Aída Quilcué**, Indigenous human rights defender (see box above), received a message threatening the lives of members of various Colombian human rights organizations. The motivation for the message was the Social and Interethnic Public Hearing that developed in Santander de Quilchao to denounce violations against human rights and international humanitarian law committed by Colombian Security Forces, Paramilitaries and the FARC against Indigenous communities in Cauca.
- On February 5<sup>th</sup> 2010, **Ingrid Vergara**, spokesperson for Movement of Victims of State Crimes (MOVICE) was the subject of an assassination attempt in Sucre. This was after repeated threats in both October and December of 2009. It appears that the motive was MOVICE's involvement in the arrest of several high ranking politicians linked to paramilitary groups.<sup>130</sup>
- In October of 2009, **Islena Rey**, President of the Meta Human Rights Civic Committee, was traveling with two other activists when a guerrilla group, Revolutionary Armed Forces of Colombia reportedly opened fire, seriously injuring Ms. Rey.<sup>131</sup>
- On March 2<sup>nd</sup> 2009, **Lina Paula Malagon Díaz**, an attorney at the prominent human rights organization, the Colombian Commission of Jurists (CCJ), received a detailed death threat signed by the right-wing paramilitary group, the Black Eagles. The letter explained that she had been declared a "military objective" because of her association with and work for CCJ, and her work on behalf of trade unionists.<sup>132</sup>
- On February 13<sup>th</sup> 2007, **Katherine Gonzalez Torres**, sister of human rights defender Sandra Gutierrez, was kidnapped after the Black Eagles e-mailed a death threat to more than 70 rights groups nationwide: "We will finish with you by means of your families ... your families will pay dearly."<sup>133</sup> For 27 days, she was kept in a cold dark room by her captors and psychologically tortured. She was released physically unharmed, but traumatized.<sup>134</sup>
- On May 11<sup>th</sup> 2006, **Nieves Mayusa**, member of the National Trade Union of Agricultural Workers (FENSUAGRO) along with her partner Miguel Ángel Bobadilla, were detained in Bogotá by the Joint Action Units for Personal Liberty (GAULA),<sup>135</sup> a government security force anti-kidnapping unit. Ms. Mayusa's sisters, one of whom is a regional leader with the Colombia health worker's trade union (ANTHOC), were also detained. Accused of being members of the FARC, they were detained for over 2 years before being released for lack of evidence linking them to the guerilla group.<sup>136</sup>

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<sup>130</sup> Front Line Defenders, *Colombia: Intimidation and Threats Against Human Rights Defenders Ms. Ingrid Vergara and Mr. Juan David Díaz Chamorro*, Feb. 9, 2010, available at <http://frontlinedefenders.org/node/2358>.

<sup>131</sup> Reiniciar, *Islena Rey, Victim of Assault in Puerto Rico, Meta* (Oct. 19, 2009) <http://www.reiniciar.org/?q=node/248>.

<sup>132</sup> "Joint Statement on Threats Against Human Rights Defenders", <http://www.hrw.org/en/news/2009/03/05/joint-statement-threats-against-human-rights-defender>.

<sup>133</sup> Christian Science Monitor, "Paramilitaries reemerge in pockets of Colombia", Mar. 12 2007.

<sup>134</sup> Christian Peacemaker Teams, *Katherine Gonzalez Torres Appears Alive and Well*, Mar. 20, 2007,.

<sup>135</sup> GAULA was created by Law 282/96 and its personnel comes from DAS, CTI, Fiscalia, and the Armed Forces.

<sup>136</sup> *Front Line Defenders, Colombia: Intimidation and Threats Against Human Rights Defenders Ms. Ingrid Vergara and Mr. Juan David Díaz Chamorro*, Feb. 9, 2010, available at <http://frontlinedefenders.org/node/2358>.

- On 11 May 2006, **Fanny Perdomo**, member of Citizens Community for Life and Peace (CIVIPAZ), was arrested on suspicion of kidnapping and rebellion. Although the prosecutor tried to link her to the FARC, the only evidence was her purchase of a phone card and hygiene products for her sister, accused of being a member of the FARC. Although the purchase was not illegal, it was after 2 years of detention that Ms. Perdomo was released.<sup>137</sup>

***c. Failure to duly investigate and prosecute the harassment and unlawful killings of women’s human rights defenders***

The government has an obligation to investigate human rights violations thoroughly, identify the responsible persons—not only the actual perpetrators, but also identifying the chain of command—as well as ensure reparations for the victims in cases of extrajudicial killings and enforced disappearances. General Comment No. 6 notes that, “States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation to the right to life.” Furthermore, the Committee established in *Herrera v. Colombia*, that failure to commit the necessary resources to do so may result in a violation of States parties duties of enforcement under article 2 as well as specific protections granted under article 6.<sup>138</sup>

Though there is evidence that there has been some reduction in the rate of extrajudicial executions by security forces in 2009, Philip Alston, UN Special Rapporteur on Extrajudicial Executions reported that killings of this kind are still carried out in a more or less systematic fashion within the military. Systematic harassment of survivors, community leaders and others trying to pursue justice in these cases was also found to be a “common pattern”. In many cases, the killings were referred to the military justice system, which usually closed the cases without a serious attempt to pursue those responsible. The Special Rapporteur noted: “encouraging steps demonstrate a good faith effort by the government to address past killings and prevent future ones. But there remains a worrying gap between the policies and the practice. The number of successful prosecutions remains very low, although improved results are hoped for in the coming year”.<sup>139</sup>

Additionally, the Special Rapporteur found that “false positive” killings (unlawful killings of civilians made to look like lawful killings during combat) in Colombia have been carried out by the military.<sup>140</sup> The case of the municipality of Soacha, which has been especially well-publicized, involved 11 persons, including a child, who disappeared near Bogota in January 2008.<sup>141</sup> Their bodies were later displayed by the national army as unidentified members of illegal armed groups killed in combat in the department of Norte de Santander a few days after their disappearance.<sup>142</sup>

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<sup>137</sup> *Id.*

<sup>138</sup> *Herrera v. Colombia*, Communication No. 161/1983, ¶ 10.3, (1987) UN Doc. CCPR/C/31/D/161/1983.

<sup>139</sup> *Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions - Mission to Colombia 8-18 June 2009*, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/C6390E2F247BF1A7C12575D9007732FD?Opendocument..>

<sup>140</sup> Philip Alston, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 11, July, 29, 2009, UN Doc. A/64/187.

<sup>141</sup> UN News Service, *UN expert voices concern over murders committed by Colombian security forces*, 18 June 2008, available at <http://www.unhcr.org/refugees/pdf/4a572b31.html> (accessed 22 April 2010).



## II. Recruitment and Executions of Child Soldiers by Illegal Armed Groups

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*In War Council the other members of the [armed] group vote on whether to kill you or not, and if you get more votes than not, then they kill you.*

–Former Child Soldier Bogotá, Colombia

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This Committee has expressed serious concern about the use of children as soldiers under article 6, the right to life.<sup>143</sup> In its Concluding Observations for Uganda, the Committee held that “the State party should take the necessary steps, as a matter of extreme urgency and in a comprehensive manner... to reintegrate former child soldiers into society”<sup>144</sup> under the rights guaranteed under both article 6 the right to life, and article 24, the rights of the child. For more on article 24, see pages 49 to 55. This Committee has also held that State Parties should provide mechanisms for tracking down children who have disappeared in conflict.<sup>145</sup>

Former child soldiers gave accounts of being subjected to “War Councils” in which members of armed groups, including children, who were found to have “violated the rules” were voted by their peers as to or not whether their punishment would be death (see box below). For more information on Child Soldiers in Colombia, see analysis under article 24, pages 49 to 51.

Since 2006, the Attorney-General’s Office has found 109 bodies of children—mainly victims of armed groups—in clandestine graves.<sup>146</sup> Whether these children found were child soldiers, being recruited as such or other types of victims of armed groups is unknown. However, according to testimonies of former child soldiers, children recruited by armed groups were frequently killed for “insubordination” ranging from stealing food from the group’s reserves to trying to escape.

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### Recollections of a War Council\*

*When you’re in an armed group you starve a lot. There is not a lot of food and you don’t always get a meal. One of my friends was caught with Panella [sugar] that he took from the reserve. They held a War Council and they voted to have him killed. The next day they dug a hole in the ground and shot and killed him. He was 17 years old.*

*I went through a War Council. They tied me down for a month and then the Commander ordered a War Council for me. They put me in front of all my partners and started asking each person whether to punish me or kill me. My life was saved by two votes. My crime was trying to escape. If you loose a part of your gun you could also face a War Council.*

\*Testimonies of former child soldiers, provided through the assistance of Taller de Via.

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<sup>143</sup> Human Rights Committee, Concluding Observations, Uganda, ICCPR, (2004) 47 ¶ 15 UN Doc. A/59/40 vol. I.

<sup>144</sup> *Id.*

<sup>145</sup> Human Rights Committee, Concluding Observations, El Salvador (2002) 61 ¶ 84(10) UN Doc. A/58/40 vol. I.

### III. Sexual and Reproductive Rights

General Comment No. 6 on the right to life under article 6(1) requires that the right not to be arbitrarily deprived of one's life be broadly interpreted and that positive measures be undertaken to protect this right.<sup>147</sup> The Committee also holds that article 6 may be implicated when the lives of pregnant women are at risk in clandestine abortions.<sup>148</sup> Moreover, General Comment No. 28 notes that States parties should provide information with regard to article 6, "on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."<sup>149</sup>

The Committee has made clear that obstructions to accessing sexual and reproductive health rights infringe upon pregnant women's right to life due to the increased maternal mortality that may result when women are forced to resort to unsafe illegal abortion. For example, in its Concluding Observations for Poland, the Committee noted that limited accessibility to contraceptives, lack of sexual education in schools and insufficiency of family planning implicated Covenant articles including article 6. Similarly, in its review of Mali, the Committee recommended the State party "strengthen its efforts...in particular in ensuring the accessibility of health services, including emergency obstetric care."<sup>150</sup>

Article 7 declares that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" which clearly prohibits infliction of both physical and mental suffering.<sup>151</sup> This Committee has long interpreted article 7 to apply in situations where medical treatment is denied. In General Comment No. 28, it specifically calls for information from State's parties on whether women who have become pregnant as a result of rape have access to legal abortion and emphasized the positive character of the State's obligation, The information provided by States parties on all these issues should include measures of protection, including "the availability of legal remedies, for women whose rights under article 7 have been violated.

The Committee repeatedly recognizes the applicability of article 7 to the denial of abortion. In the 2005 case of *K.L. v. Peru*, the Committee found the State party to be in violation of article 7 when it denied an abortion to Karen Noelia Llantoy Huamán, a 17-year-old carrying an anencephalic fetus.<sup>152</sup> The abnormality was discovered three months into Llantoy's pregnancy and, although the law permitted therapeutic abortion, the hospital denied authorization.<sup>153</sup> Llantoy gave birth to a baby girl who survived four days, during which time Huamán had to breastfeed her.<sup>154</sup> She subsequently fell into a deep depression.<sup>155</sup> The Committee found that the refusal of a therapeutic abortion was the cause of Llantoy's mental suffering, in violation of article 7.<sup>156</sup>

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<sup>147</sup> ICCPR, General Comment No. 6, Art. 6, The Right to Life, ¶ 5 *supra* note 118.

<sup>148</sup> Human Rights Committee, Concluding Observations: Guatemala, ¶ 19 (2001) UN Doc. CCPR/CO/72/GTM; Concluding Observations: Poland, ¶ 11 (1999) UN Doc. CCPR/C/79/Add.10 (concluding that limited accessibility to contraceptives, lack of sexual education in schools and in sufficiency of family planning implicated Covenant articles including article 6).

<sup>149</sup> ICCPR, General Comment No. 28, Equality of Rights Between Men and Women, ¶ *supra* note 36.

<sup>150</sup> ICCPR, Concluding Observations, Mali, 47 ¶ 81(14) (2003) UN Doc. A/58/40 vol. I.

<sup>151</sup> ICCPR, General Comment No. 20, The Right to Liberty and Security of Person (Art. 9) ¶ 5 (1992) UN Doc. HRI/Gen//Rev.1,30.

<sup>152</sup> *Karen Noelia Llantoy Huamán v. Peru*, Communication No. 1153/2003, ¶ 6.3, (2005) U.N. Doc.

CCPR/C/85/D/1153/2003.

<sup>153</sup> *Id.* at ¶¶ 2.1, 2.3.

<sup>154</sup> *Id.* at ¶ 2.6.

<sup>155</sup> *Id.*

In addition to physical and mental suffering, such policies deny women equal protection pursuant to article 3 of their right not to be subject to cruel, inhuman and degrading treatment. The message of such a law is that women are not fully human or equally entitled to the life- and health-saving treatment, which is available to all but women and girls needing abortion or emergency obstetric services. As stated by the Special Rapporteur on Torture, discriminatory conduct includes punishment for “transgressing gender barriers and mandates or challenging predominant conceptions of gender roles.”<sup>157</sup>

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### **Justice Denied for Child Rape Victim\***

Blanca, a 13-year old girl who was raped and as a result became pregnant and contracted an STD, was sent to seven different health care providers, all of whom refused to provide an abortion, arguing conscientious objection and willfully ignoring their obligation to immediately refer her to an adequate provider. The girl ultimately was forced to carry out a high-risk pregnancy and give the baby for adoption. She suffered permanent health consequences including scoliosis and lung damage. After the rapist was sentenced, Blanca and her mother started receiving death threats on the part of the rapist’s friends and family, which included a kidnapping attempt. To address the immediate danger faced by Blanca and her mother, on September 21, 2009 the Inter-American Commission of Human Rights issued precautionary measures requesting the Colombian State to take all necessary measures to ensure the well-being of Blanca and her mother, both in terms of personal safety and physical and psychological health.

\* Provided by Women’s Link Worldwide.

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Women in Colombia experience both physical and mental suffering, sometimes amounting to torture, as a result of the denial to the right to lawful abortion. Women experiencing complications of pregnancy and needing therapeutic abortion are forced to suffer from painful, frightening and life-threatening conditions, often for many months. Those experiencing unsafe abortions or other obstetric emergencies, who are often in extreme pain and require immediate treatment, also fear the consequence of prosecution. The mental anxiety is also horrific: added to the fear of being prosecuted is the fear that she will not get needed treatment. This violates the understanding of the World Community as stated in the Beijing Platform for Action, that women suffering complications of abortion ought to be treated expeditiously and humanely.<sup>158</sup> In all cases, the denial of therapeutic abortion fulfills the purpose element of torture, as the required withholding of service is discriminatory and punitive.

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<sup>157</sup> U.N. General Assembly, 56th Session. “Report of the UN Special Rapporteur on the Question of Torture and other Cruel, Inhuman or Degrading Treatment”, Sir Nigel Rodley, Special Rapporteur, ¶ 17. UN Doc. A/56/156 (July 3, 2001).

<sup>158</sup> Beijing Declaration and Platform for Action, G.L. (b). Fourth World Conference on Women, A/CONF.177/20

The State party has the obligation to prevent acts of inhuman treatment through effective legislative, judicial and administrative means.<sup>159</sup> Mr. Ordoñez's Memo 030, ordering public officials to ignore the Constitutional Court's decision protecting therapeutic abortion and to instead deny life and health-saving abortions to women,<sup>160</sup> does the opposite. Memo 030 obstructs women from receiving treatment for abortion and pregnancy-related complications, including life-threatening situations. It violates article 7 by subjecting pregnant women to torture and inhuman treatment in multiple ways.

Women and children like Blanca (see box above) who have been left in distress and not treated due to the doctors' refusal to either provide a referral nor interrupt a pregnancy have suffered physical and mental pain. Additionally, women carrying severely damaged fetuses, rape victims, and women with serious health conditions suffer mentally and physically from their inability to obtain a legal therapeutic abortion.

#### **IV. The Colombian Government's Response**

With respect to threats, injuries, and executions committed against women human rights defenders, paragraph 189 of the Colombian government's report makes note of Ruling T-539/04 which recognizes the duty of the state to afford protection to all citizens and especially to those who are close to the "conflict." It is important to note that when the Constitutional Court issues a favorable decision in response to a *tutela*, it is because it establishes that the government is breaching its constitutional obligation to uphold and protect a person's fundamental rights. No statement is made as to the specific measures the government is undertaking to comply with this ruling.

Paragraphs 211 through 216 note the strengthening of Colombia's 1997 Protection Programme through the collaborative effort of government and civil society, in an effort to protect certain population groups—particularly vulnerable to the actions of illegal armed groups. Among other selected population groups, the Protection Programme specifically recognizes the need to protect human rights NGOs, as well as leaders and activists of political groups, opposition groups, social, civic, community, trade unions, farm and ethnic associations.

Paragraphs 220 through 223 of the Colombian government's report further refer to Decree No. 3570 of 2007, which established the Programme for Victim and Witness Protection, and was designed to complement Law 975 of 2005, the Justice and Peace Act. The Programme operates with the goal of protecting those populations that are in a situation of threat or danger as a direct result of their involvement in the justice and peace process as either a victim or witness. Under the Programme a person applies for protection and may receive initial assistance for herself and her family for 15 days, after which an evaluation is carried out by the Technical Risk Assessment Group which then determines the appropriate measures to take according to their situation. On May 16, 2008, the Constitutional Court issued decision T-496/08<sup>161</sup> mandating Colombian authorities to conduct an integral revision of the Programme for Victim and Witness Protection so it complies with international standards. The complaint that led to this decision was filed by 12 women victims who represented 299 families and five civil society

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<sup>159</sup> Human Rights Committee, Concluding Observations, Philippines, ¶¶ 8, 11, UN Doc. CCPR/CO/79/PHL, Dec. 1, 2003. *See also*, CAT, Article 2, U.N. Doc. A/39/51 (1985). Colombia ratified the CAT treaty on Dec. 8, 1987.

<sup>160</sup> Constitutional Court, Decision C-355/06 of 2006.

<sup>161</sup> Colombian Constitutional Court, Decision T-496 of May 16, 2008. Justice Jaime Córdoba Triviño wrote the

organizations and who demanded protection from the imminent danger they were facing given the inefficacy of the Programme. In its report, the government fails to specify how the mandated revision to the Programme has occurred. Finally, paragraph 260(a) of the report cites Directive No. 9 of 2003 which aims to strengthen the policy of promoting and protecting the human rights of workers, trade unionists and human rights defenders.

With respect to the failure to duly investigate and prosecute the harassment and unlawful killings of women's human rights defenders, in its report, the Colombian government cites the passage of Law No. 975 of 2005, the Justice and Peace Act, which provides for the reintegration of members of organized armed groups outside the law who effectively contribute to achieving national peace, and other provisions for humanitarian agreements. Among these provisions, Law No. 975 of 2005 restricts impunity for outrageous crimes, as well as any form of amnesty or pardon, and legally recognizes the right of victims to know the truth, as well as acknowledges their rights to justice and full reparations. Both national and international organizations have strongly criticized Law 975, including the Colombian Commission of Jurists, Amnesty International, Human Rights Watch and the UN High Commissioner for Human Rights<sup>162</sup>. The criticism refers to the law's lacking of guarantees to victims of human rights abuses as well as lack of accountability for perpetrators who, if processed receive extremely reduced sentences with ceiling maximums ranging between 5 and 8 years in prison for crimes including mass homicide and rape.

In addition, in paragraphs 245 through 251 the Colombian government notes further efforts to combat impunity for human rights violations and breaches of international humanitarian law. Specifically the report cites an international cooperation agreement signed by the Colombian government and the government of the Netherlands in 2003, which "aims to: i) develop and implement a policy to combat impunity, and ii) pursue and follow up on a number of proceedings for human rights violations and breaches of international humanitarian law."

Public policy, which was formalized through document CONPES 3411 of 2006, aims to tackle the obstacles that hinder investigating cases of human rights violations and breaches of international humanitarian law through the strengthening of existing organizations, practices and procedures for detecting the occurrence of violations, resolving cases, punishing perpetrators and compensating victims. To this end, a cooperation protocol has been signed by the Armed Forces, the National Police and the Ministry of National Defence, ensuring the safety and protection of commissions entrusted with fact-finding, and entities responsible for investigation and prosecution of violations, such as the Unit for Human Rights and International Humanitarian Law of the Public Prosecutor's Office, the Office of the Attorney General, the Judicial Council, the criminal courts and the specialized circuit courts, have been strengthened.

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<sup>162</sup> See, BBC, "AI critica 'ley de justicia y paz'", Apr. 26, 2005, available at: [http://news.bbc.co.uk/1/hi/spanish/latin\\_america/newsid\\_4487000/4487231.stm](http://news.bbc.co.uk/1/hi/spanish/latin_america/newsid_4487000/4487231.stm), El Tiempo, ONU descalifica la Ley de Justicia y Paz, November 7, 2009, available at [http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA\\_NOTA\\_INTERIOR-6531207.html](http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-6531207.html). TERRA, *Human Rights Watch critica la Ley de Justicia y Paz y recomienda a la OEA retirar su misión de paz*, available at <http://terranoticias.terra.es/articulo/html/av2431528.htm>, Comisión Colombiana de Juristas, Colombia: El cumplimiento de la justicia y la paz: Balance sobre la aplicación de la

## V. Recommendations

- The Colombian State must stop stigmatizing the work of human right defenders, and is urged to take concrete action against extra-judicial killings and summary executions of women leaders. The competent authorities, such as Fiscalía General de la Nación, must initiate investigations to determine the intellectual and material authors of these crimes. Additionally, the Colombian State has to give human right defenders not only physical protection, but also the adequate guarantees to participate in politics at the national and regional level.
- The state party must assure access to sexual and reproductive health care services in conditions of quality and equality. It must identify the obstacles and barriers of accessibility to these kinds of services and implement policies and programs that overcome these barriers.
- The government should redesign sexual and reproductive health programs to take into account the specificity of cases of girls who have been part of illegal armed groups. Programs should differentially and comprehensively developed so as to respect the dignity of women in the process of growth and development who have a previous history of violations of their rights.
- The state party must revise the mandatory health plan in order to extend the supply of contraceptive methods in accordance with scientific advances and to avoid backward steps in access to contraceptives as occurred with the recent elimination of condoms under this plan.
- Public functionaries appointed to posts related to the implementation of sexual and reproductive rights must be impartial and they must carry out their duties in accordance with the Constitution and the law.
- Procedures should be adopted to ensure the protection and survival of all unaccompanied and displaced children. Family tracing programs should be established as part of general assistance programs.
- Unaccompanied or displaced children should, whenever possible, be placed in the care of extended family members or community members rather than in institutions.
- Emergency and reconstruction assistance programs should take psychosocial considerations into account, while avoiding the development of separate mental health programs. They should also give priority to preventing further traumatic experience.
- All child soldiers should be able to access demobilization benefits and efforts should be made to ensure benefits equity between children and adult demobilizing soldiers. However, because some child soldiers lack civilian life experience program planning must harmonize benefits packages and reintegration strategies.
- All former child soldiers under the care of the State should be able to access complete health care services that include accurate information about their sexual and reproductive rights and be provided all available means to exercise them.

- The government should make available to demobilized child soldiers access to immediate medical services of all kinds upon demobilization, regardless of whether or not they have a previous affiliation to a hospital or medical facility in a region different than the one in which they are demobilized. They should not have to wait on medical care until such an affiliation is resolved.
- In the event that a child loses limbs in combat, the health care system must provide them with prostheses without necessitating any 'special agreements' for the provision of these services.
- Special attention should be paid to the nutritional condition of children who have recently demobilized as many come out of combat sufficiently malnourished. Nutrition programs should be built in to health care programs for demobilized child soldiers.
- Demobilized children in cities like Bogotá attend SENA job training programs in which they are grouped with disabled children. As a result they face stigmatization and isolation from other groups of children, which results in high drop-out rates from these programs. Prior to placement in job training programs a thorough assessment of a demobilized child soldiers current skill level, ability and resources should be conducted to allow for placement in the appropriate program. Similarly, assessments of a demobilized child soldiers interests and needs should also be conducted in order that they be placed in programs and occupations in line with those interests and needs, and not bounce from occupation to occupation never developing any particular set of skills.

**Article 17: The Right to Freedom from Unlawful Reputational Attacks and Article 19:  
Right to Freedom of Expression, Article 21: Right of Peaceful Assembly,  
Article 22: Freedom of Association, and Article 25: Political Rights**

**I. Harassment and Violence Against Women Human Rights Defenders**

Because freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected, the Human Rights Committee has directed States to take positive measures to overcome limitations.<sup>163</sup> In General Comment No. 25, the Committee makes clear that the Covenant requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.<sup>164</sup>

- Article 19 asserts, “everyone shall have the right to hold opinions without interference; and that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.” The freedoms to hold and express opinions have been enshrined repeatedly by the Human Rights Committee as central to the human rights system and the ICCPR. In General Comment No. 22, the Committee states that article 19.1 includes the right of everyone to hold opinions without interference and that this right is unconditional.<sup>165</sup> The Human Rights Committee stated in General Comment No. 25 that a commentary on public issues without censorship or restraint is vital to informed public opinion.<sup>166</sup>
- Article 21 states: “The right of peaceful assembly shall be recognized.” The Human Rights Committee has denounced attacks on demonstrations and obstacles to peaceful protest as violations of article 21. In Its concluding observations on Argentina, the Committee recommended that “[a]ttacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required” and that the State Party provide information on measures taken in its next report.<sup>167</sup>
- Article 22 states, “[e]veryone shall have the right to freedom of association with others.”<sup>168</sup> With respect to article 22 of the Covenant, the Committee has reiterated concern about reports of cases of intimidation and harassment of human rights activists by the authorities and stated that, “the free functioning of non-governmental organizations is essential for the protection of human rights.”<sup>169</sup> Political rights, guaranteed in article 25, include the right and the opportunity, without any distinctions as to any rights described in article 2, including political or other opinion, and without unreasonable restrictions, to take part in the conduct

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<sup>163</sup> ICCPR, General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, ¶ 12, (1996) UN Doc. CCPR/C/21/Rev.1/Add.7.

<sup>164</sup> *Id.*

<sup>165</sup> ICCPR, General Comment No. 22, Right to Freedom of Thought, Conscience and Religion, ¶ 3, (1993) UN Doc. CCPR/C/21/Rev.1/Add.4.

<sup>166</sup> ICCPR, General Comment No. 25, ¶ 12,

<sup>167</sup> Human Rights Committee, Concluding Observations: Argentina, ¶ 13, (2001) UN Doc. CCPR/C/56/40.

<sup>168</sup> ICCPR, Article 22, U.N. Doc.A/6316 (1966).

<sup>169</sup> Human Rights Committee, Concluding Observations for the Human Rights Committee, Belarus, (1998) ¶ 10, UN



of public affairs.<sup>170</sup> Because freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected, the Human Rights Committee directs States to take positive measures to overcome limitations.<sup>171</sup>

Additionally, article 17 states, “(1) No one shall be subjected to [...] unlawful attacks on his honor and reputation,” and “(2) Everyone has the right to the protection of the law against such interference or attacks.” The Human Rights Committee’s General Comment No.16 with respect to article 17 of the Covenant explains that the right to be free from unlawful reputational attacks “is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.”<sup>172</sup> Furthermore, article 15 of the Colombian Constitution mirrors these concerns, establishing that “every individual has the right to personal and family privacy and to his/her good reputation, and the state will respect them and have these rights and ensure they are respected.”

Ensuring freedom of expression, assembly, and association supports this participation. These rights apply to the “free operation of non-governmental human rights organizations and political parties,” and the Human Rights Committee has urged governments “to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance.”<sup>173</sup> The Colombian government’s false accusations and use of excessive force on women’s human rights defenders is a violation of these rights.

Instead of protecting the honor and reputation of its citizens, the government of Colombia is actively complicit in stigmatizing those who defend human rights. Women human rights defenders, such as **Ingrid Vergara, Nieves Mayuza and Fanny Perdomo Hite**, have been accused by high-level officials of being, or being linked to, guerrillas or terrorists.<sup>174</sup> Government officials are making public accusations to sully the reputations of independent women’s rights activists. These unfounded accusations of terrorism are in violation of the Covenant, which guarantees the right to hold and express opinions without interference.

Other women human rights defenders such as **Aida Quilcue, Lina Paola Malagón Díaz, Sandra Gutiérrez, Islena Rey, Ingrid Vergara, Nieves Mayuza, and Fanny Perdomo Hite** have faced death threats, lost family members to arbitrary killings, or have been jailed without just cause because of their work defending against and exposing human rights violations in Colombia.

Left unchecked, these attacks become increasingly pervasive and lead to a serious deprivation of human and civil rights for defenders. For example, see the stories of Nieves Mayuza and Fanny Perdomo on page 38. These two women human rights defenders in Colombia who were accused

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<sup>170</sup> ICCPR, Art. 25, U.N. Doc.A/6316 (1966).

<sup>171</sup> ICCPR, General Comment No. 25, ¶ 12,

<sup>172</sup> ICCPR, General Comment No. 16: The right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Art. 17), ¶ 1 (1988) UN Doc. No CCPR/C/21/Rev.1/Add.7.

<sup>173</sup> Human Rights Committee, Concluding Observations: Azerbaijan, ¶ 23 (2002) UN Doc. CCPR/A/57/40.

<sup>174</sup> Amnistía Internacional, Peligro en el trabajo Antaques contra sindicalistas en Colombia (2007)

<http://asiapacific.amnesty.org/library/Index/ESLAMR230282007?open&of=ESL-384>.

Amnistía Internacional, Peligro en el trabajo Antaques contra sindicalistas en Colombia (2007)

<http://www.amnesty.org/en/library/asset/AMR23/028/2007/en/ee18a769-d36a-11dd-a329-2f46302a8cc6/amr230282007es.pdf>.

Human Rights First, Baseless Prosecutions of Human Rights Defenders In Colombia,

[http://www.humanrightsfirst.org/defender/asset/asset\\_name?asset\\_name=Human+Rights+First+Report+on+Baseless+Prosecutions+of+Human+Rights+Defenders+in+Colombia](http://www.humanrightsfirst.org/defender/asset/asset_name?asset_name=Human+Rights+First+Report+on+Baseless+Prosecutions+of+Human+Rights+Defenders+in+Colombia)

of being members of the FARC were held for two years in detention until released for a lack of evidence linking them to the guerilla group.<sup>175</sup>

In December of 2008, the Attorney-General's Office consented to a police request to secretly monitor emails from a number of NGOs and individuals, including a member of OHCHR Colombia. However, once made public, the Attorney-General's Office dismissed the prosecutor responsible for the decision.<sup>176</sup> The High Commissioner for Human Rights stated, "It is worrying to find that some senior government officials have not stopped publicly stigmatizing human rights defenders and trade unionists as sympathetic to guerrilla groups....[T]he challenge of minimizing the risks to the life and safety of human rights defenders still stands, most notably owing to the stigmatization of their legitimate work."<sup>177</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions observed that statements of this kind from government officials "stigmatise those working to promote human rights, and encourage an environment in which specific acts of threats and killings by private actors can take place."<sup>178</sup>

## II. Sexual and Reproductive Rights

Article 19(2) asserts that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds. In relation to article 19, General Comment No. 10 provides that "the Committee needs in addition pertinent information about... conditions which in practice affect the exercise of this right."<sup>179</sup> Further, in General Comment No. 28, this Committee has required States parties to report on "any laws or other factors which may impede women from exercising the rights protected under this provision on an equal basis."<sup>180</sup>

With respect to the denial of abortion, this Committee underlined the critical relationship between the right to information and the right to life in its Concluding Observations on Guatemala's report. It stated that "the State party has the duty to adopt necessary measures to guarantee the right to life of pregnant women who decide to interrupt their pregnancies by providing the necessary information and resources to guarantee their rights...."<sup>181</sup>

The right to information thus implies a positive duty of the State to guarantee each woman access to accurate and complete medical information about her pregnancy as well as the law to enable her to make the decisions necessary to protect her life and health, whether it is the need for an abortion or for emergency obstetric services.

Procurador General Alejandro Ordoñez' actions directed at nullifying Constitutional Court's decision T-388/09, which mandates specific authorities to ensure that all educational campaigns on sexual and reproductive rights targeting adolescents include accurate information about the grounds to access lawful abortion services, undermine Colombian adolescents and girls' rights under article 19(2).

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<sup>175</sup> *Id.*

<sup>176</sup> Human Rights Council, Annual Report of the UN High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary-General ¶ 78 n.39 (2002) UN Doc. A/HRC/10/32.

<sup>177</sup> *Id.* at ¶¶ 75, 79.

<sup>178</sup> *Statement by Professor Philip Alston, Mission to Colombia 8-18 June 2009, supra note, 133.*

<sup>179</sup> ICCPR, General Comment No. 10, Freedom of Expression, ¶ 3 *supra note, 171.*

<sup>180</sup> ICCPR, General Comment No. 28, Equality of Rights Between Men and Women, ¶ 22 *supra note, 20.*

## Article 24: Rights of the Child

### I. The Recruitment of Children as Soldiers

*They recruited my niece when she was 12. They told her life with them was really good. She was a child and was convinced to join them. She was sent to the jungle and didn't like it there. When she tried to escape, they shot her in the back and killed her.*

–Testimony of a family displaced from the department of Chocó

This Committee has urged the States parties—including Colombia—to take all appropriate measures to ensure the protection of former child soldiers and provide them with adequate assistance and counseling for their rehabilitation and reintegration into society, under article 24, the rights of the child.<sup>182</sup>

In States with internal armed conflict, where children have served as child soldiers for armed actors, the CRC Committee<sup>183</sup>, CAT Committee<sup>184</sup> and ICESCR Committee<sup>185</sup> have all urged States parties—including Colombia—to ensure the demobilization of all under-age soldiers, and to provide such children with adequate psychosocial recovery assistance and family and social reintegration. The CRC Committee has specifically noted that while non-State actors are in *de facto* control of areas of a State party's territory, the State party still holds responsibility for children's human rights in these areas and invited all other parties to respect child rights within the area under their control.<sup>186</sup>

Since 1999, Colombian Law has specifically forbid the use of child soldiers in the Colombian army. This means that only adults serve in the army and also that the conscripts are at least 18 years of age. Further, in January 2001, the United Nations Treaty of the Rights of the Child was amended. The minimum age for fighters in an armed conflict was raised from 15 to 18 years of age. But both the guerrilla movement and the paramilitaries recruit minors for their armies. Recruiting minors means that the armed parties take on young people and children under the age of 18 as fighters in their combat units. They often try to persuade young people with tempting promises to come and fight with them in the group. Sometimes they force a family to give up their children to become fighters.

<sup>182</sup> See, for example, Human Rights Committee, Concluding Observations: Colombia, 44 ¶¶ 290, 305 UN Doc. A/52/40 vol. I (1997) (urging the State party to adopt measures assisting children caught up in the activities of guerrilla & paramilitary groups); Philippines, 15 ¶ 63(17) (2003) UN Doc. A/59/40 vol. I (noting a lack of adequate measures of protection from the State for children allegedly being used by armed actors and urging the State to provide adequate assistance to them); Uganda, ICCPR, 47 ¶ 70(15) (2003) UN Doc. A/59/40 vol. I (urging the State party as a matter of extreme urgency to take adequate steps to reintegrate former child soldiers into society).

<sup>183</sup> See for example, the CRC Committee Concluding Observations: Lebanon, 11 at ¶ 80 (2002) UN Doc. CRC/C/114; Guinea-Bissau, 12 ¶ 78 (2002) UN Doc. CRC/C/118; Sudan, 53 ¶ 278 (2002) UN Doc. CRC/C/121.

<sup>184</sup> CAT Committee Concluding Observations, Uganda, 39 at ¶ 97(o) (2002) UN Doc. A/60/44 (urging the State party to take the necessary steps, to facilitate the reintegration of former child soldiers into society).

<sup>185</sup> ICESCR Committee, Concluding Observations, Colombia, 110, ¶ 790 (2001) UN Doc. E/2002/22 (urging the State party to take children affected by armed conflict as well as women and discourage them from taking up arms)

Researchers from MADRE conducted over 30 interviews with former child soldiers from Bogotá, the Department of Meta, and the city of Pereira, capital of the Department of Risaralda. The age of recruitment ranged from ten to seventeen years of age and participation varied through most of the identified armed groups in Colombia. Youth said they were recruited in various areas in Colombia including: Bogotá, Meta, Arauca, Tolima, Llanos Orientales, and San Vicente del Caguán.

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### **Testimony of a Girl Involved with a Paramilitary Group\***

*I was 11 when I went back to Tame. About 50 paramilitaries came to live in the town. I spoke a lot with one man who was an officer of the paramilitaries. He eventually asked me to be his girlfriend. I told him I couldn't because if my father found out he would beat me. After he begged and begged, I finally said yes, as long as we hid it from my father.*

*I started thinking, "What will happen to me if I get together with this man? I have no future with him. Being with the commander of a paramilitary force is risky. The guerillas will come and kill me." I made up my mind and one day when he came to town I told him, "John, I don't want to be in a relationship with you. Can we just leave this as it is?"*

*He said to me, "Sandra, you don't know who you are messing with. You got involved with a paramilitary, not some civilian. You got yourself into this and now you can't get out. Don't think you can get away from me. If you want this to end, you can end your own life." I told him I was going to leave. He said, "Go ahead, I'll kill your Mom and Dad."*

\*Testimony provided with the help of Taller de Vida.

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#### ***a. Life with an armed group***

The former child soldiers interviewed shared common experiences such as being subjected to hard labor and given little food. Their duties ranged from being informants, to camp guards, to active killing. They were trained on how to use guns and other arsenal and punished if their pistols weren't kept clean. Youth were denied access to the radio and other forms of media, were not allowed to attend school, and in most cases, were not allowed to visit family members. They were not allowed to leave the armed group and were killed if caught trying to escape.

Recruited youth were told if they left that the Colombian army or police would kill them on sight. On the rare occasion that someone is allowed into town, usually to run a specific errand, a youth would be accompanied by a commander and were forbidden to talk with anyone in the town. If s/he were caught talking to someone else or strayed too far from the commander, they were sent to War Council (see page 40).

Recruitment stories ranged from joining armed groups voluntarily due to abandonment, being orphaned, or fleeing domestic or sexual violence or other issues at home. Some children were seduced into joining armed groups with promises of a better life only to find the promises were false and that they faced the punishment of death if they tried to leave. Some children shared that they were forced into joining or staying with the armed groups under threat of harm to their

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### **Testimony of a Girl Involved with a Paramilitary Group\***

*After [the armed group] took the town they would recruit children by force to join them. Other times they would coerce children to get them to join. They start by telling the kids that they were going to pay them really well, that they wouldn't have to go to the jungle but would stay close to the road and the town. They started teaching them how to use a gun and of course the kids were really excited about it.*

\*Testimony of a displaced family from the region of Chocó. Provided through Taller de Vida.

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#### ***b. Lack of prevention of recruitment by the Colombian government***

There are no current policies or government guidelines available that address or provide strategies for the prevention of the recruitment of children as soldiers by illegal armed groups. The burden of prevention is taken on in small efforts primarily made by smaller NGOs, which identified schools as a place where children are most often recruited. Advocates identified five main recommendations for helping to prevent youth recruitment.

1. **Provide trainings to educators in high-risk areas.** Low-income communities and communities where there is a history of conflict are often at higher risk for child soldier recruitment. Educators and counselors in these communities are often unaware of the problem and lack the necessary training in identification of a child at risk and appropriate intervention methods. Proper training can help educators and counselors become agents for protecting children from recruitment.
2. **Implement school programs designed to address risk factors.** Modifying after school programs to include prevention education; following up with families of children who miss school and; training counselors to look for and address recruitment when it happens are cost effective methods for reducing recruitment by armed actors.
3. **Provide support for children who experience abuse at home.** Children who experience domestic violence or abuse in their households are at a much higher risk for being recruited than other children. In conjunction with child service policies, special attention and training to childcare providers should be provided.
4. **Address the basic needs of displaced families.** Often displaced people are forced to leave their children with relatives or friends in order to search for employment or housing in new places. These children are at a high risk for being recruited.
5. **Data collection on the recruitment of children as soldiers.** While we know the general environments recruited children tend to come from, there is a dearth of information on the relationship between displacement and recruitment or on what school programs work best for prevention. The Colombian government should provide proper funding of adequate studies and surveys on the reasons for recruitment and best practices for prevention.

## II. Denial of the Right to Therapeutic Abortion

The Covenant assures to every child “the right to such measures of protection as are required by [his/her] status as a minor, on the part of [his/her] family, society and the State.”<sup>187</sup> In its General Comment with respect to article 24, the Committee noted that the scope of the rights States Parties are obligated to protect includes all other rights guaranteed by the Covenant, and “may also be economic, social, and cultural.”<sup>188</sup> Thus, the State Party is obligated to protect more than just the political rights of minors (*e.g.*, citizenship and the right to a name): the State Party should also seek to protect rights such as health and life that are prerequisites to the significance and exercise of political and civil rights.

This failure by the government of Colombia to provide appropriate reproductive health care for pregnant minors violates the rights of the child by depriving the girl child, at special risk in early pregnancy, of her right to the protection of her life and health. General Comment No. 28 indicates this Committee’s concern about minors’ reproductive rights, calling for information regarding the availability of abortion to women pregnant as a consequence of rape.<sup>139</sup>

The abortion ban also violates, *inter alia*, the following articles of the UN Convention on the Rights of the Child (CRC)<sup>189</sup>: article 6, which recognizes the right to life and survival; article 24, which guarantees “the right of the child to the enjoyment of the highest attainable standard of health;” and article 39, which calls upon States Parties to take measures to promote the physical and psychological recovery of child victims of abuse.

The CRC’s General Comment No. 4 expresses that Committee’s grave concern with the negative health outcomes for the girl child of young motherhood and clandestine abortion, urging that States Parties create appropriate family planning programs for adolescents that include obstetrical care and abortion services. In particular, the General Comment provides:

Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices.<sup>190</sup>

The effects of the failure of the Colombian government to provide appropriate reproductive health care for pregnant minors has had a disparate impact on women like Blanca (see box on page 41) who was ultimately forced to carry out a high-risk pregnancy and give the baby for adoption. She suffered permanent health consequences including scoliosis and lung damage.

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<sup>187</sup> ICCPR, Article 24 (1966) U.N. Doc. A/6316.

<sup>188</sup> Human Rights Committee, General Comment 17, Rights of the Child, ¶ 3 (1989), UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (27 May 2008).

<sup>189</sup> Colombia ratified the UN Convention on the Rights of the Child on January 28, 1991.

### III. Government Response

With respect to the prevention of recruitment of child soldiers by illegal armed groups paragraph 526 of the Colombian government's report cites Decree Nos. 395 and 4690 of 2007. While no specific information is given as to the content of Decree No. 395, Decree No. 4690 created the Inter-Sectoral Commission for the prevention of recruitment and use of children and adolescents by organized groups outside the law. The report makes no mention as to the success rate of either decree. Despite these measures, civil society organizations report an increasing trend in child recruitment.<sup>191</sup> In November of 2008, the Constitutional Court issued Order 251 mandating the government to create a special program for children at risk or being displaced or recruited, stating that "forced recruitment is one of the main causes of forced displacement" and that "the magnitude and scope of the criminal phenomenon of child forced recruitment has not been documented by authorities or even civil society in Colombia."<sup>192</sup>

Paragraph 568 notes that the Attorney General has filed a complaint with the State Prosecutors Office for the crime of illegal recruitment of minors by illegal armed groups. As yet no individuals have been identified to bring to trial. In addition, according to the report, the Ministerio Publico has requested that members of the AUC<sup>193</sup> (United Self-Defense Forces) who are part of the truth, justice and reparation process be investigated as to the participation of children and adolescents in their groups, the process and place of their recruitment and what information they possess about recruiters.

Finally, paragraph 569 notes that in addition to the above, the Office of the Attorney General has conducted an evaluation of the current policies on demobilization of illegal armed groups and determined that children and adolescents have not received sufficient attention. As a result, the government has been tasked with accounting for what happened to the large number of child soldiers who were turned over to the ICBF. According to the report, currently the Attorney General is working the Colombian media and other national and international entities to provide greater coverage on the crime of unlawful recruitment.

Regarding the rehabilitation of former child soldiers paragraph 525 discusses Law No. 1106 of 2006 (extending and amending Law No, 782 of 2002 and Law No, 418 of 1997) which calls on the Colombian Family Welfare Institute to establish a special protection program for all minors who have formerly taken part in hostilities or have been victims of political violence as a result of armed conflict. Further paragraph 564 and 565 note that demobilized children and adolescents are to be treated differently than the adult demobilized population and have special characteristics that must be addressed. To this end, the legal definition of victims of violence stresses the State's social obligation to the rehabilitation of demobilized youth. According to the report, as of 1999 a specialized program, spearheaded by the Colombian Welfare Institute, has aimed to provide a road map for the future lives of demobilized children and adolescents with the goals of restoring and protecting the Rights of the Child, building citizenship and democracy, promoting a gender perspective, as well as the concepts of shared responsibility, social integration and preparation for a productive future. Accordingly the programme takes a

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<sup>191</sup> Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia. *Colombia: en la mira de organismos internacionales por el uso y reclutamiento de niños y niñas*. February 12, 2009. Available at <http://www.child-soldiers.org/document/get?id=1568>

<sup>192</sup> Constitutional Court. Order 251, October 6, 2008. Justice Manuel José Cepeda wrote the opinion.

<sup>193</sup> AUC, the Autodefensas Unidas de Colombia or the United Self Defense Forces of Colombia, is a loose, right-wing paramilitary umbrella organization formed in April 1997 to consolidate most local and regional self-defense groups each with the mission to protect economic interests and combat FARC and ELN insurgents locally. The AUC is supported by economic elites, drug traffickers, and local communities looking for effective government

three-pronged approach to rehabilitation through the prevention of recruitment, specialized care and monitoring and supporting the demobilized.

The report also notes the challenges faced by the government in providing quality care to the entire demobilized population of children and adolescents. Reaching 100% of the target population requires enhancing the training of public servants, staff and educators and policy changes that foster better performance. Paragraph 567 of the report cites the issuance of Directive No. 013 of 2004 by the Attorney General to aid in this process. Under the Directive prosecutors are encouraged to intervene in criminal proceedings brought against demobilized youth and to move for their termination based on international standards which hold that minors who have taken part in hostilities are not victimizers, but rather victims themselves of armed conflict. As such, these children should be made available to the ICBF<sup>194</sup> to assure full restoration of their rights. Likewise, under the same Directive members of the armed forces are encouraged to hand over demobilized child soldiers to the ICBF within 36hrs of demobilization. Directive No. 013 of 2004 has, according to the report, resulted in halted investigations in over 700 proceedings, as well as the initiation of over 10 investigations into the use of the child population in intelligence activities by Colombian security forces.

Despite these measures, Colombia still lacks a overarching policy to prevent child recruitment by armed groups. Local and national authorities lack the capacity to respond in a fast and adequate manner to this phenomenon country-wide and judges face serious structural and evidentiary difficulties to investigate the crime of child recruitment.<sup>195</sup>

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#### **IV. Recommendations**

- The State must respect and ensure the civilian and humanitarian character of camps for refugees and internally displaced persons at all times.
- Provide trainings to educators in high-risk areas. Low-income communities and communities where there is a history of conflict are often at higher risk for child soldier recruitment. Educators and counselors in these communities are often unaware of the problem and lack the necessary training in identification of a child at risk and appropriate intervention methods. Proper training can help educators and counselors become agents for protecting children from recruitment.
- Implement school programs designed to address risk factors. Modifying after school programs to include prevention education; following up with families of children who miss school and; training counselors to look for and address recruitment when it happens are cost effective methods for reducing recruitment by armed actors.
- Implement school programs that sensitize and train educators to the demands that must be met when teaching former child soldiers. Educators must rethink their teaching strategies, curricula and actions to foster the development of the basic skills and core competencies of demobilized children and promote their social inclusion.

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<sup>194</sup> ICBF, the Instituto Colombiano de Bienstar Familiar or the Colombian Family Welfare Institute, is a public service institute committed to the comprehensive protection of the family and especially children. ICBF coordinates the National System of Family Welfare and proposes and implements policies, advice and technical and socio-legal assistance to communities and public and private organizations at the national and territorial level.



- The government should reorganize educational curricula so that it takes into account the cultural diversity of Colombia, paying particular attention to implementing special education programs for Indigenous and Afro-Colombian children. To ensure this, training of educators is needed about the particularities of different cultures.
- The government should require that children with disabilities undergo psychological and neuropsychological assessments, which are not covered by the health care system, to ensure they are placed in educational programs that meet their individual needs.
- Provide support for children who experience abuse at home. Children who experience domestic violence or abuse in their households are at a much higher risk for being recruited than other children. In conjunction with child service policies, special attention and training to childcare providers should be provided.
- Address the basic needs of displaced families. Often displaced people are forced to leave their children with relatives or friends in order to search for employment or housing in new places. These children are at a high risk for being recruited.
- The government should provide psychosocial support to families that are reorganizing and reintegrating into society which address the situations they have experienced in the armed conflict. Teams and therapists participating in the reorganization of families must be trained in family intervention.
- The government should require that families and guardians who take in demobilized child soldiers are properly trained and understand the contexts from which their children have come from, their emotional needs, their prior relationships, values and ethics.
- The government should implement family tracing programs and make every effort to locate the original families of child soldiers. They should do so by building alliances with neutral organizations who are in contact with families of children who are part of remote Indigenous and Afro-Colombian communities.
- Data collection on the recruitment of children as soldiers. While we know the general environments recruited children tend to come from, there is a dearth of information on the relationship between displacement and recruitment or on what school programs work best for prevention. The Colombian government should provide proper funding of adequate studies and surveys on the reasons for recruitment and best practices for prevention.

## APPENDIX A: SIGNATORIES TO THE SHADOW REPORT

### CODHES ([www.codhes.org](http://www.codhes.org))

Consultaría para los Derechos Humanos y el Desplazamiento (the Consultancy for Human Rights and Displacement)—CODHES—is a private non-profit organization that was established on February 15, 1992 by a group of people from various related disciplines within the fields of research and academia committed to the issue of human rights, international humanitarian law, and the search for peaceful alternatives to Colombia's internal armed conflict. CODHES promotes the consolidation of peace in Colombia and the realization of human rights through advocacy and incidence before the government to guarantee policies that benefit the entire population, with an emphasis on those people and communities most affected by Colombia's conflict. CODHES works for the effective and comprehensive implementation of human rights and international humanitarian law, and the strengthening of social capacities of populations who are at risk of displacement, or already displaced, through a perspective of democratic peace building coupled with social justice. CODHES operates with the vision of finding a democratic solution to Colombia's internal armed conflict and overcoming the country's humanitarian crisis, through the protection and promotion of equitable human rights, social justice and sustainable development.

### Humanas ([www.humanas.org.co](http://www.humanas.org.co))

The Regional Center of Human Rights and Gender Justice—Humanas—is a center of feminist studies and action, whose mission is the promotion and defense of women's human rights, international humanitarian law and gender justice in Colombia and Latin America. Humanas is comprised of a group of women from diverse social science professions, especially law, anthropology, political science and communications, that seek to contribute to the promotion, dissemination, advocacy and protection of women's human rights, under international human rights law, humanitarian law and gender justice, and promote and implement initiatives that contribute to understanding the situation of women in different contexts and overcoming gender inequalities in various political, judicial, economic, social and cultural environments. Humanas works to strengthen the social, cultural, political and legal status of women through alliances with national, regional and global women's organizations, as well as state institutions, multilateral regional and global institutions, academic centers and civil society organizations. Humanas' work centers around gender justice (truth, justice, reparation and justice systems), women's human rights, democracy and political participation and subjectivity and culture.

### LIMPAL ([www.limpalcolombia.org](http://www.limpalcolombia.org))

Liga Internacional de Mujeres por la Paz—LIMPAL—is an affiliate of Women International League for Peace and Freedom aiming to achieve peace through peaceful conflict resolution and the establishment of freedom and social, economic and gender justice for all persons and peoples of the world. Since 1997, LIMPAL has worked with women who have been displaced by Colombia's long-standing armed conflict, helping them overcome the devastating effects of displacement and advocate for their rights. Today LIMPAL plays a critical role in the network of civil society organizations educating women who have been displaced about their constitutional rights. LIMPAL's activities focus on peaceful alternatives to conflicts, such as human rights trainings, the enhancement of existing women's and human rights networks, the provision of secure spaces where women and their families can build support networks, and the development of income-generating projects for women. Working with over 500 women, 90 percent of whom are of African-descent and over 50 percent of whom are heads of their families, LIMPAL provides humanitarian aid and human rights trainings and documents cases of human rights abuses. LIMPAL encourages women to share their stories of displacement and

MADRE ([www.madre.org](http://www.madre.org))

MADRE is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights. MADRE advances women's human rights by providing resources and training to enable its sister organizations to meet urgent needs in their communities and partners with women to create long-term solutions to the crises they face. Its programs areas are: Peace Building, Women's Health & Combating Violence Against Women, and Economic & Environmental Justice. MADRE works towards a world in which all people enjoy the fullest range of individual and collective human rights; in which resources are shared equitably and sustainably; in which women participate effectively in all aspects of society; and in which people have a meaningful say in policies that affect their lives. MADRE's vision is enacted with an understanding of the inter-relationships between the various issues it addresses and by a commitment to working in partnership with women at the local, regional and international levels who share its goals. MADRE is also a proud member of the Women Human Rights Defenders International Coalition, a resource and advocacy network for the protection and support of women human rights defenders worldwide.

Taller de Vida ([www.tallerdevida.org](http://www.tallerdevida.org))

The Partnership Development and Consulting Center of Life Workshop is a nongovernmental organization that promotes the development of personal resources, community and social development of children, young people, families and communities affected or at risk of being affected by socio-political violence, helping to strengthen the processes of human development from a psychosocial and rights perspective. The projects that Taller de Vida has developed over more than 17 years in Colombia include working with families to provide support for children and young veterans who are in the process of reintegration. Taller de Vida is an organization recognized for its leading knowledge-building processes and innovation in the development of methodologies that have enabled psychosocial transformation in the social landscapes of many children and young people. Taller de Vida has led prevention projects for children at risk of linking to illegal armed groups through the construction of psychosocial scenarios based on fun and art. These projects help develop critical thinking, emotional self-control and creativity in children and, as well as expose them to errors and difficulties, allowing the construction of a clear and positive sense of self and the capacity to devise imaginative solutions outside of the attachment to armed groups.

Women's Link Worldwide ([www.womenslinkworldwide.org](http://www.womenslinkworldwide.org))

Women's Link Worldwide is international human rights non-profit organization working to ensure that gender equality is a reality worldwide. Founded in 2001, Women's Link has 501(c)(3) status in the United States, foundation status in Spain and non-governmental organization status in Colombia, as well as regional offices in Europe (Madrid, Spain) and Latin America (Bogotá, Colombia). Women's Link takes a multilayered approach to advancing women's rights. Women's Link maintains a state-of-the-art body of information with court decisions from around the world and with strategies for working with courts and tribunals to advance women's rights and gender justice. They critically examine the structure, actors, and arguments available in a given context with the purpose of identifying the most strategic avenues to address issues of concern. They conduct field-based research when information is not available and it is necessary to undertake strategic litigation in areas of concern. They identify and litigate cases that will have an impact beyond individual interests by changing policies, practices, setting precedent, or creating social change. Finally, Women's Link offers technical assistance to advocates, NGOs and others to work strategically with the courts to promote gender equality through the development and implementation of human rights standards.