



III CIVIL SOCIETY ALTERNATIVE REPORT TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Executive Summary

Introduction

1. The report presented herewith is the product of the combined effort of a variety of social, academic, union and human rights organisations from Colombian civil society that work in the monitoring of economic, social and cultural rights (ESCR hereafter), and the monitoring of state adherence to obligations derived from its ratification of the International Covenant of Economic, Social and Cultural Rights (ICESCR hereafter), in the Republic of Colombia.

2. This report focuses principally on the 2001-2006 period, but it makes relevant references to the effects of follow-up and measurement of progressivity, to decisions, adherence to norms and current practices up until March 2009. It is principally based on official figures, but it also uses data from the United Nations system and data collected by human rights and academic organisations which monitor the ESCR situation in Colombia. It also includes references to the press, specialised magazines and indicators of ESCR violations.

1. The general panorama of economic, social and cultural rights in Colombia

3. Colombia has a total area of 2,078,408 square kilometres; 44 million inhabitants (51.2% women and 48.8% men); 3.4% of the population define themselves as indigenous and 10.6% define themselves as afrocolombian¹.

4. The Colombian state ratified the International Covenant on Economic, Social and Cultural Rights and has committed to verification of its obligations by the Committee of the Covenant. In accordance with the Political Constitution of Colombia², (Article 93) international human rights instruments ratified by the state form part of the political charter.

5. Colombia has been experiencing an internal armed conflict for more than four decades. This situation has generated a serious human rights crisis which is demonstrated by the problems of forced displacement and internal refugees. The country is considered to have the world's second largest internally displaced population. It is estimated at four million, or 9% of the national population³.

6. Colombia has the second highest level of inequality of income distribution in the region, with a Gini coefficient of 0.576⁴. The design of the tributary system is clearly regressive, placing emphasis on indirect taxes levied on those who earn less and the extension of exonerations to the sectors with highest earnings. Reforms to the transfer regime (Legislative Act 01 of 2001 and Legislative Act 011 of 2006) intensified this situation by drastically reducing the amount of resources afforded to health, education and potable water. In 2005 the reduction was 0.6% of GDP, in 2006 1.1% of GDP, while in 2007 a drop of 1.3% of GDP was recorded. This demonstrates a sustained regression in the destination of resources to health,

¹ National Statistics Department, Dane, National Census 2005.

² According to Article 93 of the Political Constitution of Colombia "international treaties and agreements ratified by the Congress, which recognise human rights and which prohibit their limitation in exceptional circumstances, take prevalence in internal order. The rights and responsibilities consecrated in this charter will be interpreted in conformity with international human rights treaties ratified by Colombia."

³ Information taken from the Consultancy for Human Rights and Forced Displacement, CODHES, available at: www.codhes.org/Publicaciones/infocartagena.pdf (accessed 8 March 2008).

⁴ In this regard, see: Ricardo Bonilla and Jorge Iván González (coordinators), "Bien-estar y macroeconomía 2002-2006: el crecimiento inequitativo no es sostenible" ("Wellbeing and Macroeconomy 2002-2006: Inequitable Growth Is Not Sustainable"), Bogotá, CID, National University of Colombia, General Comptroller of the Republic, 2006, p 37.

education and potable water. It is calculated that in the 2008-2016 period between 66.2 and 76.6 billion pesos will cease to be invested in these areas.

7. According to official figures, 27.7% of the population suffers Unsatisfied Basic Needs⁵. Some 40.8% of Colombian homes suffer food insecurity, while more than 20% of boys and girls under five suffer malnutrition, 63.7% of the population experiences energy deficiencies and 36% suffers protein deficiency⁶.

8. Colombia has the highest number of crimes against union members in the world. In the last 22 years some 2,667 union activists have been murdered. With regard to homicides, it is calculated that the rise in the number of union activists killed went up 71.4% between May 2007 and April 2008⁷.

9. The rate of illiteracy is 8.6%. It is calculated that 20% of the young population (2,509,257 boys, girls and youths) is not included in the school system. Barely 34.1% of the population between 5 and 17 enjoys full access to the right to good quality education⁸. Colombia is the only country in Latin America where primary education is not free.

10. Rights violations in the world of work are becoming more marked. With regard to unemployment, Colombia shows a level of 11.6%⁹, well above to the average for the region, which stands at 8%. The state has not developed a public policy aimed at creating employment, while decent work is increasingly scarce.

11. At the moment, the quantitative deficit of housing, that is to say the lack of buildings to accommodate homes, translates into a shortfall of 1.76 million households. The qualitative deficit, meanwhile, is equally dramatic, with 29.6% of households lacking basic services, while 19% of constructions built from inadequate materials¹⁰. Despite the explicit prohibition of forced eviction under international law, this

practice is commonplace, particularly against families which have taken on mortgage debts with the banking system.

12. The concentration of land ownership is very high and continues to intensify. Just 0.43% of landowners hold the titles to 62.9% of rural property, while 57.87% hold just 1.66%¹¹. Despite the recommendations formulated by the ICESCR Committee with regard to agrarian reform, in Colombia a process of agrarian counterreform is being implemented through a combination of legal and illegal measures.

II. The right to health and social security (Articles 9 and 12 of the ICESCR)

13. After a decade and a half of implementation in the health system, the balance of its application has been negative. The health system has divided into two main regimes: a contributory regime linked to opportunities for employment that functions according to the logic of the market, and a subsidised regime orientated towards poor people who cannot accede to the market, which functions thanks to state support. Each regime has distinct Obligatory Health Plans, with the subsidised system having a plan of benefits with less reach, meaning that those dependent on it receive fewer benefits and lower quality service.

14. The contributory regime, being based on formal employment, creates barriers to access in an economy in which informal contracts and work insecurity are on the rise. Meanwhile, for informal workers health services require a total payment of 12.5% of income received, while for formal workers the payment is 4%, as the balance is paid by the employer¹². Additionally, the payment required from autonomous workers is the same, regardless of their level of earnings, a factor which hits those with lower incomes hard. Furthermore, should they lose their employment, these workers are excluded from the contributory regime after three months of non-payment. These workers also face difficulties in transferring to the subsidised

⁵ National Statistics Department, Dane, National Census 2005.

⁶ Colombian Institute for Family Wellbeing, National Survey of the Nutritional Situation in Colombia 2005, Bogotá. Colombian Institute for Family Wellbeing, 2007, pp 323, 243, 245.

⁷ National Union School, "La coyuntura laboral y sindical, hechos y cifras más relevantes" ("The Labour And Union Situation, Significant Facts And Figures"). http://www.ens.org.co/aa/img_upload/45bdec76fa6b8848acf029430d10bb5a/INFORME_COYUNTURA_LABORAL_Y_SINDICAL_2007_2008.pdf

⁸ Ibid.

⁹ Data from the Economic Commission for Latin America and the Caribbean, CEPAL.

¹⁰ Ibid.

¹¹ Agustín Codazzi Geographical Institute; Corpoica: Zoning Of Land Use Conflicts In Colombia, Volume 4, Bogotá, 2002.

¹² General Attorney, (PGN); Centre for Legal, Justice and Society Studies, "Estudio del derecho a la salud en la perspectiva de los derechos Humanos", ("Study Of The Right To Health From A Human Rights Perspective"). Bogotá. PGN, 2008, p. 60.

regime, as they are generally not recognised as part of the poor population that are accepted as candidates for health subsidies. It must also be pointed out that, along with making the monthly payments, access to health services requires the payment of other costs¹³ which oscillate between U\$1 a U\$8 a month (COP \$1400 and COP \$16000): some studies affirm that lack of money is the principal cause for non-use of health services by the non-affiliated population and the second most widespread cause of non-use by the population affiliated to one of the two regimes¹⁴.

15. The subsidised regime is based on an assistance-based vision, supplying subsidies according to demand, and failing to provide special focus on the most poor amongst the poor. This regime does not contain any projection based on the right to health, instead functioning as a residual factor to the market. At the same time, the selection of beneficiaries is carried out by a survey (known as SISBEN) which constitutes an unjustified filter as it is based on quality of life indicators, rather than levels of poverty. This results in many poor people being unfairly excluded from the health system.

16. One of the principal defects of the system springs from its marked emphasis on individual insurance. This leads to the structural weakening of the public health system in the country, a dynamic which is evidenced by the deterioration of the hospital network - since 1993 80% of its installation capacity has been closed or restructured because of lacking financial viability. In this sense, the growth of individual insurance does not represent a rise in actual opportunity to take advantage of comprehensive health services, nor an effective provision of this right. The determination of private businesses that supply health services to maximise profits leads to practices that negatively impact the quality of attention: costs of medical personnel are reduced, along with costs of laboratories and medications, diagnoses that demand

certain treatments are avoided or cheaper treatments are prescribed. This situation is reflected in opinion surveys of service users¹⁵.

17. The weakness characterising health services has serious effects on public health. Indices of maternal mortality show 79.8 deaths for every 100,000 births, a figure that is comparable to that of 1985, when 80.6 deaths were registered per 100,000 births¹⁶. The fight against tuberculosis shows low levels of progress, with rates of detection standing at 31.4% despite a target of 70%, and rates of successful treatment standing at 60% before a target of 85%¹⁷. The number of children showing low birth weight are equally worrying, with rates rising from 7.3% in 2000 to 8.4% in 2006¹⁸.

III. The right to work and rights in the workplace (Articles 6 and 7 of the ICESCR)

18. The Colombian state does not have a public employment policy. By contrast, and on the initiative of the government, various standards that are clearly regressive with regard to working people have been approved. As a result of the application of Law 789 of 2002, workers' earnings have fallen drastically due to the cutbacks in overtime, holiday and Sunday pay rates, along with cuts in payment for unsocial hours, which particularly affect women. Law 797 of 2003 modified the pensions regime, lengthening the number of weeks of contribution required, and thereby delaying retirement for many working people. A new regulation brought into effect by the administration has left 130,000 provisional workers, who were already working in administrative positions before the reforms, in a situation of instability. Individual contribution regimes have been configured as a charge for young people who now see their real earnings diminishing while the possibility of retirement disappears into the distance. Pension funds and the private sector are the beneficiaries of these reforms. Despite the global financial crisis, pension funds accumulated

¹³ Classified as copayments and moderated quotas. These mechanisms are incorporated into the health system in keeping with the perception that users make irrational use of services and there is therefore a need to create economic filters.

¹⁴ Currea Lugo, Víctor. "El derecho a la salud en Colombia: Diez años de frustraciones" ("The Right To Health In Colombia: Ten Years of Frustrations"). Bogotá: 2004, p. 208.

¹⁵ The poor quality of the health system is reflected in user satisfaction surveys. The negative image of businesses and health service institutions has grown: in 2000, only 10.1% of sick people who did not seek assistance from the health services cited the poor quality they offered whereas in 2005 this percentage had reached 22.4%. See: Flórez, Carmen; Soto, Victoria. "Evolución de la equidad en el acceso a los servicios de salud de la población colombiana" ("Evolution Of Equality of Access to the Health Services Among the Colombian Population"), in: Various authors: "Avances y desafíos de la equidad en el sistema de salud colombiano" ("Advances and Challenges for Equality in the Colombian Health System"). National Planning Department; Corona Foundation; University of the Andes and Rosario University, Bogotá, 2007, p. 21.

¹⁶ Rosario University, Economics Faculty, "Pérdidas y ganancias de las reformas en salud" ("Profits and Losses from Health Reforms"). Part 5, Volume 2, p.9. Available at: www.urosario.edu.co/investigación

¹⁷ *Ibid.*, p. 7.

¹⁸ Cesar Cablero Reinoso, "La salud que pagamos los colombianos" ("The Health We Pay For in Colombia"), Portafolio, 18 February 2008.

earnings of 2.12 billion pesos in the month of January 2009¹⁹.

19. The number of employment contracts has diminished progressively, with a corresponding rise in more insecure forms of employment. The controversial Associated Work Cooperatives (Cooperativos de Trabajo Asociado) have contributed to deteriorating quality of employment in Colombia. The numbers associated with said cooperatives have increased five-fold: in 2002 97,318 were registered to these organisations, with the figure rising to 537,859 in 2008²⁰. In 14 years, between 1992 and 2006, the number of permanent positions in the industrial sector fell by 40%, while the number of temporary contracts went up by 192%. In the manufacturing sector the reduction in permanent jobs dropped by 10% in six years, between 2001 and 2007²¹.

The right to association

20. With regard to union association, the Ministry for Social Protection has denied juridical recognition to 472 union actions of diverse nature, in open disregard of ILO Agreements 87 and 98. Since 2000 the Ministry has refused to register 234 new union organisations, with the result that 7,020 workers in the country were denied the right to unionise. On average, over the course of this government's tenure, at least 46 attempts to create union organisations have been blocked each year. The rate of collective negotiation in Colombia is among the lowest in the world – barely 1% of working people have a real opportunity to negotiate their working conditions²².

Attacks on the lives and wellbeing of unionised persons continue to be commonplace. Some 2,709 murders have been recorded over the past 23 years²³. With only 184 sentences being handed down, in relation to 136 victims, the level of impunity is 98.3%²⁴. Alongside the murders, during this period there were also 4,258 threats, 234 attempted murders and 194 forced disappearances²⁵. Some 35% of these incidents of violence and 481 of the murders have taken place between 1 January 2002 and 31 December 2008²⁶. So far in 2009 21 union activists have been killed and one was disappeared²⁷.

IV. The right to food (Article 11 of the ICESCR)

22. Colombia does not have a nutrition and food policy that reflects human rights concerns. The recent attempts to approve a nutrition plan have failed thanks to the national government²⁸. According to the Colombian Institute for Family Wellbeing (ICBF), 40.8% of Colombian homes suffer food insecurity. This silent tragedy is reflected in a series of indicators which, in contradiction of the assertions made by the national government in its Fifth Report, reveal an undeniable humanitarian tragedy: the number of deaths linked to hunger reached the shameful figure of 40,000 between 1998 and 2002²⁹; more than 20% of children under five are malnourished; 63.7% of the general population has energy deficiencies and 36% suffer protein deficiency. Hunger also conceals micronutrient deficiencies the length and breadth of the country, with 33.2% of those younger than five experiencing anaemia, while among the general population there are deficiencies of Vitamin C in 22.6%, Vitamin A in 32%, Zinc in 62.3 %, and Calcium in 85.8%³⁰.

¹⁹ See: El Universal, "Asofondos ganó \$ 2,12 billones" ("Asofondos made \$2.12 billion"), available at: http://www.eluniversal.com.co/noticias/20090304/ctg_eco_asofondos_gano_212_billones.html

²⁰ National Union School, "Una política de exclusión sistemática: panorama de la situación de los trabajadores y de las organizaciones sindicales en Colombia" ("A Policy of Systematic Exclusion: Panorama of the Situation of Workers and Union Organisations in Colombia"). See: <http://www.ens.org.co/documentos.htm?x=20155012>.

²¹ Centre for Development Investigation (CID), «Bien-estar y Macroeconomía 2007. Más allá de la retórica» ("Wellbeing and Macroeconomy: Beyond Rhetoric"). National University of Colombia, Bogotá, 2007.

²² Calculations of the National Union School based on data from the Ministry for Social Protection.

²³ National Union School. "Una política de exclusión sistemática: panorama de la situación de los trabajadores y de las organizaciones sindicales en Colombia" ("A Policy of Systematic Exclusion: Panorama of the Situation of Workers and Union Organisations in Colombia") Available at: <http://www.ens.org.co/documentos.htm?x=20155012>.

²⁴ Data from the Colombian Commission of Jurists.

²⁵ Based on data from the National Union School, <http://www.ens.org.co/>.

²⁶ Based on data from the National Union School, <http://www.ens.org.co/>.

²⁷ Based on data from the National Union School, <http://www.ens.org.co/>.

²⁸ Since the National Food and Nutrition Plan (1996-2005) drew to a close, no similar programme has been approved. In 2007, Law 203, to "establish a legal framework for food and nutritional security" was approved (Senate of the Republic of Colombia 2007). Unfortunately, at the behest of the government, this did not pass through the Senate. For a previous analysis of the Nutrition Plan (1996-2005) see Rocío Ortíz (et al.), 2006, "Análisis de la Política de Nutrición en Colombia" ("Analysis of the Nutrition Policy of Colombia"), in the magazine Salud Pública (Public Health), V.8 No.1 April, Bogotá.

²⁹ Universidad Externado de Colombia, "Tres menores de cinco años mueren al día en Colombia por desnutrición" ("Three Children Under Five Die of Malnutrition Every Day in Colombia"), Bogotá, available at: <http://www.uexternado.edu.co/noticias/desnutricion.html>

³⁰ Colombian Institute of Family Wellbeing, "National Survey of the Nutritional Situation of Colombia", 2005, Bogotá. Colombian Institute of Family Wellbeing, 2007.

23. Agricultural policy is oriented to reducing food production. The national government plans to mobilise five million rural residents in the production of biofuels³¹, implying a significant reduction in the production of foods. In a context in which the continuing falls in the production of cereals and other foods have been constant, this will deepen the crisis in national agrarian production³². A huge enlargement of the area devoted to biofuels has taken place – while in 2003 188,000 hectares were sewn, this figure had risen to 300,000 hectares in 2007, and the government’s projections say this will eventually reach one million hectares³³. In some cases afrocolombian communities have seen their land illegally expropriated by paramilitary groups linked to biofuel companies. In Curvaradó, for example, local communities have lost 29,000 hectares to paramilitary groups, with 7,000 of these now used to grow palm oil³⁴.

24. Another persistent problem is linked to the food blocs operated by legal and illegal actors involved in the conflict. Between July 2002 and December 2007, together with attacks on other goods protected by humanitarian law, some 90 food blocs spread out over diverse parts of the country³⁵.

V. The right to education (Articles 13 and 14 of the ICESCR)

25. In contradiction of ICESCR stipulations, Colombia does not offer free education (with a few exceptions made by certain local authorities). Despite the advances made in coverage, the education system continues to show socio-economic and ethnic inequalities. The difference in educational averages between income deciles 1 to 10 is 7.64 grades in 2003. While the population of decile 1 had completed 4.21 grades on average, those of decile 10 had completed 11.85 grades on average³⁶. The afrocolombian and indigenous population has less chance of benefiting from a quality education. While illiteracy among the general population aged 15 and over stands at

7.89%, the figure for indigenous groups is 17.7% and the figure among afrocolombians is 13%. Among displaced communities school inattendance affects at least 66.7% of children of school age³⁷.

26. At the moment 34.1% of the population aged between 5 and 17 enjoys full access to their right to a quality education. The effective rate of schooling, or the proportion of students who successfully completed the grade they were studying, in relation to the 5 to 17 age group, went from 60.6% in 1994 to 72.4% in 1998, but in 2003 the figure was 68.3%, four points below the rate attained in 1998³⁸.

27. With regard to indigenous and afrocolombian communities, the rate of inattendance among the 5 to 17 population is 25.5% for the indigenous and 16.7% for afrocolombians. The proportion of the indigenous population that has successfully completed mid-level education is 23% of those over 17, while the corresponding rate among afrocolombians is 33% - both figures are below the national average of 36%³⁹.

28. Public spending on education has been subject to regressive policies of fiscal adjustment to the general structure of revenue and spending and to the system of distribution of resources and competencies which was approved in the 1991 Constitution. In 2001 the participation of territorial entities in the current revenue of the nation was calculated at 43%, a figure which fell to 33.5% in 2008. This modification has a negative impact on the educational system, diminishing substantially the resources that make guarantee of the right to education possible. It is calculated that since the reforms began 2,698,738 children and youths between 5 and 17, who should be matriculated in the preschool, basic and mid-school levels (that is to say, 22.6% of the total), did not register in educational institutions. In 2006, 33,000 less teachers were contracted than in 2001, and the assignation that the state gives to each student (subsidy

³¹ “¿Alimentos o gasolina?” (“Food or gasoline”), *Semana* magazine, digital edition, 10 June 2007. See: http://www.semana.com/wf_InfoArticulo.aspx?IdArt=106693

³² See: Juan Carlos Morales González, “El hambre al servicio del neoliberalismo” (“Hunger in the Service of Neoliberalism”). Ediciones desde abajo (“From Below” Editorial). Bogotá. 2006. p. 195.

³³ See: ILSA, “La cuestión agraria hoy. Colombia: tierra sin campesinos” (“The Agrarian Question Today. Colombia: Land Without Campesinos”), Bogotá, 2008.

³⁴ See: “Los usurpados del Chocó” (“The usurped of Chocó”), *Semana*, edition 1402, 16 March 2009, p. 49.

³⁵ See: The International Committee of the Red Cross, Annual Report 2007 p. 60; Annual Report 2006. p. 38; Annual Report 2005. p. 30; Annual Report 2004, p. 12.

³⁶ General Attorney of the Nation. “El derecho a la educación. La educación en la perspectiva de los derechos humanos” (“The Right To Education: Education from the Perspective of Human Rights”). Bogotá, March 2006.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

on demand or payment for training) remained at the same level for the entire period of the reforms.

29. The majority of the recommendations of the United Nations Special Rapporteur on the Right to Education in Colombia have not been implemented. These include delinking the school system from the conflict and defining and protecting it as a “space for peace”⁴⁰. One of the most worrying problems in this respect is the use of schools by the state security forces as bases for military activities, which puts the lives of children at risk⁴¹.

VI. The right to housing (Article 11 of the ICESCR)

30. Colombia’s housing policy is based on the criteria of the market and subsidies to support demand. The emphasis of the system is on the adjudication of social housing and habitational improvement. Subsidies for demand are delivered with the finance sector employed as intermediary. Such fundamentals create strong barriers to access for the poorest sectors of society, as they are obliged to meet prerequisites of previous saving or of minimum earnings which they do not have. For families relying on earnings of less than two minimum wage salaries, this policy is of little use. For this reason subsidies do not have a positive effect on the quantitative and qualitative housing deficits: 14.79% suffer quantitative deficits, 29.6% suffer shortages of basic public services, and 19% of constructions are considered materially inadequate⁴².

31. Although the state has heralded the growth of subsidies between 2002 and 2006, we find an important rise until 2004, before a significant drop. In 2006 alone there was a fall of 35% when compared to the previous year. In parallel, the figures for credits granted show an identical trend, with a fall of 52% between 2005 and 2006⁴³.

32. Colombia has one of the highest levels of rented accommodation in the region, with 36.6% of the population living in rented properties⁴⁴. With regard to juridical security of tenancy, one out of every two homes is subject to illegality due to lack of proper title deeds or failure to meet urban norms⁴⁵. Another persistent problem is the practice of forced eviction. Despite the fact that it is prohibited by international law⁴⁶, evictions are carried out as police procedures, generally with repressive attitudes being adopted towards evicted families. These procedures are the result of the difficult financial conditions which these families find themselves in. Being unable to pay for their properties, they are then forcibly removed after judicial decisions. Between January 2000 and October 2007, some 2,287 properties designed for family occupancy were dealt with judicially in this manner. These facts demonstrate the magnitude of the problem and the failure to address affordability as a component of the right to housing⁴⁷.

VII. The campesino, indigenous and afrocolombian communities

33. Rural poverty is very high. In 2005 the national poverty average, according to official data, was 49.2% and extreme poverty stood at 14.7%, while the figures for rural areas were 68.2% and 27.5% respectively⁴⁸. Despite the Committee’s recommendation that the state adopt “the necessary measures to implement an authentic agrarian reform”, the reality is that state policies are oriented in the opposite direction, as is reflected by: (i) the elevated concentration of productive land in the hands of an elite minority; (ii) the violent eviction of agricultural communities from their land; (iii) the promotion of laws and norms that legalise eviction, and (iv) the elimination of the institutions responsible for measures to distribute and protect the land.

⁴⁰ See: doc E/CN.4/2004/45/Add.2, Report of Special Rapporteur Katarina Tomasevski, Mission to Colombia 1 – 10 October 2003.

⁴¹ The campaign “Soldado por un día” (“Soldier For A Day”) in which children are taken to visit Army battalions and take part in all areas of military training, is well-known in this regard.

⁴² Garay, Luis Jorge; Rodríguez, Adriana. “Colombia dialogo pendiente. Volumen II. Políticas de empleo, salarios y vivienda”, (“Colombia Awaiting Dialogue. Volume II, Employment, Salary and Housing Policies”). Planeta Paz. Bogotá, 2007.

⁴³ Ibid.

⁴⁴ “Colombia tiene el porcentaje de arrendatarios más alto de la región” (“Colombia has the highest percentage of renters in the region”). El Tiempo newspaper. 22 February 2008.

⁴⁵ “La mitad de la vivienda en el país es ilegal” (“Half the housing in the country is illegal”). El Tiempo newspaper. 30 January 2008.

⁴⁶ In the specific case of forced eviction, General Observation No 7 of the Economic, Social and Cultural Rights Committee. There are also expert recommendations such as: “La Práctica de los Desalojos Forzosos: Directrices Completas para los Derechos Humanos en Relación con los Desplazamientos Basados en el Desarrollo” (“The Practice of Forced Eviction: Complete Directives for Human Rights with Regard to Displacements Based on Development”), adopted by the Expert Seminar on the Practice of Forced Displacement in Geneva, 11 – 13 June 1997.

⁴⁷ Data supplied by the High Council of the Judiciary to COHRE in UDAEF08-770 of 6 June 2008 as a response to the right to petition exercised by COHRE with Consecutive 19/2008.

⁴⁸ Data taken from the Mission for the Design of a Strategy for Reduction of Poverty and Inequality (MERPD).

34. The ownership of land is increasingly concentrated among a few landowners. According to data from the Agustín Codazzi Geographical Institute (IGAC) from 2002, 0.4% of the landowners controlled 61.2% of rural territory at the end of the nineties. This represents an area of 41,147,680 hectares, suggesting properties of over 500 hectares on average, while 24.2% of rural territory (18,646,473 ha) was distributed among 97% of the registered owners. In the case of the latter group, properties were predominantly under three hectares in size⁴⁹.

35. The Rural Development Statue (Law 1152 of 2007) has proved one of the most harmful for rural populations. The law was declared unconstitutional by Ruling C-175 of 2009 and it has set a worrying precedent for the management of rural areas as it contains elements that are clearly regressive for the rights of rural populations. This norm created subsidies for the purchase of land but only businesspersons who presented project proposals in keeping with the policies of the Ministry of Agriculture could access them⁵⁰. It conditioned the adaptation of land to business tenders for agroindustrial production projects prioritised by the Ministry⁵¹. Additionally, the Statue adopted measures for the legalisation of eviction of displaced communities, facilitating the legalisation of titles appropriated through simple notary procedures before 1997. This was done through the recognition of ownership of any party who had dominion for a period not less than the term of acquisitive prescription, which according to Law 791 of 2002 is 10 years⁵².

36. It is also important to highlight that 76% of displaced persons had rights linked to their land as owner, occupier, possessor or holder of tenure, and that around seven million hectares have been usurped from their legitimate owners or occupants thanks to displacement⁵³. Despite the declared unconstitutionality of the Statue, it is feared that its content will be reproduced in other norms. Should this happen, it will create obstacles to the handing over of lands to small producers, not to mention legitimating the eviction of displaced communities from their land and thereby

further intensifying the already extremely high levels of land concentration.

37. Indigenous peoples suffer constant violations of their right to self-determination in their territories. In recent years various laws have been approved which these communities have come to know as “eviction norms”. Among these is the Mining Code (Law 685 of 2001), burden of proof provisions of the Free Trade Agreement between the US and Colombia (Law 1143 of 2007), the Rural Development Statue (Law 1152 de 2007) and the Forestry Law. These last two have been declared unconstitutional precisely because they disregard the right to consultation with free, prior, informed consent.

38. It is worth underlining some aspects of Law 1152 again. The norm expressly prohibits the constitution or enlargement of reserves on the entire Pacific coast, thereby disregarding the fundamental rights of the Wounáan, Embera, Eperara, Tule and Awá peoples⁵⁴. This law also attacks the rights of nomadic and semi-nomadic indigenous communities, whom it obliges to settle in order to have territorial rights⁵⁵. This regulation thus strikes a heavy blow against the Nükák and other semi-nomadic communities and horticultural itinerants (such as the Yurí and Caraballos of the River Puré in Amazonas, the Yuhup and the Cagua in the departments of Vaupés and Amazonas, and the Sikuaní, Tsiripu, Wamonae, Yamaleros and Wayaberos). The law includes the indigenous and afrocolombian communities within the erroneous concept of “ethnic minorities”, with the aim of imposing projects that will harm the environment and their territorial integrity in the areas in which they live. The argument employed to justify such actions is that they are in the interests of the majority – such a position can generate discriminatory attitudes and clearly undermines Agreement 169.

39. With regard to indigenous territories, we must also highlight the reductions in budgetary assignments for the acquisition of lands for indigenous reserves, which has dropped from 3,000 million to 1,000 million or less between 2001 and 2007⁵⁶.

⁴⁹ Agustín Codazzi Geographical Institute; Corpoica: “Zoning Of Land Use Conflicts In Colombia”, Volume 4, Bogotá, 2002.

⁵⁰ Articles 2, 56 and 60 of Law 1152 of 2007.

⁵¹ Article 100 of Law 1152 of 2007.

⁵² Article 138 of Law 1152 of 2007.

⁵³ The Episcopal Conference, CODHES and the Comptroller General of the Republic believe that this percentage rose between 76% and 79%. In: Attorney General of the Nation. “Control Preventivo y Seguimiento a las Políticas Públicas en Materia de Reinserción y Desmovilización” (“Preventive Control and Monitoring of Public Policies with Regard to Reinsertion and Demobilisation”). Volume I, Bogotá, 2006. pp: 185 y 179.

⁵⁴ Article 123, Law 1152 of 2007.

⁵⁵ Article 121, Law 1152 of 2007.

⁵⁶ In this regard see: Juan Houghton, “La tierra contra la muerte” (“Land Against Death”), Centre for Cooperation with the Indigenous, Bogotá, 2008.

40. The afrocolombian population is one of the most affected by forced displacement, representing almost a quarter of the displaced population in the country (22.5%). It is calculated that 12.3% of the entire afrocolombian community now finds itself in a situation of forced displacement⁵⁷. As in the case of the indigenous, peoples of African origin tend to suffer higher levels of poverty: 47,2% of this population did not have their basic needs satisfied, while they also lived in conditions of extreme poverty⁵⁸. Their salaries were approximately 20% less than the average of those of non-Africans, and only 51% were able to access the national health system⁵⁹.

VIII. The situation of women and the LGBT population

41. The situation of women is deteriorating in various ways. Sexual violence against women as a weapon of war remains a habitual practice: in the last four years 127 cases of sexual violence have been reported, the majority of them carried out by legal and illegal armed groups⁶⁰. The situation of displaced women offers a good example of the impact of war on this population, with 15.8% of these women saying they have suffered sexual violence (ranging from being hit to rape) either before or after their forced displacement⁶¹.

42. The incidence of poverty among women went from 75.5% to 78.1% between 2000 and 2004, while the level of extreme poverty rose from 41.3% to 43.6%⁶². In 2005, 26.6% of homes classified as poor had a female head of household⁶³. With regard to undernourishment, women are more vulnerable, with

32.8% of women of childbearing age, and 44.7% of pregnant women, suffering anaemia; 20.7% of pregnant women are also underweight for their stage of pregnancy⁶⁴; and the rate of mortality due to breast cancer rose from 7.2 to 8.58 between 2000 and 2005⁶⁵.

43. A careful analysis of the Economically Inactive Population (EIP) reveals that: of the people who are studying, 59.9% are men and 29.8% are women; of those carrying out housework 61.4% are women and 10.9% are men⁶⁶. The disparity in salaries between men and women persists, especially among those employed in service industries, along with professionals, technicians, directors and salespersons, among whom men's salaries are on average 30% higher than women's⁶⁷. Job opportunities also show inequalities where women are concerned: in May 2008 the rate of female employment was 40.5%, while the corresponding figure for men was 65.5%. Unemployment figures meanwhile show women suffering disproportionately, with female unemployment standing at 14% while male unemployment was 8.7%⁶⁸. In sum, women have less access to education, they tend to have a longer working day (with responsibilities in both the workplace and the home), they have lower salaries than men, they receive fewer opportunities for work and they are more affected by unemployment.

44. Despite the recommendations of the ESCR Committee to the Colombian state (1995 and 2001) with regard to discrimination against women and the work situation of *madres comunitarias* (community childcare workers), the government and the institu-

⁵⁷ Consultancy for Human Rights and the Displaced, (CODHES). 2008. "Afrocolombianos desplazados, un drama sin tregua" ("Displaced Afrocolombians: A Drama Without Truce"), 22 May 2008, available at: http://www.codhes.org/index.php?option=com_content&task=view&id=157 (last accessed August 2008).

⁵⁸ Fernando Urrea. "Informe Final Grupos Étnicos. Misión para el Diseño de una Estrategia para la Reducción de la Pobreza y la Desigualdad", ("Ethnic Groups Final Report. Mission for the Design of a Strategy for the Reduction of Poverty and Inequality"), DNP Bogotá, 2006. p. 46.

⁵⁹ Racial Discrimination Observatory. "Análisis de Datos de la Encuesta Continua de Hogares de junio de 2004" ("Analysis of Data from the Continuous Survey of Homes of June 2004"). Bogotá, 2008.

⁶⁰ "Women and the Armed Conflict" Roundtable, "VII informe sobre violencia sociopolítica contra mujeres, jóvenes y niñas" ("VII Report on Socio-Political Violence Against Women, Female Youths and Girls"), 2007. See: <http://alainet.org/images/MESA%20mujer%202007%5B1%5D.pdf> (accessed 1 August 2008).

⁶¹ El Espectador newspaper, electronic edition. "El 16% de mujeres desplazadas sufren violencia sexual" ("16% of Displaced Women Suffer Sexual Violence"), 18 July 2008. See: <http://www.elespectador.com/articulo-el-16-ciento-de-mujeres-desplazadas-sufren-violencia-sexual> (accessed 30 September 2008).

⁶² Salamanca, Rosa Emilia, National Tribunal of Women and ESCR, "Falta de condiciones, garantías y oportunidades para la realización de los DESC", ("Lack of Conditions, Guarantee and Opportunities for the Realisation of ESCR Rights"), Case 4, ILSA; ATI, Casa de la Mujer. Bogotá, 2006.

⁶³ National Confluence of Women's Networks, Cladem, Diverse Colombia Corporation, Profamilia, "Shadow Report to the Committee for the Elimination of Discrimination Against Women", p. 16.

⁶⁴ Colombian Institute for Family Wellbeing, "National Survey of the Nutritional Situation of Colombia 2005", Bogotá, 2007. p. 85.

⁶⁵ Data taken from the National Statistics Office (DANE); Integrated Survey of Homes, Bogotá, March to May trimester 2008.

⁶⁶ Data taken from the National Statistics Office (DANE); Integrated Survey of Homes, Bogotá, March to May trimester 2008.

⁶⁷ National Statistics Office, UNDP, "La perspectiva de género: Una aproximación desde las estadísticas del DANE" ("The Gender Perspective: An Approximation based on the DANE Statistics"). Bogotá, 2004, p. 37.

⁶⁸ Data taken from the National Statistics Office (DANE); Integrated Survey of Homes, Bogotá, March to May trimester 2008.

tion responsible, The Colombian Institute for Family Wellbeing, have not designed and implemented policies to tackle the problem and guarantee the labour rights of these 78,573 women. The work of *madres comunitarias* is valued at well below the minimum wage, despite the fact that their dedication to the care of children involves great responsibility and working days of over eight hours⁶⁹. Additionally, social security cover continues to exclude many of these women, with 14,187 not affiliated to any health or social security regime⁷⁰ thanks to the inadequacy of their earnings.

45. Another factor that is of concern to the *madres comunitarias* is the closure of community homes. In 2003 there were 43,444 of these in operation on a full-time basis and 17,732 on a part-time basis. In 2004 these figures had dropped to 42,905 and 7,601 respectively. A fall of 670 homes in one year translates into 8,710 children who no longer receive this care⁷¹.

46. It is important to underline that the national government continues to resist accepting the involvement of the Protocol Verification Committee of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).

47. Discrimination on the grounds of gender and sexual orientation persist. Between 2006 and 2007 alone, 67 homicides and 31 cases of physical and verbal violence by police against the LGBT (lesbian, gay, bisexual and transgender) population were registered⁷². Expressions of homophobia have also come from the highest levels of government, with the Presi-

dent of the Republic, Alvaro Uribe, himself employing pejorative and discriminatory terms on occasion⁷³. It must also be emphasised that in 1995 the Committee raised the need to eradicate the mistitled phenomenon of “social cleansing” and reduce levels of impunity for those responsible. It is noteworthy that the Juridical System of the National Police (SIJUR) has not registered any abuse against the LGBT population, though the NGO *Diverse Colombia* knows of 31 cases of such abuse. Furthermore, various regional public attorneys have registered incidents of violence affecting the LGBT population, among them Magdalena Medio, Risaralda and Arauca⁷⁴.

48. With regard to public policy, the LGBT population has been rendered invisible by the government’s social strategies. The 2006-2010 National Development Plan, entitled “A Communitarian State: Development for All”, in its chapter concerning special dimensions makes no reference to the LGBT population, nor does it include any measure aimed at this sector. At the same time bodies such as the National Planning Department considers that the LGBT population benefits from public policies in a more general way and, for this reason, says it will not develop policies specifically designed to guarantee the rights of these people⁷⁵.

49. The Congress of the Republic has, for six years, refused to approve five legislative projects that sought recognition for same-sex partnerships, despite the fact that these projects only referred to patrimonial rights and social security, leaving other issues such as adoption and same sex marriage to one side⁷⁶. Mean-

⁶⁹ On the salary assignments for *madres comunitarias* see: Colombian Institute for Family Wellbeing, “Hogares comunitarios de Bienestar, 20 años construyendo amor”, (“Community Wellbeing Homes, 20 Years Building Love”), Bogotá, 14 April 2008.

⁷⁰ Data supplied by *madres comunitarias* organisations.

⁷¹ Data supplied by *madres comunitarias* organisations.

⁷² Figures based on *Diverse Colombia* data.

⁷³ The President of the Republic, Alvaro Uribe Vélez, in one of his televised speeches during the XXXII Communal Governmental Council, showed signs of homophobia, humiliating his adversaries and verbally attacking them with adjectives related to women and gays. On this occasion, with reference to the supposed terrorists, he said the following:

“And I see that the terrorists talk a great deal, as they have made the country accustomed to. They should talk less and define peace, because if they don’t we’ll finish them. Those sweet, effeminated voices that bore the country every eight days. It was like a melody, we got used to their serenades. Little voices trying to find a louder voice, and at the same time, under the table, giving orders for planes to be hijacked and terrorist acts to be carried out. We’re not buying into that story. With us, they will first have to give up that sweet little voice – they will have to talk like strong women or real men. They should talk straight and make peace and stop being so pretentious, because we move slowly, like turtles, but firmly. And we will take all the time that is needed to finish them off.”

⁷⁴ *Diverse Colombia*, “Situación de los derechos humanos de lesbianas, hombres gay, bisexuales y transgeneristas en Colombia, 2006-2007”, (“The Situation of Lesbians, Gay Men, Bisexuals and Transgender Persons in Colombia, 2006-2007”), *Diverse Colombia Human Rights Report*, Bogotá, 2008.

⁷⁵ The National Planning Department “considers that the LGBT population benefits from public policies in general, through the guarantee of non-discrimination in access to basic state services, and it has not pronounced nor offered anything for the consideration of CONPES on the definition of a specific policy for this population”, response to the right to petition exercised by *Diverse Colombia* before the National Planning Department in November 2007.

⁷⁶ In recent years the following legal projects have been presented: Law 85 of 2001, Law 43 of 2002, Law 113 of 2004, Law 130 of 2005 (Senate), Law 152 of 2006 (Chamber). The aforementioned legislative projects have been archived for later voting or denied due to process issues.

while, the most recent project⁷⁷ was frustrated by acts of conciliation in the legislature despite all necessary procedures for its approval having taken effect. The government has on various occasions shown its opposition to the recognition of equality for patrimonial rights for same-sex partnerships, and has blocked the guarantee of full social security for the LGBT population⁷⁸.

IX. Victims of forced displacement

50. Advances made with regard to recommendations concerning the displaced population are meagre, to say the least. The Constitutional Court, through Ruling T-025 of 2004, declared that the situation of displaced persons represented a “state of unconstitutionality” in that it implied systematic violations of all rights and a lacklustre institutional response in almost all regards. The national government has not seen to it that the almost four million now living in a situation of displacement are guaranteed their rights. On the contrary, it has generated greater dependence of these communities on humanitarian aid⁷⁹, while privileging the option of return without guaranteeing security for, or the willingness of, the returned population. It has also ignored their rights, as victims, to truth, justice and reparations. It has likewise stopped making the necessary budgetary provisions to deal with the situation⁸⁰.

51. The socio-economic situation of the displaced population is desperate – it is calculated that the average monthly income of a displaced family is only 65% of minimum wage⁸¹. Barely 8% of this population has adequate housing, while 82% have not managed to access programmes of income generation⁸². Only 61% of the homes included in the National Survey of Verification of the Rights of Displaced Peoples have applied for family housing subsidies, and only 34.7% of this figure was granted them. Additionally, 90% of said subsidies have been paid, but only 44% have been used by the beneficiaries.

52. According to the National Verification Survey, “among the population that missed meals the week prior to the survey, 68.1% did not consume between four and seven meals, and 15.3% missed between eight and 14 meals”. With regard to access to education, there are high levels of non-attendance: intra-annual desertion stood at 3.4% among children between five and 11, 5% among those between 12 and 15, and 18.5% for the group between 15 and 16 years of age.

53. Through Writ 008 the Constitutional Court has declared that the “state of unconstitutionality” being suffered by the displaced population persists, thereby confirming the ongoing nature of the problems being experienced by this population. In the aforementioned writ, the Court affirms that among the policies that should be applied to overcome this situation are: (a) reformulation of public policies with regard to housing and land; (b) adjustment of public policies with regard to truth, justice and reparation, emergency humanitarian aid, return and resettlement. (c) adoption of specific mechanisms for protection; (d) design and presentation of a spending budget aimed exclusively at displaced peoples; (e) adoption of measurement indicators for the effective delivery of the rights of displaced persons.

Conclusions

1.- The guarantee of economic, social and cultural rights in Colombia is far from being achieved, as is particularly demonstrated by the high levels of food insecurity, the deficit in housing, the population excluded from the education system, labour insecurity, problems of access to health services and the persistence of discriminatory practices against important sections of the population. One of the most worrying aspects of the current situation is the humanitarian crisis being suffered by the internally displaced population.

⁷⁷ Law 130 of 2005 (Senate), Law 152 of 2006 (Chamber).

⁷⁸ The executive body, during the constitutionality processes concerning the rights of same-sex partnerships, through the Ministries of Taxation, Social Protection, Agriculture and Defence, made interventions that were detrimental to ESCR rights and LGBT persons, especially with regard to Article 10 of the ICESCR concerning the family.

⁷⁹ In this regard see: the Public Defender’s Report on Violent Forced Displacement in Colombia, No 01. Public Defender, Bogotá, April 2002.

⁸⁰ At a 2 May 2005 hearing before the Constitutional Court, the Minister of the Treasury, Alberto Carrasquilla, told the newspaper *El Tiempo*: “We have 40 billion pesos raised. From there we will have to pay pensions and the payment of the debt will give us the 42 billion. From there we’ll tackle the issues of justice, defence and the displaced.”. www.eltiempo.com, (accessed 3 June 2008).

⁸¹ “Estado nutricional, de alimentación y condiciones de salud de la población desplazada por la violencia en seis subregiones del país”, (“The State of Nutrition, Food and Health Conditions of the Population Displaced by Violence in Six Subregions of the Country”). Pan-American Health Organization, UN World Food Programme Colombia, 2005, p 5.

⁸² COHRE, “Defensa del Derecho a la Vivienda de la Población Desplazada en Colombia, Informe de Misión de investigación”, (“Defence of the Right to Housing of the Displaced Population. Report of the Research Mission”). Bogotá, 2005.

2.- The extremely high level of wealth concentration is being deepened by modifications to the tax system which target the poor and exempt those with the highest incomes. High levels of land concentration are also worsening thanks to a combination of legal and illegal mechanisms.

3.- The health system makes access to medical attention difficult for normal people, both through the lack of progressive structures in the subsidised regime and through the lack of a service delivery-oriented vision in the contributory regime. Public health has deteriorated markedly, as is demonstrated by the weakening of the hospital network and backward movement with regard to diseases like tuberculosis, along with maternal mortality and low birth weight.

4.- The country does not have a public employment policy – on the contrary it has approved regressive laws, including the effective reduction of salaries. Labour insecurity has deepened thanks to practices and institutions such as the Associated Work Cooperatives (Cooperativos Asociados de Trabajo) and temporary contracts. Colombia remains the most dangerous country in the world for union activity.

5.- High rates of mortality associated with hunger and elevated indices of malnourishment and hidden hunger have been proved. Food production is being reduced thanks to governmental policies, especially with regard to biofuels.

6.- Colombia does not offer free primary education at the national level. The rates of genuine education show that the incorporation and continued attendance of children and youths in the education system has been fluctuating rather than progressing.

7.- There are acute deficits in housing, both in terms of quantity and quality, along with lacking juridical security for tenants. The practice of forced eviction remains commonplace despite being prohibited under international law. Housing policy is characterised by and designed according to the parameters of the market.

8.- Afrocolombians are disproportionately affected by displacement and extreme poverty. They also suffer greater difficulties in acceding to health services, obtaining housing subsidies and receiving education.

9.- Sexual violence against women continues to be employed as a weapon of war. The feminisation

of poverty likewise continues, and is especially pronounced in the labour market where women receive less for doing more and are confronted by greater difficulties in finding work. The recommendation of the ESCR Committee with regard to *madres comunitarias* has not been properly implemented.

10.- Indigenous communities have suffered huge infringements with regard to their territories: various laws which threaten their collective property have been approved. Budgetary assignments for the establishment and enlargement of reserves have been cut substantially.

11.- The LGBT population is the victim of constant attacks motivated by homophobia. Substantive equality in terms of social security for same-sex partnerships has been frustrated.

Recommendations

1.- The Platform recommends that the demands of Ruling T-025, which prescribes various public policy measures to alleviate the situation of the displaced, be met.

2.- The Platform recommends the adoption of a tributary regime based on progressive taxes which seek revenue from citizens in accordance with their income level. It also recommends the adoption of a system of transfers to the regions which allows greater investments in health, education and potable water.

3.- The Platform recommends the reform of the health system in order that new structures based on the norms of human rights law be instituted.

4.- The Platform recommends that an employment policy consistent with the provisions of the International Covenant on Economic, Social and Cultural Rights, and the agreements of the International Labour Organisation, be formulated.

5.- The Platform recommends a strategy of investigation and prosecution of those responsible for crimes against union activists and union members be implemented.

6.- The Platform recommends that a food and nutrition policy based on human rights, which facilitates effective action on the high levels of mortality associated with hunger, along with hidden hunger and malnutrition, be designed and implemented. This should

include a reorientation of agrarian policy, promoting the production of food and the exploitation of cultivatable land.

7.- The Platform recommends that all practices fuelling attitudes of discrimination and inequality for socio-economic and/or ethnic reasons, and thereby impede access to education, be confronted and that a public policy of free primary education be implemented.

8.- The Platform recommends the formulation of a public policy designed to reduce quantitative and qualitative deficits in housing, facilitating juridical security of tenancy and the prevention of forced eviction.

9.- The Platform recommends that a policy of agrarian reform, which guarantees the collective property of indigenous and afrocolombian communities, along with the individual tenancy of campesino families, be developed.

10.- The Platform calls on legal and illegal armed actors to cease the practice of sexual violence against women as a weapon of war.

11.- The Platform calls on the state to adopt measures to effectively reduce salary differentials between men and women, along with the lower levels of schooling and job opportunities suffered by women.

12.- The Platform calls on the state to adopt measures to prevent homophobia and attacks against the LGBT population.

13.- The Platform recommends that the state approve norms allowing the achievement of substantive equality for same-sex partnerships with regard to social security.

14.- The Platform calls on the state to satisfy the recommendations of the ESCR Committee with regard to the working conditions and status of madres comunitarias and gardeners.



Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo
Secretaría Técnica Corporación Cactus Carrera 25 No. 51-37 Oficina 301
Teléfonos: 3458329 - 3458340 - 2555073 - Bogotá, D. C.