



PARALLEL REPORT TO THE FIFTH
REPORT OF THE COLOMBIAN STATE TO
COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS (E./C.12/COL/5)



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PARALLEL REPORT TO THE COLOMBIAN STATE'S FIFTH REPORT OT THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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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.

I. 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 afrocolombian.¹

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 Colombia,² (Article 93) international human rights instruments ratified by the state form part of the political charter.

* En: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/PCDHDD_Colombia_CESCR42.pdf Pre-Sessional Working Group, 25-29 May 2009.

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.

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_SINDI-CAL_2007_2008.pdf

8 Ibid.

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

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 population.³

6. Colombia has the second highest level of inequality of income distribution in the region, with a Gini coefficient of 0.576.⁴ 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, 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 Needs.⁵ 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 deficiency.⁶

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 2008.⁷

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 education.⁸ 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 materials.¹⁰ 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 employer.¹² 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 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 US\$1 a US\$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 regimes.¹⁴

15. The subsidised regime is based on an assistance-based vision, supplying

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.

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.

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 users.¹⁵

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 births.¹⁶ 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 2006.¹⁸

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 earnings of 2.12 billion pesos in the month of January 2009.¹⁹

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 fivefold: in 2002 97,318 were registered to these organisations, with the figure rising to 537,859 in 2008.²⁰ 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 2007.²¹

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 conditions.²²

Attacks on the lives and wellbeing of unionised persons continue to be commonplace. Some 2,709 murders have been recorded over the past 23 years.²³ 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 disappearances.²⁵ Some 35% of these incidents of violence and 481 of the murders have taken place between 1 January 2002 and 31 December 2008.²⁶ So far in 2009 21 union activists have been killed and one was disappeared.²⁷

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

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 Rocio Ortiz (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.

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 Choco"), *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.

to the national government.²⁸ 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

23. Agricultural policy is oriented to reducing food production. The national government plans to mobilise five million rural residents in the production of biofuels,³¹ 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 production.³² A huge enlargement of the area devoted to biofuels has taken place – while in 2003 188,000 hectares were sown, this figure had risen to 300,000 hectares in 2007, and the government's projections say this will eventually reach one million hectares.³³ 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 oil.³⁴

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 country.³⁵

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 average.³⁶ 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 age.³⁷

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 1998.³⁸

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 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 risk.⁴¹

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

37 Ibid.

38 Ibid.

39 Ibid.

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 UDAEOF08-770 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).

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 inadequate.⁴²

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 2006.⁴³

32. Colombia has one of the highest levels of rented accommodation in the region, with 36.6% of the population living in rented properties.⁴⁴ 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 norms.⁴⁵ Another persistent problem is the practice of forced eviction. Despite the fact that it is prohibited by international law,⁴⁶ 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 housing.⁴⁷

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% respectively.⁴⁸ 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.

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 size.⁴⁹

35. The Rural Development Statute (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 them.⁵⁰ It conditioned the adaptation of land to business tenders for agroindustrial production projects prioritised by the Ministry.⁵¹ Additionally, the Statute 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 years.⁵²

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 displacement.⁵³ Despite the declared unconstitutionality of the Statute, 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 Statute (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.

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.

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.

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 peoples.⁵⁴ This law also attacks the rights of nomadic and semi-nomadic indigenous communities, whom it obliges to settle in order to have territorial rights.⁵⁵ This regulation thus strikes a heavy blow against the Nükák and other semi-nomadic communities and horticultural itinerants (such as the Yuri and Caraballos of the River Puré in Amazonas, the Yuhup and the Cagua in the departments of Vaupés and Amazonas, and the Sikuani, 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 2007.⁵⁶

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 displacement.⁵⁷ 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 poverty.⁵⁸ Their salaries were approximately 20% less than the average of those of non-Africans, and only 51% were able to access the national health system.⁵⁹

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 groups.⁶⁰ 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 displacement.⁶¹

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 household.⁶³ 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 2005.⁶⁵

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 men.⁶⁶ 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's.⁶⁷ 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 institution 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 hours.⁶⁹ 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 care.⁷¹

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).

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.

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, Álvaro 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.

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.

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 registered.⁷² Expressions of homophobia have also come from the highest levels of government, with the President of the Republic, Alvaro Uribe, himself employing pejorative and discriminatory terms on occasion.⁷³ 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 Arauca.⁷⁴

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 people.⁷⁵

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 side.⁷⁶ Meanwhile, 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 population.⁷⁸

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 aid,⁷⁹ while privileg-

ing 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 situation.⁸⁰

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 wage.⁸¹ Barely 8% of this population has adequate housing, while 82% have not managed to access programmes of income generation.⁸² 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.

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 Organisation, 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.

PRESENTATION

THE URGENCY OF FREEING OURSELVES FROM TERROR AND MISERY

1. *“Humanity’s highest aspiration is the achievement of a world where human beings are free from terror and misery and enjoy freedom of speech and thought”*

This sentence, a variation on the phrase contained in the Preamble to the Universal Declaration of Human Rights, is a precise synthesis of the aims of the women and men that seek the complete guarantee of the rights of individuals and peoples. In 1948, the year of the proclamation of the Universal Declaration, the memory of the crimes carried out in the Nazi concentration camps was sufficient cause to talk of terror as a threat that even called into question our very concept of humanity. In the words of Hannah Arendt: The old spontaneous bestiality gave rise to the completely cold systematic destruction of human bodies designed to destroy human dignity.”¹

2. Even though the memory of the terror of the camps is alive in our collective conscience, it is usual for the society of the spectacle to remain silent on other mechanisms that also destroy human bodies and call into question our concept of humanity. The scourge of hunger, lack of housing, abysmal working conditions, closed hospitals and the commercialization of education are all mechanisms that fracture our dignity and destroy human lives. In this sense, the documents contained in this Parallel Report presented to the Committee on Economic, Social and Cultural Rights (hereafter CESCR) were drawn up with aim of contributing to freeing ourselves from an environment in which we a daily witness to the that terror aims to perpetuate misery and the misery facilitates the implementation of terror.

3. That is why we understand that the spirit of social rights is to ensure a dignified life for every human being, with an emphasis on avoiding the silent continuation of misery. Given this, our starting point is an nonnegotiable ethical conviction: we believe that free basic schooling, adequate food, decent housing, decent jobs, trade union freedom, social security, universal healthcare, water as a public asset and guaranteed land and territorial rights are unavoidable cornerstones of the building of a peaceful, democratic, just society. True to this commitment, the current Report shows the serious debt Colombia has in terms of social rights.

¹ Hannah Arent, “Concentration Camps”, cited by Richard J. Bernstein, “El mal radical. Una indagación filosófica”, Buenos Aires, Litemod, 2005, p.318.

- 2 CESRC, General Comment No.3; General Comments adopted by the Human Rights Committee Article 2 – Application of the Convention at a national level, 13th period of sessions, U.N. Doc. HRI/GEN/1/Rev.7 at 140 (1981), para. 2
- 3 Ibid. para.2

4. This is a collective enterprise carried out by diverse organizations: human rights groups, non governmental, academic, social and grassroots organizations that in their daily work seek to build a democratic society. This work was coordinated by the Colombian Platform for Human Rights, Democracy and Development (hereafter The Platform) a network that brings together around one hundred organizations that work for the full enjoyment of the Economic, Social and Cultural Rights. This Report looks at two aspects; firstly it evaluates the level of enjoyment of the social rights, mainly education, healthcare, food, housing, work, trade union rights, land and territory. This analysis is enriched by chronicles of real cases of affected rights. Secondly, there is an examination of the situation experienced by population groups that are entitled to such rights: women, indigenous peoples, Afro-descendants, peasants, lesbians, gays, bisexuals, transsexuals and people in a situation of forced displacement.

5. This report mainly covers the period 2001-2006, but also makes specific references for follow up and measuring progression in terms of decisions, norms and practices in force in July 2009. It is based mainly on official data, but also refers to the United Nations System and data from human rights organizations and academics that monitor the ESCR situation in Colombia. This includes quotes from the press, specialized journals, from indicators and cases of ESCR violations.

REGRESSIVENESS AS CHARACTERISTIC TRAIT OF THE STATE'S ACTIONS.

6. According to the International Covenant on Economic Social and Cultural Rights (herein after ICESR), international instrument signed and ratified by the Colombian State, one of the mandatory obligations is the adoption of measures that allow forward progress (article 2.1) towards giving full effect to social rights. To be concise, the States must adopt measures that allow the expansion and gradual improvement of the conditions under which social rights are enjoyed and exercised to such point that every man and woman has an effective enjoyment of such rights. In line with this the CESCR has highlighted that the measures that the State must adopt “should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant”.²

7. The obligation to make progress also implies the duty to not regress understood as the prohibition on adopting policies and measures that reduce, worsen or eliminate the conditions of “achieved improvements” in relation to the ESCR. For the CESCR “any deliberately regressive measure in such respect requires the most careful consideration and must be fully justified by reference to the totality of the rights contained in the Covenant and in the context of the full exploitation of the maximum resources to hand.”³

8. Unfortunately, the analysis of the V Report of the Republic of Colombia to the Committee on Economic, Social and Cultural Rights (herein after V Report) shows that in recent years there has been no consistent advance in the area of social rights and that the situation of the populations shows a tendency towards a decline in their quality of life. Many situations that appear as a source of affectation of rights, either remain the same or worsen. A good example of this can be found in the implementation of the Legislative Act 04 of 2007 (reform of the Political Constitution of 1991) that once again reformed the way in which transfers by the Nation to the regional entities are distributed leading to a loss in the enjoyment of basic rights to tune of between 66.2 billion 76.6 pesos between 2008 and 2016. Due to a previous reform the territorial entities had already lost more than 16.5 billion pesos in the period 2002-2008 for the financing of health-care, running water and basic sanitation.⁴

9. With respect to labor rights, an area where one can see a disimprovement in the working conditions and social security, as well as disturbing increase in unemployment, reaching levels above the regional average. The percentage of economically active individuals affiliated to trade unions tends to decline, alongside the possibility of participating in collective negotiations on working conditions.. This situation flows from the institutional barriers (both legal and administrative) that block the possibility of founding new trade union organizations. As well as the legal barriers, the attacks on trade union affiliates keeps Colombia in the position of the most dangerous country for trade union activity.

10. In relation to healthcare, the Report shows that the obstacles to the effective enjoyment of this right over the last 15 years remain in place. The emphasis on individual insurance has been disastrous for public health, which is clear from the serious situation facing the hospital network; consultations have been reduced to record minimum time, many key medicines are not covered by the health plans. The inequality in the benefits of prepaid medicine in comparison to the contributive regime (EPS) and the subsidized regime (SISBEN) has been maintained.

11. Almost ten years after the last appearance of the Colombian State before the CESCR, primary education is still not free of charge, despite the ICESCR, which obliges the State to make it so, having come into force more than thirty years ago. The recommendation on Agrarian Reform was ignored and on the contrary regulations were approved that benefit the large landowners allowing the legalization of land expropriated through violence and forced displacement reinforcing an agribusiness model of development that goes against the peasant, indigenous and afro economies which explains the growth of rural poverty indices.

4 Cf. Alberto Yepes. ¿Desarrollo para todos? En: Sin democracia, Sin derechos, Quinto año de gobierno de Álvaro Uribe Vélez. (Development for All? In: No Democracy, No rights, Fifth year of the Government of Álvaro Uribe Vélez) In: Bogotá D.C.: Colombian Platform for Human Rights, Democracy and Development, April 2008, pp. 95-96

12. New data on the food and nutritional security show that a good part of the Colombian population suffers from food insecurity and that many pregnant mothers are at risk of anemia and that the children, both male and female, are constantly exposed to the risk of malnutrition. In terms of housing, the high levels of a quantitative and qualitative housing deficit have been maintained as well as the extremely high percentages of families that live in rented accommodation and the continuing forceful evictions, a practice which despite being prohibited under international law is customary in our country.

13. The levels of forced displacement have tended to increase alongside a deepening deterioration in the quality of life of the families in this situation. The State's policy shows no consistency in facing up to the problem of the displaced persons despite the pressure of the Constitutional Court' following Tutela* T-025 of 2004. Forced displacement figures as a source of an integral violation of rights of wide section of the population. For these reasons the consolidation of a society where the exchange values are more important than human pain, the importance of the economic crisis tends to overshadow the sharpening of the humanitarian crisis. Colombia is one of the two countries with the highest number of displaced people in the world, without the government developing coherent actions to overcome this disgraceful situation.

14. The violation of the self-determination of the Indigenous and Afro Peoples also figures as a constant factor. In recent years there has been a reduction in the budgetary allocations for the titling and adjudication of collective territories, whilst official ideologies that do not recognize the ethnic groups as peoples gain ground, preferring to use the term "ethnic minority" under any light a pejorative term with shades of discrimination.

15. Women are the hardest hit by poverty and tend to work more for lower salaries and to be greater affected by unemployment and have less opportunities to work. The female population suffers a greater impairments of their rights due to the armed conflict, in particular sexual violence as a weapon of war. Lesbians, gays, bisexuals and transsexuals have been particularly affected by discrimination on the grounds of gender identity and sexual orientation. Despite having gained a certain visibility in the eyes of public opinion, the social policies continue to deny them their differential rights, whilst at the same time the governmental coalition has blocked important initiatives to obtain equality in patrimonial rights for same sex couples.

16. Regressiveness is the common point on which the articles of this report coincide. Despite the international obligations and the commitments undertaken by the Colombian State before the International Community, the situation of Economic, Social, Cultural Rights has tended to worsen. At the same time there

* Tutela is a writ of protection or amparo of fundamental rights. It is left here in Spanish as it is frequently used in English in reference to the Colombian Judicial System.

has been no adequate follow up to the compliance with the Recommendations of the CESCR. There has been a complete lack of compliance in relation to others, amongst which are:

- The Committee urges the State party to adopt the necessary measures to carry out an authentic agrarian reform.
- The Committee urges the State party to consider ratifying ILO Convention 102 on Social Security (Minimum Norms) and to take measures to ensure a significant increase in social security coverage.
- The Committee reiterates its 1995 recommendation that the status of community mothers be regulated and that they be entitled to a minimum wage.
- It also urges that the State party adopt a policy of “equal work for an equal wage” as laid down by the Covenant and to reduce the wage difference of men and women.
- The Committee urges the State party to try and punish those responsible for the murder of trade union leaders and to afford an adequate compensation to the families of the victims.
- The Committee suggests that the State party launch a campaign to promote the quality of and access to education with the aim of providing, amongst other things, free and obligatory education.
- The Committee strongly recommends that the State take account of its obligations under the Covenant in all aspects of its negotiations with international finance institutions to ensure that the ESCR are not undermined, especially those that apply to marginal or disadvantaged groups.

**NEITHER REDISTRIBUTION, NOR RECOGNITION:
THE STRENGTH OF INEQUALITY.**

17. The question of regresiveness in terms of social rights is understood as a barrier to the possibility of building a society with a more reasonable distribution of resources. Social rights must be based on policies that achieve the reality of social justice based on the recognition of social groups that are victims of a lack of cultural recognition, social invisibility and discriminatory stereotypes such as those that occur with women, indigenous peoples, Afro-descendants, peasant communities and the LGBT population. In the same way, these policies should facilitate the redistribution of social assets that allow the men and women and the organized communities to live with dignity by achieving income redistribu-

5 See Nancy Fraser, "Iustitia Interrupta", Bogotá, Siglo del hombre, Universidad de los Andes, 199

6 Peter Sloterdijk, "En el mismo barco" (In the same boat) Madrid, Siruela, 2006, p. 96ff..

tion measures and a redesign of the division of labor. In short, the social policy should aim to tackle the sources of cultural and economic injustice as two factors that combine and reinforce each other.⁵

This demand cannot be put off any longer in a society, such as Colombia, with extreme inequalities in the distribution of income, land and other productive and financial elements. The lack of wide reaching public policies in relation to work and food, the limitations of housing policy, the individualization of health and social security policies and the reconfiguration of agricultural policy are elements that deepen social injustice instead of challenging it.

19. To this one must add the strengthening of a tributary policy which instead of taking from taxpayers according to their economic means is based on huge exemptions for those sectors which benefit from the concentration of wealth. The design of the public finances is based on a middle class whose payments make up for what the high income sectors don't pay which also strengthens the inequality.

AID AND THE MARKET AS SUBSTITUTES FOR RIGHTS.

20. According to international parameters a social policy based on rights implies carrying out universal actions that cover the population as a whole without denying the differences in gender, ethnic origin, generation and sexual orientation. Nevertheless, from the beginning of the 1990s this aspiration has come under attack from a concept that defends a social policy centered on allocations made by the market. In this way, the construction of what is public, based on social solidarity and citizenry was seriously undermined by the defense of the atomized individual, Robinson Crusoe style, who must satisfy their basic needs in isolation. Since then, social policy has sought to respond to what Peter Sloterdijk called "apartment individualism" where each individual seems to function as a small nomadic island separated from everyone else and in constant movement in order to perpetuate that distance.⁶ If we go from being naked creatures created by a god to citizens that aspire to enjoy the rights they won, in recent years we have seen how the new stage of the metamorphosis consists in changing from citizen to a client who buys services.

21. In synthesis, social policy stops being social; public policy is fractured to operate as a simple regulator of services where everyone saves themselves. In this context, the State intervenes in the market, but not to limit it, but rather to include those who find themselves outside of it. Social policy, like a good shepherd who guides the prodigal son, focuses on returning to the market those who had left the herd.

22. But the story doesn't end with the client-purchaser. Since August 2002 the metamorphosis has tended to increase. Social policy continued on its reformulation in order to take another route: it no longer sought to guide individuals to the market but rather to guide families towards a loyalty to the government. Social policy stopped basing itself on sectoral efforts that articulated a comprehensive strategy of social security and has since then consisted of a decomposition into mere monetary units. We went from school places to amounts of money. From the distribution of land to amounts of money. From social security in health to amounts of money and we may well continue this way.

23. In that order of ideas, one can explain, , the aforementioned reform of transfers which reduced the resources available to the territorial entities to invest in health, education and basic sanitation in order that central government had more resources for the war and more money for monetary subsidies. In the past these resources aimed to ensure the quality of life, later they changed to ensure the results of opinion polls.

THE PARALLEL REPORT AS A TOOL FOR JUSTICE AND DIGNITY.

24. We would like to end this brief presentation by recalling one of its initial points: The Report is the result of the collective work of many people and organizations that dedicated energy and thought to make it possible. In the same way, we believe that this Report can be a tool to strengthen the collective work of the organizations and individuals that seek a way out of the permanent crisis in which we find ourselves. Both the articles of the Report as well as its Conclusions and Recommendations were drawn up with that in mind.

This collective opus is at the service of the collective aspirations.

Colombian Platform for Human Rights, Democracy and Development
July 2009.





Carolina Mateus Ariza. *Ingrato trabajo*. Escuela Nacional Sindical

III PARALLEL REPORT OF CIVIL SOCIETY TO THE COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

25. Colombia has total surface area of 2,078,048 square kilometers and a population of 44 million (51.2% women and 48.8% men); 3.4% of the population defines itself as indigenous and 10.6% as Afro-Colombian.¹ According to official data 27.7% of population suffer Unsatisfied Basic Needs.²

26. The country has suffered an internal armed conflict for more than four decades, which has created a serious humanitarian crisis evidenced in forced internal displacement and number of refugees. It is considered to be the second country in the world with the greatest internally displaced population. It is calculated that some 4 million people have been displaced against their will, which is equivalent to 9% of the national population.³

27. Colombia ranks second in the region in terms of inequality in the distribution of income, with a Gini coefficient of 0.576⁴. Despite the CESCR recommending in 1995 “a modification in the tributary and finance system”⁵ the design of the tributary system is clearly regressive, placing an emphasis on indirect taxation of the lowest income level and the extension of exemptions to the highest income group. The reforms of the transfers regime (legislative act 01 of 2001 and legislative act 011 of 2006) heightened the situation by drastically reducing the amount of resources allocated to health, education and running water. In 2005 this reduction represented 0.6% of GDP, in 2006 1.1% of GDP whilst in 2007 the loss was calculated as being 1.3% of GDP⁶, which shows the regression sustained in the allocation of resources to health, education, basic sanitation and potable water. It is calculated that in the period 2008-2016 between 66.2 and 76.6 billion pesos will cease to be invested in these areas.

28. According to the Political Constitution of Colombia⁷ (article 93) the international human rights instruments ratified by the State form part of the Political Constitution. The Colombian State ratified the International Convention on Economic Social and Cultural Rights and submitted itself to the verification of its obligations by the CESCR. In line with its obligations derived from the

1 Cfr. National Department of Statistics, Dane, National Census, 2005.

2 Ibid.

3 Information taken from the Consultancy for Human Rights and Forced Displacement, CODHES available at CODHES, www.codhes.org/Publicaciones/infocartagena.pdf (accessed march 5th 2008).

4 See, Ricardo Bonilla and Jorge Iván González (coordinators) Bien-estar y macroeconomía 2002-2006; el crecimiento inequitativo no es sostenible. (Welfare and macroeconomy 2002-2006; the inequitable growth is not sustainable) Bogotá, Centro de Investigaciones para el Desarrollo CID, Universidad Nacional de Colombia, Contraloría General de la República 2006 p.37

5 CESCR, Final comments of the Committee on Economic, Social and Cultural Colombia. E/C.12/1995/18, para. 193

6 See, Centro de Investigaciones para el Desarrollo CID, Bien-estar y macroeconomía 2007. Más allá de la retórica. (Welfare and macroeconomy 2007: Beyond the rhetoric) Bogotá: Universidad Nacional de Colombia, CID, 2007, p. 142

7 According to article 93 of the Political Constitution of Colombia “The treaties and international conventions ratified by Congress that recognise human rights and prohibit their limitation in states of exception, prevail in the internal order. The rights and duties consecrated in this Constitution shall be interpreted in conformity with the international treaties on human rights ratified by Colombia.

8 See: V Report of the Republic of Colombia to the Committee on Economic Social and Cultural Rights. Bogotá D.C.: Republic of Colombia, Ministry of Foreign Affairs, December 2007

ICESCR Colombia has presented five reports to the CESCR, the last of them in January 2008 which analyses “*the progress and difficulties in the area both normative, judicial and administrative have been shown to be in compliance with the International Convention on Economic, Social and Cultural Rights in our country.*”⁸ A close reading of it allows one to state that although certain progress is shown, the recommendations of the CESCR have not been fully complied with. On the contrary administrative and legislative actions have been taken against the them, which violate the principle of non regression in compliance of international state obligations.

CHAPTER I

THE RIGHT TO HEALTH AND SOCIAL SECURITY (ARTS. 9 & 12 OF THE ICESCR)

Health is a fundamental human right indispensable for the exercise of other human rights.

Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.⁹

1. CONSECRATION AND CONTENT OF THE RIGHT

29. The Colombian State has ratified the main international treaties that recognize health as a human right¹⁰ which must be fully realized for the whole population without any type of discrimination. In the context of monitoring the Colombian State's obligations under the ICESCR we present a general balance sheet of the implementation of the national health policy structured from 1993 as the General System of Social Security and Health (SGSSS) and the impacts that the development of the same has had on the fulfillment of the right to health of Colombians.

30. Paragraph 1 of article 12 of the ICESCR establishes the state obligation to guarantee “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and paragraph 2 of the same establishes some of the measures that must be adopted to achieve this end, amongst them:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

⁹ CESCR, General Comment No. 14. Application of the International Convention on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (22nd session 2000), U.N. Doc. E/C.12/2000/4 (2000), para. 1

¹⁰ Constitutional jurisprudence in relation to the right to health is, apart from the ICESCR is comprised of, amongst other human rights instruments ratified by Colombia, the following: International Convention on Civil and Political Rights (Article 7); American Convention on Human Rights (Article 26); Additional Protocol to American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Articles 10 & 11); the Convention on the Elimination of all Forms of Discrimination against Women (Articles 11, 12 & 14); Conventions 161, 102 & 155 of the ILO; the Convention on the Rights of the Child, (Articles 23 & 24); Geneva Convention and the Additional Protocol II (Articles 9 & 17) Guiding Principles on Internal Displacement (Principle 18) International Convention on the Elimination of All Forms of Racial Discrimination (Article 5) Convention No. 169 on Indigenous and tribal peoples in Independent Countries (Article 25) and the inter-american convention on the elimination of all forms of discrimination against persons with disabilities

11 CESRC. General Comment No. 14, op. cit., para. 11.

31. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

32. The concept of the "highest attainable standard of health (article 12) implies the complete fulfillment of a human being and the full exercise of the other human rights which refers as much to psycho-physical, environmental and socio-economic conditions as much as resources and public actions through which the State guarantees their integral welfare.

33. In relation to the content of the right, one also has apart from the right to timely and appropriate health care, the right to health, *the principal underlying determinants of health*.¹¹ in reference to access to healthy food and adequate nutrition, adequate housing, potable water, adequate sanitary conditions, safe and healthy working conditions, healthy environment, access to health education and information and the participation of the population in the entire process of adopting decisions on questions related to health at a local national and international level.

34. The General Comments No. 14 of the CESRC sets out that the right to health in all its forms and levels must be guaranteed by the States parties and covers the following *essential and interrelated elements*.

Availability: understood as public health and health-care facilities, goods and services, as well as programs, have to be available in sufficient quantity within the State party.

Accessibility: Understood as health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Acceptability: Understood as all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements.

Quality: As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel with adequate salaries

scientifically approved and unexpired drugs and hospital equipment in good condition, and adequate sanitation.

35. On a constitutional plane, articles 48 and 49, particularly, define the sum of principles that must guide the provision of healthcare in Colombia and the framework for State and individual competences and responsibilities. Article 48 stipulates that all inhabitants of the national territory are entitled to the inalienable right to social security. From this the norm establishes that its provision is obligatory and should be done under the direction, coordination and control of the State, subject to the principles of participation, progress, universality and solidarity in terms laid down by the law.

36. In article 49 the Constitution conceives of health as a public service charged to the State and at the same time guarantees everyone access to the services of promoting, protecting and recovering health. Article 50 guarantees all children under the age of one that are not covered by some form of protection or social security the right to receive free attention in all healthcare institutions that receive State funds and all agricultural workers access to health services, housing and social security with the aim of improving their income and quality of life (article 64).

37. Article 44 points out that rights of children to life, health, social security and a balanced diet are fundamental and take priority over other rights. Article 365 establishes that public services are inherent to the social aim of the State and imposes upon it the duty to ensure an efficient provision to all the inhabitants of the national territory; and 366 imposes on the State the obligation to contribute to the general welfare and improvement in the quality of life of the population and favor the satisfaction of unsatisfied health needs, environmental sanitation and potable water.

38. Another important aspect to analyzing the guarantee of the right to health in Colombia is the definition of the principles of the SGSSS. For the purposes of this balance sheet we take as central points of reference; equity¹², integrity, quality¹³, participation¹⁴, efficiency¹⁵, universality¹⁶, solidarity¹⁷ from a rights based perspective.

2. CESRC RECOMMENDATIONS

In 1995 and 2001¹⁸ the CESRC commented on the situation of the right to health and social security specifically recommending in 2001 take measures to ensure that “to ensure that its system of subsidies does not discriminate against the most disadvantaged and marginalized groups”¹⁹. Also in 2001 it asked the Colombian State to “in its next periodic report to provide detailed information based on

12 Equity: defined as “the practice of mutual aid between persons, generations, economic sectors, regions and the communities in line with the principle from the strongest to the weakest” (Law 100/93, Art. 2 Literal. c)

13 Understood as provision for all events that affect health, the economic means and the condition of the entire population.

14 Participation: defined as the “intervention of the community through the beneficiaries of social security in the organisation, control, management and financing of the systems institutions as a whole.” (Art 2. Literal f.) In the specific case of health there are no important specifications. (Art. 153 Numeral 7)

15 Efficiency: Defined as the best social and economic use of the administrative, technical and financial resources available so that the services be provided in an adequate, timely and sufficient manner. However, the services are not provided according to need, timeliness, sufficiency and quality as this efficiency has been interpreted as the lowering of costs based on a reduction in quality.

16 Universality: Defined as “the guarantee of protection for all persons without any form of discrimination in all stages of life (Law 100/93, Art. 2, Literal b)

17 Solidarity: defined as “the practice of mutual aid between persons, generations, economic sectors, regions and the communities in line with the principle from the strongest to the weakest” (Law 100/93, Art. 2 Literal. c)

18 See Colombian Platform for Human Rights, Democracy and Development. Cuadro comparativo recomendaciones Comité del Pacto 1995-2001 (Comparative table of recommendations to the ICESCR 1995-2001). Available at: <http://www.plataforma-colombiana.org/infornmes.htm>

19 CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights E/C.12/1/Ad.74, para. 47

²⁰ Ibid para 45.

²¹ Ministry of Foreign Affairs. V Report of the Republic of Colombia to the Committee on Economic, Social and Cultural Rights, Bogotá, January 2009.

²² Ibid., para. 27.

comparative data on the problem of abortion in Colombia and the measures, legislative or otherwise, including the review of its present legislation, that it has undertaken to protect women from clandestine and unsafe abortion.²⁰

3. ON THE V PERIODIC OFFICIAL REPORT

40. In general the information contained in the V state report²¹ is biased and does not reflect the reality of the right to health in Colombia. It concentrates on the coverage in insurance, ignoring the low quality of the services received by the population, the lack of adaptation of the public policy to the socio-cultural conditions of the people and the access barriers to public health provisions which continue to be wanting and discriminatory.

41. The reported indicators show national averages that do not allow one see the differences and problems that the system faces on a regional and local level. Nor does it break down the information according to population variables. For example, it refers to a national life expectancy average of 72.2 years²² but makes no mention that in some populations, amongst them, the indigenous communities the mortality rate is very high and the calculated life expectancy is just 48 years. The report is based on many structural indicators and descriptions of indicators with out cross referencing them to levels of implementation or results.

42. The V Report is tendentious in presenting a large volume of norms as progress in the right to health without carrying out an analysis on its implementation or the way in which this has contributed to complying with the obligations of the ICESRC. In fact, as will be seen further on, the continual modifications of the norms of the health system has led to a series of adjustments that hinder the provision of services, the congestion of the institutions, widening the financial intermediation and restricting access to information.

43. Another shortcoming of the V Report is that in its analysis there is no rights based focus that clearly indicates what progress has been made in the enjoyment of the right to health nor the questions pertaining to equity in access, nor the availability and quality of services that are recognized and provided for. On the contrary the report limits itself to describing the neoliberal style policy, deeply assistentialist in nature (based on subsidizing demand) and exclusive (focused on the poorest of the poor) that has been developed by governments over the last two decades. Finally, it is paradoxical that official report shows as a gain the sentences of the Constitutional Court when what they have done is compensate for the deficiencies in the norms and the administration of the SGSSS.

4. SITUATION OF THE RIGHT TO HEALTH

Laws 100 of 1993 and 1122 of 2007 that structure the SGSSS are at odds with the constitutional mandates and the international standards of the right to health, particularly those parts that refer to equity and non discrimination by privileging the logic of the market in the organization and provision of healthcare. The design and implementation of the health system derived from Law 100 and Law 1122 and their regulatory norms have given rise to structural problems in the right to health. In this respect, a study by the Procurator General of the Nation identified four basic points of tension i) a weakness of responsibilities in public health; ii) the setting up of unjustifiable obstacles in access to healthcare iii) violation of the principle of equality in the partially regressive nature of the contributions; and iv) the inequitable differentiation between the contributive and subsidized regimes.²³

45. The recent sentence of the Constitutional Court T-760 of 2008, shows the deep unfairness and inequalities that the current Health System promotes and thus the non compliance with the mandate of the CESRC to ensure that “*its system of subsidies does not discriminate against the most disadvantaged and marginalized groups.*”

Characterization of the General System of Social Security in Health (SGSSS) in Colombia

46. In December 1993, Law 100 was passed structuring a model of healthcare in the following terms²⁴

The individual services are organized under the logic of an insurance market and administrative competition.²⁵

The obligatory nature of insurance understood as the existence of one fund to which all resources flow (Solidarity Guarantee Fund FOSGYA). The demand of a minimum benefits plan (Obligatory Health Plan) and the payment of insurance companies per capita adjusted for risks (Capitation Payment per Unit).

Separation of the insurance and administrative functions in the provision of services and the insistence that the public and private institutions compete in an environment regulated by the market.

47. The model is based on the neoclassical view of assets²⁶ according to which, the private assets are those that imply an individual differentiated benefit and for which people are willing to pay; and the public assets are only those that have high negative or positive externalities, that is, those that affect many people in

²³ Procurator General of the Nation. Centro de Estudios de Derecho, Justicia y Sociedad (DeJusticia). Estudio del derecho a la salud en la perspectiva de los Derechos Humanos (Study on the right to health from a human rights perspective). Bogotá: 2008, p. 57.

²⁴ Hernández, Mario. El derecho a la salud en Colombia: obstáculos para su realización. (The right to health in Colombia: obstacles to its realization) In: La salud está grave: una visión desde los derechos humanos (Health is ill: a human rights vision). Platform for Human Rights, Democracy and Development, Bogotá: 2000, p. 144.

²⁵ Enthoven, Alain. Managed Competition of Alternative Delivery Systems. J. Health Politics, Policy & Law. 1988 (13) Pp: 305-321.

²⁶ Hernández, Mario. Op. cit., p. 144.

- 27 Banco Mundial. El financiamiento de los servicios de salud en los países en desarrollo. Una agenda para la reforma. (The financing of health services in developing countries. An agenda for reform) Bol. Of. Sanit. Panam. 1997. 103(6). Pp: 695-709.
- 28 Paredes, Natalia. A cinco años de la Reforma del sistema de salud colombiano, ¿Qué ha pasado con el derecho a la salud?(Five years on from the reform of the health system in Colombia) In: La salud está grave: Una visión desde los derechos humanos (Health is ill: a vision from a human rights perspective). Colombian Platform for Human Rights, Democracy and Development. Bogotá: 2000, p. 168
- 29 Health Promotion Companies of the Subsidised Regime and Health Promotion Companies of the Contributive Regime.
- 30 Health Provision Institutions and Social Companies of the State.
31. Obligatory Health Plan of the Subsidised Regime and Obligatory Health Plan in the Contributive Regime.
- 32 Barón, Gilberto. Cuentas de Salud de Colombia 1993-2003, el Gasto Nacional en Salud y su financiamiento. Ministerio de la Protección Social (Health budgets in Colombia 1993-2003, national health expenditure and its financing) National Department of Planning. Bogotá. 2007.
- 33 Procurator General op. cit. p.71
34. The lack of quality in the health system has been reflected in some surveys on satisfaction in health services. The negative image of the companies and institutions that provide health services has increased. Whilst in 2000 only 10.1% of sick people did not attend health services alleging poor quality, in 2005 this percentage increased to 22.4%. See Flórez, Carmen y Victoria Soto. Evolución de la equidad en el acceso a los servicios de salud de la población colombiana. (Evolution of equity in access to health services by the Colombian population) In: Varios autores. Avances y desafíos de la equidad en el sistema de salud colombiano (Advances and progress in the equity of the Colombian health system). Departamento Nacional de Planeación. Fundación Corona; Universidad de los Andes y Universidad del Rosario. Bogotá: 2007, p. 21.

a negative or positive sense and so must be financed by the public resources as nobody would be willing to pay for them.²⁷

48. Based on this view of economic theory, the SGSSS integrates in one system all the institutions and interventions of the sector whose guiding mechanism for financing, administering and providing services is **affiliation to a health insurance plan**.²⁸ With this logic the administrative functions charged to the EPS-S and EPS-C²⁹ are separated from the provision of services by the IPS and ESE³⁰ drawing up individual differential benefit plans (POS-S and POS-C)³¹ and basic attention plans in public health (PAB now called Collective Intervention Plans) amongst others. This logic generates an interest for the market in individual treatment of illnesses and a State weakened in its ability to deal with collective health problems.

49. The preponderance of the logic of the market in the health system can be verified as one observes the behaviour of national expenditure in the area. In one study³² of health expenditure in the first years of Law 100 it was shown that the increase in general resources for health, which was 6.2% of GDP, increased to 9% of GDP in 2000 and maintained itself at that level for 2001 and 2002, and was in the region of 7.8% in 2003. That is to say an increase in resources of around 50%. However, this increase has not led to an improvement in the quality nor the universalization of the service and nor has it reduced the high level of inequity.

50. The health system is conceived of in the terms of the market and the cost of the private administration of resources of the system is as high as 30%³³ with the private running costs being much higher than the public ones and the relative coverage is lower. This level of profit contrasts with the percentage of budget items in “investment” of the private sector which are around 0.5%. In short, the increase in public spending on health does not translate into satisfying users, but rather the enrichment of private health providers.

51. With the logic of maximizing the profits of the private companies that dominate the health system they fall into practices that seriously harm the quality of health; reduction in medical personnel, in laboratories and medicines; avoidance of diagnoses that require treatment of illnesses or the prescription of cheaper treatments even where they are not convenient for the patients etc.³⁴ (See, § 82-83)

Evidence of the violation of the right to health in Colombia)

a) *On the principle of Access.*

This principle covers the indispensable guarantees for the enjoyment of the right to health, avoiding all factors of social material or physical discrimination. This

implies that the SGSSS allows everyone in the entire national territory can count on and access health establishments, goods and services.

Insurance coverage

53. By insurance we refer to the population with health insurance, which is offered through two regimes; the contributive and subsidized regimes. The contributive regime is geared towards those who can pay for it and must affiliate to the Health Promotion Entities (EPS) and the subsidized regime designed for those who cannot pay and whose access is dependent upon a subsidy on demand.³⁵

One of the main reasons given for the promulgation of Law 100 of 1993 was that the SGSSS would achieve universal coverage by 2001. Now, fifteen years after the law was passed and with the recent reform (Law 1122 of 2007) the system has not achieved total coverage. Not all the population is affiliated to one or other of the regimes and some of those who have done so are not guaranteed timely access and effective use and quality of services.³⁶ In relation to this point the official figures are unclear: they indicate an expansion in global coverage which went from 39.6% in 1993 to 79.27% in 2007, which is equivalent to an increase of 36% in respect of the contributive regime and 43% in respect of the subsidized regime. However, a breakdown of these figures shows inequity in access.

55. In terms of the insurance of the public sector, with the entry into force of Law 100 of 1993 the Institute of Social Insurance (ISS) was condemned to compete on unequal terms with the private health entities. Due to what was called *adverse or biased selection* the ISS and its ESEs dealt with the higher cost patients.³⁷ Despite this situation the Capitation Payment per Unit (UPC) did not take into account the deviation towards high cost illnesses that the profile of the users of this institute represented.³⁸ The EPS and the ISS had to deal with, for various years, an additional pension burden of 1.2 billion pesos and a high public debt of more than 1.4 billion pesos.³⁹ In the last few years it had serious problems amongst them the restrictions placed upon it by its own institutional framework⁴⁰ to affiliate new users that had entered the labor market and had a low mortality rate⁴¹ and in terms of income it was the entity most affected by the demands of FOSGYA for compensation in the accounts for attending to users charged to the solidarity sub account of the subsidized regime.⁴²

56. In the context of this situation and faced with a level of indebtedness close to 284%, the National Government approved the Conpes Document 3456 in January 2007 recommending that the public EPS of the ISS should be placed in the hands of Family Allowance Funds (with state participation). As a result the EPS of the ISS was liquidated, the Health Superintendent's Office dictated resolution 028 of 2007 through which it cancelled its operational licence; and

35 See: Paredes Hernández, Natalia. Op. cit., p. 169

36 Movimiento Nacional por la Salud y la Seguridad Social. Balance de ley 100 (Balance sheet of Law 100) Bogotá: 2006, p. 51

37 This situation is recognised by the National Government in CONPES Document 3456, January 2007

38 CONPES Document 3456 15th January 2007, p. 12

39 Ibid., p. 15

40. For example, by way of Resolution 1416 of 1998 its operational certificate was withdrawn until 2001

41 CONPES Document 3456 15th January 2007, p. 7

42 Ibid., p. 14

43 Editorial of El Tiempo. 15th July 2007. The Comptroller General came out with a similar position Press Bulletin 12th July 2007. Available at: www.contraloriagen.gov.co

44 The SISBEN is a management tool to evaluate poverty and has four components. The first is total rationality of focalisation which indicates that only the very poorest should be selected as beneficiaries of the insurance subsidies. The second component is a survey which makes it possible to collect the information. The third is a poverty indicator; a statistical procedure to quantify the level of poverty of the family, classify the poor and order them on a scale of zero to one hundred, zero being the extreme limit of poverty. The fourth component is the cut off point, a decision making procedure that separates those who deserve the subsidy from those who do not taking into account the level of poverty according to the indicator and the availability of funds.

the Ministry for Social Protection in Decree 055 of 2007 issued the rules for the transfer of the affiliates to the new EPS.

57. It is lamentable that the measures required to keep the EPS-ISS functioning were rejected systematically by the National Government and the creation of a new entity made up of private family allowance funds leaves one with the feeling of clear favoritism towards a health system made to measure by the private sector.⁴³

Affiliation and payment of health insurance

58. Affiliation to the contributive regime is made by way of a monthly standardized obligatory payment of 12.5% regardless of the type of contract one has. The formula generates inequalities taking into account the type of contract, given that with work contracts 4% is paid by the worker and the rest is paid by the company, whilst independent workers must pay the entire percentage. It is worthy of attention the fact that independent contributors pay the same regardless of whether they earn a minimum monthly wage or three, 15 or 20 minimum wages which also reduces the real income of thousands of workers.

59. That is why the standard contribution rate is unfair as it doesn't take into account the real income earned. These differences are strongly reflected in the social and economic reality of the population where the high rate of short-term work translates into barriers and loss of income to an important percentage of people.

60. Add to this the coming into force of the Single Affiliation Form (PILA) that links payment of health insurance to pensions. The employees, be they temporary or if they only earn a minimum salary without any benefits must spend 28.5% of their income on social security: health (12.5%) and pension (16.5%). This has led workers, particularly those over the age of 50 to withdraw from the contributive system, given that they can't justify paying 16.5% of their income on a pension when they have no chance of reaching the minimum level of contributions required to obtain a pension.

61. In the case of the subsidized regime, the affiliation is dependent upon the allocation of a state subsidy to the poor who have no means of payment. This mechanism works like a subsidy for demand to widen and strengthen the market and guarantee the success of private capital invested in the sector. The selection of the beneficiaries is made by applying the survey of potential beneficiaries of the social programs called SISBEN⁴⁴, which are deeply flawed as they are based on Quality of Life Indicators and not on poverty levels.

62. Whilst the official figures on insurance showed a significant increase in the subsidized regime by 2004, this is in part due to the implementation of Agreement 267 of the same year, which allowed the inclusion of new affiliates by way of partial subsidies. These new places were awarded to residents in urban areas, classified as level 3 of the SISBEN, who were not affiliated to the SGSSS. This led to the affiliation of a significant sector of the population with a benefit plan inferior to that of affiliates from level 1 and 2. That is to say, coverage was increased, but the inequality in relation to health provisions and its quality were made worse.

63. In any case the SGSSS mainly protects the Insurance companies, giving a maximum term of three months for basic health care to the unemployed populace that does not pay its insurance on time. Once this period has lapsed the unemployed must begin the process to be included in the subsidized regime. However, they almost never manage to affiliate to this regime as their SISBEN level is too high.

Access to and use of health services.

64. This scheme of healthcare has established a contractual relationship between the user and the insurer, an organization with services fragmented by the logic of the market and not the needs of the people⁴⁵ and consequently there are multiple difficulties in accessing timely and quality care. This is one of the reasons why people continually seek recourse in judicial actions such as *tutelas*⁴⁶ rights of petition and informal petitions which although they need not be done through a lawyer, in practice they imply the availability of specialized advice in order to proceed.⁴⁷ According to the calculations of *Así Vamos en Salud*⁴⁸ the administrative barriers, in other words, the different bureaucratic procedures demanded by the EPS for healthcare, the bad service and the time lag between the request, the medical appointment and being attended to, count for 27% of the reasons why people do not access healthcare services.⁴⁹

65. Another significant barrier to access and use health services and programs is economic in nature. Studies have shown that the lack of money is the main reason why uninsured people do not use the services and the second reason why people affiliated to one or other of the two regimes.⁵⁰ This is because apart from the monthly payment to accede to each of the health services one is also required to make a co-payment or moderating quotas⁵¹ that range from US \$2 to US \$ 10 (\$1,900 and \$17,000).

66. Added to this, there are the differences between the Obligatory Health Plans depending on the insurance regime one belongs to. The difference in the value of the UPC⁵² in the subsidized and contributive regime has fluctuated between

45 Movimiento Nacional por la Salud y la Seguridad Social. Op. Cit., pp. 51-52.

46 In 2005 a total of 224,270 tutelas were lodged, 13% more than 2004 and 160% more than in 1999. The cumulative figure for tutelas registered in the country between 1992 and 2005 was 1,067,070. Right to life (36.5%), petition (36.4%) and health (35.9%) – taken together or separately- were the most commonly invoked reasons for tutelas in the period 2002-2005. The administrative procedures to which patients are subjected, the explicit barriers to access and the lack of control or oversight by the relevant organisms has turned the tutela into a "bureaucratic prerequisite" to demand the right to health and the most basic medical services. From 1999 until 2005 the requests by this method rose by nearly 280%, whilst the general increase in tutelas was 160% in the same period. In 2005 more than a third of all tutelas lodged concerned the right to health (36.12%). The 81.017 tutelas lodged to Project the right to health were brought about because of refusal of services, non furnishing of medicines, carrying out of surgery, lack of opportunity to get medical appointments with specialists due to misinterpretations of the Handbook on Procedures and Interventions of the Obligatory Health Plan, partial authorizations, negligence of the EPS, furnishing of incomplete benefit plans and a lack of particular specialists in some regions, amongst others. See Public Defenders Office. La tutela y el derecho a la salud. Periodo 2003-2005 (The tutela and the right to health. 2003-2005). Bogotá: 2007, pp. 25

47 The Colombian Association to demand the right to health, Salud al Derecho, has carried out a direct advisory service, follow up and systematisation of the cases of violations of the right to health. Of a sample of 458 cases assessed between 2006-2007, it established that the tutelas represented 30.34% of the cases; rights of petition corresponded to 28% and in 22.7% of the cases the people made telephone calls to begin procedures to guarantee their access to the services.

48 Monitoring of health sector in Colombia, <http://www.asivamosensalud.org>

49 Así vamos en salud, Comparative monitoring indicators for Bogotá, Barranquilla, Cali, Cartagena y Medellín: 2008. Available at: www.asivamosensalud.org

50 Currea Lugo, Victor. El derecho a la salud en Colombia: Diez años de frustraciones. Bogotá. 2004. P: 208.

51 The co-payments and moderating quotas in the SGSSS arose from the idea that the users make an irrational use of the services and so there is a need to create economic filters.

52. Capitation Payment Unit, value which the Insurance companies receive for each affiliate.

53 Constitutional Court. Sentences T-685/1998, T-60/99, T-398/98 of 1999, amongst others.

54 Faced with the evident unfairness in access to the provision of health services, the Constitutional Court emitted Sentence 760 of 2008, with which it partially corrected the inequalities derived from the existence of five different obligatory health plans created according to the economic means of the patients. The sentence proceeds to recognise that it is part of the right to health guarantees for the timely, efficient access to quality medical appointments, procedures, treatments and medicines, for which it imposes on the authorities the task of reforming the obligatory health plans and establishing a common benefit plan for the contributive and subsidised regime that respects the right to equality. However, this judicial mandate cannot disguise the structural deficiencies in the current health system and the absence of a public policy that fully guarantees health as a human right.

55 "Medical care in case of illness as well as prevention, treatment and control of illnesses are central characteristics of the right to enjoy the highest attainable level of health. These characteristics are dependent on access to medicines. So, access to medicine is an indispensable part of the right to enjoy the highest possible level of health: Paul Hunt y Rajat Khosla. El derecho humano a los medicamentos. (the human right to medicines In: Sur. Revista internacional de derechos humanos. Year 5. No. 8. June 2008, p. 102.

56 El acceso a medicamentos en Colombia. (Access to medicines in Colombia) Xerox. IFARMA – CINEP, September 2008

55% and 56% in the last few years, which has meant a smaller benefit plan for one group of the population (subsidized regime) and a wider plan which another group has access to (contributive plan).

67. The population identified by the system as “high cost patients” are subjected to risk selection by the insurance companies, which determines their access to the benefit plan. In any case they demand more than three years affiliation to the EPS for a whole package of catastrophic illnesses, in contravention of the Constitutional Court’s sentences which have made clear that the patients with catastrophic illnesses cannot be denied the required services for their treatment.⁵³

68. These situations have become socio-economic discriminations that restrict access and use of services in contravention of the recommendations of the CESRC. In relation to this, the Comptroller General of the Nation has warned about the exclusive and less than equitable care brought about by the existence of different plans based on the stratification of the population according to their means, violating the right to equality recognized in the Political Constitution and the very Law 100.⁵⁴

Access to medicines

69. Access to medicines⁵⁵ has suffered from a process of deterioration in the last four years as a consequence of an increase in costs. In 2003 Colombians spent approximately 1,500 million dollars on medicines and now they spend around 2,300 million dollars, even though consumption has remained static⁵⁶ that is to say the prices have risen considerably. This is not only because each medicine has experienced increases in its commercial value but also because there are highly efficient pressures that displace consumption towards new more profitable and more expensive products.

70. When the medicines have to be acquired directly with the individuals’ and the families’ own resources the prices and the tendency towards more expensive products reduce the possibility of the poor accessing them. In this way it affects the mandate, according to which the medicines should be economically accessible to all, including people in circumstances of poverty. The rise in the prices of medicines translates into a decreased access by the population in at least two situations.

If the medicines are included in one of the benefit plans of the social security system, the patients face administrative barriers that impede their access, such as the authorizations and the lack of stock or other subtle or explicit practices that force them to seek recourse in exceptional tutela actions and recovery. All

of this makes it so that people prefer to obtain medicines with their own money or not use them⁵⁷

71. This scheme also has the advantage that insurance companies transfer the cost to FOSGYA which has two perverse effects; on the one hand they maximize their income from displacing the financial responsibility to FOSGYA, but on the other hand it is a sort of alliance between big business and the insurance companies which has become evident where the insurance companies displace consumption towards products convenient to both: new very expensive medicines with generous profit margins and high profits. So the medicines do not respond to health needs but rather commercial expectations intervene in their formulation and use.

72. Health personnel are subject to intense commercial campaigns whose effectiveness is clearly reflected in the numbers⁵⁸. These strategies directly affect the principle of access to reliable information given that they interfere with the opinion of the health professionals and the patients in terms of the quality of the medicines and they impact on the choices as already explained, which generally translates into higher costs.

73. There are two further elements that should be taken into account. The first is the change in the prices of medicines in 2004 that went from having a relative control and supervision to a scheme of wide ranging freedom in which the reduced monitoring and supervisory mechanisms are inoperative.

74. The other element which has a huge impact has been the growing protection of intellectual property rights for medicines. Although Colombia, like the rest of the countries in the Andean Community of Nations CAN has applied patents since 1993, this protection has experienced a dizzying strengthening since 2002. That year, in exchange for the extension of trade preferences, Colombia gave the controversial protection to test results whose effect on the prices of medicines has been truly relevant.⁵⁹ The impact of the protection is clear. Given that it creates a temporal monopoly, the price of the product is greater than it would otherwise be in conditions of competition, in other words, when faced with the existence of generic medicines.

One of the best known examples concerns the case of the combination Lopinavir-Ritonavir, needed by HIV patients and protected by a patent. The product costs a lot more in Colombia than in neighboring countries, especially in those where there is competition with generic products. The organizations of patients that require this type of medicine have requested an obligatory license that reduces the price to a competitive level or allows the entry of generics. Up till the moment no positive response has been received. However, it is urgent that the license be

⁵⁷ The Survey on Quality of Life carried out in Bogotá in 2007 showed that in general, patients only receive 63% of the medicines prescribed, 20.9% received incomplete quantity and 16% didn't receive any of the prescribed medicines.

⁵⁸ In the same survey, 63.9% of the prescribed medicines were not included in the POS

⁵⁹ Data gathered by the Alliance of NGOs grouped together in Misión Salud, Ifarma and companies such as Pharmaketing, proved that the prices in medicines protected by Decree 2085 of 2002 were higher than in neighbouring countries and even those of wealthier countries like Canada and the USA.

60 El Tiempo. Pacientes rajan a las EPS (patients slate the EPS). Bogotá: June 26th 2003, pp. 1-4.

61 Ibid.

62 El Tiempo. 101 minutos para una Urgencia encuesta de satisfacción de usuarios (101 minutes for an emergency. Users satisfaction survey. Bogotá: June 5th 2005, pp: 1-14 -1-15.

63 Revista Semana. Salud en Colombia pide remedios. (Health in Colombia requires a remedy) Available at: http://www.semana.com/wf_InfoArticulo.aspx?IdArt=111051. Bogotá: April 17th 2008.

granted, as the high costs of these medicines affects the access of a particularly vulnerable group of patients such as HIV carriers and also patients with other catastrophic illnesses.

The Colombian State needs to meet its obligation to protect public health using all means at hand to control and regulate access to medicines, including price control and the use of different schemes that promote the use of generics and the importation of generics or of cheaper brands. At the same time it needs to avoid signing free trade agreements that increase the intellectual property rights, including the Free Trade Agreement with the United States and the European Union which would seriously affect the national production of medicines and increase the monopoly of them by multinationals.

b) On the concept of Acceptability and Quality

75. On the guarantee of this principle in the SGSSS, the Public Defenders' Office carried out the largest survey ever in the sector⁶⁰ showing the low quality of services offered by the insurance companies, which are below international standards in healthcare. A second survey of the Public Defenders Office carried out in 16 cities between September 2004 and January 2005 revealed deficiencies in the insurance schemes that did not achieve universal coverage. The index of satisfaction of users was 67.69 points *"the services haven't improved", "there is indiscipline and a lack of order in the general health system", "an immediate cardiovascular surgery is only authorized after twelve months"*⁶¹ *the insurance companies continue to not supply medicines to patients that suffer high cost illnesses such as HIV-AIDS, kidney and cardiovascular ailments, cancer and mental health* *"the waiting time in emergency services is over 101 minutes"*⁶²

76. Even the studies carried out by the Ministry for Social Protection recognize the low quality of the health services provided in Colombia; according to the report of the entity one in every five patients attended receive inadequate treatment:

*"Having analyzed 2,287 medical histories, the Ministry recognizes that 411 patients (almost one in five) have suffered infections whilst in hospitals, falls from stretchers, back or waist ulcers from remaining lying down in the same position, wrong diagnoses or unnecessary surgery. These findings show that Colombia has a higher index of mistakes than figures for other countries which varies from 10 to 15 percent."*⁶³

77. In the area of supply of medicines the levels of satisfaction are also low. In effect, in the contributive regime it barely reaches 54%, whilst 25% of patients in the same regime indicate that no medicines were supplied. In the subsidized regime 44% of the users expressed that all the required medicines were supplied

whilst 32% indicate that they didn't receive any medicines. The most critical case is of those insured by family tie, of which 97% expressed that they had no possibility of obtaining the required medicines.⁶⁴

78. As regards the quality control of the medicines, in the SGSSS there is a Pharmo vigilance Network. However, it hasn't been operative and neither has it produced results. It makes no sense to invest thousands of millions of dollars in acquiring medicines when many of them are low quality. Moreover, there is a market for medicine bottles that get into the hands of illegal networks allowing them to rebottle products that look real but are in fact, fakes.⁶⁵

79. At the same time, the Global Strategy on World Health, Innovation and Intellectual Property in May by the General Assembly of the WHO must be adopted. It endorsed the conclusion the WHO had arrived at after five years of research: "The current incentive model for sanitary innovation, based on patents and the perspective of high monopoly prices is not useful to the developing countries". For the same reason the countries agreed to foment research in medicines and other products to meet the needs of developing countries and improve access to the same.

80. It should be pointed out that the low levels of patient satisfaction and the low quality of care are a consequence of the restrictions, based on strictly financial criteria, that the EPS and IPS place on health professionals. This is shown by a survey carried out by the Public Defenders Office of 1,544 doctors in 310 municipalities (representative sample of a total of 41,522 professionals) which is conclusive as regards the way in which the profit motive affects the effective access to health services and the supply of medicines to the patients:

"their [the doctors] greatest unconformities are the limitations imposed by the insurance and health management models(...) According to the report [of the Public Defender] these impede the application of academic protocols prioritizing keeping expenses down."⁶⁶

"Where I work everything is calculated in percentages. The ceiling on prescriptions is 65 per cent, i.e. of 20 consultations we can prescribe for around 12 or 13 patients and the same applies to the laboratories, referrals, radiology and diagnostic images" says one of the doctors. Even though they think that they require at least half an hour to evaluate and make a proper diagnosis in a consultation, the schedules that are organized for them only allow them spend 18 minutes on a person, in the best of cases, most of which is spent filling out forms and bills.

It is worrying that in the Public Defender's survey the doctors also referred to routine tests such as blood sugar level, cytology and renal tests. Likewise, com-

64 Universidad del Rosario. La viabilidad del sistema de salud: qué dicen los estudios (The viability of the health system; what the studies say.). Fundación Corona; Universidad del Rosario. Bogotá: 2006, p. 18

65 Rincón Perfetti, G. **G&M de Colombia Lawyers-Asociación Líderes en Acción**. Bogotá. 2008.

66 El Tiempo. Médicos denuncian que EPS los intimidan para que no pasen toques de fórmulas y exámenes (Doctors denounce that the EPS intimidate them not to exceed ceiling limits on formulations and exams). Available at <http://www.gonzalodiaz.net/1100/ley100/limitar.shtml> Bogotá: November 24th 2007

⁶⁷ Ibid.

mon medicines such as analgesics and antibiotics were also limited. According to these professionals there are strict controls on referrals to specialists in cardiology, neurology, urology, internal medicine, rheumatology, ophthalmology, orthopedics amongst others and they even put up obstacles to incapacity certifications. Most of the time (57.8%) these restrictions are communicated verbally by the EPS and IPS to the doctors (which also includes, intimidation, threats of firing, changes in timetable and reduction in salary), by memoranda or notes (19.7%) and even by blocking the system i.e. this does not allow prescriptions for certain types of medicine or procedures (...)

In relation to consultation times, the Public Defenders' report points out that whilst article 97 of resolution 5261 of 1994 indicates that the time spent should not be less than 20 minutes in some parts of the country it is 15 minutes. 46% of the doctors expressed that the consultation time decreases because the entities assign additional appointments of the so called 'priority' cases, for which time is taken from other patients.⁶⁷

c) On the principle of access

81. The first relevant question that arises is the concentration of professionals in urban areas and their lack of presence in rural areas. A clear example of this is the number of professionals to be found in the Capital District compared to the Orinoquia or Amazon region (south of the country). Whilst in the first case there are 4.94 professionals for every 100,000 inhabitants in the second case there are only 2.14 for every 100,000 inhabitants.

82. On the other hand the dismantling of the public hospital network is also worrying. More the 80% of the installed capacity, mainly in the provinces, has been closed or restructured because they are not financially viable (Law 344 of 1996) according to the government. The old public hospitals had to turn themselves into State Social Companies (ESE) in order to enter into and compete in the services market and have sufficient resources via supply as they had ceased to receive resources for their operation and had to begin to sustain themselves through billing and sale of services.

83. Despite the three restructuring processes of the 420 public hospitals undertaken in the last 15 years, these continue to have an extremely high debt portfolio and the National Government has tended to promote a model of ceding the Public Health and Service Providers to private operators. In 2009 this is projected for more than 200 ESE arguing the need to guarantee their sustainability in terms of quality and long term efficiency. It is clear that in these restructuring processes there is a concern for financial savings at the expense of the principal role the

public hospital network has in providing access to and provision of health services to the populace. This is very worrying when one takes into account that this network has the greatest regional coverage.

84. Another important indicator of accessibility has to do with health expenditure. Between 1993 and 2006 public expenditure on health rose by 6.3% to approximately 8% of GDP. However, this increase is not reflected in a greater supply as, according to the Procurator General of the Nation, 30% of these resources go to the administration of the insurance companies.⁶⁸

d) On the principle of Adaptability

85. In the SGSSS there are inequities that are expressed through the exclusion of specific groups as the model is homogenous treating all people as if they were white, heterosexual urban males ignoring the huge diversity of the country.

The displaced population⁶⁹

86. In Colombia the forcibly displaced population reaches the figure of more than 4,300,000⁷⁰ people. It is calculated that amongst the displaced population minors under the age of twelve have a mortality rate of 3.32 per 1,000.⁷¹ Given the precarious conditions of their surroundings, there is a higher rate of infector-contagious illnesses such as acute respiratory infection – ARI – and acute diarrheic illness – ADI- particularly amongst children under the age of five. Of every 100 minors between 1 and 4 with a vaccine certificate only two have been fully vaccinated. Likewise of every 100 displaced adolescents 35 are already mothers, which is double the national average.⁷²

87. The access and coverage of health insurance for the displaced population is less than that of the receiving population: approximately 2 of every 10 of these people have no type of document affiliating them to the system and worse still is the institutional discrimination in health care for this population. According to the first report of the Monitoring Commission on public policy on forced displacement, only 9.6% of the population registered has been affiliated to some health insurance regime in the framework of humanitarian emergency aid.⁷³

88. In the health institutions there are important obstacles to accessing and using services by the displaced population; deficiencies in quality of care; problems in getting insurance; limitations on recognizing their condition as a displaced person, high cost for consultations and medicines for the users as well as discrimination, under valuation and a lack of participatory spaces are some of the problems mentioned by the communities.⁷⁴

68 Procurator General of the Nation and De Justicia, Op. Cit, p. 71

69 Naranjo, Claudia. El desplazamiento forzado en Colombia: una crisis que no se supera. (Forced displacement in Colombia: a crisis which has not been overcome) Research Group on Violence and Health. Interfaculty Doctorate in Public Health. Universidad Nacional de Colombia. 2008. Bogotá- Colombia

70 CODHES Information System. 2009

71 World Food Programme - Colombia. 2005

72 OPS- Universidad de Antioquia. *Series de Salud y Desplazamiento*, modulo No. 1. Medellín. 2003. Monitoring Commission on public policy on force displacement. First report of the constitutional report, January 31st, http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52

73 Monitoring Commission on public policy on forced displacement. First report of the constitutional report, January 31st, http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52

74 Ibid

75 Constitutional Court, Auto No. 008 of 2009, persistence of the State of Matters Unconstitutional declared by Sentence T-025 2004, Magistrate. Manuel José Cepeda Espinosa, para..23.

89. Another aspect is that of the mental health related problems. In the majority of cases, given the trauma of being displaced and the conditions which arise from it, this creates physical and emotional instability. Whilst in some cases they manage to obtain professional help the medicines required for their treatment are not covered by the Obligatory Health Plan. Also there is an evident lack of continuity in these programs which are generally linked to immediate and short term projects and not structural policies of the health institutions.

90. The situation is so dramatic that five years after the Constitutional Court declared the State of Matters Unconstitutional in relation to the situation of the displaced this situation persists and has obliged the Court to make new pronouncements. Monitoring Commission on public policy on forced displacement highlighted that

“in terms of the effective enjoyment of the right to health, there continued to be a lack of considerable efforts, for example in vaccination (...) despite almost 80% of the registered displaced persons are affiliated to the social security health system 16% of the minors have not received all the vaccines required for the age.”⁷⁵

The Right of Women To Decide

91. It is calculated that in Colombia 44.5% of pregnant adolescents have had abortions. Of every 100 women who have abortions, 29% suffer some complication and only 18% arrive at a medical centre to receive care. For every 100 pregnancies in minors under the age of 19 there are 36 abortions, whilst the average of all women is 12 abortions per 100 pregnancies.

92. Traditionally the debate on abortions in Colombia has revolved around moral arguments. In 2005 following a constitutional law suit lodged by a Colombian lawyer against the law that penalized abortion the Constitutional Court began to study the situation as a national public health problem and not a moral problem.

93. To begin with, the clandestine procedures impose a future high economic cost on the health system. In the countries where abortion is penalized and women are forced to seek abortions in secret there is a greater probability that they will suffer psychological traumas. Different studies show that the negative psychological effects for women are reduced when the abortion is legal, as there is good information and adequate medical services available.

94. Considering abortion to be a public health problem the Constitutional Court decided in Sentence C-355 10th of May 2006 that no crime is committed when the woman decides to interrupt the pregnancy in the following cases: (i) “when proceeding with the pregnancy constitutes a danger to the life or health of the

woman as certified by a doctor”; (ii) “when there is serious deformation of the fetus that makes life unviable, as certified by a doctor”; (iii) “ when the pregnancy is the result of a acts, duly reported, that constitute non consensual carnal knowledge or sexual act, abuse, non consensual artificial insemination or transfer of a fertile ovum or incest”.

95. The regulation of this sentence (Decree 4444 13th of December 2006) drawn up by the Ministry for Social Protection established a legal structure to guarantee the rights recognized by the Constitutional Court and ensure a real impact on the lives of women. This norm sets down clear rules for the complete implementation of the decision and imposes rights and obligations on both the doctors and the women who seek the service of voluntary interruption of their pregnancy (VIP). Nevertheless, the normative ignorance on the part of the healthcare institutions and public and judicial functionaries constantly causes unjustified delays or denial of the VIP service. Also the Technical Norm for attending to a VIP paid no heed to what the Constitutional Court said given that in its provisions it establishes that in the case of women under the age of fourteen years parents or guardians’ consent will be required which is a setback in the rights of women recognized in sentence C-355 2006.

96. Despite all the abuse by doctors, institutions and/or public functionaries it is inconceivable that there has yet to be the first disciplinary or administrative sanction imposed on the entities or judges that refuse to provide the VIP service under the three aforementioned circumstances or refuse writs for the service when it is requested.

The health of the workers

97. The V Report of the Colombian State to the CESCR does not cover the component of occupational health. It is clear that the right to health is interdependent on the rights to work and social security and consequently the changes in working practices that the country has suffered in the decade of the nineties and this current decade represent a deterioration that negatively affects a significant group of citizens. Thus, the right to health in the workplace means dignifying of work, the universalization of social security and the guarantee of a healthy environment.

98. The National Survey on Working Conditions and Health⁷⁶ showed the inequities in the protection of occupational health. The smaller companies, which are the majority of those in the country, have a low level of implementation of occupational health programs and a minimum advice from the Professional Hazards Administrators. The medium and large companies not only have greater resources but they also receive preferential treatment by these bodies.

76 Ministry for Social Protection, Encuesta Nacional de condiciones de salud y trabajo, (National Survey on health and working conditions) 2007

77 Universidad del Rosario. Facultad de economía. Pérdidas y ganancias de las reformas en salud (Profits and loss of the health reforms). Fascículo 5. Tomo , p. 9. Available at: www.urosario.edu.co/investigación
78 *Ibid.*, p. 7

99. There are also inequities to be found according to the sector; agricultural workers and agriculture in general has an almost total lack of health protection in working activities. There are not sufficient programs that guarantee the right to health for female peasants despite the Colombian State approving Convention 184 of the International Labor Organization on security and health in agriculture.

100. Official statistics on accident rates show an increase in frequency and severity from 1995 onwards. Studies have shown that this phenomenon is due to the low coverage of occupational health programs and is related to the increase in sub contracting and casualization in the workplace. At the same time there continues to be a sub diagnosis and a under reporting of professional illnesses. This low visibility has implications both in carelessness in prevention as in the denial of economic and healthcare benefits.

101. The lack of guarantees in the right to health in the workplace is even more dramatic when one considers that the available data corresponds to the affiliates of the General System of Professional Risks which is about six million people according to the data of the insurance association (FASECOLDA). That means barely one in three workers belongs to this system, which doesn't have any mechanisms or policies to guarantee universal coverage nor any solidarity mechanisms. The so called informal sector is lacking in any policies, strategies or programs that facilitate the protection of health in the workplace. This situation affects, above all, women and the child population linked to the labor problem and the survival strategies of groups who see their survival threatened in the context of the armed conflict and economic precariousness.

e) The Situation of public health in Colombia.

102. In the area of public health the results of the application of the insurance model outlined in the Law 100 of 1993 are generally negative as very little or no attention is paid to the indicators in this area. It is only now with the publication of alarming statistics that the public authorities have begun to define actions in relation to this.

The indices of maternal mortality in the country are at the same level as 20 years ago. In 1985 this indicator found 80.6 maternal deaths for every 100,000 live births and today it is at a similar level of 79.8⁷⁷;

The situation with regards to tuberculosis is alarming: “Tuberculosis is a clear example of the said deterioration, given that the country has one of the most deficient programs in the country with detection rates of 31.4% compared to the goal of 70% and curing rates of 60% compared to the goal of 85%. The same applies to acute respiratory infection and acute diarrheic illness in under fives.⁷⁸

Anemia affects three of every ten children under five, 32% of women between the ages of 13 and 49 and half of pregnant women.⁷⁹

The percentage of children born below weight has increased from 7.3% in 2000 to 8.4% in 2006.⁸⁰

5. REFORM OF THE GENERAL SYSTEM OF SOCIAL SECURITY IN HEALTH

103. Faced with this panorama at the beginning of the legislature 2006-2007 the Government of Álvaro Uribe Vélez lodged three bills in Congress with the aim of “reforming” the health system under Law 100 of 1993⁸¹ to which were added another seven bills by parliamentarians.⁸² The processing of those bills ended with the presidential sanction of Law 1122 of 2007, which can be characterized in the following terms:

It expressly states that its aim to “make adjustments” to the General System of Social Security in Health but does not include a structural reform of the insurance model which has proved to be inadequate in terms of public health, unfair in access and imbalanced in relation to the players.

There is no commitment to a substantial reform of the systems’ incentives and consequently the health of the Colombians continues to be a secondary aim of the system, which is geared towards maximizing profits for the EPS.

It keeps the partial subsidies, which are equivalent to only 30% of the Obligatory Health Plan of the subsidized regime.

It keeps various regimes and benefit plans for users according to their economic means.

It doesn’t modify the financial intermediation in the health system and on the contrary it preserves the interests of the insurance companies allowing them to continue to collect contributions to the contributive regime.

This reform promotes a regulation that transfers the management of affiliations from the subsidized regime of the territorial entities to the insurance companies.

It does not contemplate measures to achieve growth in universal coverage of the health system beyond issuing carnets rather than giving real guarantees of access to services.

79 El Tiempo. October 8 2006. p. 1 – 17.

80 Cablero Reinoso, César. La salud que pagamos los colombianos. (the health that we Colombians pay for) Newspaper Portafolio. February 18th 2008.

81 The Hill 002 of 2006 (Chamber)/040 of 2006 (Senate) which, as well as introducing some modifications regarding the actions of the Basic Attention Plan (PAB) and ‘guarantee’ a minimum level of contracts with the public health network proposes a very controversial measure which confers on the Minister for Social Protection the faculty to relieve the administration of public health resources for up to one year from those institutions that did not meet certain management and results indicators defined by the Ministry itself. The Bill 01 of 2006 (Senate) which gives extraordinary powers to the President of the Republic to regulate the vertical integration of the EPS, of the IPS or economic health groups in such a way that the contracting of health services does not exceed 50% within their own network. The Bill No 067 of 2006 which promotes the universalization of the affiliation of the Social Security Health System through increasing by one percentage point the payment quota in the contributive regime, for which the employers are responsible, for the Solidarity and Guarantee Fund (FOSYGA) with which it will obtain 800,000 million pesos in extra funds each year in order to increase the number of places in the subsidised regime.

82 Four from the government coalition, two from the Democratic Alternative Pole and one from MIRA

83 According to article 3 of Law 1122 of 2007, the Ministry for Social Protection will regulate the advisory and consultancy functions of the National Council of Social Security in Health.

84 Article 4 of Law 1122 of 2007 stipulates that the composition of the Health Regulation Commission is as follows: 1. Minister for Social Protection; 2. Minister for Finance; 3. Five experts designated by the President of the Republic taken from slates sent in by various entities such as Colombian Association of Universities, Health Research Centres, Centres for Research in Health Economics, duly organised Associations of Health Professionals and Associations of Service Users.

85 CESCR General Comment No. 14 para. 17

86. The alternative proposal was to create a fund with resources from FOSGYA. By the same token the proposal to assign the Service Users' Ombudsman to the Public Defenders' Office in coordination with the National Superintendence of Health was ruled out.

87 According to General Comment No. 14 the quality of health services is another component of the right to the highest attainable level of health: "As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation." *Ibid.*, paras. 17 y 12 d.

88 CESCR General Comment No. 14 para. 30

104. Additionally, with Law 1122 the paltry participation of citizens in the management bodies of the health system will be even further reduced, for at least two reasons, with the creation of the Health Regulation Commission: In first place the National Council of Social Security in Health (where the representatives of the territorial entities, the employers, the workers, the Institute of Social Insurance, health professionals and service users have a seat) is relegated to a mere advisory role.⁸³ In second place the new Health Regulation Commission has a limited composition and has a strictly technical profile and very little independence from the National Government (through the ministers for Social Protection and Finance) that presides over and designates the other members.⁸⁴

105. Also with the creation of Health Regulation Commission under Law 1122 of 2007 citizen participation is restricted in the management of the system, said participation has been qualified by the CESCR as one of the components of the right to health: "the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels."⁸⁵

106. Lastly, article 42 of Law 1122 of 2007 created the figure of service users' ombudsman, which will be under the National Superintendence of Health in coordination with the Public Defenders' Office. The function of the ombudsman will be to speak on behalf of affiliates to their respective EPS at a departmental or district level with the aim of having knowledge of, managing and forwarding on to relevant authorities complaints related to the provision of health services. Nevertheless, as was contemplated in Law 1122 the figure of ombudsman for health service users has at least two major failings: The first is that its observations are not binding on the EPS, which means the findings of its investigations may be ignored by the entities questioned by service users; and secondly the resources for the fund which will finance the ombudsman's office are sourced from the EPS themselves, which without any doubt wrests independence from the institution vis a vis the entities under examination.⁸⁶ The creation of this post will contribute little to the improvement of health services⁸⁷ and protect the rights of patients not least due to the way its operation was established by Law 1122 of 2007.

107. In short with the passing of Law 1122 of 2007 there was no structural transformation but rather a discriminatory health system that offers differential "benefit plans" to patients according to their economic means and not their needs and social conditions was preserved. In this way the Colombian State ignored its obligations of ensuring the enjoyment of the right to health without any discrimination and negates two of the elements that are part of this guarantee: Non discriminatory economic accessibility and; non discrimination and equality of treatment.⁸⁸

6. CONTROL OF THE RIGHT TO HEALTH: SENTENCE T-760 OF 2008

108. The non compliance of state obligations with respect to the protection and guarantee of the right to health in Colombia was pointed out by the Constitutional Court in Sentence T-760, 31st of July 2008. In this pronouncement the Constitutional Court acknowledged the existence of seven obstacles that the health service providers place in the way of users of the health system and are the result of regulatory failings:

When a service provision or supply of a medicine is not authorized because it is not part of the Obligatory Health Plan, even in the case of children.

When they demand a requirement for the provision of a service a moderating payment, even of those who lack the means to do so.

When they deny a medicine, diagnostic exam or procedure because it was ordered by a doctor that is not assigned to the entity the patient is affiliated to, but is a specialist in the area and attended to the person.

When they don't authorize the provision of a service because in the past the person did not comply with the payment of their health contributions on time but at a later date.

When they interrupt the provision of health services because one month has elapsed since the person lost their job and stopped contributing to the system.

When an entity refuses to accept the transfer of a patient because they have family member who suffers form a catastrophic illness and consequently they demand that they wait longer to be transferred.

When the benefit plan of the POS is interpreted in a restrictive way considering excluded from the service procedures and medicines not explicitly mentioned in it.

109. Taking into account these obstacles and the cases submitted for its consideration, the Court recognized four patterns of violation of the right to health which were due to regulatory and supervisory deficiencies of the system. Each one of them were presented to the Court as questions to which it responded affirmatively:

“ Does the State ignore the right to health of people by maintaining a state of uncertainty as to which services are included, not included or excluded from the obligatory health plan taking into account the controversies that this uncertainty generates and its negative impact on timely access to health services?”

89 Semana. Lentamente se cumple sentencia de la Corte Constitucional sobre salud. (Slowly the Constitutional Court's sentence is being complied with) Edición digital. Bogotá. 11th March 2009. Available: <http://www.semana.com/noticias-salud/lentamente-cumple-sentencia-corte-constitucional-sobre-salud/121599.aspx>

“Does the State ignore the right to health of the people by allowing that the majority of the judicial decisions that demand access to health services have to deal with guaranteeing access to services included in the obligatory health plans and already paid for?”

“Does the State ignore the right to health of the people that are beneficiaries of the subsidized regime by not taking measures to guarantee that they can access a health plan that is not different in content to the obligatory health plan for the contributive regime? Given that the right to health imposes upon the State the duty to progressively advance towards the widening of the services covered by insurance, can the lower coverage for children in subsidized regime be prolonged indefinitely like the differences in coverage for adults?”

“Does the State ignore the right to health of the people when they require medical service other than medicines by not having set down and regulated a procedure by which the entity charged with guaranteeing the provision of the service guarantees effective access to the same?”

110. As the Constitutional Court noted these general problems can be summed up in one which is particularly relevant to the examination of the CESRC regards its compliance with states' obligations in relation to the right to health:

“Do the failings in the regulation, confirmed in this sentence by the cases accumulated and the tests carried out by this Court represent a violation of the constitutional obligations that the relevant authorities have to respect, protect and guarantee the right to health in order to ensure their effective enjoyment? To this question the answer is affirmative and the necessary orders to overcome the regulatory failings detected have been given. The orders that will be given are within the framework of the system conceived of by the Constitution and developed by Law 100 of 1993 and later norms given that the Court would exceed its powers by ordering the design of a different system. That decision is for the legislators. The orders will be given to legally competent authorities to adopt the determinations that could overcome the failings of the regulations that have translated into a neglect of the right to health evident in the tutelas that have been presented with increasing frequency in the last number of years. This will be looked at later.”

111. One year after the judgment of the Constitutional Court what has come to light of the formulas to comply with the sentence are worrying.⁸⁹ For example the Court in its sentence ordered the unification of the benefit plans, the contributive and subsidized regime. Well, what is known up till now from press reports is that the National Government will unify the contributive and subsidized regimes' benefit plans by reducing the content of the former to make it equal (to less) to

the latter in a measure that will represent a step backwards in the guarantee of the right to health for more than 16 million affiliates of this regime: “As the Constitutional Court has ordered that the contributive and subsidized regimes must be equal in the Government the idea is floating about of a ‘POS light’. This is in order to adjust to whatever money there is. There would be additional services for those who contribute to the system.”⁹⁰ In this way the Government would be formally complying with the sentence but in such a way that ignores the spirit of the judgment, which is to make advances, as supposed by the principle of progression, towards a unification of the regimes in such a manner that it would improve and increase the benefit plans’ of the subsidized regime based on what is included in the contributive regime.

CONCLUSIONS

112. In 2001, the CESCR recommended that the Colombian State allocate a higher percentage of its GDP to the health sector and ensure that subsidy system not discriminate against disadvantaged or marginal groups. Although there has been an increase in public expenditure on health, the SGSSS has not managed to progress towards the complete guarantee of the right to health in the country. Whilst official figures have shown an improvement in coverage, what is worrying is that it still hasn’t reached the goal of universality set for 2001.

113. The SGSSS, due to its structure benefits the higher income sector of the population. The existence of differential benefit plans according to insurance status is particularly inequitable with the more socially vulnerable population as is the case with subsidized regime of the POS. This is seen in the impossibility of people of no means accessing health services and the so called **route of death** as an unacceptable reality incompatible with human dignity which the CESCR should make a pronouncement on.

114. Given the crisis of the public hospital network in the country, to which is added the deficient distribution of human talent in health and the organization of the supply of services by insurance companies using market criteria and not need as well as the insured and uninsured population face geographic barriers to access goods, programs and health services.

115. The health conditions also reflect the problem of inequity in access and acceptability and the profound repercussion on aspects of public health arriving at the extreme of new cases of deaths from human rabies, a lack of data on public health and recurrence of endemic diseases etc.

116. The situation shown in this parallel report was ratified by Constitutional Court Sentence T-760 of 2006 which made clear the deep crisis in the right to

90 El Tiempo. No todas las enfermedades cabrán en el nuevo plan obligatorio de salud (Not all illnesses will fall within the remit of the new obligatory health plan. Bogotá. 10th of March 2009.

health that Colombia is experiencing and the need to adjust health policy so as it attends to the entirety of the health needs of the population, expanding and leveling the POS, guaranteeing medical attention without the need to seek recourse in a tutela, ensuring full coverage in 2010 and ensuring that the organs of control and the management of the SGSSS are effective. For the social organizations this sentence should be strengthened and the Constitutional Court should proceed to a declaration of “state of matters unconstitutional” in the area of health and that its lead to the design of a new health policy that effectively recognizes and guarantees health as a human right and not as merchandise.

CHAPTER II

THE RIGHT TO WORK AND IN THE WORKPLACE

(ARTICLES 6, 7 & 8 OF THE ICESCR)

The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity.¹

CONSECRATION AND CONTENT OF THE RIGHT

116. The Colombian State has ratified the principal international treaties on the human right to work, accepting obligations that are binding on the national and international level.² Specifically the ICESCR proclaims the right to work in article 6 and explicitly develops its individual dimension through the recognition of the right of every person to equitable and satisfactory working conditions in article 7. The Convention also recognizes the collective dimension of the right to work in article 8, which consecrates the right of the workers to found trade unions and to freely join them as well as the right of these to function free from state interference.³

117. The 1991 Political Constitution recognizes a wide range of guarantees relating to work: in its preamble and in article 1 it consecrates the right to work as one of the essential aims of a social and democratic state subject to the rule of law; article 17 prohibits slavery, servitude and human trafficking in all its forms; article 25 recognizes the right to work in decent and just conditions and offers state protection in all its forms; article 26 refers to the right of every person to choose their profession or trade; article 53 indicates the basic protective principles of labor that should be developed in a general labor statute, which to date has not been issued by the legislature; article 64 establishes the obligation to protect

¹ CESCR. **General Comment No. 18.** Application of the International Convention on Economic, Social and Cultural Rights General Comment No. 18, The Right To Work (article 6 of the International Covenant on Economic, Social and Cultural Rights), (35th session 2005), U.N. Doc. E/C.12/GC/18 (2006), para. 1

² In addition of the ICESCR other instruments form part of the constitutional jurisprudence in the area of the right to work: the Universal Declaration of Human Rights (articles 23, 24, 25); International Covenant on Civil and Political Rights (Article 8) the Convention on the Elimination of all Forms of Discrimination against Women (Article 11); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5); the Convention on the Rights of the Child (Article 32), the International Convention on the Protection of the Rights of All Migrant Workers; the American Convention on Human Rights (Article 6) and the Additional Protocol (Articles 6,7, 10). In relation to the International Labor Conventions of the International Labor Organization (ILO) there are eight fundamental conventions ratified by the Colombian State: Convention 29 of 1930 on Forced Labor; 105 of 1957 on the abolition of forced labor; 100 of 1951 Equal Remuneration Convention; 111 of 1958 Discrimination (Employment and Occupation) Convention; 138 of 1973 on the Abolition of Child Labor (Minimum Age Convention); 87 of 1948 on freedom of association and collective negotiation and 98 of 1948 on the right to organize and collective bargaining.

³ Cf. CESCR, General Comment No. 18, para. 2. On the right to work the CESCR acknowledges that articles 6, 7 & 8 del ICESCR are interdependent, although it warns that in that comment it only deals with the content of article 6 of the covenant. Cf. CESCR General Comment No. 18, para. 8

⁴ Ibid., para.12

⁵ CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights 27th session, E/C.12/1/Add.74(2001), paras. 35 – 40

agrarian workers and the duty of the State to promote their access to land and educational services, health and housing amongst others; article 215 in its final paragraph ordains that even in states of exception the government is forbidden from worsening the social rights of workers; and in article 334 in reference to state intervention in the economy it indicates the special duty to create full employment and ensure that all people, particularly those of lower income, have effective access to basic goods and services.

118. According to General Comment No. 18 the activity of work presumes the existence of a series of interdependent and essential elements.⁴

Availability: Understood as the existence of specialized services to assist and support individuals in order to enable them to find available employment.

Accessibility: Comprises three dimensions i) equality of opportunity and treatment in terms of employment and occupation ii) physical accessibility iii) the right to information on the labor market.

Acceptability and quality: Refers to the right of the worker to (a) Protection of the right of the worker to enjoy just and favorable conditions of work, in particular to safe working conditions, the right to form trade unions and the right to freely choose and accept work.

In its application, the States are subject to the obligations to respect, protect and apply, framed in the general duty to progressively realize the right and its correlate to not adopt regressive measures.

1. Recommendations of the CESCR

119. In 2001, the CESCR emitted various recommendations on the right to work⁵. It reiterated its 1995 recommendation that the status of community mothers be regularized and that they have the right to a minimum salary; it encouraged the State to take steps to reduce the high level of unemployment and to address, in particular, the case of youths and women; it urged the public authorities to ensure that the minimum wage enables workers and their families to have an adequate standard of living. It also urged the State to adopt a policy of “equal work for equal pay” and to reduce the wage gap between men and women; it urged the State to take effective measures to provide for the personal security of trade union representatives, to bring to trial and punish the persons responsible for murdering trade union members and to provide for appropriate compensation for the victims’ families and it urged the Colombian State to take effective measures to strengthen existing laws on child labor and to improve its monitoring mechanisms in order to ensure that those laws are enforced and to

protect children from economic exploitation (at the same time it invited the State to ratify ILO Convention No. 182 on the worst forms of child labor).

2. On the V official periodic report.

120. The V Report of the Republic of Colombia to the CESCR presents an optimistic panorama on economic growth the labor situation. Nevertheless, as will be seen further on, this does not correspond with reality. On the one hand, that growth has not meant significant improvement in the conditions of life of the population, nor a decrease in the rate of unemployment and labor informality and on the other hand the employment model has generalized a delaborization impacting on sensitive areas of life such as social security, rest and working conditions etc.

121. The V Report presents as progress the labor reform of 2002 (Law 789) and the law that regulated the public servants conditions (Law 909 of 2004); norms that as shall be seen constituted regressive measures that have impacted on the level of protection of the labor guarantees in Colombia.

122. Lastly, it is worth pointing out that the official information does not explain how the right to strike and join a union continue to be affected by restrictive administrative measures (in contravention of the recommendations of the ILO) as well as the persistence of anti-union violence. One has to remember that Colombia occupies first place in the world in terms of the murder of trade unionists and has been subjected to constant monitoring by organs of the ILO as a worrying case of violations of trade union freedoms which has led to the setting up of an ILO office in Colombia. On these points the official report to the CESCR is wanting and we shall go into detail on this.

3. Situation of the right to work in Colombia.

123. The average annual economic growth in the last few years has been above 5% of GDP but hasn't had a positive impact on the quality of employment. So although the rate of economic growth was greater than the regional average (5.6% in 2007 according to ECLAC) the country has shown a high rate of stagnation in the reduction of unemployment indicators, barely managing to reduce it to 11.1% in 2007, whilst the average urban unemployment rate in Latin America was 8%. Colombia's cycle of growth between 2003-2007 did not produce any sustainable change in labor market indicators and continues to have one of the highest rates of unemployment in Latin America (fluctuating between 11 and 12% of the economically active population) and neither did it have an impact on the reduction of poverty and inequality⁶

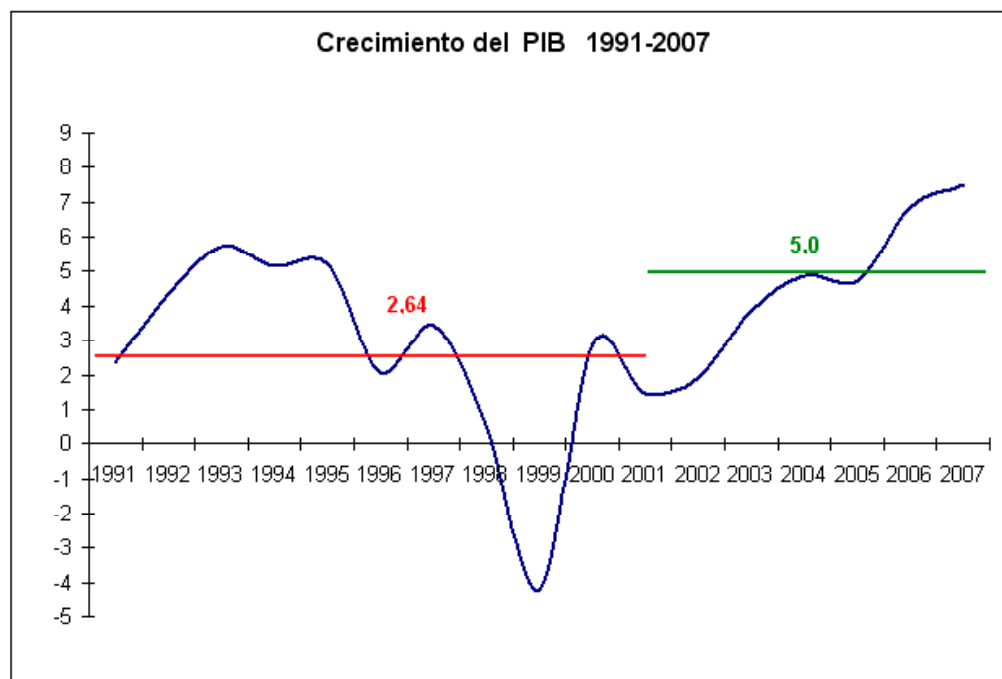
⁶ On this see: Centro de Investigaciones para el Desarrollo (CID). Bienestar y macroeconomía 2002-2006, crecimiento insuficiente, inequitativo e insostenible. (Welfare and macroeconomy 2002-2006, insufficient inequitable and unsustainable growth) Bogotá: Universidad Nacional de Colombia-Contraloría General de la República, 2006.

7 National Union School, Crecimiento y déficit: La ficción del trabajo decente en Colombia, Informe Nacional de Trabajo Decente en el año 2007. (The myth of decent work in Colombia National Report on Decent Work in the year 2007 Medellín: PCDHDD – ENS, 2008, p. 7

8 "Desempleo más alto en cinco años se suma a informalidad" (Unemployment at its highest in five years adds to informality). Newspaper El Tiempo. 28th of February 2009.

9 National Union School. Una política de exclusión sistemática: panorama de la situación de los trabajadores y de las organizaciones sindicales en Colombia (A systematic policy of exclusion: panorama of workers and trade unions in Colombia). Available at <http://www.ens.org.co/documentos.htm?x=20155012>.

10 Cf. Ministry of Foreign Affairs, Colombia: Un país positivo (A positive country). Available at: [http://www.presidencia.gov.co/colpositiva/julio/col_positiva30dejulio\(espagnol\).htm](http://www.presidencia.gov.co/colpositiva/julio/col_positiva30dejulio(espagnol).htm)



Graphic 1.

Source: DANE and National Union School (ENS)⁷

124. After 2007, when Colombia reached an historic figure of 7.5% growth, came a period of regional and global deceleration. By 2008 the GDP growth in Colombia had fallen to 2.5%. This deceleration had an immediate impact on labor indicators: although in the period 2001-2007 the unemployment rate experienced a slight fall from 14.7% in 2001 to 11.1% in 2007, by the end of 2008 and the beginning of 2009 there was a worrying increase reaching 12.9% in the first semester of that year⁸. Thus, in January 2009 there was an extra 308,081 people unemployed nationally giving a total of 2,830,005 people seeking employment, however, the rate of occupation went from 50.1% to 50.3%⁹. This was due to the impact of the global economic crisis and the absence of counter-cyclical employment policy that promotes the active creation of new decent jobs.

Work opportunities

125. In 2001 the CDESCR recommended that the State “adopt measures aimed at reducing the high rate of unemployment”. The following year the government of Álvaro Uribe Vélez acted in the opposite fashion. The passing of Law 790 of 2002 and the implementation of the so called Program for Administrative Renovation meant the “redesign of 142 entities (99 were modified, 6 created, 3 divided, 30 liquidated and 4 were fused)¹⁰ with the consequent elimination of 40,000 jobs (including the suppression of posts, and early pensions etc.) With the

liquidation of the telecommunications company, Telecom, and various associates alone, 8,174 workers joined the ranks of the unemployed.

126. The low rate of job creation and the high rate of unemployment have remained steady in the last few years (the national rate of unemployment never fell below 10% in the period 2002-2008¹¹) and the creation of employment has been limited to the informal sector. In 2008 in the 13 metropolitan areas 57.2% of those working were informal workers, this figure was higher than that registered in same period of 2007 when it was at 56.9%. The figures shows a movement of workers from the formal to the informal sector. So whilst the figure for those at work in the informal sector grew by 166,789, an increase of 3.5%, the figures for the formal sector grew by 72,910, an increase of 2%. This means that in the 13 metropolitan areas the jobs lost in the formal sector were created in the informal sector.¹²

127. If we look at the unemployment rate in terms of gender there continues to be a gap between women and men: in 2007 the unemployment rate for women was 14% whilst the rate for men was 8.6%. By 2008 the female rate of unemployment was 16.1%, i.e. 6 points greater than the male rate. It is worth pointing out that in 2008 there 57,000 more women unemployed than in 2007. Sixty five percent of the female working population in Colombia is concentrated in two sectors of the economy: trade and services (hotels, restaurants, social services, both communal and personal) Women continue to have less opportunities in the labor market. Whilst 71 of every 100 males work only 46 of every 100 women do so. Of every 100 women of working age 53 are inactive whilst for men the figure is 29.¹³

128. With regard to youths, their situation in the labor market worsened between 2007 and 2008. Their unemployment increased from 20.3% to 20.9% for males and from 26% to 27.3% for women. This represents 1,036,800 unemployed youths, almost half of the 2,263,400 unemployed in the country. In addition, from one year to the next the informality amongst the youth increased by 22.4% whilst 227,000 lost their employment in the private sector (11.2%) and the state sector (9.8%)¹⁴

129. Rural unemployment continued to show high levels, close to 7.8% of the population in 2009. Meanwhile the new sources of employment created in rural areas have been principally in the forestry, fishing and hunting areas and not necessarily in traditional peasant activities.¹⁵

11 Cf. National Union School Informe Nacional de Trabajo Decente 2008 (National Report on Decent Work 2008). Available at: http://www.ens.org.co/apc-aa-files/INFORMES_TRABAJO_DECENTE/INFORME_TD_2008.pdf

12 Cf. National Union School. Una política de exclusión sistemática. Op. Cit.

13 National TradeUnion School. Informe sobre la coyuntura laboral y sindical en 2008-2009 (Report on the labor and union conjuncture in 2008-2009). Available at: http://www.ens.org.co/aa/img_upload/45bdec76fa6b8848acf029430d10bb5a/Coyuntura_ec_mica_laboral_y_sindical_2008_30_abril_Luciano.doc.

14 Ibid.

15 "Según gobierno el desempleo rural cayó 0,8% a julio de 2009" (According to the Government rural unemployment fell 0.8% by July 2009) radio Santafé. 2nd of September 2009. See electronic version available at: <http://www.radiosantafe.com/2009/09/02/según-gobierno-el-desempleo-rural-cayó-08-por-ciento-a-julio-de-2009/>

16 Ibid..

17 Ibid..

18 Centro de Investigaciones para el Desarrollo (CID). Bien-estar y Macroeconomía 2007. Más allá de la retórica. (Welfare and Macroeconomy 2007. Beyond the rhetoric.) Universidad Nacional de Colombia. Bogotá. 2007.

19 Ibid..

20 National Union School. Carencias y exclusiones en el acceso a empleos decentes (Failings and exclusions in access to decent jobs) Available at <http://www.ens.org.co/articulos.htm?x=20154386&cmd%5B111%5D=c-1-75>.

21 National Union School. Una política de exclusión sistemática. Op. Cit.

Delaborization and precarious working conditions

The income of the workers in receipt of the minimum wage decreased 1.2 percentage points in relation to the National Consumer Price Index (CPI) and 2.4 points in relation to lower incomes in real terms, thus losing purchasing power. Despite this reality, in December of 2008 the government imposed a wage 'rise' that took as its reference point the rate of inflation for 2008 which at 7.67%, was less than the inflation rate for low incomes which was 8.99%¹⁶

131. At the same time the gender income gap remained. According to data from the DANE, in 2007 women received on average 74.3% of males' income, the gap being greater in the informal sector. Moreover, from 2006 to 2007 the income of males increased by between 22% and 25%, whilst that of females increased by between 18% and 21%.¹⁷ Despite the CESCER recommendations of 1995 and 2001 in relation to community mothers this sector continues to receive a poor remuneration consisting of a subsidy of 348,180 pesos (approximately 150 dollars) from which they must pay health and pension contributions.

132. In relation to work contract conditions of the Colombian working population, studies indicate that even in the recession years there was a greater number of permanent workers than are currently employed in industry.¹⁸ One study from the National University shows that in 1992, 539,807 workers were permanent hires, whilst in 2006 only 324,822 were, which indicates a reduction of 40%. At the same time, temporary hires, be they direct or indirect through agencies went from 94,858 in 1992 to 277,020 in 2006 an increase of 192%¹⁹. According to the monthly manufacturing survey the same tendency was found in that sector; permanent employment went from 62.4% in 2001 to 52.9% in 2007, losing 10 percentage points which went to temporary employment both direct or through agencies²⁰.

133. Also the Associated Work Cooperatives CTA, which have contributed to the decline in the quality of employment, have expanded considerably under the government of Álvaro Uribe Vélez. According to the Confederation of Cooperatives of Colombia, CONFECOOP, in 2002 there were 1,110 cooperatives and by 2008 their number had tripled to 3,903, including both associated work cooperatives and pre-cooperatives. As a result the number of partners of the said cooperatives quintupled. In 2002 there were 97,318 registered and in 2008 there were 537,859²¹. These entities constituted under the legal figure of CTA do not really comply with the principles of cooperatives and they abuse the right to associate in cooperatives in order to circumvent the rights of workers to the benefit of the businesspeople and those who are a sort of front men for the employers promote the creation of them. Frequently after liquidating work contracts or carrying out massive lay offs, employment offers are made through the CTA. This phenomenon is even to be found in state agencies. So the CTA have

become a mechanism to reduce labor costs, violating or denying the minimum non negotiable rights of the workers.

134. Another form of delaborization is through denying the existence of an employee relationship, through what are known as “garbage contracts” which have spread through out the public and private sector. The private sector hires the workers through judicial mechanisms more akin to commercial or civil law such as supply contracts, commercial agency or as independent contractors; in the public sector workers are frequently hired through “administrative provision of services contracts” and in both sectors they frequently turn to “service orders” with which they aim to deny an employee relationship. Those that are hired through such contracts have technical autonomy, but they must comply with working schedules determined by the employer, work in their installations and work with equipment and material, which is owned and supplied by the employer. Consequently they meet all the requirements of wage labor, even if they are disguised under other contractual forms.

135. In short, despite the economic growth of 2003-2007 there was no significant proportional increase in the rate of employment. On the contrary in the period under consideration by the CESCER a model that privileges savings in labor has been consolidated in which non-labor contract forms that deteriorate the quality of employment in Colombia are common. Added to this the first effect of the global economic crisis in Colombia was the immediate worsening of the unemployment figures and an increase in informality in the workplace.

Obligation of non regression

136. The current legal framework that regulates working relations contradicts the constitutionally established labor guarantees and also the ICESCR. Article 53 of the Political Constitution establishes the **obligation to expedite** a Labor Statute that takes into account the fundamental minimum principles, amongst which are equality of opportunities for workers; a livable minimum wage, proportional to the quantity and quality of work; employment stability; non negotiable nature of the minimum benefits established in labor norms and others. Not only is there a complete lack of legislation on this constitutional norm from the Congress, but there have also been labor reforms, which make working relations more precarious, amongst them Laws 789 of 2002, 797 of 2003 and 909 of 2004 stand out.

137. Under **Law 789 of 2002** passed with the aim of “promoting employability and developing social protection” benefits are given to employers with the aim of stimulating the hiring of young people²². However, the measures established under Law 789 not only curtailed some labor rights in the area of payment rates for Sundays, holidays and overtime but also did not have any positive effect on the

²² In explaining its motives for the labor reform, the government claimed that one of the aims was the creation of 160,000 jobs per year which would result just from applying the law in the formal sector.

23 Centro de Investigaciones para el Desarrollo (CID). Evaluación de la Reforma Laboral Ley 789 de 2002 (Evaluation of the Labor Reform Law 789 of 2002). Bogotá: Facultad de Ciencias Económicas, Universidad Nacional de Colombia, 2007.

24 Corporación Cactus, la reforma laboral y las mujeres en Colombia (the labor reform and women in Colombia). Available at: http://www.cactus.org.co/documentos/mas_trabajo_menos_calidad_vida.doc.

25 Procurator General of the Nation, Concepto D-6822 ante la Corte Constitucional frente al examen de la Ley 789 de 2002. (Concepto D6822 to the Constitutional Court on the examination of Law 789 of 2002) Available at http://www.procuraduria.gov.co/html/noticias_2007/noticias_424.html.

creation of jobs; on the contrary during its time in force work has become more precarious through the ostensible reduction in workers' income²³. Its effects were particularly seen in the case of women. According to the DANE, in Colombia from 2000 to 2002 there was a big reduction in the average wage difference between men and women, which went from 16.64% to 8.93%. This reduction was reversed in 2003 when it returned to the levels of the beginning and end of the 1990s, that is, 14.28% which not only indicates a continued discrimination against women in Colombia in employment but its strengthening.²⁴

For the Procurator General of the Nation the measures adopted on the basis of Law 789 of 2002 are inadequate, they are detrimental to the workers and their application is an attack on human dignity, the right to work and the minimum labor guarantees. In the opinion of the Procurator the measures under study did not encourage the creation of jobs, as had been foreseen by the legislature, according to the documents presented in the suit. According to these reports, the law instead of facilitating improvements for the workers reduced their quality of life due to lack of the minimums established in the derogated norms such as overtime payments, shift bonus and triple pay for Sundays and holidays²⁵

138. Under **Law 797 of 2003** the entire pension system was modified by including new elements into its calculation, which came into force in 2004 establishing the initial percentage between 55% and 65% depending on income, increasing the number of contributory weeks to 1,300 by 2015 and establishing a pension limit between 80% and 70.5% of the base income, depending on income. These reforms have only favored the Colombian finance sector that manages the severance payment contributions (cesantías) and pension funds contemplated in Laws 50 of 1990 and 100 of 1993.

139. **Law 909 of 2004** modified previously recognized rights and in framework of regulating access to posts in the public administration placed 130,000 provisional workers, who had been occupying public administration posts prior to the implementation of the legislation, in an unstable legal situation.

Foreign Direct Investment and its social and labor impacts.

140. Apart from stable growth the Colombian economy has stood out for its ability to attract foreign investment, which the National Government presented as a success story produced by its security policy. It is undeniable that foreign direct investment (FDI) increasing quantitatively with registered investments increasing

from US \$501 million in 1990²⁶ to US \$10,564 million in 2008, increasing by 16.7% with respect to 2007²⁷. However, it is also true that FDI in Colombia has not increased in a qualitative sense, especially in terms of its role in promoting the social development of the country and the creation of decent jobs.

141. According to statistics from the Bank of the Republic in the period 2000 – 2006 FDI in Colombia totaled US \$ 28,493 million making it the fourth largest recipient in Latin America after Mexico, Brazil and Chile²⁸. Of this sum US \$12,363 million were invested in the mining, quarries and oil sectors, i.e. 43.4% of the FDI is concentrated in the extraction of non renewable natural resources, a not very sustainable economic activity which has serious implications in labor, social and environmental terms.

142. The most important contribution that the multinational companies make in the hinterland where they extract the natural resources is the payment of royalties that benefit the neighboring communities, a sum equivalent to between 1% and 12% of the mineral extracted²⁹. These are invested in health, education and potable water and sewerage. With the passing of the Law of Judicial Stability (Law 963 of 2005) the large investments are exempt from increments in this rate, showing that the social contribution is very limited and the profits of the companies are favored above social development.

143. It is also important to mention that due to the high degree of mechanization the FDI in the mining and oil sector does not significantly contribute to the creation of direct employment in the country. According to the DANE, the mining, quarrying and oil sector barely represents 1.1% of national employment³⁰. At the same time the working conditions in the mining and oil sector are in many cases unhealthy and dangerous. Ingeominas has documented that between 70% and 80% of the coal, gold, emerald mines and limestone, clay and other construction materials quarries in the country do not meet the minimum security conditions. In 2006 alone 25 miners lost their lives due to occupation security failings³¹

144. The industrial manufacturing sectors, such as transport, storage and communications and financial establishments have also managed to attract a significant amount of FDI in the period 2000-2006 with investments around US \$7,975 million, US \$ 4,143 million and US \$ 2,840 million respectively. However, this investment has not contributed substantially to the social development of Colombia. Amongst the reasons for this are that the FDI operations were not new investments to contribute to the productive and technological expansion of the country, but were rather fusions or acquisitions of already existing national companies in some cases after the processes of liquidation and privatization of state bodies.

26 Uribe, Jose Dario. Flujos de capital en Colombia. (Capital flows in Colombia) Bogotá. 1995. p: 16. Available at <http://www.banrep.gov.co/docum/ftp/borra025.pdf>

27 Proexport. Informe consolidado inversión extranjera (Consolidated report on foreign investment) Available at <http://www.proexport.com.co/vbecontent/NewsDetail.asp?ID=9971&IDCompany=16>.

28 CEPAL. La inversión extranjera en América Latina y el Caribe 2006. (Foreign Investment in Latin America and the Caribbean 2006) Santiago de Chile: 2007, p. 7

29 International Development Research Center. Regalias mineras (Mining Royalties). Montevideo: 2004, p.8

30 Ramirez Madrid, Margarita. Sectores económicos: Estructura económica y laboral (Economic Sectors: Economic and Labour Structure. In: Observatorio de los derechos del trabajo No. 8. Medellín: August 2006, p. 70

31 No hay seguridad en 70 por ciento de las minas de Colombia", (there is no security in 70 percent of the mines in Colombia) Newspaper El Tiempo. 8th of February 2007. Available at <http://www.minesandcommunities.org/article.php?a=150>.

32 Parra Restrepo, Bernardo. ¿Qué hay detrás de la venta de Bavaria? (What is behind the sale of Bavaria?) UN Periódico, September 2006 available at <http://unperiodico.unal.edu.co/ediciones/79/02.htm>.

33 Observatorio Social de Empresas Transnacionales Españolas en Sudamérica. "Luces y sombras" en la Responsabilidad Social Empresarial. (lights and shadows in Corporate Social Responsibility) 15th November 2007. Available at: http://www.observatoriosindical.org/doc/Comunicada_General_Multinacionales.doc.

34 National Planning Department (DNP). Visión 2019: aprovechar las potencialidades del campo (taking advantage of the potential of the countryside) Dirección de Desarrollo Rural Sostenible. Bogotá: 2007.

35 See the section on the rights of indigenous peoples and Afro-Colombian communities in this publication.

The clearest example of this was the purchase of the brewery "Bavaria" by the South African company SAB Miller in 2005 which generated an income of some US \$90 million per year for the majority shareholders that sold it. But this did not create one single new job³². On the contrary it was preceded by massive lay offs and the destruction of the union that represented the workers (Sintrabavaria) drastically worsening the conditions of the quality of life of the workers and their families³³.

Agroindustrial megaprojects and labor rights

145. The National Government predicts that for the year 2019 "the agricultural sector will have increased its production, productivity and competitiveness; it will have greater access to the international markets; will create stability for the income of the producers and sustainability for their productive activities"³⁴ This will be generated by the growth of the sector by taking advantage of the opportunities offered by international markets and greater competitiveness and agricultural production.

146. These are agroindustrial mega-projects promoted by the government which mean the excessive exploitation of natural resources, changes in soil use, impact on ecosystems, displaced populations and a production system which borders on servitude, ignoring the rights of the indigenous peoples and the Afro-Colombian communities that inhabit many of those places. This exploitation has been carried out in direct contravention of ILO Convention 169³⁵

147. Norms such as the Law 788 of 2002 and the Resolution 180687 of 2003 issued by the Ministry of Mines and Energy, amongst others, have encouraged the growing and commercialization of oil palm, yucca, sorghum, sugar cane and sugar beet amongst other products with the aim of turning them into carburant alcohol, the basis of the agrofuels. One of the biggest arguments for promoting this model is the increase in employment indices. However, more than 30,000 sugar cane workers have no work contracts but rather are hired through CTAs; they work daily shifts of over 12 hours; health protection and professional hazard insurance are precarious, even though the cane cutting work is physically exhausting due to the long shifts exposed to the elements; they don't receive any clothing suitable to the job' and they receive less than the minimum wage given that the deductions are made from their compensation (salary in the cooperatives) to pay for tools, health and fines for days not worked. This situation contrasts with the profits made by the sugar barons that in 2007 reached almost 500,000 million pesos (US \$ 250 million), which was due in large part to the subsidies they receive from the State to produce ethanol.

148. The palm oil workers, which number more than 200,000 in Colombia have denounced that they are also hired through CTAs, that they work between 10 and 12 hours a day, that they don't receive any payment for transport, they are not supplied with tools, nor working clothes nor do they receive the family subsidy and what's more they are punished when they collect fruit which is too green or too ripe.

149. Also the workers in the flower industry, which is a highly subsidized sector, continue to denounce multiple obstacles to exercising their right to organize and trade union freedoms, casualization of contracts, unjust salaries, high rate of occupational illnesses due to high productivity demanded of them³⁶ and also the deductions for the social security system are not paid into the respective entities impeding their access to medical care and obtaining economic provisions for old age, incapacity or death.³⁷

During the working day the authorized lunch break is between 15 and 30 minutes, including the time taken to get to the lunch place. Also due to the instability and the short term contracts many workers do not have paid vacations. (Informe sobre floricultura colombiana 2008. Op. cit. p.20).

Obligation to protect

150. Protection in the area of work and social security is very poor in the growing informal sector, in large part due to the lack of control and supervision as well as state complacency in relation to informal labor market insertion mechanisms such as self employment, initiative, entrepreneurship and associated work co-operatives³⁸ defended in the V Report of the Colombian State to the CESCR as "alternative forms of decent work"³⁹.

151. In relation to the obligation to *protect*, the protection of the workers in the workplace has not been of interest to the National Government. In addition to the disappearance of the Ministry for Work in 2002, insufficiently replaced by the Ministry for Social Protection, is the lack of infrastructure and effectiveness in dealing with complaints: there are only 112 labor inspections and 289 inspectors: from the second semester 2005 to the first semester of 2006, 902 sanctions were imposed out of a total of 95,964 complaints lodged by workers⁴⁰ i.e. less than 1%.

36 Pereira Morales, Ana Pilar. Caracterización de la población de Bogotá y Cundinamarca con síndrome de túnel del carpo de origen profesional determinado durante el periodo 2002-2003 (Characterization of the population of Bogotá and Cundinamarca with Tunnel Carpus caused by occupation during the period 2002-2003). Bogotá. November 2004. This study showed that between 2000 and 2004 that highest occurring illness was (32%) Tunnel Carpus Syndrome and that the majority of cases were of (89,7%), and also that the most important risk factor was carrying out just one activity, particularly if it was (94%). The sector of greatest incidence was the flower industry with 32.6% of the cases.

37 See for example: Corporación Cactus. Informe sobre la floricultura colombiana 2008. Condiciones laborales y la crisis del sector. (Report on Colombian Floriculture 2008. Working conditions and the crisis of the sector) Bogotá. ARFO Editores. p: 17.

38 National Development Plan. Law 1.151 of 2007 (July) "Por la cual se expide el Plan Nacional de Desarrollo 2006-2010" (Which expedites the National Development Plan 2006-2010).

39 Ministry of Foreign Affairs. V Report of the Republic of Colombia to the CESCR. Op. Cit

40 Informe del Ministerio de la Protección Social al Congreso de la República, periodo 2005-2006 (Report of the Ministry for Social Protection to the Congress of the Republic. Available at: <http://www.minproteccionsocial.gov.co/VBeContent/library/documents/DocNewsNo14886DocumentoNo1545.PDF>

41 DANE, Estimaciones y proyecciones de población (Calculations and population projections)

42 Propuesta de Política nacional de envejecimiento y vejez 2007-2019., (Proposal for a national policy on ageing and the aged 2007-2019). Ministry for Social Protection.

43 Cf. National Union School, Informe nacional de trabajo decente 2008, Op. Cit.

44 Report to the 97 International Labor Conference, presented by the trade unions and the Colombian Confederation of Pensioners. Bogota May 2008

45 Ibid..

Older people

152. The 2005 census identified 3,778,000 people over the age of 60 in Colombia of which 2,655,911 were over the age of 65. Four years later, according to the projections of the DANE⁴¹ this population group was made up of 4,151,533 people to which one has to add those who are over 50 years of age and form part of population groups at risk, such as those in state of indigence⁴².

153. The current situation in Colombia is that of every four older adults, less than one receives a retirement pension. This situation will worsen in the coming years as a result of demographic tendencies and the absence of policies to ensure otherwise. In relation to the income of pensioners, the majority of them receive a very low monthly allowance as 76.65% of them receive an income equivalent to two or less minimum salaries, which is not enough to cover the costs of the family basket, which nowadays costs more than two minimum salaries. The situation is worse for women, as 80.87% of these receive up to two minimum salaries, whereas the proportion of men in this situation is 68.97%⁴³

Trade Union Freedoms (article 8 of the ICESCR)

154. Colombia has one of the lowest unionization rates on the continent, not only due to a series of legal, practical and administrative restrictions, but also as a direct consequence of the disappearance of labor contracts and the persistence of violence against the members of unions. Of the 100 largest companies in the country, 52 have no union and in 29 of them there isn't any form of collective negotiation with the workers⁴⁴.

Right of association

155. In flagrant violation of the ILO Conventions 87 and 98, between 2002 and 2007 the Ministry for Social Protection denied 472 permits to form new organizations, inscribe new boards, reform statutes, creation of committees and sub directive boards, changes in boards and removal from posts; acts which constitute a serious violation of the ILO norms and internal legislation. In the same period and in contravention of the successive recommendations of the ILO Freedom of Association Committee, the Ministry for Social Protection refused to register 234 new unions which means that at least 7,020 workers were denied to right to unionize⁴⁵.

Refusal to inscribe acts of constitution	Number of Cases
2002	3
2003	68
2004	36
2005	45
2006	55
2007	27
Total	234

Table 1. National Union School based on figures from the Ministry for Social Protection and Sislab

156. In the period 2000-2007 many attempts at creating unions were repressed through legal mechanisms or through coercion and force. In order to avoid unionization the companies employ diverse strategies such as the contracting system which impedes affiliation to the unions, conditions hiring to non affiliation, campaigns to demonize unions, repress any attempt at forming a union, expelling the organizers and in some cases they have gone to the extreme of using illegal armed groups to intimidate union leaders or to oblige the workers to resign from the union and collective contracts.

Between January and August 2009 there were 58 disaffiliations from the National Association of Public Servants of the Public Defenders Office ASDEP, provoked by a rumor within the institution that “functionaries or public servants that were affiliated to ASDEP would not be considered for promotion within the administrative career structure” Cf. Right of petition, directed at the Public Defender Volmar Pérez Ortiz by ASDEP, Bogota 9th of September 2009.

157. Also, the anti-union activities of employers are generally supported by the Ministry for Social Protection which on the one hand does not investigate or sanction those violations and nor does it promote trade union affiliation as a method of preventing them. It also imposes a restrictive legislation on the registration and legal recognition of union organizations that are formed, which has caused the failure of many attempts by workers to set up new union organizations.

Collective negotiation

158. The coverage of collective agreements in Colombia continues to be one of the lowest. Only one in every hundred workers are in a real position to negotiate working conditions; the rest (i) are in the informal sector (58 of every 100), (ii) are public sector workers, which the State systematically denied the right to negotiate their working conditions, or (iii) they are workers with casual contracts, cooperative contracts or are considered to “self employed”.

159. The collection work convention, which represents the type of negotiation promoted and carried out by the unions and which expressed the degree of autonomy obtained by workers in the jobs, has suffered a clear decrease in the two periods of the current government. If we take the periods 2002-2003 and 2006-2007 the number of collective conventions fell by 23.4% and the collective agreements by 10.9% in relation to the previous period.; in terms of coverage this fell by 28.9%⁴⁶

⁴⁶Ibid..

47 Ibid..

48 Legis y HC-Human Capital. Tendencias en Remuneración, prácticas en beneficios extralegales (Tendencies in Remuneration, practices and extralegal benefits). Bogotá. 2007.

160. In 2007, 463 collective conventions were negotiated, one more than in 2006. This increase, which is only 0.2% is due to the increase of 183.3% in Collective Agreements compared to a reduction of 34% in Collective Conventions. The unionized contracts continued to represent a very low number, representing only 1% of the total and showing no signs of evolution. The previous data includes the celebration of 37 tribunals of arbitration, which arose from the inability of the parties to directly arrive at any agreement or when the disagreement is due to an anti-union policy which leaves the union with no choice but call for arbitration⁴⁷.

161. The increase in the number of agreements and the reduction in collective conventions is a negative indicator of the evolution of collective bargaining in Colombia. The figure of “collective agreements” was established in our legislation as an alternative to ‘negotiation’ for non unionized workers. However, in the majority of cases, it does not represent a real negotiation in which the workers can independently define their petitions and choose their negotiators; generally, what takes place is that the company imposes it through middle management and workers have not alternative but to accept it. Moreover, it is common for companies to use the agreement as an anti-union strategy in order to pressurize workers to leave the union and sign up to the agreement. An investigation by Legis and HC-Human Capital explicitly recognized this policy justifying it on the grounds that these constituted “alternative mechanisms, which to some degree discouraged the affiliation of employees to unions⁴⁸.”

Year	Collective Convention		Union Agreement		Union Contract		Total	Coverage
	Total	%	Total	%	Total	%		
2002	567	73,45	200	25,91	5	0,65	772	176.774
2003	268	70,16	110	28,80	4	1,05	382	72.244
2004	491	70,34	192	27,51	15	2,15	698	134.244
2005	272	62,39	160	36,70	4	0,92	436	99.336
2006	385	83,33	72	15,58	5	1,08	462	60.462
2007	254	54,86	204	44,06	5	1,08	463	

Table 2. Source: Ministry for Social Protection and calculations of the ENS.

Right to Strike

162. The right to strike in Colombia is restricted, as it is not understood as a form of legitimate struggle to defend the rights of workers, but rather as a later stage in the collective negotiations after direct talks. The most representative problems in this respect are: (i) only one type of strike is protected, denying the right of other types such as solidarity strikes, local ones and those carried out by federations or confederations; (ii) strikes are banned in the public services contravening conventions 151 and 154, which have been ratified; (iii) there are no definitions of essential services in accordance with the recommendations of the Freedom of Association Committee of the ILO and by legal means strikes in a large number of sectors such as distribution companies or salt exploitation, oil and by products sectors or in the educational sector are forbidden; and (iv) the right to strike is limited to a stage in the collective negotiation.

Anti-union violence

163. Anti-union violence and the constant violation of the human rights of unionized workers in the period under consideration by the Committee has remained at high levels continuing the historic tendency which has not been overcome and is evidenced by the murder of 2,709 trade unionists in the last 23 years⁴⁹. Despite the variations in some indicators (massacres) the systematic and selective nature of these violations as well as their continuance over time continue to be characteristic traits of this attempt at extermination. On top of the murders, 234 trade unionists suffered attempts on their life, 194 were forcibly disappeared and 4,258 received death threats in the same period. Thirty five percent of these acts of violence and 481 of the murders took place between January 1st 2002 and December 31st 2008. In 2009, 21 trade unionists were murdered and one was forcibly disappeared⁵⁰. In terms of all of the violations of the right to life, liberty and physical integrity carried out against trade unionists in the last 23 years there have been 184 sentences in relation to 136 victims, consequently the rate of impunity is 98.3%⁵¹

164. The educational and agricultural sectors continue to be the most affected by the violations, followed by the health, communications and transport, industrial manufacturing, public services, mining sectors which historically have represented the greatest mobilizations, protests and vindication of their rights. Antioquia, Santander, Valle, Atlántico and Bogotá are the regions most affected by the anti-union violence.

49 National Union School. Una política de exclusión sistemática. Op. Cit.

50 Data from the National Union School

51 Data from the Colombian Commission of Jurists.

52 National Union School. Informe sobre la coyuntura laboral y sindical en 2008-2009. Op. Cit.

53 Data taken from the Colombia, Europe, United States Coordination's database.

A 71.4% increase in homicides in the year 2008 to date compared to 2007. Whilst between January and April 2007 there were 14 murders of trade unionists registered, between January and April 2008 24 homicides were committed against unionized workers, in particular union leaders⁵².

165. Colombia continues to be the most dangerous country for trade union activity. Aside from the armed conflict, there is additionally the stigmatization, persecution and aggression by the very State. It is calculated that more than 11 trade unionists were victims of extra-judicial executions in period 2002-2009⁵³ and another significant statistic was for the victims of homicides committed in an alliance between state functionaries (members of the Administrative Department of Security DAS) and paramilitary groups.

“Supreme Court upholds the Prosecution Services’ accusation for three homicides against Jorge Noguera. The decision was announced in a preliminary hearing in the trial against the ex direct of of the DAS (...) The charges against Noguera Cote are sustained in a 170 page judgment, which include the murder of academics, politicians and trade unionists as well as illegal surveillance of human rights NGOs. According to the Prosecution Service Noguera placed the intelligence organism at the service of the ‘paras’ under the leadership of the extradited figure Rodrigo Tovar Pupo, a.k.a. ‘Jorge 40, and Hernán Giraldo in order to commit the murders. The ex director Noguera Cote, was supposedly the detonator of the crimes by handing over information on the victims. Amongst the homicides are those of Alfredo Correa D’Andreis, Zully Esther Codina, Fernando Piscioti and Adán Pacheco Rodríguez.

The Prosecution Service claims that prior to the murders the DAS, under the command of Noguera, carried out intelligence on the victims and drew up reports which claimed they belonged to subversive groups. Some of the victims were even detained prior to being murdered.

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CONCLUSIONS

166. This balance sheet of the right to work in the period 2002-2008 shows that in Colombia there is very little respect for the human rights and labor and union rights recognized in the ICESCR. On the contrary, the general tendency is towards the limitation of work contracts, an increase in hiring under various casual and flexible modalities and the persistence of anti-union violence and high levels of impunity in relation to the acts committed against unionized workers.

167. Despite the positive diagnosis in the labor and union area contained in the V Report of the Republic of Colombia to the CESCR various aspects should cause concern for the Committee:

The absence of a real employment policy in Colombia which goes beyond the cycles of economic growth and deceleration and promotes the creation of new quality jobs. This can be seen in the small impact the positive economic growth of the years 2003-2007 had on the employment levels and the immediate effect the world economic crisis had on labor indicators such as unemployment and informality in the following years.

In the period under examination there has been an increase in non labor modalities of hiring through the use of CTAs, subcontracting, civil contracts, orders for service provision etc. which are promoted by the institutional set up and used massively to the detriment of the labor rights social security and trade union freedoms of the Colombian workers.

The consolidation of an economic model which promotes the lack of recognition of labor and union guarantees at the same as it promotes agroindustrial projects and the exploitation of natural resources (with worrying labor and environmental impacts).

The permanent and unjustified restriction on the right of association, collective bargaining and the right to strike by the administrative authorities and the flagrant ignorance of the contents of the conventions and recommendations of the ILO.

The adoption of regressive measures that have had a negative impact on the income of workers (Law 789 of 2002), on employment stability of 130,000 public servants (Law 909 of 2004) and the maintenance of their posts (Law 790 of 2002) without any of these reforms having sufficient justification in the light of the criteria defined by the CESCR in its general comments.

The sharpening of anti-union violence and the continued impunity in relation to the attacks on the life, physical integrity and freedom of the members of trade unions.

CHAPTER III

THE HUMAN RIGHT TO FOOD (ARTICLE 11.1 OF ICESCR)

*Should adopt more immediate and
urgent steps needed to
ensure "the fundamental right to freedom
from hunger and malnutrition"*

1. CONSECRATION AND CONTENT OF THE RIGHT

168. The right to adequate food is found consecrated in article 11.1 of the ICESCR and detailed in the General Comment No. 12 of the CESCR². The Political Constitution of Colombia guarantees the right to food in articles 64 and 65 which state that it is the duty of the State to promote the progressive access to land ownership by the agrarian workers and to improve the quality of life of the peasants, as well as giving special protection to the production of food, promoting the development of agricultural, fishing, forestry and agroindustrial activities. However, the human right to food has had a weak jurisprudential development. The Constitutional Court in some of its judgments has established the subsidiary responsibility of the State in relation to food³.

169. General Comment No. 12 is very clear in demarcating the State's obligation in relation to the protection and realization of the right to food in a progressive, non discriminatory sense in concordance with the basic constitutive elements of law: the availability, cultural acceptability, access and quality of the food.

170. The availability is having sufficient quantity of quality food to satisfy the nutritional needs of the individuals without harmful substances and that they be acceptable to each culture. The accessibility of these foodstuffs in ways that are sustainable and do not impinge on the enjoyment of other human rights (which supposes the guarantees of food security and sovereignty for the current and future generations), be that through ensuring the means of individuals or communities to feed themselves directly by exploiting the productive land or other natural sources of food or through distribution systems, elaboration, commercialization that work well allowing the transfer of food from the point of production to where it is required by society. The right to food should incorporate the right to water⁴.

1 CESCR, General Comment No. 12. Application of the ICESCR General Comment No. 12, The right to adequate food (Article. 11 of the ICESCR), 20th session 1999) UN Doc E/C12/1995/5 (1999) para.1

2 The constitutional jurisprudence on the right to food is, apart from the ICESCR, comprised of the following treaties and human rights conventions ratified by Colombia: Convention of the Statute of Refugees (1951); International Convention on the Elimination of all Forms of Racial Discrimination (1965); American Convention on Human Rights (1969); the Geneva Conventions (1949) and the Additional Protocols (1977); Convention on the Elimination of All Forms of Discrimination Against Women (1979); Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "San Salvador Protocol" (1988); Convention on the Rights of the Child (1989); Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries (1989); International Convention on the Protection of All Migrant Workers and their Families (1990); Guiding Principles on Internal Displacement.

3 Constitutional Court Sentences T-605/92, C-223/94, C-237/97

4 CESCR, General Comment No. 15, Application of the ICESCR, General Comment No. 15 The Right to Water (articles 11 & 12 of the ICESCR), (29th Session, 1999), U.N. Doc. E/C.12/2002/11 (2003), par. 1

5 Concluding Comments of the Committee on Economic, Social and Cultural Rights: Colombia E/C.12/1/Add.74, para. 37

6 Ibid. para. 44

7 Colombian Family Welfare Institute (ICBF). Encuesta Nacional de la Situación Nutricional de Colombia ENSIN (National Survey on the Food Situation of Colombia) 2005. Bogotá: ICBF, 2007.

171. It also includes economic and physical access. The former implies that the financial personal or family cost of acquiring the essential elements for an adequate food regime should not exceed the real possible income nor place at risk the satisfaction of other basic needs. The socially vulnerable groups should have special programs that allow them enjoy an adequate alimentation. The physical accessibility means that the food should be accessible to all, overcoming geographical barriers or the difficulties that may arise in the health and physical state of the people.

172. The violations of the human right to food bring grave consequences to the people and societies that suffer them; perpetuation of the poverty trap; increase in morbidity-mortality associated with the lack of food; destruction of social fabric; harm to the family, regional and national economies; greater possibility of armed conflicts, violation of associated rights (life, education, health, territory etc), amongst others. For this reason the guarantee of the right to food implies an unrestricted social commitment by the State.

2. RECOMMENDATIONS OF THE CDESCR

173. There is no explicit recommendation made to the Colombian State by the CDESCR on compliance with the right to food. In the 89th and 86th evaluation sessions of the IV official periodic report by Colombia on the application of the ICDESCR (2001), the CDESCR urged the State “to ensure that the minimum wage enables workers and their families to have an adequate standard of living”⁵, which includes the right to adequate food.

174. The CDESCR also recommended that the State “adopt the necessary measures to carry out genuine agrarian reform.”⁶ a measure which is undoubtedly related to the stipulations of article 11.1 of the Convention on the State’s obligation to take measures to improve the production, conservation and distribution methods of the food and perfect or reform the agrarian regimes.

175. None of these recommendations has been complied with and the advances that are mentioned in the V Report are highly questionable as will be analyzed hereafter.

3. ON THE V PERIODIC OFFICIAL REPORT

176. The Colombian State is obliged to comply with the commitments the follow from the ICDESCR even more so when Colombia is experiencing a critical food situation, which is even recognized by the governmental authorities⁷. As will be

seen further one the “V Report of the Republic of Colombia to the Committee on Economic, Social and Cultural Rights” fails to analyze the real situation of the right to food in the country, as seen by the failure to incorporate a rights perspective on the international obligations of the Colombian State with particular reference to article 11.1 of the ICESCR.

177. The V state report is exhaustive in mentioning the National Food and Nutrition Plan (PNAN) as a “*State Plan*” that reached the goals set at the beginning⁸. However, not only are there questions about its efficiency⁹ but also after its termination in 2005 no plan or policy that replaces it or strengthens it has been put in place. It was not until March 2007 that some government bodies presented a document to the National Council for Economic, and Social Policy (CONPES) that put under consideration a Food and Nutritional Security Policy¹⁰. In the same sense, almost eight months later Bill 203 of 2007 was lodged in the Congress of the Republic to “*establish the legal framework for Food and Nutritional Security*”¹¹. Unfortunately at the behest of the State it did not prosper. This shows the regression in the right to food as no public policy with a HR perspective which gives continuity to the former PNAN 1998-2005 has been implemented.

178. By dilating on and blocking the setting in train of a public policy which is favorable to the right to food the Colombian State also violates another of its main obligations laid down in article 2 of the ICESCR; that the State “undertakes to take steps,(...) with a view to achieving progressively the full realization of the rights “. The “legislative advances” reported by the Government in its V Report are far from being structural or determining, as almost all of them are related to the adoption of measures that favor one or other agricultural activity which do not respond to a strategy to promote, defend and guarantee the right to food.

4. SITUATION OF THE RIGHT TO FOOD

179. According to the Colombian Family Welfare Institute, ICBF, 40.8% of Colombian homes suffer food insecurity¹². This silent tragedy is reflected in a series of indicators that contrary to what is stated by the National Government in its V Report, show an undeniable humanitarian tragedy; the deaths associated with hunger reach the shameful figure of 40,000 cases between 1998 and 2002¹³. More than 20% of the children under five have energetic deficiencies and 36% of them protein deficiencies¹⁴; 63.7% of the general population has energy deficiencies and 36% protein deficiencies¹⁵; and hidden hunger (deficiency of micronutrients) is rife throughout the country, with 33.2% of children under five suffering from anemia; deficiency of Vitamin C in the general population 22.6%; Vitamin A 32%; Zinc 62.3% and Calcium 85.8%¹⁶.

8 Ministry of Foreign Affairs. V Report of the Republic of Colombia to the Committee on Economic, Social and Cultural Rights (Spanish version), p. 120.

9 Its reach and effects have been placed in doubt in academic circles, both nationally and internationally. Cf., Ortiz Moncada, Rocio; Ruiz Cantero, María T. y Carlos Álvarez Dardet. Análisis de la Política de Nutrición en Colombia. (Analysis of Nutritional Policy in Colombia) In. Rev. Salud Pública. Bogotá. V.8 No.1 April 2006. pp., 1-13.

10 Ministry for Social Protection and others. Política Nacional de Seguridad Alimentaria y Nutricional (PSAN). Conpes Document 113. Bogotá: 31st March 2007. Available: <http://fenalce.net/archivos/conpes113.pdf>

11 Senate of the Republic of Colombia. Bill No. 203 of 2007 Senate. In: Gaceta del Congreso. Bogotá. Year XVI. No. 599, 27th September de 2007

12 ICBF, Op.Cit., p. 323.

13 Universidad Externado de Colombia “Tres menores de cinco años mueren al día en Colombia por desnutrición” (Three children under five die every day in Colombia due to malnutrition. Bogotá. 2006. In: <http://www.uexternado.edu.co/noticias/desnutricion.html> [Consulted: 23/ VIII/2006].

14 12 % chronic malnutrition (size/age), 1.3 % acute(weigh/age) and 7 % global (weight/age); See: ICBF. Op. cit. pp. 74 – 76. This data and the following correspond to the year 2005, the last year of valuation of the nutritional state of the country in ENSIN, carried out by the Panamerican Health Organization and National Health Institute.

15 Ibid., pp. 243, 245.

16 Ibid., pp. 149, 283, 287, 291 y 295

17 World Food Program; European Commission; Panamerican Health Organization. Estado nutricional, de alimentación y condiciones de salud de la población desplazada por la violencia en seis subregiones del país. (Food and Nutritional State and health conditions of the population displaced by violence) Bogotá: diciembre 2005. PDF Document, pp. 38-41. Available at: <http://www.mediosparalapaz.org/downloads/estado%20nutricional%20de%20los%20desplazados.pdf>

18 ICBF. Encuesta Nacional de la Situación Nutricional de Colombia Op. cit., p. 74

19 Ibid., pp., 150 y 152.

20 Ibid., p. 85.

21 Ibid., p. 188

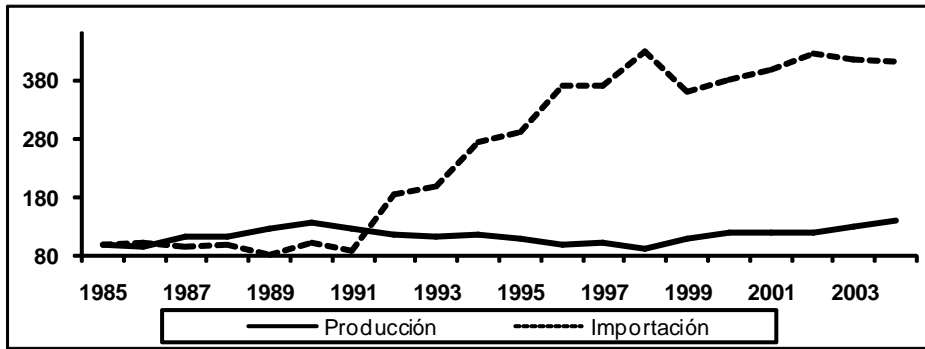
In March 2007 the Public Defenders' Office went public on the food crisis in the Department of Chocó in virtue of almost 100 mainly indigenous and Afro-descendent children dying from hunger or food privation related illnesses in the first few months of the year. The malnutrition and the deaths from hunger in Chocó as in the rest of the country are well known but they haven't caused any great concern on the part of this and previous governments.

Fian – National campaign for the right to food PCDHDD. Food Crisis in Chocó, 30th of March 2007.

180. The scale of the situation is worse amongst the more vulnerable populations with the grave situation of the children and the displaced persons standing out; 87% of the displaced population live badly in a situation of food insecurity (46 points above the national average);¹⁷ chronic malnutrition in the rural population under the age of five is almost double that of the urban area (17.1% vs. 9.5%)¹⁸; anemia affects 32.8% of women of a fertile age and 44.7% of pregnant women¹⁹; 20.7% of pregnant women are below weight for their age (33.2% in the case of pregnant adolescents)²⁰; and only 46.8% of children under six months receive breast milk exclusively and just 45.2% of mothers say they were given information on breast milk²¹.

Obligation to respect

181. Although article 65 of the Political Constitution of Colombia expressly states that the “*food production shall enjoy the special protection of the State*” this obligation has not been met, given that from 1990 onward when the neo-liberal model was fully introduced in the country the agricultural sector began to fall apart and lose its traditional productive capacity, especially in relation to the production of food. As an example, the following graph shows the rhythm of production and importation of cereals in Colombia in the period 1985-2004 (1985=100). There was a complete turn around from the beginning of the decade with two serious consequences for the availability of food: (i) it shows the slow disappearance of cereals and the production or breeding of other foodstuffs (food security) and (ii) the availability of them depends increasingly on their importation (food sovereignty).



Graph 2. The importation of food.²²

182. Although the CDESCR urged the Colombian State in 2001 to “adopt the necessary measures to carry out a genuine agrarian reform” it is true that state policy is orientated in the completely opposite direction. Nowadays, agricultural policy only encourages the generation of agricultural goods on a large scale related to the agro-exporting proposal causing the destruction of the family based peasant economy linked to the production of food which limits the physical access to it and places at risk the availability of food in the country. The explicit intention of the State is push five million peasants into the production of agrofuels²³ which implies cutting off 45% of the rural population from their natural vocation: the production of food²⁴.

183. The coercion of the Colombian rural sector is on occasions enmasked under the figure of the creation and support to “productive projects’ that are usually presented as actions in favor of the right to food, but as the State confirms in its V Report²⁵ are conditioned to the logic of territorial intervention and the promotion of agro-exportation.

184. This model is linked to the intervention and territorial control strategies of the dynamic of the internal armed conflict that seeks to reconfigure the rural areas in terms of the needs of the armed conflict or local or transnational big businesses. In fact, the Rural Development Statute (Law 1152 of 2007) against which there are a number of demands for unconstitutionality works as a mechanism to destroy the communities, opening up the door to the illegal appropriation or legalization of the theft, in favor of criminal sectors or investors, of the land of millions of rural inhabitants who were displaced or of those that still have their property or collective territories²⁶.

185. As regards forced displacement the right to food is one of the most violated rights in so far as the people and the communities are forced (generally through the use of violence) to abandon their territories and belongings or as a consequence of the appropriation and destruction of the resources that were used by the population to meet their food needs. These violations, many of them legitimized by

²² Graph taken from: Morales González, Juan Carlos. *El hambre al servicio del neoliberalismo. (Hunger at the service of neoliberalism)* Bogotá: Ediciones desde abajo, 2006, p. 195. Data based on (in 1000 tonnes) taken from FAO-FAOSTAT

²³ ¿Alimentos o gasolina? Food or petrol? *Semana Magazine. Electronic Edition.* Bogotá. 10/VI/2007. Available at: http://www.semana.com/wf_InfoArticulo.aspx?IdArt=106693

²⁴ The population census of 2005 points out that the rural population is approximately 11 million people.

²⁵ Ministry of Foreign Affairs. Op. Cit., p. 124.

²⁶ To see some of the criticisms of the Rural Development Statute consult: Carta del Procurador General de la Nación, Edgardo Maya Villazón, al Ministro de Agricultura y Desarrollo Rural (letter from the Procurator General of the Nation, Edgardo Maya Villazón). 8/X/2006. In: Grupo Semillas. *Proyecto de Ley de Desarrollo Rural.* Pull out. Bogotá. 2006. pp: 29-32.

27 This situation was already seen in the case of the Embera people in the most recent complete report on the state of the HR of the indigenous population in Colombia. See: Arango, José Ubeimar; García, Alejandra y Heydi Cristina Gómez. La institucionalidad pública frente a la garantía del derecho a la alimentación. (the public institutions in the face of the guarantee of the right to food.) In: Centro de Cooperación al Indígena Cecoin. Indígenas sin derechos. Situación de los derechos humanos de los pueblos indígenas (Situation of the human rights of the indigenous peoples). Bogotá: Ediciones Antropos, 2007, pp. 348-350

28 See : Constitutional Court , Sentence T-025 de 2004, 22nd January 2004, PM. Manuel José Cepeda Espinoza. Available at: <http://www.acnur.org/biblioteca/pdf/2501.pdf>.

29 Monitoring Comisión of Public Policy on Forced Displacement. National Process of Verification of the Rights of the Displaced Population. Primer Informe a la Corte Constitucional. (First report to the Constitutional Court) Bogotá: 31st January 2008, p. 135. Available at: http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52

30 Just between July 2002 and December 2007, along with attacks on other property in various areas of Colombia around 90 food blockades were established See International Committee of the Red Cross (ICRC). Annual Report 2007, p. 60; Annual Report 2006, p. 38; Annual Report 2005, p. 30; Annual Report 2004, p. 12

31 Semana Magazine, Una prueba más del fracaso de la lucha contra las drogas (Proof of the failure of fight against drugs), Wednesday June 21st 2006. Available at: <http://www.semana.com/noticias-on-line/prueba-del-fracaso-lucha-contra-drogas/95385.aspx>

32 Morales González, Juan Carlos y Alejandro Mantilla Quijano. Hambre y fumigaciones en Colombia: una tragedia por valorar (Hunger and Fumigations in Colombia a tragedy to be evaluated). Colombian Platform for Human Rights, Democracy and Development. Document presented to Documento presentado Un Rapporteur on the right to health, Paul Hunt. Bogotá: 2007

33 Public Defenders' Office, "La ejecución de la estrategia de erradicación aérea de los cultivos ilícitos, con químicos, desde una perspectiva constitucional" (A Constitutional perspective on the execution of the aerial eradication strategy of illicit crops using chemicals). Bogotá: June 2003, at www.defensoria.org.co

34 See the report of the Ecuadorian Scientific Commission. El sistema de aspersiones aéreas del Plan Colombia y sus impactos sobre el ecosistema y la salud en la frontera ecuatoriana (The aerial aspersions system of Plan Colombia and its impacts on the ecosystem and health on the Ecuadorian border. Quito: April 2007. Available at: <http://www.accionecologica.org>

the State have been particularly harmful to the rights of the Afro-Colombian and Indigenous communities. When this happens and having not protected the right of the population to food, the State tries to soften the crisis and silence the voices of dissent using food aid programs, which distribute food without taking into account the principle of cultural acceptability which forms part of the right²⁷.

186. It is paradoxical that in the V Report the Government cites as an example of its compliance with its international obligations Sentence T-025/04 of the Constitutional Court, which, in fact arose not from a governmental advance but rather from a pronouncement by the highest court in the face the systematic violation of the human rights of the displaced population and the indolence of the State in the face of what was termed "*a state of matters unconstitutional*"²⁸ which still continues, one of its indicators being the existence of a critical food situation²⁹.

187. In addition to this there is the territorial reconfiguration that includes the participation of various actors that take part in the hostilities (including State forces) who through food blockades have confined various rural communities, restricting the access of the population to sufficient and adequate food. These actions have been justified as a war strategy aimed at cutting of the supply of food to the enemy forces³⁰ even when this violates International Humanitarian Law and in particular the 1st and 2nd Additional Protocols of the Geneva Convention in articles 54 and 14 respectively.

188. The obligation to respect has also been ignored in the application of the Colombian State's anti-narcotics policy which has in line with US directives focused on the elimination of crops through aerial fumigation. Many sources, including the UN, have coincided in pointing to the failure of the fumigation strategy, as the areas under coca reached 159,600³¹ in 2005. In 2006 it was calculated that the area fumigated was at least 172,025 hectares, 29% more than in 2005³².

189. This method of eradication has had a negative impact on the environment, human health and on food crops giving rise to social dynamics of isolation, forced displacement, amongst others³³. The diplomatic tensions that have arisen with the Republic of Ecuador due to the socio-environmental impacts of the fumigation policy carried out by Colombia along the border with that country are very serious.³⁴

The Public Defenders' Office denounced that "the indiscriminate fumigations of small plots ignore the positive differentiated measures taken by the State in favor of these small growers and worse still they have affected the right to health and a safe environment for the population as well as the rights of the children that inhabit the regions where the Eradication Program is being executed" (Public Defenders' Office, A Constitutional perspective on the execution of the aerial eradication strategy of illicit crops using chemicals), Bogotá, April 2002.

190. Another situation which shows the State's non compliance with the obligation to respect the right to food is the policy of encouraging the agrofuel crops, particularly African Palm and Sugar Cane which have rapidly been occupying vast areas of Colombia many of them suitable to the production of food. In 2003, there were 188,000 hectares planted with these crops and in 2007 they already had some 300,000 (the Government target is one million hectares)³⁵. Some of these crops have expanded in areas where there the forced displacement of peasant and ethnic communities has taken place.³⁶

191. Consequently the policies, programs and measures implemented to date have meant the worsening of the hunger situation in the country, the almost total loss of food sovereignty and autonomy impacting on the availability, access to and cultural relevance of the food process.

Obligation to protect

192. In relation to the obligation to "protect" the right to food³⁷, the Colombian situation and the role of the State are deplorable. To cite one example the negotiations that led to the signing of the Free Trade Agreement (FTA) with the USA has left food availability (based on internal production) exposed to the threat of immediate destruction.

193. According to specialist studies, the FTA is highly favorable to the USA and unfavorable to Colombia, in the trade balance (taking as base value the average importations between 2001-2004). "Colombia gave the USA a zero tariff on imports equivalent to US \$839 million, whilst the USA gave Colombia a zero tariff for imports that reach US \$ 776 million which is clearly unbalanced and asymmetric in the USA's favor."³⁸

194. With an economic policy that does not subsidize internal production of food competing with one that does, it has been calculated that in the first years

35 Various authors *La cuestión agraria hoy. Colombia: tierra sin campesinos.* (The Agrarian question today. Colombia: land without peasants.) Bogotá: ILSA, 2008, p. 159.

36 This is the case of the Afro-Colombian communities of Jiguamiandó, Curvaradó and Domingodó in the Department of Chocó, that were violently expelled from in 1996 by paramilitary groups that took over the collective lands. In 2001 23 businessmen connected to the paramilitary structures commenced a mega-project to plant African Palm on more than 5,000 hectares that formed part of the lands stolen from the black communities in that region Flórez, Jesús; Millán, Constanza. *Derecho a la alimentación y al territorio en el Pacífico colombiano* (The right to food and territory on the Colombian pacific coast.) Diócesis de Quibdó y otras. 2007, p. 138.

37 This obligation refers to the State being obliged to "[adopt] measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.". See CESCR, General Comment No. 12, Op. Cit., para. 15

38 Garay, Luis Jorge, et al. *La negociación agropecuaria en el TLC. Alcances y consecuencias.* (The agricultural negotiations of the TLC. Implications and consequences) Bogotá: Planeta Paz, 2006, p. 80.

39 Ibid., pp. 148 y 172.

40 So, for example, Resolutions 464 and 465 of 2007 authorized the use of three new varieties of genetically altered corn in four Colombian departments without consulting the population at risk and putting at risk the dynamics of food autonomy that struggle for the clean production of food and the sovereign control of resources and processes, amongst seeds.

41 Ministry of Foreign Affairs V Report. Op. cit., p. 121.

42 "Bienestarina" is the main and most abundant food nutritional supplement supplied by the State throughout the country. Amongst its components are wheat flour and soy bean See: Vélez, Germán. Los alimentos transgénicos en Colombia. Riesgos e impactos en la agricultura y la salud humana (Genetically modified foods in Colombia. Risks an impacts on agriculture and human health. Grupo Semillas.. Bogotá: 23rd December 2002. Available at: <http://www.semillas.org.co/sitio.shtml?apc=c1a1--&x=20154735>

43 Jefe paramilitar de los llanos desmovilizado ayer reconoció haber recibido tierras del INCODER". (Demobilized paramilitary boss acknowledged yesterday having received land from INCODER) Magazine of the Colombian Airforce – Ministry of National Defence. Bogotá, 12th April 2006. Available at: <http://www.fac.mil.co/index.php?idcategoria=9079>

44 Capturan a ex presidente de FINAGRO por presunto favorecimiento a "Micky" Ramirez". (Capture of ex president of FINAGRO for supposedly favoring "Micky" Ramirez News item of Caracol Radio. online. Bogotá, 11 June 2008. Available at: <http://www.caracol.com.co/nota.aspx?id=612770>

of implementation of the FTA national food production will fall by 13% in the case of corn, 23% for soy bean, 15% for beans and 23% for wheat. As part of the chain of effects the initial fall in production will cause, in the short term, the loss of 200,000 hectares and 30,000 rural jobs per year³⁹.

195. Despite the worldwide debate around the serious harm that may be caused by the sowing, commercialization and use of genetically modified organisms (GMOs) on the environment, human health and rural economies, the Colombian State has refused to protect both the producers and consumers from such risks. It refuses to apply the principle of precaution and the provisions of the Cartagena Protocol on Biosecurity (2000), thus opening up a space for greater sowing, commercialization and use of GMOs⁴⁰. Even though the V Report by the Colombian State mentions having made efforts to "control and supervise food for human consumption"⁴¹. In relation to this issue there are no effective controls. This State's inaction occurs despite the strong demands of civil society organisms that have even shown how "Bienestarina" (food supplement)⁴² used in state food aid, mainly for the child population is contaminated with genetically modified soy bean.

196. In Colombia the concentration of land is one of the determining factors of poverty and hunger. In 2002 it was calculated that barely 0.6% of landowners owned 53.5% of the land area. The issue in question is key in so far as the land, along with other productive factors, continues to be expropriated in detriment to the peasant economy. The possibilities of guaranteeing the internal availability of food and ensure physical access to it will be increasingly more restrictive.

197. As regards the State's encouragement of mega-projects, the exploitation of natural resources and the modifications of the country's infrastructure, in which transnational capital has strong interests and usually acts without any control on it. It has been shown that these initiatives are frequently carried out in violation of the human and collective rights of the communities that live in those zones, particularly ignoring the right to participate and the consultation of the peoples.

198. In relation to this the Colombian State not only has shown itself incapable of protecting the right to food of the rural populations but moreover it has shown itself to be complicit in this phenomenon. So the INCODER (Colombian Institute for Rural Development), an institution charged with agrarian reform has been involved in the handover of thousands of hectares to the commanders of paramilitary groups⁴³ responsible for the commission of hundreds of grave human rights violations. Equally it has become publicly known the National Agrarian Fund (FINAGRO) transferred more than 18,000 million pesos in credits to known criminals close to the defunct Pablo Escobar⁴⁴.

Obligation of realization

199. The obligation to realize the right to food, comprises at the same time the State's duty to 'facilitate' and 'make effective' that right. As has already been stated the State has not formed any policy favorable to the right to food nor to the work of the rural communities and economies on which internal food production rests. For this reason, it does not carry out significant actions to strengthen people's access to and the means that guarantee food and nutritional security.

200. In terms of making the right to food effective, the actions undertaken by the State and mentioned in the V Report are mainly assistentialist programs which due to their incoherence and the impossibility of linking them to a public policy that favors the right to food (as weak as this may be) cannot be considered by any means to be actions that respond sufficiently and completely to this obligation.

201. Respected academic research bodies on the issue of food in Colombia⁴⁵ that analyzed these programs showed the impossible nature of showing the impacts that these measures have had in alleviating hunger in the country. So, the only achievements in the area of the progressive realization of the right, corresponds to minimal increases in coverage. There were even public denunciations that showed that in the development of some of these activities the food aid was used for political proselytism by narco-paramilitaries⁴⁶.

202. Using the Colombian Institute of Family Welfare's (ICBF) own statistics one realizes that the 'advances' of the food supplement programs are questionable. For example, one can observe how the Program for Community Welfare Homes, coverage has been frozen whilst they strengthen other nutritional attention schemes (Child breakfasts, Families in Action, "Juan Luis Londoño Program). What is of concern is that Child Breakfast programs where the nutritional intake does not rise above 20% are strengthened to the detriment of Community Welfare Homes where the children receive a nutritional intake of over 70%. This is shown in the following table⁴⁷:

45 Such as the Observatory on Food and Nutritional Security which collaborated in this report.

46 Intervention of Senator Gustavo Petro in the Congress of the Republic. Bogotá: 01 November 2004.

47 Table is based on National Planning Department. Hacia una Colombia equitativa e incluyente. Los Objetivos de Desarrollo del Milenio y el Plan Nacional de Desarrollo 2006-2010. Estado Comunitario: Desarrollo para todos. (Towards an equitable and inclusive Colombia. The Millenium development goals and the National Development Plan 2006-2010. Communitarian State. Development for all). Bogotá: DNP, 2007

Coverage	2002	2006	VARIATION 2002-2006
Beneficiaries of Families in Action (families)	320.716	682.307	378.675
Child beneficiaries of Welfare Homes ICBF	945.503		9.103
National Program of elder adults nutrition "Juan Luis Londoño"	25.710	383.773	358.063
Child Breakfasts.	78.152	1.006.640	928.488

Table 3. Coverage of Food Programs 2002/2006

⁴⁸ Based on the systematization carried out by the Foundation FIDHAP and the Asamblea SUR of the discussion on the situation of the right to water in Colombia in the context of the II Colloquium on Social Policy and Human Rights held in Bogotá 30th of October 2008.

⁴⁹ Information available at: <http://www.elespectador.com/articulo137624-solo-el-52-de-los-municipios-suministra-agua-24-horas-del-dia?page=0,1>

203. Finally it striking that in order to correct the vacuum and lack of a food policy, the Colombian State resorts to describing the program “Bogotá Sin Hambre” (Bogotá without hunger) in its V Report when this is an exclusive initiative of the local government in the Colombian capital and not the National Government.

204. In short, the actions reported in the V Report (Productive Projects, “ Food Security Network – RESA) or those carried out by the Presidential Agency for Social Action and International Cooperation (Acción Social) fit into the logic of social intervention (not structural transformation) linked to the dynamic of the internal armed conflict, territorial control, war on drugs; or are timid responses to the criticism of the Constitutional Court of the state abandonment of the displaced population. Apart from this, the state duty to facilitate the realization of the right to food continues to be non existent.

5. SITUATION OF THE RIGHT TO WATER⁴⁸

205. According to a diagnostic of the Public Defenders’ Office⁴⁹ the country has a population of 42,888,592 of which approximately 11 million are based in rural areas. Twenty seven percent of the population have unsatisfied basic needs. Next we will present some aspects that were confirmed by this supervisory agency.

206. The availability of water is related to the regularity and continuity in the water service, the sustainability of the sources and the use of water (which usually comprises the consumption, sanitation, preparation of food and personal hygiene and household chores). Although this shouldn’t be a problem in Colombia given its rainfall regime, it is a problem for other reasons, such as, the destruction of watersheds, and the deterioration of hydric resources, deforestation, the use of chemicals in agriculture, pollution of rivers and streams with domestic and industrial waste, amongst others. This makes water treatment and access a high cost activity. This is why the development of governmental policies on the sustainability of this asset are required.

207. Amongst the indices of vulnerability, understood as the fragility of the hydric system in maintaining an appropriate availability of water to meet the demand for the resource, the national situation is very serious. Almost 20 million people, 48% of the population are at high level or very high level of vulnerability in the enjoyment of this right. Only 17% of the inhabitants are not at risk of suffering failings in the supply of potable water. The departments most exposed to a lack of water are: La Guajira, Valle del Cauca, Santander, Atlantico, Norte de Santander, Caldas and the city of Bogotá.

208. It has been calculated that 43% of the sewage discharges have no sanitation and management of sewage plan. What is more, less than 10% of these waters

are properly treated before being discharged into natural water bodies. Only 52% of the municipalities supply water 24 hours a day. Approximately 90% of the population belong to social stratum one, two and three: a person from stratum one consumes on average 103 liters per day, whilst a person from stratum 6 consumes on average three times that amount.

209. In Colombia 9,022,276 people have no access to a piped water supply and 13,541, 532 have no access to sewerage. It is calculated that 977,984 children between the ages of 0 and 4 have no access to piped water supply. Only 40% of houses have access to both piped water and sewerage services.

210. In 222 municipalities the coverage for the piped water municipal supply in rural areas does not rise above 30% and 593 municipalities do not have higher coverage than that in sewerage. Only 17 municipalities have reached optimum coverage levels for both running potable water and sewerage i.e. above 95% coverage.

211. The peasants, indigenous, Raizals and Afro-Colombians have lower than the national average rate of coverage in municipal water supply and sewerage. Eighty three percent of the 541 municipalities that supplied information in the first semester of 2007 did not supply water fit for human consumption. In the first semester of 2007 the percentage of unfit samples due to coliform bacteria was 46%, for E-Coli it was 30% and for residual chlorine it was 49%. The biggest number of illnesses related to water are related to classical dengue and malaria. The largest number of deaths that are possibly related to water is perinatal mortality, acute diarrheic illness and malnutrition.

212. From 1999 to 2004 the inflation in the water, hygiene and sewerage sector was above the general rate of inflation reducing the purchasing power of the low income families and possibly pushing up general inflation. In 2007 the average national subsidy for fixed charges was 32% for stratum one; 22% for stratum two and 8% for stratum three. In relation to this charge the contributions of stratum five were 73% and for stratum six 112%. In the same year the national average for subsidies for basic consumption charges was 50% for stratum one; 36% for stratum two and 16% for stratum three. In relation to the said charge the contributions of stratum five were 39% and for stratum six 50%. These subsidies are being reduced with a consequent rise in prices.

213. Although almost 9.6 billion pesos were invested in 2007, between 1996 and 2005 in the basic water and sanitation sector there was no up to date inventory of potable water and basic sanitation infrastructure. There is no works and investment plan for the next five years for the payments made by users through the tariffs .

214. Faced with the complaints by citizens for deficiencies in the provision of water and sewerage services, the level of response by the public service water companies is low; only responding to 46% of the requests, complaints, queries motivated by high tariffs, failings in the provision of service, meter errors, suspension, disconnection, reconnection and reinstallation of service.

215. The situation in Chocó is of particular concern where almost 90% of the black communities have no access to potable water; water consumption is from rainfall and the sewage goes directly into the rivers. The hydric resources are being increasingly polluted by mining concessions to national and international companies that dump high socio-environmental impact chemical substances into the rivers. This happens despite the special rights the Afro-descendant communities have over their collective territories.

216. The contamination of water sources by effluent discharges is one to the contributing factors to future risks. There is no policy to regulate and avoid this source of contamination. Even the institutions that provide the basic sanitation service make discharges into water sources. Seventy five percent of the discharges at national level go straight into the rivers and streams without any type of treatment and on many occasions these rivers supply the rural water supply making treatment even more complex.

217. Other factors that impede access to water have to do with the inadequate construction of works, the construction of hydric works to favor some rural businessmen and the contamination of rivers by oil and agroindustrial companies. In the case of the Orinoquia and Llanos Orientales region there is a high risk of a reduction in the natural supply of water due to the reduction in the flow of rivers, in particular the river Guatiquía because of the transfer that Bogotá makes in order to supply its water system; this reduces the inundations of the flood plains causing a loss in the conditions required for the crops and the fish.

218. In the case of the department of Tolima, the National Government has allocated resources for the implementation of water supply works for the agricultural sector including the building of the irrigation district El Triangulo; however, the beneficiaries of this product are not small peasant producers nor the communal indigenous Piajos whose ancestral lands will be flooded but rather large scale rice and sorghum productive processes.

219. The Orinoquia region also faces pollution problems with its water sources due to oil exploitation. The discharges of the oil wells into the bodies of water transform the environment and exterminate the aquatic ecosystem of the rivers.

220. As regards the economic accessibility to water this depends on the economic stratification of the population on the basis of which tariffs are set according to the criteria consecrated in Law 142 of 1994. It is evident that the current methodology for setting tariffs does not reflect the income of homes that are faced with paying water and sewerage charges that are beyond their means and have to put off satisfying other basic needs; pay a daily rate or resign themselves to the service providers suspending the service. The phenomenon is such that in Medellín a social movement has arisen of “disconnected” that fights for access to water in conditions of social justice in services so basic as water and electricity.

221. The water management model imposed by State contained in the departmental water plans threatened the functioning and sustainability of the communitarian water supply. The Government is interested in putting the supply service offered to date by the communities in the hands of private operators alleging that the management of them has been inefficient, despite the fact that it is they who have worked to save the water sources and guarantee the fundamental right of water as a collective asset.

222. In formulating national potable water and basic sanitation policy the reality of the construction, operation and functioning of the community water supplies are not taken into account. They are the ones who attended to the demand for potable water for domestic use in the majority of the national territory. From one generation to the next the communities that manage these water supplies have contributed, with work methodologies, techniques, empirical knowledge, to the care of hydric sources and for the operation of the supply system. However, despite this community effort the State, which seeks to organize a private provision of water via concessions under the departmental water plans is not interested and so attacks the communitarian effort using technical arguments.

CONCLUSIONS

223. For all these reasons we believe that the Committee on Economic, Cultural and Social Rights should formulate urgent recommendations to the Colombian State in order to stop the violation of the right to food and water and that it generates political, economic and administrative social policy conditions that guarantee the full realization of these rights.

224. The analysis of the food situation laid out in this document allows us to conclude that Colombia, lacks, since at least 2005, a public policy favorable to the right to food. In this sense, it would be important that the CESCR recommends that the State formulate and implement a food policy in accordance with its international obligations and takes into account particularly vulnerable sectors such as children, indigenous peoples and forcibly displaced population.

225. The Colombian State in the period under examination has managed, promoted and supported dynamics that are an attack on the right to food and particularly an attack on food sovereignty and autonomy. The CESCR could urge the Colombian State to:

- Develop a public agrarian policy that gives special priority to production of food, developing programs that protect national production with incentives for the small producers.
- Subordinate the international commercial negotiations to the right to food in such a manner that the economic management of the economy strengthens food sovereignty and autonomy instead of undermining them.
- The development of a public agrarian policy the sets in train the implementation of an integral agrarian reform basing itself on the recognition and titling of collective indigenous and Afro territories as well as the adjudication of lands aimed at the peasant population.
- The restitution of territories taken from the indigenous and Afro communities as well as the peasant families by legal and illegal means alongside the adoption of programs aimed at guaranteeing the no repetition of these crimes.

226. Finally it is important that the CESCR recommend that the State constitutionally recognize water as a human right.

CHAPTER IV

THE RIGHT TO EDUCATION (ARTICLE 12 OF THE ICESCR)

As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities⁵⁰

1. CONSECRATION AND CONTENT OF THE RIGHT

227. Article 13 of the ICESCR along with other international instruments⁵¹ forms part of the body of international norms that shape the obligations of the State for the full realization of the right to education. Also the Committee in its General Comment No. 13 develops and complements the way in which such obligations should be understood.

228. According to the methodology adopted by the United Nations to evaluate the right to education the framework for obligations is defined by the guarantees of availability, accessibility, adaptability and acceptability.

Availability: This obligation is satisfied on two different human rights planes. In the context of civil and political rights it materializes in the respect for and satisfaction of the freedom of private actors to found and administer educational establishments and of the parents to choose the education of their children and the academic freedom of the teachers and students. In the context of the ESCR this obligation is materialized in the State's duty to invest resources to ensure that educational establishments, teachers and educational programs are available to all children in sufficient quantity and quality⁵². The duty of the States in this instance is to ensure that obligatory, free education be available to all children of a school going age.

Accessibility: This deals with eliminating discriminatory practices in access to education or economic motives (thus the demand that it be free) geographical or material motives.

⁵⁰ CESCR **General Comment No. 13**, Application of the ICESCR General Comment No. 13, The Right to Education (Articles 13 of the ICESCR) 21st 1999 U.N. Doc. E/C.12/1999/10 (1999), para. 1

⁵¹ The Universal Declaration of Human Rights (Art. 26); San Salvador Additional Protocol to the American Convention on Human Rights (Arts. 13 and 16); International Convention on Civil and Political Rights (Art. 18); Convention on the Rights of the Chile (Arts. 23, 28 and 29); Convention on the Elimination of All Forms of Discrimination Against Women (Art. 10); Inter-American Convention for the Elimination of All Forms of Discrimination Against People with Disabilities (Art. 3) International Convention on the Elimination of All Forms of Racial Discrimination (Art 5.) Convention 169 of the ILO, related to the Protection and integration of indigenous and other tribal and semi tribal populations in independent countries, (Arts. 21, 22, 27,28, 29 and 30); and Convention 182 of the ILO on the worst forms of child labor (Art. 7). All these human rights instruments have been subscribed to by the Colombian State and form part of the constitutional jurisprudence.

⁵² Public Defenders' Office.. Sistema de Seguimiento y Evaluación de la Política Pública Educativa a la luz del Derecho a la Educación. (Monitoring and Evaluation System for the Public Educational Policy in the Light of the Right to Education) Bogotá: 2004, p. 34.

53 Constitutional Court. Sentence T-402 of 1992.
 54 Constitutional Court. Sentences T-323 of 1994
 and T-534 of 1997.

Adaptability: In the supreme interest of the child an education that adapts to his/her needs and allows them to remain at school. Specially through the guarantee of human rights within their education and the promotion of them through school practices.

Acceptability: This refers to the quality of the education and is measured by respect for human rights, the quality of physical infrastructure, labor guarantees for teachers, the pertinence of the content, respect for the cosmovision of the indigenous peoples and Afro-descendants as well as their autonomy to develop their won educational processes.

229. Internally, in the Constitution of 1991 education is particularly consecrated in articles 27, 41, 44, 67, 68, 69 and 70. Article 27 guarantees the educational freedoms, learning, research and teaching. Article 41 stipulates that the State should promote democratic practices inside the private and official educational institutions with the aim of transmitting principles and values of citizen participation. Article 44 stipulates that education is a fundamental right of children⁵³. In article 67 education is recognized as a right for all people and that its realization is the responsibility of the State, the society and the family; it also indicates three essential aspects for the full effective realization of the right to education: (1) education shall be obligatory between the ages of five and fifteen years of age, (2) it shall consist of at least one year of preschool and nine of basic education and, (3) public education shall be free of charge, retaining the right to charge for academic services those who can afford them. On the first point the Constitutional Court expanded the fundamental right of public basic free education up to the age of 18⁵⁴. Finally, this article also states that it is the State's responsibility to regulate and exercise the highest supervision and inspection of education with the aim of ensuring quality, compliance with the aims and the best moral, intellectual and physical formation of the pupils; guarantee the adequate coverage of the service and ensure the necessary conditions for the access of the children to the educational system and their continuance in it.

230. Article 68 of the Constitution stipulates that private individuals may found educational establishments in conformity with the law for their creation and management; and recognizes the guarantee of the educational community to participate in the management of the educational institutions. It also ordains that teaching be charged to people of acknowledged ethical and pedagogical suitability. The law guarantees the professionalization and dignification of the teaching profession. The right of parents to choose the type of education for their under age children is recognized and it stipulates that in no State establishment can a person be obliged to receive religious education. The eradication of illiteracy is

consecrated as a duty of the State as is the special obligation for the education of people with physical or mental limitations or with exceptional capabilities. The last part of Article 68 consecrates the right of ethnic groups to have an education that respects and develops their cultural identity⁵⁵.

231. Article 69 guarantees university autonomy and recognizes a special regime for the State's universities. The State is responsible for strengthening scientific research at this level and for having financial mechanisms that make access possible for all those who are suited to higher education.

232. Article 70 stipulates that the State has the duty to promote and foment the access of all Colombians to culture in equal conditions through permanent education and scientific technical, artistic and professional education at all stages of the process of the creation of national identity. It emphasizes the state duty to protect culture in all its diverse manifestations as the basis of the nationality and to ensure the equality and dignity of all cultures that cohabit the country. In article 71 it recognizes the right to knowledge and artistic expression and indicates that the development plans shall include measures to foment the sciences and culture in general for which state incentives for its promotion are required.

233. The General Education Law (Law 115 of 1994) is the result of a wide ranging discussion that aimed to develop the area of educational services and its integration with the principles of participation, peace, human rights and democracy. Notwithstanding its regulation as a public service what is required is paraphrasing Senator Luís Carlos Avellaneda its regulation as a fundamental right through a statutory law:

“The educational service was regulated without having decided the nature of the right to education, its characteristics and the principles that will illuminate that right. In this way, walls were raised without having made the cement that gave a basis to the regulation of education⁵⁶”

234. Law 115 of 1994 refers to multiple aspects and proposes grand educational aims for the country. However, in some cases the provisions have been implemented partially and in others later regulations around educational evaluation and the organization of the provision of educational services have ruined the commencement of the Institutional Educational Projects. These projects lost their autonomy in face of the imposition of policies that set standards and the development of basic responsibilities for teaching as well as integration or fusion measures for the educational centers in order to increase efficiency in the management of resources and in the educational administration⁵⁷.

⁵⁵ This is in accordance with other norms that recognize the right of cultural identity: the ethnic and cultural identity of the Colombian Nation (Art.7); the official nature of the indigenous languages in their territories, the ethno-education and bilingual teaching (Art. 10, literal e; article 68 numeral 5; freedom of conscience and worship (Arts. 18, 19); defense of cultural patrimony (Art. 70); as well as the faculty of the indigenous peoples to administer justice

⁵⁶ Luis Carlos Avellaneda. La urgencia de políticas públicas adecuadas para mejorar la situación de niños y niñas en condición de desplazamiento (The urgency of the situation of displaced children). In: El derecho a la educación de niños y niñas en situación de desplazamiento y de extrema pobreza en Colombia. (The Right to education of displaced children in extreme poverty in Colombia) Due Process of Law Foundation (DPLF), Instituto Pensar de la Universidad Javeriana and Lawyers Collective José Alvear Restrepo. Bogotá: Due Process of Law Foundation, 2005, p. 69

⁵⁷ Analysis based on: Lerma Carreño, Carlos Alberto. El derecho a la educación en Colombia (The Right to Education in Colombia). Fundación Laboratorio de Políticas Públicas. Buenos Aires: 2007, pp. 16-19. Available at: http://www.foro-latino.org/flape/producciones/coleccion_Flape/06Colombia_Derecho.pdf

58 Javier Medina, Seguimiento a las Recomendaciones del Sistema de Naciones Unidas con relación al derecho a la educación (Monitoring of the Recommendations of the UN System in relation to the Right to Education) In: Así van los Desc, insumos para la elaboración del informe alterno al Comité de Derechos Económicos, Sociales y Culturales de Naciones Unidas Such are the ESCR, elements for the elaboration of the parallel report to the CESCR). Bogotá: Colombian Platform for Human Rights, Democracy and Development, October 2008, pp. 25-25

2. RECOMMENDATIONS TO THE CESCR

235. Both the CESCR in 1995 and 2001 and the UN Special Rapporteur Katarina Tomasevski have formulated some recommendations which will be outlined below⁵⁸. The obligation to guarantee the free cost of basic primary education stands out. The compliance with these recommendations is dismal. Although the State shows certain advances in the period 2002-2010 in some aspects of the right to education such as the expansion of coverage, in other aspects the right to education a grave “national educational debt” persists.

Content	1995 ⁵⁹ Observations Committee ESCR	2001 ⁶⁰ Observations Committee ESRC	2004 ⁶¹ Recommendations Special Rapporteur
Availability	<p>Concerned that universal primary education has not been achieved.</p> <p>Recommends the adoption of measures to ensure primary education for all.</p>	<p>Recommends providing free obligatory education.</p>	<p>Recommends increasing by 30% the budgetary allocation for education increasing from 4% to 6% of PIB</p>
Accessibility	<p>Indicates that efficient access to education is low.</p> <p>Concerned that universal primary education has not been achieved.</p> <p>Recommends the adoption of measures to ensure primary education for all.</p>	<p>Concerned that the exception in Article 67 of the Constitution translates into charges that impede low income families from accessing to education having to entable judicial actions to guarantee the right.</p> <p>Concerned that the country has one of the lowest literacy rates for adults in the region.</p> <p>Recommends providing free obligatory primary education.</p>	<p>Recommends an explicit affirmation of the obligation to guarantee free education to all children of basic school going age.</p> <p>Which requires a detailed identification of actual costs paid per student in order to eliminate them.</p> <p>Recommends guaranteeing the free education and subsidizing the costs of education for displaced children and child workers</p> <p>Recommends an immediate study on the educational exclusion with the aim of adopting all the measures for its elimination.</p> <p>Recommends developing mechanisms to eliminate the discrimination against pregnant girls and mothers</p>



59 CESRC Concluding Observations 1995, Op. Cit.

60 CESRC Concluding Observations 2001, Op. Cit.

61 Economic and Social Council. Report of the Special Rapporteur, Katarina Tomaševski. Mission to Colombia, 1 to 10 October 2003. E/CN.4/2004/45/Add.2. February 2004. Available at: http://www.plataforma-colombiana.org/biblioteca_pag/051.doc

Adaptability	<p>Recommends that education on human rights be given at all levels.</p>		<p>Recommends the adaptation of education to the needs of working children with their participation in the design an evaluation of it.</p> <p>Recommends an immediate study on the discrimination in education with the participation of the victims in order to adopt the measures for its elimination.</p> <p>Recommends that strengthening of teaching and learning in human rights with the participation of human rights defenders, teachers and students.</p> <p>Recommends an educational strategy with a gender focus aimed at analyzing educational processes from the perspective of both sexes.</p> <p>Also the design of an education against conflict and violence that is of use for the reconstruction of a life project for children and youths who victims of the conflict and displacement.</p>
Acceptability	<p>Concerned by the fall in the quality of secondary education and the labor situation of the teachers.</p> <p>Recommends adopting measures that improve the quality of secondary education and the material conditions of the teachers.</p> <p>Recommends that classes on human rights be give at all educational levels.</p>	<p>Recommends a campaign to promote quality in education.</p> <p>Recommends implementing monitoring mechanisms for the National Educational Plan</p>	<p>Recommends immediate measures to clarify the murder of teaching staff and for the protection of the human rights of professionals, trade unionists and academics.</p> <p>Recommends that teaching and learning of human rights be strengthened with the participation of human rights defenders, teachers and students.</p> <p>Recommends an educational strategy with a gender focus aimed at analyzing educational processes from the perspective of both sexes.</p> <p>Also the design of an education against conflict and violence that is of use for the reconstruction of a life project for children and youths who victims of the conflict and displacement.</p> <p>The educational models designed with the participation of individual and collective holders of the right to education seem good.</p>

62 Ministry for Foreign Affairs Op. Cit.

63 Ibid., para 849-886

64 Presidency of the Republic – National Planning Department. Bases del Plan de Desarrollo 2002-2006 Hacia un Estado Comunitario (Bases of the Development Plan 2002-2006, Towards a Communitarian State) p. 128, available at www.presidencia.gov.co/planacio/Bases_listo.pdf

65 In relation to this the V Report of the Republic of Colombia to the Committee on Economic, Social and Cultural Rights states in paragraphs 851 and 852 that between 2002 and 2006 considerable advances were made in the expansion of coverage, for example the creation of 1,419,427 new school places in primary and secondary education and a further 301,580 places in higher education. These results increased the rate of coverage in basic and secondary from 82% in 2002 to 90.1% in 2006. Apart from the interest in increased the number of students enrolled year after year, the V Report also states that the Government sought the continuity of these children in the system. Thus, the school drop out rate fell (primary and secondary) from 8% in 2002 to 6% by the end of 2005.

66 On this see: Corporación Región. Derecho a la Educación. Cumplir metas no es suficiente. (Right to Education. Meeting targets is not sufficient) In: Colombian Platform for Human Rights, Democracy and Development). *Deshacer El Embrujado. Alternativas a la política del Gobierno de Álvaro Uribe Vélez.* (Breaking the Spell. Alternatives to the policies of the Government of Álvaro Uribe Vélez) Bogotá: Ediciones Antropos Ltda., pp. 121-125; Fundación Corona. Informe 2006 de progreso educativo en Colombia (2006 Report on educational progress in Colombia). Bogotá: 2006; Procurator General of the Nation. *El derecho a la educación. La educación en la perspectiva de los derechos humanos* (The Right to Education. Education from a human rights perspective) Bogotá: March 2006

3. ON THE V PERIODIC OFFICIAL REPORT⁶²

236. The report by the State centers on two of the three matters that make up the educational policy of the Government of Álvaro Uribe Vélez called the “educational revolution” that is the increase in coverage and an improvement in quality⁶³. It doesn’t make any major reference to the strategy of rationalization (or efficiency) in the educational sector and the regressive impact that these measures have had in the area of quality, availability and socio-cultural adaptation in the “educational service”.

237. The National Development Plan Towards A Communitarian State (2002-2006) has as an aim the integral gross coverage in preschool, basic and secondary education. It aimed to create, 1,500,000 places in preschool through to secondary raising the gross schooling rates from 82% to 92%⁶⁴. Despite the policy of the educational revolution conceiving education as a element in human and socio-economic development and as an instrument for achieving social equity a balance sheet of the growth in coverage⁶⁵ shows that the expansion is relative and insufficient as it doesn’t take into account other aspects that satisfy the right education, such as quality, continuity of the children and youths in the educational system and their real progress within it (effective rate of schooling).

238. In this sense the V Report does not show the persistence of sizable inequalities in access and availability of education nor of the high drop out and repetition rates, particularly in the first year of primary education. Neither does it expose the insufficient coverage of higher education and the inequity in access nor does it analyze the reasons for the low quality of primary and secondary education and the increase in the gap between public and private education. It doesn’t analyze the inflexible institutional and curricular design which has wrested autonomy and participation from the schools in order to reduce costs in infrastructure, administrative, teaching and management staff⁶⁶.

239. The state report does not show what specific advances have been made to comply with the recommendations of the Rapporteur in 2004 and the CESCR in 1995 and 2001. For example, it hides the fact that there is no free education in the country. With some exceptions carried out by some Mayors that have eliminated or reduced the educational fees for families, education continues to be a service for which one pays.

4. SITUATION OF THE RIGHT TO EDUCATION

240. In Colombia we are still a far way from reaching an adequate level of the exercise of the right to education. A report by the Procurator General of the Na-

tion shows that only 34.1% of the population between the ages of 5 and 17 years of age fully enjoy the right to quality education⁶⁷

241. The national institutional design outlined for the educational system is not based on the perspective of education as a human right but rather it is seen in terms of investment, profits, management models and economic rationalization which from the beginning constitutes a modification of the aims of education contained in international human rights law.

242. The educational models imposed are mainly economic management models and not pedagogical models. The educational rationalization based on management concerns – fusion of educational institutions, flexible models for fast tracking and students catching up on their academic level, temporary contracts for teachers, freezing of staffing levels and the increase in the technical rate (number of students per teacher, which is formally 32 in urban areas and 22 in rural areas, but in reality is above 45 per teacher) have deepened the problems in the lack of quality of public education.

Availability dimension

243. Although at first sight a process of regulation and educational planning is being carried out the available information allows one to conclude that the modernization of the educational service is not taking place in line with the progressiveness that the ICESCR ordains.

244. The obligation on availability implies that there are sufficient state resources available for the educational system to function adequately at all levels and modalities, which does not exclude other actors, other than the State, from meeting the demand for education, but without losing sight of the exclusive state obligation to ensure that obligatory free education be available for all children and youths of a school going age.

245. For the Procurator General of the Nation the compliance with availability in education can be evaluated through indicators such as investment in preschool, primary and secondary education⁶⁸; free nature of education⁶⁹ professionalization and dignification of the teaching profession; availability of teaching staff and the modernization of the educational service⁷⁰.

Reduction of resources for education

246. Public expenditure on education has been characterized since 2001 by a regressive policy of fiscal adjustment as regards the general structure of State income and expenditure and the distribution system of resources and responsi-

67 Procurator General of the Nation, Op. Cit. p. 20

68 Measures national expenditure on education as a percentage of GDP; looks at the national average expenditure per student the distribution of resources within the General System of Participation.

69 Looks at, amongst other aspects, educational costs, reasons for not studying, the expenditure on education per home, especially those populations that live in poverty, indigence or any other form of vulnerability

70 Evaluates achievements in school autonomy, academic, learning, investigation and professional freedom, Institutional Educational Project, curriculum, School Manual, students' representative, school management, National System for the Evaluation of Education and System for Accreditation of the Quality National System of Information on Formal, Non Formal and Informal Education and the attention to special population groups and the Ten-year Plan for Educational Development etc.

71 Lerma Carreño, Carlos Alberto. Op. cit. No. 35. pp. 57ff

72 According to calculations by various institutions the municipalities and departments lost out on around \$12.4 billion pesos between 2002 and 2008 which meant less public investment in health and education which weakened the process of administrative decentralization. Up to 2006, public education had lost \$3.39 billion and public education \$3.5 Billion.

73 Raúl Arroyave. La ley 715 de 2001: Hacia la privatización total de la educación. (Law 715 of 2001: Towards the total privatization of education) Available at: http://deslinde.org.co/IMG/pdf/Hacia_la_privatizacion_total_de_la_educacion_La_ley_715_de_2001.pdf

bilities which was approved in the Constitution of 1991 (Articles 347, 356 and 357).

247. The Political Constitution stipulates that in order for the territorial entities to function autonomously they shall have access to two sources of finance that form part of the participations regime: the Monetary Allocation (*Situado Fiscal*) (with which the transfers to districts and departments for health and education are determined), and the participation of the municipalities in the Current Revenue of the Nation that would increase from 14% in 1993 to 22% in 2001. Both sources are derived from taxes paid by the citizens and should revert to the regions for the financing of collective needs. The regulations and distribution criteria for transfers were defined by Law 60 of 1993.

248. In 2001 in the midst of great social discontent, legislative act 01 was passed. This act modified the constitutional regime in force and created the General System of Participations (SGP) with which the fiscal adjustments began⁷¹ in relation to national resources for education, health and basic sanitation, which were transferred to territorial entities.

249. The SGP derogated the constitutional mandate that graduated the resources that the Nation allocated to the territorial entities to finance education, health and basic sanitation proposing instead a constant calculation that took into account factor such as growth, inflation rate and a maximum rate of growth of 2.5% with which the resources transferred to the regional and local administrations were effectively reduced.⁷²

249. In 2001 the participation of the territorial entities in the current income of the Nation was calculated as being effectively 43% falling to 33.5% in 2008.

250. With Law 715 of 2001 the General System of Participations was regulated and defined in a more concrete manner the responsibilities of the territorial entities and the parameters for the allocation of transfer. The transfers reform had a negative impact on the educational system; of 11,925,488 children and youths between the ages of 5 and 17 years of age that should have been enrolled at preschool, primary and secondary levels, 2,698,738 (22.6%) did not enter the educational institutions. In 2006, 33,000 less teachers were hired compared to 2001. The allocation transferred by the State for every student (subsidy for demand or capitation payment) was the same amount throughout the period of the reform.

251. According to the Colombian Federation of Teachers⁷³, apart from the budgetary losses described, a series of regressive measures that flowed from Law 715 of 2001 were implemented to take account of the financial adjustment amongst the allocation of resources only for student attended to (allocation for demand).

252. Despite the transitory nature of legislative act 01 of 2001 a second constitutional adjustment on transfers was approved by the Congress of the Republic by legislative act 04 of 2007 which increased the cutbacks in territorial transfers. This new reform prevented a return to the formula consecrated in the 1991 Constitution for transfers, which meant cutbacks in real terms of over \$63 billion between 2008 and 2016 for the departments and the municipalities⁷⁴.

253. Education is being defianced by the State. The Corporation Women and Economy carried out a study in five municipalities on the public budget in education which showed that the allocation per capita barely covered the cost of staff wages and there was no finance for other concepts such as teacher training, school transport, equipment and materials, maintenance and construction of infrastructure. The new reform is regressive if we take into account that only in cities such as Bogotá and Medellín with a sufficient tax base to generate income, can investments (though still insufficient) be made in education⁷⁵. The dependency of the territorial entities on the State is such that every reduction in the SGP means children leaving school and a reduction in the already low quality.

Non compliance the obligation for free education

254. With these cutbacks in the public financing of education, the aim of free education is increasingly distant. The Colombian State has not complied, for three decades, with the obligation on free primary education demanded of it by the ICESCR and other international treaties. This non compliance is seen in the permanent omission of the mandate included in article 14 of the ICESCR which imposes on the signatory States that hadn't, at the time of signing it, implemented free and obligatory primary education the duty to *“within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”*

255. To date there is no free education. The constitutional proposal contained in article 67 denies the right to free education as does Law 115 of 1994 and Decree 992 of 2002. As the V Report of the State recognizes *“ the families pay for the costs of the provision of educational services such as school exam reports, carnet, certifications and the use of equipment and according to their socio-economic level they pay for school fees (derechos academicos), costs which total, according to the Ministry of National Education, between 5% and 13% of the amount the State allocates to the provision of the educational service”*

256. Aside from not complying nationally with the mandate of free education, the National Government “punishes” those entities that make progress on this. In Conpes Document 75 of December 2003 the National Government shows itself

⁷⁴ See the calculations of the negative impacts on the finances of the territorial entities in: Ramirez, Gloria. La trilogía uribista. La reforma a las transferencias (The Uribe trilogology. Transfer reform). Newspaper Caja de Herramientas. Electronic edition. Bogotá: Year 16. No. 123, June 2007, Available at : http://www.viva.org.co/caja_herramientas; Federación Nacional de Departamentos. Posición de los Departamentos frente al acto legislativo que modifica el SGP. (Position of the departments in the face of the legislative act that modifies the SGP) Available at: <http://www.federacionnacionaldedepartamentos.org.co>

⁷⁵ Coalition for the Right to Education. Desfinanciación del derecho a la educación en Colombia y necesidad de una política pública de gratuidad (Definancing the right to education and the need for public policy on free education). Available at <http://coalicioneeducacioncolombia.blogspot.com>

76 Yepes, Alberto. Propuestas para la exigibilidad y la gratuidad de la educación en Colombia (Proposals for the demand for free education in Colombia). In: Foundation for Due Legal Process and others, Op. Cit., pp. 97-98
 77 Procurator General of the Nation. Op. Cit

to be particularly adverse to the idea of municipalities guaranteeing the right to free education through the allocation of resources (including budget surpluses) to the financing of programs that put into practice the principle of free primary education⁷⁶.

“The execution of resources of the allocation for education from the General System of Education should be line with the provisions of Directive No. 04 of 27 of March 2003 issued by the Ministry of National Education. Consequently the resources that the official educational institutions fail to receive for the concept of school fees as a consequence of free education programs cannot be supplemented with resources from the allocations for education of the General System of Allocations”

257. Free education should be understood as a universal policy of States in the area of public education. The ICESCR says that it should apply to primary education, however, in making an harmonious interpretation of article 44 of the Constitution, the jurisprudence and the declarations of Jomtien and Dakar this should be for all minors in basic education.

Aspect of accessibility

This obligation is related to the right that every person has to access, without any discrimination (for material, economic or geographical reasons), to public free education at primary level. To evaluate this the Procurator General of the Nation used indicators such as; a) school coverage measured in the first place as the attendance and non-attendance at educational institutions by the population of school going age; the participation of official and private sectors in enrollment to evaluate the response of the State to the demand for education; the participation of the population by income group with the aim of observing the level of attention given to the most needy from state subsidies; b) the effective rate of schooling recognizing that schooling is not achieved by a simple enrollment but by passing the course or corresponding level and the acquirement of abilities and achievements programmed in the school; and c) the gross and net schooling rates⁷⁷.

259. According to this report from the figures for increases in coverage one can draw the following conclusions:

- An increase in school attendance can be observed in the absolute figures for the 5 to 17 year old population in the period 1992-2004 which rises from 6,347,185 in 1992 to 9,486,837 in 2004 with a positive difference of 3,139,652, an increase greater than the population increase of the same period which was 1,387,688.

- As a result of the increase in enrollments for the 5 to 17 year olds in period after the 1991 Constitution the rate of school non-attendance for this group falls from 4,261,221 in 1992 to 2,509, 257 in 2004. The fall in non-attendance is not continuous; between 2000 and 2001 instead of decreasing, non-attendance rose by 334,783; later it began to fall again to situate itself in 2004 at the same level as 2000⁷⁸.
- The achievements made in the 13 year period are relative. Compliance with the obligation for the universalization of primary basic education is far from being achieved as a fifth of the population is outside the school system (2,509,257 children and youths). There is discrimination in access to education. The State has not complied with the obligation for free primary education despite 60% of the population being below the poverty line and educational costs being the main reason for not attending primary school. The sector with greater income attends educational centers more than lower income groups⁷⁹.
- The most evident discrimination is for socio-economic and ethnic reasons and particularly affects people who live in rural areas. When these two variables occur together the situation is even more serious as has been confirmed by the Observatory on Racial Discrimination “Faced with the lack of public resources that guarantee an adequate infrastructure and a full staff of teachers, availability of adequate educational material and access to resources to close the technological gap Afro-Colombians – by far the poorest – have been obliged to take on a responsibility that mainly falls to the State. The minors who overcome these obstacles and manage to enter the educational system face a discriminatory structure that does not respect cultural identity and creates no incentives to keep students and does not adapt to their educational needs⁸⁰
- The development plan has no targets for guaranteeing the permanence of the children in the school system⁸¹. As regards the rate of illiteracy, this remains at 8.6% and there continues to be inequity between the rural and urban sectors.
- Another element which impedes access to education by the population of a school going age is the socio-political violence that affects students and teachers. The location of military and police posts near educational establishments in violation of the principle of distinction found in international humanitarian law has been the cause of events in which students and teachers have died in armed actions between the combatant forces. Added to this is the forced recruitment and use of minors by the state forces as informants.
- The indicator of the effective rate of schooling which shows the efficiency of education by not only looking at the access conditions (enrollments) but also the continuance and progress of pupils in the education system demonstrates

78 A study on educational progress in Colombia in the period 2001-2005 indicates that the number of enrollments in secondary education rose by more than 300,000 youths, reaching almost three million students. Thus it rose from attending to 52 of every 100 youths in 2000 to 57 of every 100 youths in 2004. However, four out of every 10 youths of age to take this level do not study. There are marked differences between departments and regions in the area of educational coverage: in Vichada the coverage is 21% whilst in Bogotá it is 73%. In 2004 in Guanía, Guaviare, Vaupés and Vichada only one in every ten youths attended secondary school at the age they should do so; whilst in Bogotá four out of every ten do so. *Secondary education* is the level where there is least coverage. Despite the increase in 33,000 enrollments, nearing the figure for one million students, seven out of ten youths of age to study in secondary education do not do so. See: Fundación Corona Informe 2006 de progreso educativo en Colombia (2006 Report on educational progress in Colombia. Bogotá. 2006

79 The differences in school attendance between people of lower and higher incomes persist. These gaps are to be found at all educational levels up to higher education where for every poor person who studies five wealthy people do so. School attendance rates are lower in rural areas than urban areas. The difference is between 12% and 17% at all educational levels, except for primary. The difference in attendance at primary level between men and women are minimal, both according to income and area (rural-urban). Ibid.

80 Observatory on Racial Discrimination. El derecho a no ser discriminado (The right not to be discriminated against) (summary) ODR. Bogotá: 2008, pp. 42-43. Available at: http://odr.uniandes.edu.co/centrodoc/centro_ini.html

81 Desertion rates fell but continue to be high in grades one to six. Between 2000 and 2003 the school desertion rates fell. In primary it fell from 8% to 6%; and in secondary from 6% to 5%. These results may be linked to conditional subsidy programs promoted by the National Government and some local administrations that promote school assistance and continuance in education such as Families in Action. The drop out rates for grade one and six are high (8% and 7% respectively) and this matches the higher failure rates in these same grades. But also the Quality of Life Survey of 2003 showed that there are two main causes for the non-attendance of children at educational institutions; lack of money and not a lack of desire to study. The latter is particularly the case amongst the 12 to 17 year old population, which reflects problems of the appropriateness of the curricula that make them attractive to students. Fundación Corona Op. Cit. No. 28

82 The increases in coverage have been accompanied by efforts to achieve the promotion from one grade to the next and the continuance in the educational institutions until primary formation is finished. In order to do this a automatic promotion system has been generalized (Decree 230 of 2003, according to which the educational institutions must guarantee that 95% of the students be promoted to the next grade), a measure which many consider as having contributed to reducing the quality of education as it has put aside the demand of certain learning requirements in order to comply with the norm. In this way fewer students fail; failure rates fell between 2000 and 2003. In primary it fell from 9 of every 100 children to 5 of every 100. In secondary it fell from 11 to 4 of every 100 youths.

83 There is the Campaign "Soldier for one day" in which boys and girls visit the battalions and carry out all the activities associated with military training for one day. See Procurator General of Nation. La zona de rehabilitación y consolidación de Arauca. Informe especial (The rehabilitation and consolidation zone of Arauca. Special Report. Bogotá: PGN, March 2006

84 Report of the Special Rapporteur, Katarina Tomaševski. Mission to Colombia, Op. Cit., para. 48.

that for the 5 to 17 year old population in the period 1994 to 2003 the rate grew by 7.7 percentage points rising from 60.6% to 68.3% reaching its highest point in 1998 at 72.4%. It never managed to attain this level in the following years. The 2003 rates is lower than that which existed in 1998. Currently at least 31.7% of the population between the ages of 5 and 17 years of age are outside of the Colombian school system.

In 2003 the low rate of schooling affected at least 3,782,696 children and youths affected by real non-attendance at school. A real divergence can be seen in the diagnostic of the current development plan; whilst the Procurator calculates the school attendance deficit at 31.7% (based on an effective rate of 68.3%) the National Government calculates this same deficit as 18% (based on a gross rate of 82%). The consequence is that policies and the setting of targets for expansion of coverage, underestimate the problem and make it impossible to adopt adequate and sufficient measures for the universalization of the right⁸²

260. In terms of the accessibility dimension one has to highlight that the degradation of the Colombian armed conflict has placed children in the middle of a series of actions that directly or indirectly affect their chances of accessing the educational system. On the one hand the number of minors recruited by the different armed groups is alarming and on the other all the armed actors including state forces⁸³ in contravention of the recommendations of the Report of the UN Special Rapporteur on the right to education in Colombia in reference to separating the school from the conflict and its definition and protection as a "space for peace"⁸⁴.

The statements by the Government that in the first year of the administration 427,000 new school places were created forget that in the same period 550,000 children had to leave the school system due to desertion, failure or displacement. When talking of coverage one must recognize various factors and conditions. How can one talk of expansion of coverage when we face an increasing school desertion due to a lack of resources, displacement, domestic and child labor and the inexistence of teachers? (Jorge Gantiva, The free nature of education and the so called Educational Revolution in DPFL and others Op, Cit. p.153)

261. This obligation is related to the demand that education be sufficiently flexible so as to adapt to the needs of societies and communities undergoing transformations and respond to the needs of the students in diverse cultural and social contexts. In the report of the Special Rapporteur on the right to education it

stipulates that “the adaptability of education requires schools that adjust to the children in line with the principle of the higher interest of each child included in the Convention on the Rights of the Child. This change reverts the custom of forcing children to adapt to any school that is offered to them⁸⁵.

262. In relation to the modalities of education adjusted to the needs of specific populations the results are less than satisfactory. As regards the right to education of the forcibly displaced population this does not only mean access to a school place but rather it should be thought of from the point of view of its free nature, economic geographic accessibility and particularly from the point of view of acceptability and adaptability i.e. that the needs and contextual expectations are taken into account.

263. On the specific issue of the education policy for the displaced no measures have been adopted to obtain school materials, uniforms and food that ensure the continuance of the children and youths in the educational institutions. The policy for attending to the displaced population is inadequate and has serious gaps in resources, places, school cost, guarantee of no discrimination and psychological attention despite Sentence T-205 of 2004 which lays down for the State the following indicator for the effective enjoyment of the right “*All children and youths at home from the ages of 5 to 17 years of age regularly attend a level of formal education*”:

“86.2% of children and adolescents registered with the RUPD (Single Register for Displaced Population) and 79.4% of those not registered attend a center for formal education, but the desertion rate is extremely high. Only 10.7% partially receive books and school utensils, transport and personal hygiene elements. 15.7% pay a full enrollment fee and 18.1% pay part of it, which reveals great deficiencies in the free nature and accompaniment of minors and adolescents in their educational process. To this one must add that the results are severely depressed in the population that is not registered.”⁸⁶

264. In relation to the population of law breaking minors; these children do not receive any education that meets the internationally established parameters. Both the infrastructure and the number of professionals to attend to them are insufficient. Even though it is calculated that 27.7% of the child population between the ages of 12 and 17 work and abandon their studies there is no serious policy of the State to face up to this issue. Pregnant girls continue to be discriminated against and only by way of tutelas have they managed to defend their rights.

265. The right of the Afro-Colombian and indigenous communities to ethno-education has become a residual policy (in the eyes of the functionaries of the administration who decide where it is applied) or, in practice in a right denied by

85 Report of the Special Rapporteur, Katarina Tomaševski. Mission to Colombia, Op. Cit., para. 54

86 Gabriel Bustamante Peña, ¿En qué van los derechos de la población desplazada? (How are the rights of the displaced population?) In n: Caja de Herramientas, Year 17, No. 130, 2008 Available at: http://www.viva.org.co/caja_herramientas_contenido.htm

87 See: Observatorio Indígena de políticas públicas de desarrollo y derechos étnicos (Indigenous observatory of public development and ethnic rights policies) . Educación en los pueblos indígenas de Colombia. (Education in the Indigenous peoples of Colombia. In: Cecein. Indígenas sin derechos. Op. Cit. pp. 278-279

88 Fundación Corona. Op. Cit. No. 28

administrative measures and budgetary restrictions. The regulations imposed by the State for the organization of the educational service violate on the one hand the right of autonomy of the indigenous communities to carry out their own educational projects, be educated by their own teachers and values as well as establishing differential parameters in the area of educational evaluation and quality. On the other hand they impose processes and tools for the valuation of the quality of education that do not correspond to the particularities of the Afro-Colombian communities and indigenous peoples⁸⁷.

226. Finally, although the State has implemented some educational measures in sexual and reproductive health the efforts have been insufficient and it necessary to adopt models and educational methods that adapt to the needs of the children and adolescent population.

Dimension of Acceptability

267. The evaluation of the quality of primary and secondary education has centered on the results of two instruments; the Knowledge Tests and the State Exams. The former are applied every three years to all students of fifth and ninth grade to evaluate their skills (the capacity to employ their knowledge in their daily life.) in the areas of language, mathematics, natural sciences and civics. The latter evaluate the skills achieved having finished secondary school (students of 11th grade) in the basic areas of knowledge, and the results give information for the entry of students to higher education and also to interpret the level of educational development of the institutions, of the municipalities, departments and the country. Both instruments show a deficient situation in Colombia in terms of educational quality.

268. According to the data of the Fundación Corona⁸⁸ between 2003 and 2005 the average mark for the Knowledge test was low. In 2005 there were some advances:

- On a scale of 1 to 100 the pupils of 5th grade obtained 50 points in language, 58 in mathematics and 52 in natural sciences; the 9th grade scored 65, 61 and 59 respectively.
- The majority of the departments also increased their averages, although with some contrasts: Bogotá, Boyacá, Caldas, Cundinamarca and Santander had generally high averages in all areas and grades whereas Amazonas, Chocó and San Andrés had low averages.

- Few students reached the most complex skills level. In mathematics, 13 of every 100 in 9th grade did; in social sciences 1 in every 100 did so in 5th grade; in the same area 8 of every 100 in 9th grade did so.
- The results in the State Exams improved between 2000 and 2005; there are increasing numbers of educational institutions that fall into the high performance category. However, almost half the institutions are in the low performance category. The official institutions have lower results in the State Exam; for every official institution in the high performance category there are three private ones⁸⁹.

269. Although this data can reveal problems in the quality of Colombian education these tests have been criticized for standardizing the educational processes under parameters that do not allow one to observe the diversity and integrality of the educational processes that the institutions engage in. The demand for uniformity in the evaluation is in contravention of the respect for the autonomy of the institutions, concentrating efforts and resources in those skills whose evaluation is required by law at a national level to the detriment of other projects and areas such as physical or artistic education. The formation of pupils based on the attaining of minimum skills to satisfactorily develop in one's working and productive life denies the concept of the integrality of the person as an aim of education. It is also an attack on the regional peculiarities and the cultural diversity and plurality of thought.

270. Good results in the State's tests are more frequent in people from an urban background or from families with greater resources⁹⁰. They are also discriminatory towards ethnic indigenous minorities and Afro-descendants of lower income. Beyond the result of the official tests what is true is the conditions for learning in the country are poor and the school institutions do not have sufficient resources to provide the service.

271. Thus, the "educational revolution" contemplates a program of pedagogical materials to guarantee that the territorial entities have access to texts, books and other materials, but the targets are reduced and do not meet the State's obligation to use to the maximum the available resources to satisfy these needs. The policy of increasing coverage without increasing public expenditure on education has generated the aperture of new places without the necessary investment in policies to improve classrooms, physical installations, and equipment for schools, and the hiring of more staff, issues which are solved, as has already been commented, through schools in concession and the flexibilization of working relations for the teachers.

⁸⁹ Ibid..

⁹⁰ Ibid. Charts A.12 – A.13

272. Finally as was confirmed by the Rapporteur Tomasevski the teaching profession suffered changes under Law 715 and the New Teaching Statute with an increase in the working day, increases in the number of students per teacher and a dependency on the results of the students in the exams for funding⁹¹. According to FECODE the issuing of a new teaching statute (Decree 1278 of 2002) affects the quality of the education system and the labor stability of the teachers as it encourages the entry of staff with no pedagogical training and denies the right to promotion; it establishes the lengthening of the working day and cuts in holiday time for teachers; the automatic promotion to resolve problems related to failing and desertion; the generalization of the figure of 'school concessions' to face the shortage of educational establishments. In order not to increase the expenditure on staff there has been an increase in the number of service provision orders ignoring the labor bond and avoiding the payment of social benefits. This situation becomes more problematic when the Colombian State does not recognize the right to collective bargaining by public employees.

CONCLUSIONS

273. The analysis of the right to education in Colombia in the light of the obligations imposed by the human rights treaties in which this right is recognized allows one to conclude that the State is not implementing all of the adequate measures to satisfy them. On other occasions the authorities have simply omitted the compliance with basic standards in education such as that which ordains that public education be obligatory, universal and free of charge.

274. The affectation of the right to education of particularly vulnerable groups of children is evidenced by situations such as the lack of resources for the full availability of the sufficient infrastructural conditions, school places, programs and teachers; the existence of geographical, social and economic obstacles to the accessing of educational spaces and services and the persistence of attacks on educational communities in the context of the socio-political violence in the country.

275. A statutory law that guarantees the full enjoyment of the right to education is required. This should be the result of a participative process that involves all of civil society and should go beyond the discussion of the ten-year education plan approved for the period 2006-2016. The immediate implementation of adequate policies that recognize and ensure the free nature of universal primary education is required.

CHAPTER V

RIGHT TO HOUSING AND RIGHTS AGAINST EVICTION (ARTICLE 11.1 OF ICESCR)

The right to housing, (...) should be seen as the right to live somewhere in security, peace and dignity.⁹²

1. CONSECRATION AND CONTENT OF THE RIGHT

276. The right to housing has been developed as a human right in both international law and the Colombian Political Constitution⁹³. In relation to the former, it is worth remembering that paragraph 1 of article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. Basing itself on this provision of the Covenant, the CESCR developed the content of the right to adequate housing in the General Comment No. 4 indicating that this guarantee is comprised of various aspects: judicial security of tenure, availability of material services and infrastructure, supportable housing expenses, localization, availability, habitability and cultural appropriateness.

277. In the internal arena the Political Constitution of 1991 included in articles 51 and 64 that establish the right of the “all Colombians” to a decent home, the State’s obligation to stipulate the necessary conditions to make it effective as well as promoting progressive access to the land and housing by agrarian workers as individuals or in associations.

278. Despite the normative recognition in international human rights law and in the Constitution the right to adequate housing is far from being effective in Colombia. Whilst there is a public housing policy this is concentrated on allocating subsidies to meet demand. It doesn’t incorporate the attributes of the right to

92 CESCR, **General Comment No. 4**, Application of the ICESCR, General Comment The Right to adequate housing (Article 11 of the ICESCR) (6th session 1991), U.N. Doc. E/1991/23 (1991), para. 7

93 The constitutional jurisprudence related to the right to housing in comprised of, apart from the ICESCR, the following treaties and human rights conventions ratified by Colombia: Universal Declaration of Human Rights, article 25.1; International Convention on Economic, Social and Cultural Rights article 11.1; Convention on the Elimination of All Forms of Racial Discrimination, article 5, literal E) iii; Convention for the Elimination of All Forms of Discrimination against Women, article 14 literal 2h; Convention on the Rights of the Child article 27.2; General Comments No. 4 and 7 of the CESCR; American Declaration on the Rights and Duties of Man, article XI; American Convention on Human Rights article 26.

94 CESRC Concluding Observations 1995, Op. Cit., para. 28 c

95 CESRC Concluding Comments 2001, Op. Cit., para. 42

housing and is orientated to the priority of reaching targets of a macro-economic character such invigorating the construction sector above meeting the housing needs of the population.

2. RECOMMENDATIONS TO THE CDESCR

279. In its sessions in December 1995 and December 2001 respectively the CDESCR emitted recommendations in relation to the right to adequate housing. Thus, in 1995 the CDESCR stated that State's should "improve the housing supply in particular cheap housing for the poorer sectors, both in urban areas and rural areas and allocate resources to supply potable water and sewerage services to the entire population"⁹⁴. Later in 2001 the CESRC urged "the State party to take measures to increase housing subsidies, especially in the poorest provinces. It recommends the adoption of a system for the financing of low-income dwellings to give the poorest groups access to adequate housing"⁹⁵

280. Despite the CDESCR recommendations in the period 2002-2008 there have been no significant improvements in the right to decent housing and the effective measures adopted by the Colombian State to deal with the said suggestions are scarce as will be seen throughout this chapter. On the contrary, what has been seen is a persistent housing shortage both quantitatively and qualitatively as well as grave situations of forced displacement of the civilian population that continue and have not been dealt with adequately by the public authorities as the Colombian Constitutional Court has warned. In addition the regressive legislative measures adopted by the Colombian State (such as the clearing of rural titles law) are of concern. With these they aim to legalize the title deeds illegally obtained through theft of peasants, Afro-descendants and indigenous lands.

3. ON THE V OFFICIAL PERIODIC REPORT

281. The V Report of the Republic of Colombia to the CDESCR explains that the compliance by the State with its commitments in the area of decent housing are framed within the policy called "Country of Owners" which is one of seven tools of Equity contemplated in the National Development Plan 2002-2006 (Towards a Communitarian State). In paragraphs 712 and so forth of the V Report there is a description of this policy orientated towards promoting access to private property in two ways: the development of mirco, small and medium sized companies (MIPYMES) and access to Social Interest Housing (SIH).

282. in terms of the results, the official V Report points out that between 2002 and 2005 the annual allocation of subsidies grew by 76% and credits increased by 74%. The amount of resources from the national budget allocated to Social

Interest Housing grew by 260,000 million pesos per year rising from 150,000 million to 410,000 million pesos for this type of housing with the participation of the National Guarantee Fund. In total the allocation of 395,885 housing solutions (the quantitative deficit is 1.76 million houses)⁹⁶.

283. In the same fashion the Colombian State in its V Report to the CESCR that current policy of subsidies has “placed a brake” on the housing deficit. As shall be seen in the following section the focus on subsidies is inadequate and insufficient to satisfy housing demand in Colombia. This has been ratified by the Comptroller General of the Nation. In addition there continues to be an alarming housing shortage that have not been overcome, amongst other things, due to the deficiencies in the design, formulation and implementation of this policy of subsidies for family homes.

284. On the other hand the official Report does not explain the connection and interdependence between the right to land and the right to housing. Indeed, in the official information given to the CESCR the problems of the concentration of land and the practical difficulties in applying legal instruments to create urban zoned land, which affects the planning and ordinance policies for the democratic access to land and housing are omitted.

285. Neither does the official report give an account of the structural problem which cuts across all discussions and decisions on social interest housing policy in Colombia. This is a question of the legal definition of Social Interest Housing that currently exists (single paragraph of article 15 of Law 388 of 1997) which lays down the conditions for the prices of social interest housing as the only relevant criteria for the specifications or characteristics of the plots or urbanized built upon areas⁹⁷. The policy of social interest housing has been defined in terms of the maximum price established of 135 legal minimum salaries leaving aside discussions and decisions around the attributes of adequate housing in concordance with international doctrine.

286. Lastly the V Report gives as an example of the State’s compliance with its obligations to guarantee the right to housing for the most vulnerable populace the focus on resources and the allocation of 33,394 subsidies for Social Interest Housing. However, a recent study evaluating the policy on housing for the displaced population⁹⁸ showed that from a total group of 41,852 homes recognized by the State as being displaced and beneficiaries of the subsidy for social interest housing between 2002 and June 2007, 23,966 homes (57%) had applied for a subsidy and 17,886 (43%) had been awarded one but had not used it to acquire a house. Of the total number of subsidies 35,334 beneficiaries were urban and 6,508 were rural⁹⁹.

96 Garay, Luis Jorge y Rodríguez, Adriana. Políticas de empleo, salarios y vivienda. (Employment, salaries and housing policy) In Colombia diálogo pendiente. Volume II. Bogotá: Planeta Paz., 2007, p. 208.

97 “Whilst the price of social interest land may be a point of reference in determining the size of plots and the built space it cannot be the only criteria as this ignores a series of attributes that a decent house should have (Art. 51, Constitution) such as habitability, accessibility to public and social services and cultural appropriateness. The exclusive mention of price criteria and the silence of the law on the other attributes mentioned significantly reduces the content of the right to decent housing (Art. 51, Constitution) of the inhabitants of social interest housing” Text of the lawsuit on the constitutionality of the two legal norms that significantly distort the content of the right to housing in Colombia presented by Fedevivienda and DeJusticia in September 2008.

98 Presidency of the Republic; Acción Social and UNHCR. Evaluación del impacto de los programas de vivienda rural y urbana para la población en situación de desplazamiento (Evaluation of the impact of rural and urban housing programs in a situation of displacement). Bogotá: 2008, p. 25.

99 For the Consultancy on Human Rights and Displacement (CODHES) between 1985 and June 2007, 4,075,580 people were displaced in Colombia. If one takes into account that the average family size for the displaced families is 5 then the total number of families displaced is 815,116 families out of a national total of 11,190,000, according to the 2003 Survey on the Quality of Life. That is to say 7.28% of Colombian families find themselves in a situation of forced displacement and would demand housing solutions on this basis. See: http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=39&Itemid=51.

100 National Statistics Department (DANE). General Census of 2005 Available at: <http://www.dane.gov.co/censo/>. The UBN methodology seeks to determine if the basic needs of the population are covered. The groups that do not reach the minimum threshold level set are classified as poor. The simple indicators chosen are: Inadequate housing, houses with critical overcrowding, houses with inadequate services, home with a high economic dependency and home with children of school going age that do not attend school. Three of the variables are affected by the degree of urbanization.

101 Calculations of the National Center for Construction Studies Centro (CENAC). Alejandro Florián Borbón – Fedevivienda. Vivienda de interés social. Mucho de negocio, poco de derecho (social interest housing. A lot of business, few rights) In: Colombian Platform for Human Rights, Democracy and Development. Deshacer el Embrujo. Op. Cit., p. 127.

102 Ibid.

4. SITUATION OF THE RIGHT OF HOUSING.

287. Colombia has a total surface area of 2,070,048 Km² of which 1,141,748 Km² correspond to the continental surface area. There are 44 million people in this territory (51.2% women and 48,8% men) of which 75% are urban. Twenty per cent of the population live in the capital city of Bogotá. In the last census of 2005, 3.4% of population described themselves as indigenous and 10.6% as Afro-Colombian. According to the results of this census 27.7% of the population have unsatisfied basic needs (UBN)¹⁰⁰. Whilst 10.6% of people live in homes with one or more UBN three of the indicators show that 10.4% of the Colombian population live in houses unfit for human habitation; 11.1% live in critically overcrowded conditions; and 7.4% live in houses with inadequate services.

288. Despite the claims of the official report the current housing policy was designed to promote economic growth, the use of unskilled labor and the functioning of the housing “market” “without any interference” and not the effective guarantee of the right to adequate housing in all its dimensions and components.

289. Indeed, the housing policy of the Colombian Government is not based on a human rights perspective but rather the logic of the market. Thus, from the 1990s onwards the policy of successive governments has been limited to generating housing solutions through the adjudication of subsidies to meet demand under the presumption that the market would take care of the supply. Reality has shown that market only solves a part of the housing needs and that currently millions of Colombians have growing housing needs.¹⁰¹

290. This focus in Colombia has led to a “*Social interest housing policy (...) which is considered as just another piece of economic policy, which is without doubt true in macroeconomic terms but is insufficient as a public policy to deal with the social reality and the magnitude of the housing problem particularly given that the Constitution states that a decent house is the right of all Colombians*”¹⁰². Indeed the contribution of the housing and buildings construction sector to the aggregate of the national product (Gross Domestic Product –GDP) including social interest housing and priority interest housing was significant in the last few years with growth rates above the average of the rest of the economy. Though this does not mean a substantial improvement in relation to the unsatisfied housing needs of the Colombian population.

291. So, whilst the right to housing is consecrated in the Constitution and is recognized in various human rights instruments ratified by the Colombian State there is no public policy designed and implemented from a rights based perspective in such a way that adequate measures are adopted to satisfy the different aspects that form part of the housing rights. In accordance with this it is difficult

to agree with the balance sheet of the State's report to the CDESCR as without a doubt a housing policy that reduces its conceptual and practical horizons to a problem of subsidies to meet demand is inadequate and insufficient.

292. The "subsidy to meet demand" on which the States places special emphasis is definitely not a solution to satisfying the right to housing. Its obsessive application has led to the neglect of all other components susceptible to state regulation and promotion in the area of solving the housing deficit that affects lower income Colombians.

293. In relation to the policy one must say that whilst the amounts for subsidies paid out in the period 2002-2006 show an important increase up 2004, they later fell which meant a reduction in 2006 of 35% compared to the previous year. Likewise the figures for credits paid out followed a similar pattern showing a decline of 52% between 2005 and 2006¹⁰³. So for the supposed beneficiary the allocation of a housing subsidy is not a guarantee of getting a house it is only an expectation.

294. At the same time, although the subsidy system is thought of in progressive terms the amount is insufficient for families earning less than two minimum salaries. The value of the subsidies for acquiring new houses in 2002 was between 46% and 12% of the value of the house depending on the type of house¹⁰⁴. However, these sums have, under government instructions, decreased since 2004 with the argument of achieving greater coverage for the applicants. So for example the subsidies were reduced in the range of 42% - 0.8%. Type two housing was reduced the most, losing 13 percentage points.

295. Indeed, as the Comptroller General of the Republic warned in his report, the current subsidy policy is not adequate for ensuring the effective guarantee of the right to housing in Colombia, particularly for those who rely on the intervention of the State through public policy measures to obtain a solution to their housing needs. As the Comptroller points out the current housing policy requires the following in order to obtain housing property: "Credit +subsidy+ savings = house"¹⁰⁵.

296. These conditions constitute economic barriers to obtaining a solution to the housing needs of the most vulnerable in society. In addition in the context of this policy the allocation of subsidies has been delegated to private family allowance funds, entities which only give subsidies to their affiliates. It is worth pointing out that they only give subsidies to their affiliates i.e. people who are employed and whose employers pay the parafiscal contributions, including the contribution to the family allowance funds. According to the Comptroller almost 60% of the family housing subsidies are paid through private family allowance funds. This

103 Garay, Luis Jorge y Rodríguez, Adriana. Op. Cit. p. 195.

104 As far as the awarding of subsidies is concerned, the Decree 975 of 2004 classified social interest housing by price in four categories: type 1 which is from 40 to 50 legal minimum monthly salaries (LMMS); type two 40 to 70 LMMS; type three 70 to 100 LMMS; and type four 100 to 135 LMMS

105 Comptroller General of the Republic. Evaluación de la política de vivienda, Plan Nacional de Desarrollo 2002-2006, "Hacia un país de propietarios". (Evaluation of housing policy. National Development Plan 2002-2006 "Towards a country of property owners") Contraloría General de la República-UNDP. Bogotá: 2006, p. 35

106 Desempleo más alto en cinco años se suma a informalidad" (Unemployment at five year high, adds to informality). Newspaper El Tiempo. 28th February 2009.

107 Comptroller General of the Nation Op, Cit. p.77

108 "Colombia tiene el porcentaje de arrendatarios más alto de la región" ("Colombia has the highest percentage of tenants in the region"). Newspaper El Tiempo. 22nd February 2008.

109 "La mitad de la vivienda en el país es ilegal" ("Half of all housing in the country is illegal"). Newspaper El Tiempo. 30th of January 2008.

way housing policy is mainly geared towards those in formal employment, even though 57.7% of workers in Colombia are informal workers and unemployment stands at 12.9%¹⁰⁶.

297. The Comptrollers' analysis of the subsidy policy concludes with the following statements:

- "The SIH [Social Interest Housing] policies whose dynamics are essentially defined by the forces of the market tend to think of lower class housing as a commercial product and place the strategic emphasis on the financial aspects of the activity centering on direct subsidies to meet demand to finance it and on systematic incentives to the construction and mortgage lending sectors stimulating them through measures that have an impact on profitability.
- However, it will be difficult to solve the problems of social interest housing within the supply-demand scheme that is to say within a scheme where a businessman builder offers the merchandise of "own home" to an applicant who must acquire it through the intelligent or rational action –response of the market. The SIH does not operate adequately in this mercantilist scheme. This formula has not only not contained the housing shortage it has increased it.
- The attempts at finding a solution from a market based perspective have shown their lack of effectiveness in supplying the poor with housing as well as solving one of the greatest social, environmental and fiscal consequences which is illegal or informal housing. An increasing segment of the population is not attended to by formal housing production mechanisms and are forced to recur to illegal offers of plots and the production of social housing by their own efforts"¹⁰⁷.

298. As the Comptroller has pointed out the difficulties in obtaining housing property has let to Colombia not only having the highest percentage of rented accommodation in the region (36.7% of the population live in rented accommodation)¹⁰⁸ but there are also worrying indices of illegal occupation of housing (as well as illegal urbanization): "Half of all housing built in Colombia is illegal, as they don't have deeds or the construction did not comply with urbanistic norms warns the National Federation of Real Estate Markets and the Ministry of the Environment, Housing and Territorial Development (...) 'The growth of illegal construction in Colombia is dramatic' says the Minister Juan Lozano who highlight the lack of a policy on control"¹⁰⁹. This uncontrolled growth in illegal housing constitutes, without a doubt, the ignorance of the State's obligation to guarantee the right to housing in relation to one of the integral parts of the enjoyment of this guarantee which is, according to General Comment No. 4 of the CESCR, : judicial security on the tenure of housing.

299. The situation on the respect, protection and realization of the right to adequate housing in Colombia requires reference to the following aspects which deserve the CESRC's attention. That is those issues that affect the effective guarantee of the housing rights of the entire Colombian population and especially impact on vulnerable groups such as the internally displaced, the poor, Afro-descendent communities and indigenous peoples. On these issues not all the legislative, administrative and judicial measures have been adopted and neither has the available resources been taken full advantage of: (1) quantitative housing deficit; (2) qualitative housing deficit; (3) critical overcrowding and deficit due to hazards; (4) persistence of forced evictions as a consequence of the design of the institutional system of long term financing of housing; (5) displacement and theft of land; (6) the approval of legislative measures that affect the effective guarantee of the right to housing and land.

A. The quantitative housing deficit

300. The quantitative housing deficit refers to the "lack of sufficient dwellings to house the families resident in the country. Presupposing an acceptable quality in housing the deficit would be expressed by the number of houses that are required for every family to occupy a house"¹¹⁰ which is obtained by subtracting the number of existing houses (10,420,000) from the total number of families (11,190,000)¹¹¹. However, given the existence of poor quality housing structures the quantitative deficit has been complemented by taking two other variables into account: those houses whose materials are poor quality and rented rooms (which the National Statistics Department –DANE- counts as separate housing and are not included in the quantitative deficit)¹¹².

"The quantitative deficit related to the co-habiting of families in the same house in 2003 reached the figure of 777,000 houses, figure which was calculated by subtracting 10.42 million houses from the 11.19 million families. There are 1.45 million families (13% of Colombian families) that share housing with other families and so do not enjoy any privacy, one of the elements or conditions for adequate housing. This type of deficit is greater in the urban area where the percentage of families is greater than 15% compared to 6% of rural families. The regions most affected by cohabitation of families are Valle del Cauca with a percentage rate of over 20% and the Oriental Region and the Pacific (excluding Valle)"¹¹³.

301. At the same time, basing themselves on the 2003 Quality of Life Survey, Garay and Rodríguez conclude that the "deficit due to very the deficient quality of the housing structures is 79,000 houses occupied by 85,000 families. The percentage is less than 1% of the national total in urban areas and close to 2% in rural areas (. . .) The deficit in relation to housing of rented room style was 291,000

110 Garay y Rodríguez. Op. Cit., p. 204.

111 *Ibid.*, p. 204.

112 *Ibid.*.

113 *Ibid.*, p. 205

114 Ibid..

115 See CENAC. Boletín Estadístico. Colombia –Contexto Sectorial (Statistical Bulletin. Colombia – Sector Context), April 2009. Available at: <http://www.cenac.org.co/?apc=11---&x=20152630>.

116 Garay y Rodríguez. Op. Cit., p. 210.

houses that were occupied by 350,000 families. The percentage of families in this situation is 3.1% of the total, with 3.7% being urban families and 1.5% rural families”¹¹⁴. The figures from the National Census carried out in 2005 confirm the persistence of this quantitative deficit in housing at almost the same levels as 2003. In 2005 this affected 1,307,757 families corresponding to 12.4% of families in the country.

Quantitative Deficit of Housing 2005		
	Families with a Deficit	%
Total 2005	1.307.757	12,4
Structure	283.720	2,7
Cohabitation	888.664	8,4
Unrelievable Overcrowding	135.373	1,3

Table 4. Source: DANE, Census 2005¹¹⁵

B. The Qualitative Deficit

302. As regards the qualitative housing deficit, the study by Garay and Rodríguez explains that this refers to defects in houses in terms of the minimum conditions which permit an appropriate quality of life for the occupants. In this sense the quantitative deficit is understood as (1) a lack of available basic public services (2) poor materials.

303. As regards the first type of qualitative deficit related to the lack of basic public services “ in 2003 this affected 29.6% of all houses in the country and 28.6% of families. The greatest deficits were linked to the lack of sewerage services. The conditions of rural houses are dreadful: 85% of them lack one or more of the three services, with the figure for the towns or urban areas barely rising above 10% (...) The families affected by this lack of basic public services in their dwellings are as expected the poorest families. They have unsatisfied basic needs that are double or triple the national total; they are concentrated in the lowest deciles (40% of families belong to deciles 1 and 2) and two out of every three are below the poverty line”¹¹⁶.

304. As regards the second form of qualitative deficiency, related to poor quality materials for walls and floors, according to Garay and Rodríguez’s study this “affects 2.15 million families (that live in 2.03 million houses) predominantly located in the rural area (62.2%). This accounts for 19% of housing in the coun-

try, 10% in towns and 49% in low density rural areas (...) Once again they are the poorest families with economic dependency, non-attendance at school and critical overcrowding indicators which are double the national level (10.3%, 3.1% and 11.7% respectively). They are also concentrated in the poorest deciles¹¹⁷. According to the National Census of 2005 the qualitative housing deficit covered 2,520,298 families, this is 23.8% of the families in the country:

Qualitative Housing Deficit 2005		
	Families with a deficit	%
Total 2005	2.520.298	23,8
Only structure	134.342	1,3
Only Relievable Overcrowding	159.482	1,5
Only services	1.262.012	11,9
Only cooking facilities	114.304	1,1
Structure and relievable overcrowding	21.316	0,2
Structure and services	437.431	4,1
Structure and cooking facilities	11.722	0,1
Relievable overcrowding and services	88.977	0,8
Relievable overcrowding and cooking facilities	17.586	0,2
Services and cooking facilities	73.995	0,7
Structure, relievable overcrowding and services	110.548	1,0
Structure, relievable overcrowding and services	3.772	0,0
Structure services and cooking facilities	53.037	0,5
Relievable overcrowding services and cooking fac.	15.857	0,2
Structure Relievable overcrowding services and cooking facilities	15.916	0,2

Tabla 5. Source: DANE, Census 2005¹¹⁸

117 Ibid., p. 211.

118 In: CENAC, Boletín Estadístico, Op. Cit.

119 Garay y Rodríguez. Op. Cit., p. 215.

120 *Ibid.*, p. 217.

121 On the specific case of evictions General Comment No. 7 of the CESCR. There are also recommendations from experts such as "La Práctica de los Desalojos Forzados: Directrices Completas para los Derechos Humanos en Relación con los Desplazamientos Basados en el Desarrollo" (The practice of forced evictions: Complete directives on Human Rights in Relation to Development Based Displacements) adopted by the Seminary of Experts on the practices of forced evictions, Geneva 11th to 13th of June 1997.

122 Following the Sentences of the Constitutional Court, C-383 of 1999, C-700 of 1999 and C-747 of 1999 through which it declared the unconstitutionality of the system of financing housing, the Colombian State issued Law 546 of 1999 which designed the new system.

C. Critical overcrowding and deficit due to hazards

305. In this diagnostic of the situation of the right to adequate housing in Colombia one has to refer to two particular situations: critical overcrowding and housing deficit due to hazards. According to the study by Garay and Rodríguez based on the 2003 Quality of Life Survey these two situations affect a significant number of families:

“In 2003 478,000 houses had high levels of occupation characterized as critical overcrowding affecting 561,000 people. The level of overcrowding in the rural areas is ostensibly greater than that of the urban areas where the percentage is 9% of houses compared to 3% in urban areas”¹¹⁹

306. In terms of the deficit due to hazards (which includes houses that are located in areas at risk from floods, avalanches, collapse, landslides, bursting of banks by rivers and streams, subsidence or geographical faults) Garay and Rodríguez point out that 1.65 million houses (where 1.81 million families live) are located in hazard zones and that the percentage of families in this situation is much higher in rural areas where it is almost equivalent to one in four whilst in urban areas it is less than 15%¹²⁰.

D. Rights against forced evictions

307. One of the main threats to the guarantee of the right to housing is the practice of evictions where Colombian families by way of an administrative or judicial order are obliged to abandon their homes, with the destruction of community, family and cultural ties that this implies. In the majority of cases, according to the Center for the Right to Housing and against Evictions (COHRE), the evictions are carried out by the use of excessive force on the part of the National Police and on some occasions by the Mobile Anti Riot Squad (ESMAD). In these cases the families, victims of the evictions are subjected to physical and moral ill treatment, detentions and other denigrating practices without any regard as to age and gender of the people and with no alternatives for their relocation. In this way the Colombian authorities pay no heed to international norms in the area¹²¹.

308. The mortgage processes are one of the principle causes of forced evictions which increased at the end of the 1990s, after the financial crisis caused by the exaggerated increase in interest rates, the fall in income and the increase in unemployment which led to a cessation of mortgage payments and the consequent loss of housing by thousands of Colombian families. The Constitutional Court in various decisions sets down a series of principles that motivated a legislative reform in the area of financing housing and rules to avoid to the maximum evictions due to cessation of payment¹²². However, the conditions of finance did

not vary substantially and today through the use of court orders the evictions of families with no means to pay the mortgage installments take place.

“16 families brutally evicted by the ESMAD in the neighborhood of El Codito, in the locality of Usaquen.

A total of 9 youths detained, amongst them a minor, various people with contusions and bruising product of the beatings meted out by the ESMAD. Amongst them is a pregnant women which due to baton strikes was taken to the hospital in an emergency with hemorrhaging and at risk of premature birth. This is the partial result of the eviction of 16 families carried out at approximately 4 AM in the neighborhood El Codito in the Locality of Usaquén under the orders of the mayoress of the area Martha Eugenia Botero Terreros. Also, according to the functionaries that carried out the eviction, within 15 days the next eviction of 20 more families will take place leaving them totally unprotected having built their homes for many years”

See: www.elmacarenazoblogspot.com, 30th of October 2007

309. According to figures supplied to COHRE by the Supreme Council of the Judiciary¹²³ between January 2000 and October 2007 2,287 social interest housing properties were judicially sold off. Each year there are more than 150,000 executive mortgage processes mainly due to non payment of bank loans and since 2001 more than 500,000 properties were returned to the financial corporations as dation (in lieu of) in payment for the same reason¹²⁴.

310. These figures are particularly striking not just for the continuity of the economic crisis but also because they show that mortgage loans are the only option the poorest have for acquiring a house even if they are victims displaced by the armed conflict, since indebtedness is used as a supplement to the housing subsidy which is conceived as the central structural axis of housing policy¹²⁵. The awarding of housing subsidies to the most vulnerable population in practice obliges them to acquire mortgage loans without this being accompanied by a policy of socio-economic stabilization which guarantees the payment of these loans. This, far from being a housing solution is a threat of eviction from which only the financial entities profit.

E. Internal forced displacement and the theft of land

311. One of the most devastating manifestations of forced evictions is the internal forced displacement conceived as a war crime and crime against humanity, which integrates multiple massive and ongoing human rights violations¹²⁶. Internal forced displacement and refugees are amongst the most serious humanitarian problems

¹²³ Data supplied in setter UDAEOF08-770 6th of June 2008 in response to right of petition lodged by COHRE No. 19/2008.

¹²⁴ Information from Instituto Colombiano de Ahorro y Vivienda – ICAV (Colombian Institute for Savings and Housing). COHRE. Desalojos en América Latina, los casos de Argentina, Brasil, Colombia y Perú (Evictions in Latin America, the cases of Argentina, Brazil, Colombia and Peru). 2006.

¹²⁵ This is how the current Government describes it in its V Report to the CESCR. Ministry of Foreign Affairs. Op. Cit., pp. 132 – 136.

¹²⁶ Consecrated as a crime in the Colombian criminal legislation since 2000.

127 In the figures on displacement one must include the 80,000 Colombians recognised as refugees in neighboring countries. Although the UNHCR acknowledges having treated 250,000 people as refugees in Ecuador and 200,000 people in Venezuela. In: Colombia/desplazados: sigue el aumento (Colombia displaced continue to rise). http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7458000/7458743.stm.

128 A study carried out by the Catholic Church and the University of Los Andes calculated that the land stolen by the paramilitaries from the displaced population is two times greater than the total amount of land distributed by the Agrarian Reform between 1993 and 2000. "Tierras de Desplazados en Manos Ilegales" (Displaced peoples' land in Illegal Hands"). El Colombiano, May 5th 2006.

129 The Episcopal Conference, CODHES and the Comptroller General of the Republic believe that this percentage increased from 76% to 79%. Procurator General of Nation. Control Preventivo y Seguimiento a las Políticas Públicas en Materia de Reinserción y Desmovilización. (Preventative Control and Monitoring of Public Policies in the area of Reinsertion and Demobilization) Vol I. Bogotá. 2006. Pp: 179 y 185.

130 COHRE. Defensa del Derecho a la Vivienda de la Población Desplazada en Colombia. (Defense of the Right of the Displaced Population to Housing in Colombia). Informe de Misión de investigación (Report of the Mission of Investigation). Bogotá: 2005.

that Colombia faces to the point where it is considered to be the second country in the world with the highest internally displaced population. It is calculated that in Colombia more than 4 million people have been displaced against their will, which is equivalent to almost 9% of the national population. These figures are really alarming, although they do not reflect the entire magnitude of displacement in Colombia¹²⁷.

312. The intensity of the war and the persistence of forced displacement in Colombia caused a *de facto agrarian counter-reform*, consisting of the theft of land from its legitimate titleholders and its later concentration in a small number of owners¹²⁸. Despite the difficulties in calculating it, it is estimated that around 7 million hectares have been usurped and that 76% of the displaced population had rights over land as owners, occupiers, possession or tenancy¹²⁹. These figures only partially reflect the strategic context of the war in the systematic and generalized practice of forced displacement: the appropriation of territory and the concentration of land by way of theft.

313. The public policy of attending to the displaced population shows its greatest weaknesses in at least three areas: generation of income, restitution of land and the right to housing. In the area of handing over land for socio-economic stabilization almost 54,563 hectares have been given to 4,653 families since 2002. However, up to 2006 there were 58,000 displaced families who had applied for land even though 73.4% of the officially registered displaced were owners of some type of plot.

314. The administrative chaos, the corruption of the public bodies charged with rural management, legal problems in the application of norms in the case of land confiscated from narco-traffickers and above all the paramilitary influence in the relevant decisions have all conspired against the alternative of the displaced returning to their places of origin. At least two type of cases have grabbed the attention of public opinion: (1) the handing over in concession to private individuals lands previously awarded to displaced people.; and (2) the handing over of unproductive or non-arable land to displaced people.

F. Right to adequate housing for displaced families

315. COHRE has shown that in every displaced community in Colombia at least one of the attributes that defines the right to adequate housing is not respected, or indeed various attributes at the same time¹³⁰. Only 8% of the displaced population have a decent house whilst 82% of the same population has no access to income generating programs. Between 2004 and 2008 almost 51,000 displaced families (a little over half of the families displaced by violence in one year) received subsidies for housing, which partially cover the cost of acquiring a new

or second hand house. However, the numbers of families that have managed to use them is minimal as it is impossible to obtain the rest of the money to buy a house as they have no access to finance credit as they lack employment or an income. Many of the displaced families that acquire housing through the subsidy to meet demand scheme lose them quite soon after in mortgage tribunal hearings due to non payment of the supplementary loan or their public services are suspended for the same reason. In other cases it has been confirmed that urbanizations awarded to displaced families collapse or deteriorate quickly due to their poor construction.

316. In the municipalities there is not a sufficient supply of new social interest housing. The projects that exist take years to be built and the projected area per house is minute (39 m²). Apart from that, due to the dynamic imposed by local elites the municipal authorities are compelled to acquire land for urban expansion, already concentrated in a few hands, at very high cost without any political option of applying the mechanism of added value.

317. The poor quality of housing during the displacement has profound implications for the displaced population and the inadequate housing conditions all lead to other human rights violations: hazards in the construction that threaten their physical health; being located on the outskirts of the urban centers does not facilitate finding work; frequently the children and the adults that live in displaced communities do not have access to a school at a reasonable distance and the families cannot afford the basic school items such as books, materials, uniforms and other educational needs. The inadequate housing conditions often contribute to destroying the traditions and customs of the indigenous people and Afro-Colombians, especially as it impedes the cultural expression in areas such as the traditional house and community life.

G. Concerns on existing legislation

318. In Colombia there are norms that aim to legally protect the lands of the families displaced through violence and the ethnic communities who are also evicted¹³¹ through a procedure that restricts its commercialization. The model of Protection of Land and Patrimony of the Displaced Population (Decree 2007 of 2001) explains that 83,450 plots comprising 2.5 million hectares that correspond to 76,844 people¹³² have been legally protected. However, the effective restitution of the land that the displaced were titleholders of, under conditions that guarantee the security of their tenure, in a voluntary safe return, is still pending.

319. The judicial framework for the demobilization of illegal armed groups (Law 975 of 2005) foresees as a requisite for proceeding to obtain benefits is the handing over of assets to restitute the victims. However, the National Commis-

131 In 2002 "The Afro-descendent communities [represented] 8% of the total population of Colombia and [represented] 11% of the internally displaced population in the country. The indigenous peoples [represented] 2% of the total refugee population. Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia Agosto 2002 – Agosto 2004. (Balance sheet of the public policy on prevention, protection and attention to internal forced displacement, August 2002 – August 2004). Bogotá: December 2004, p. 114. In the case of the Afro-descendent population more recent reports indicate that 12.3% of the population is in a situation of forced displacement. See: Consultancy on Human Rights and Displacement (CODHES) *Afrocolombianos desplazados, un drama sin tregua*, (Displaced Afro-Colombians, a drama without end) 22 May 2008. Available at en:http://www.codhes.org/index.php?option=com_content&task=view&id=157

132 At: <http://www.accionsocial.gov.co/contenido/contenido.aspx?conID=2583&catID=127>.

133 National Commission for Reparations and Reconciliation – CNRR. Informe al Congreso. Proceso de Reparación a las Víctimas: balance actual y perspectivas futuras. (Report to Congress. Process of Reparations to victims: current balance sheet and perspectives) Bogotá. 2007, p. 105. Available at: www.cnrr.org.co/new/interior_otros/informe_congreso2007.pdf.

134 Decreto 2007 de 2001.

135 Article 138 of the Law 1152 of 2007 states that ownership of land shall be accredited with apart from the original deeds issued by the State "the duly registered deeds awarded prior to the coming into force of this law in which there is confirmation of domain for a period not less than the period stipulated in law for extraordinary prescription" The period stipulated in the laws for extraordinary prescription is 10 years (Law 791 of 2002 and article 137 of Law 1152 of 2007). Apart from the original deeds of the State, ownership is also accredited over land by any other evidence that shows that the domain over the land left the State's patrimony. But the law does specify these measures of proof. So that in this way deeds fabricated at a posterior date through their sale by the Government may be 'laundered' or through other evidence not mentioned.

136 Law 1152 of 2007 "article 127, paragraph 3. In any case, the ordinary prescription, the extraordinary prescription, the title clearing of property and the coercive jurisdiction are suspended in benefit of those displaced by violence and whilst the forced displacement continues: Article 132. The displaced owners or possessors of rural plots that have been alienated or their rights transferred in conditions so unfavorable as to make one presume that there was no judicial liberty in its celebration may exercise actions of annulment, grave harm or rescission for which the prescription of the same will commence when the condition of displacement ceases"

137 The Geographical Institute Agustín Codazzi calculates that 57.3% of rural landowners are owners of less than three hectares, which represents 1.7% of the registered rural land area, whilst the plots of over 500 hectares represent 61.2% of the registered rural land area and is concentrated in 0.4% of rural landowners. In: IGAC, CORPOICA. Zonificación de los Conflictos de Uso de las Tierras en Colombia (Zonification of the Conflicts of Land Use in Colombia). Bogotá: 2002. According to Pastoral Social [Catholic Church] and CODHES the size of the plots abandoned by the displaced families is a) less than 5 hectares: 33.4%; b) less than 20 hectares: 65.6%; c) more than 100 hectares: 7.6%. Alejandro Reyes. Dimensiones y Características del Desplazamiento Forzado en Colombia (Dimensions and characteristics of Forced Displacement in Colombia). Public Talk on Restitution of Assets Programs hosted by COHRE. Bogotá: July 11th 2008.

sion for Reparations and Reconciliation – CNRR- admits that the demobilized paramilitaries have not confessed nor have they handed over the totality of the properties that the law demands and none of the assets that they offered in the *free declarations* have been lodged with the Fund for the Reparation of Victims¹³³.

320. The Rural Development Statute (Law 1152 of 2007) recently declared unconstitutional, was seriously questioned as it reflected the interests of those who for years, through the use of or by taking advantage of violence concentrated the property or possession of the best lands, some of them located in areas where mega-projects and large investments were to be made. It was feared that the provision of this law would consolidate the theft of the displaced populations' land through the legalization of the tenure of those who had profited from the war. Although the law included the administrative procedures to protect land¹³⁴ it lacked efficient instruments to recover land that took into account the situations of social exclusion and extreme vulnerability that the displaced suffered.

321. This law permitted the legalization of doctored or illegally fabricated deeds of purchase up to 1997¹³⁵. Whilst the figure of legalization did not apply to the lands of the displaced population or when the tenure of possession of the plaintiff was the product of intimidation or violence it is also clear that displaced people would have great difficulty in meeting the costs to defend their rights. Under this law the terms for prescription of assets worked in favor of the current possessors of abandoned rural properties or the stolen lands of the displaced.

322. Despite the apparently favorable provisions¹³⁶ the displaced families have, in practice, their defense capacity annulled in the judicial proceedings as they must demonstrate that the usurper has occupied the land in bad faith. They survive in an atmosphere of systematic violation of their rights, in many cases without obtaining humanitarian emergency aid after months and even years of displacement. Law 1152 of 2007 was declared unconstitutional by the Constitutional Court (Sentence C175 of 2009) because in its procession the procedure or prior consultation with the ethnic peoples was omitted. Still it is of concern that similar legislative initiatives are produced that incorporate measures unfavorable to the protection of the lands of peasant families and internally displaced ethnic peoples.

323. The aims of the Rural Development Statute were contemplated with the expedition of Law 1182 of 2008 which establishes a brief procedure to clear spoilt titles of properties both in the urban areas, no greater than half a hectare, and in rural areas, no greater than 10 hectares, which are precisely the average sizes of the plots owned by the displaced¹³⁷. As happened to the previous law this also had provisions which excluded lands acquired by violence, usurpation or forced displacement from the process and here also the victims did not have

the guarantees and resources to intervene in the procedure to defend their rights. All of this in a context in which the property register does not protect the rights of possession or tenure of the displaced, that they do have the right to the property. Consequently the victims of displacement have evidentiary difficulties in order to have their rights identified and protected in the process provided for in Law 1182 of 2008.

324. The same analysis could be made of Law 1183 of 2008 through which the material possessors of urban properties in poor neighborhoods that lack deeds, may register with an administrative authority as regular possessors with the aim of habilitating themselves to acquire them through prescription.

CONCLUSIONS

325. Current public housing policy is limited, precarious and not adequate to the standards for the protection of the right. Its development is centered on achieving macroeconomic targets, particularly through construction and the instrument of subsidies to meet demand without this contributing to satisfying the housing needs of the population, particularly the more vulnerable sectors.

326. The practice of mass violent evictions is added to the phenomenon of the mortgage processes as the bank loans continue to be the only option for financing housing. The agrarian counter-reform developed through forced displacement and theft and the consequent concentration of land in a few hands continues to seek legislative protection as occurred with the now unconstitutional Rural Development Statute (Law 1152 of 2007).

327. The right to restitution of land, housing and patrimony by the internally displaced population in Colombia constitutes one of the main components of restorative justice which contributes in an efficient way to the integral reparation of victims, the solution of the armed conflict and the establishment of a enduring peace.



CHRONICLES



Juan Manuel Vargas Ramírez. *Malabares de una madre*. Escuela Nacional Sindical.

A STEP BACKWARDS: NO FOOD POLICY*

“States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food.”

General Comment No. 12 para 29.

Between 1998 and 2005 the National Food and Nutrition Plan (PNAN,) became a sort of public policy on the issue of food in Colombia. Since it ended no new proposal has been set in train that overcomes the limitations that it had or that meets the requirement for progress in aims and objectives and that realize the specific contents of the right to food.

After two years of state inaction it was only in 2007 that the National Council for Economic and Social Policy (CONPES) published a new Food and Nutritional Security Policy (PSAN). Eight months later Senator Nancy Patricia Gutiérrez lodged bill 203 of 2007 in the Congress of the Republic that sought to *“establish the legal framework for Food and Nutritional Security”*¹

Despite Bill 203 being lodged by a government Senator the proposal was received negatively due to the stiff opposition of the very National Government. Effectively, in the discussion process the Minister for Finance Iván Zuluaga Escobar asked the President of the Seventh Commission of the Senate not to proceed with this legislative initiative arguing, amongst other things, that they *“[would make] a mistake by awarding the category of fundamental right to the right to food.”* And this would imply that the said right *“had immediate protection by the State”*, and the Colombian State *“as a Democratic Social State of Law (...) does not entail the universalization of basic rights to citizens.”*²

In the same document the Minister for Finance concluded that the Right to Food *“is not recognized by the Constitution”*, that as a consequence it would mean *“the immediate protection by the authorities of the Republic”* and require *“modifications (...) in the definitions of economic policy”*³

What’s more, there is no public policy which favors the right to food. It is worrying that in order to block the forming of one, falsehoods are told alleging that the right to food is not constitutionally recognized. On this issue it is

* Chronicle drawn up by the Technical Secretary of the National Campaign for the Right to Food and the Colombian Platform for Human Rights Democracy and Development in the framework of the monitoring of the food situation in Colombia with the support of FIAN International.

1 Senate of the Republic of Colombia. **Proyecto de Ley Número 203 de 2007 Senado. (Bill No. 203 of 2007, Senate)** In: Gaceta del Congreso. Bogotá: 27 of November 2009. Year XVI. No. 599.

2 Letter from the Minister for Finance, Oscar Iván Zuluaga Escobar to the President of the Seventh Commission of the Senate, Milton Arlex Rodríguez Sarmiento. Ministry for Finance and Public Credit. UJ0521-08. Bogotá: 28th April 2008, p. 2.

3 Ibid. p.4

⁴ See, amongst others: Constitutional Court, Sentence T-539/09 6th of August 2009.

worth pointing out that the fundamental right to food is explicitly recognized in article 44 of the Constitution (in the case of children) and implicitly in articles 13 (population in a situation of manifest vulnerability), 43 (women), 46 (old people) and 65 (state protection for the internal protection of food. Moreover, article 93 (constitutional jurisprudence) incorporates the internal ordinances of international human rights treaties, as well as the decisions and interpretations that follow from them, including the International Covenant on Economic, Social and Cultural Rights, ICESCR.⁴

For the moment, the fallacy outlined here contributed to Bill 203, a legal framework which could have breathed life into the PSAN, being archived and not proceeded with. This shows that whilst a large part of the Colombian population suffers from serious food and nutritional hardships from the highest spheres they delay the implementation of a public policy that covers this problem. Such an attitude implies, in and of itself, a serious violation by the Colombian State of its international obligations undertaken in relation to the right to food.

THE SCHOOL PLACE SUFFERS IN THE ARMED CONFLICT*

*The Special Rapporteur recommends
dissociating the school place from the conflict
and defining it as a “space of peace”.*

Katarina Tomasevski, Mission to Colombia para. 48

On the 16th of September 2006, troops from the Pichincha Battallion assigned to the Third Brigade of the Colombian army, stationed in the urban area of the municipality of Jambaló (Cauca) launched a mortar grenade in the direction of the rural area of Zumbico. Forty metres away in the sub section of the educational institute “Bachillerato Técnico Agrícola Jambaló” (Agricultural & Technical Baccalaureate Jambaló) where 2,500 indigenous were gathered in a social activity a piece of shrapnel hit the 10 year old child **Wilder Fabián Hurtado**, killing him instantly. The child was in the company of his parents who were taking part in the activity.

The security forces and the Minister for Defense justified the military action pointing out that they had detected movement by the insurgency, in the face of which, a member of the police force fired the artifact as a preventative measure. The testimony of the community indicates that the statements by spokespersons for the State do not match reality, given that the area where the explosive fell is a populated zone near the public highway and the school; what’s more there is a petrol station there, which had it been affected by the device would have caused a tragedy of incalculable proportions in terms of human life.

The then municipal Mayor Marcos Cuetia, commented that the military confrontations don’t usually respect communal spaces; *“bombardments and strafings are carried out near the schools which could affect the children or cause an interruption in academic activity due to the fear, insecurity and precautions that the skirmishes produce.”* In the case of Jambaló similar situations have even affected the infrastructure of the educational institutions.

For Mr Cuetia, as a member of the Nasa people *“education starts in the home, the family and the fireplace.”* This everyday nature is obviously altered or interrupted by confrontations or bombardments. It is not unheard of for projectiles to enter people’s houses at night when they are resting or during the day when they

* Chronicle written by Jorge Caballero Fula, member of the communications team of the Regional Indignous Council of Cauca (CRIC) based on an interview with the former Mayor of Jambaló Marco Cuetia and the CRIC archives.

are engaged in their chores, which affects the entire community and family, both psychologically and physically, especially the children and old people who are more vulnerable. The conflict is also felt in their own education system which is being built and implemented in Jambaló, with which they try to strengthen the community's Life Plans.

Another factor which greatly affects the children and youths in the schools and colleges are the threats from the actors in the conflict; the students are accused of carrying information to the other side and usually have to leave the area, the municipality and even the department in order to protect their lives. A similar situation occurs with the wooing of girls and young women that form relationships with members of the army or the guerrillas. It is another risk factor as the student ends up being accused of collaborating with the other side and, in many cases, ends up being murdered or charged in court.

It is also clear that the armed conflict leads to educational desertion and upsets academic continuance, says the young leader. For this reason the Mayor and the local indigenous authority (cabildo) of Jambaló have made huge efforts to attend to the students' families as a contribution to the educational community.

The measures are decided upon by the community and the families; and are agreed upon with the teachers when an immediate danger is noticed. The actions taken in these cases are the suspension of classes so as the students may return home early or the next day if any threatening movement is noticed (on many occasions the students themselves decide not to attend classes). Sometimes it is the entire social being that is interrupted as the communities take their own precautionary measures, given that they intuitively know where and when there is greater risk. This, in areas with a military presence, such as this municipality means there is no guarantee of finishing a whole week of classes as the conflict may interrupt them at any moment.

On the other hand, the Indigenous Guards' emergency plan strives to get people to observe certain recommendations in relation to moving from the house to work or from the schools to the house. In the case of Jambaló this means the strengthening of the school transport system as minimum aid to mitigate the situation.

The indigenous leaders lament that given that education is a basic right that it is affected by the war. It is worth pointing out that despite all these trials and violations, the community has decided to take on board the risks and try to get on with their daily lives because from their position of autonomy they have decided to defend their territory, their lives and not to displace themselves to the large cities to add to the poverty belts. This position, this political position, implies taking risks and of course these risk affect the educational processes.

SOUR SUGAR

IMPACT OF ASSOCIATED WORK COOPERATIVES -CTA-

[Decent work is]that which respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration . It also provides an income allowing workers to support themselves and their families (...)
CESCR, General Observation No. 18 para 7

In the last few years the sugar agribusiness has carried out an intensive policy of ‘delabouring’ of the workplace relations through the consolidation of a ‘piece work’ system by sub contractors and from 2005 onwards through the system of Associated Work Cooperatives CTA, that are a variation on the cooperative system in order to mediate between in the workplace relations between employers and workers.

In 2005 hundreds of sugar cane cutters in the geographic basin of the River Cauca began a strike in pursuit of better working conditions. At that time, one of the main demands referred to the fact that many of them were fired and then rehired, but not directly but rather through third party sub contractors. In response to the strike the sugar companies convinced them to implement the CTA figure. The sugar barons organized groups of workers that would later be associates of each of the cooperatives. They chose the managers and directors of them and drew up the “*commercial offer*” with which they imposed the contract conditions that were later presented as if it were the workers, who “*would now be partners*” had drawn them up.

More than 90% of the workers involved in the sowing, harvesting and processing of sugar cane are affiliated to these cooperatives. The CTA under the contracts of the “*Commercial Offer for the supply of services in cutting sugar cane*” end up mediating in the workplace relations of more than 25,000 workers under the norms of private commercial law (under the figure of purchase – sale of services) despite it being evident that what is negotiated is human labor and the legal guarantees that workers have in law.

* Text based on the documentation of the case: “Los corteros de caña en los departamentos de Cauca y Valle del Cauca”, carried out by the organisation Corporación Humanidad Maestra Vida.

Under this model, the sugar companies limit themselves to negotiating a commercial agreement with the CTA and this in turn sets down the “cooperative” work relations with the partners who exercise the double function of day laborers and the cooperative administrators of their own working environment. The main practical effect of this practice is the elimination of the legal bond between employer and employee and consequently all workers rights such as trade union rights, social security, pensions which are recognized by law, international human rights treaties and the Constitution vanish,

At the same time the manual agricultural labor involved in the sowing and harvesting carries with it a serious physical wear and tear due to the more than 12 hour shifts the workers engage in without any rest and the constant repetitive movement of their extremities. All of this in conditions of permanent exposure to the elements, high temperatures, ash and continual contact with glyphosate and other chemicals used in the industrial processing of the crops. As a result various occupational illnesses have been detected such as those related to backbone, joints and muscles, which in some cases have resulted in lesions and partial and complete paralysis. There have also been outbreaks of infections caused by contact with contaminated water and agrochemicals.

Faced with this, the workers frequently do not receive opportune medical attention. The ailments are not classified as professional illnesses even though it is clear that they arise from the work carried out in cutting the cane. Neither do they receive an adequate diagnosis nor indeed medium or long term treatment. By the same token a serious problem has been uncovered in relation to long term disability and disability pensions; tens of workers with serious lesions and physical disabilities, particularly lesions of the vertebral column do not currently receive any attention from the beneficiary employer, who alleges that there is no legal bond with the worker nor from the CTA whose income derived from the sale of manual services does not allow it to deal with the costs of these types of incapacity nor offer any type of relocation different from the high risk labour of the field.

All of this shows up serious problems in the functioning of the health services. These deficiencies are as much the fault of the Health Insurance Companies (EPS) as the Administrators of Occupational Hazard Insurance (ARP). This situation also reveals that the CTA lack the resources, infrastructure and administrative capacity to take on the responsibility of social protection of the labor force in the sugar industry. In fact the cooperative system was not conceived of, nor regulated by law to take on the role of employer.

Maybe the biggest most visible contradiction of the intermediary labor system in the sugar industry is the reduction in income levels in the working population in

the field, the harvest and the factory through sub contractors and cooperatives. Contrary to the official discourse of ASOCAÑA and its spokespersons that claim monthly salaries of over one million pesos for the day laborer all of the empirical evidence shows that not only do they not reach these income levels but moreover, these workers after long shifts with high productivity levels for sugar companies do not even receive a remuneration on a par with the legal minimum monthly salary. This supposes not just a notable abuse of the sugar industry's dominant position with its workers but also a flagrant violation of labor law and the State's public policies in this regard, thus also violating the human rights of the workers' families in terms of food, healthcare, housing, education; needs that cannot be covered due to the precarious nature of the salaries.

In the case of the commercial offers for the service of cutting cane the processing of the sugar cane is negotiated in sums that fluctuate between 4,000 and 12,000 tonnes of cane per contract signed with the sugar barons. In each commercial offer, on average the labor of between 75 and 120 men is sold in shifts that reach up to 70 weekly hours given that the shifts are determined by the piece work price per tonne of cane cut. In 2008 the average price after deductions did not exceed 5,400 pesos (US \$2.74) which proves in practice that with this rate one cannot generate an income equivalent to the legal minimum monthly salary.

In January 2008 the cane cutters in Valle del Cauca and Cauca started an organizational process that led to a strike in eight sugar mills. The strike lasted for more than two months due to the barons refusing to establish a dialogue with the workers which they don't even recognize as such. After more than 45 days the companies finally agreed to set up negotiations. Despite the workers making important gains in terms of salary, equipment, improvements in the weighing scale system for cut cane, amongst others, it was possible to make any headway in the most important demand; that the mills recognize the worker/employee relationship between them and the mills. However, the struggle for direct hiring, for the respect of labor rights and to improve the living conditions of the cane cutters' families continues today.

WHO SURROUNDS THE MAYOR?*

THE RIGHT TO HOUSING OF THE DISPLACED POPULATION

*At the minimum (...)
competent authorities shall provide
internally displaced persons with
and ensure safe access to
(b) Basic shelter and housing.*

Guiding Principles for internally displaced, principle 18.

Despite the constitutional obligation to guarantee displaced people a decent dwelling¹ there are currently no public policies which guarantee this right. The violation of the right to adequate housing is not just caused by the plundering they suffer at the time of the displacement, but also by the conditions they are obliged to live in, in the settlement areas. The Constitutional Court in sentences T-602 of 2003 and T-025 of 2004 pointed out that “*given that the persons who find themselves displaced have to abandon their own homes or habitual places of residence and submit themselves to inappropriate accomodation conditions where they displace themselves to when they can find them and don’t have to live in the open*” So the authorities, in compliance with their constitutional duties must provide the victims of displacement the support to obtain adequate housing.²

One situation which exemplifies the seriousness of the problem is the drama of the occupiers of the urbanisation **Prados de Alta Gracia**, which was built in the 1990s by way of resolution 011 December 10th 1996, issued by the planning board of the municipality of Fusagsugá (Cundinamarca) with the aim of partially covering the housing deficit in relation to dwellings of social interest. Upon being finished it remained abandoned for 13 years allowing it to become a refuge for delinquents and vandals.

Between September 2008 and January 2009 18 displaced families, which included old people and children occupied the ruined dwellings after state agencies had turned a blind eye to their pleas for a decent place to live. It seemed logical that

* Text drawn up based on the documentation from the case “Prados de Alta Gracia”, written by Fernando Pachón Piñeros, lawyer for the Foundation for education and development, Fedes.

1 According to Codhes (April 2009) in the last year 56,087 displaced persons arrived in Bogotá and in departments like Antioquia 51,918, in Valle del Cauca 31,527, in Magdalena 27,526, in Nariño 24,662, in Meta 16,334 and in Cordoba 12,879. 82 mass displacements were recorded “*Desplazados crece la drama*” Newspaper Desde Abajo No 146 pp. 12 & 13.

2 Cf. El derecho a la vivienda. (the right to housing) Red derecho y desplazamiento Available at: <http://derechoydesplazamiento.ilsa.org.co:81/node/307>

³ The judgement of 11.02.09 of the Second Civil Court in the Circuit of Fusagasugá makes mention of the possibility that the administration legalise the situation of the occupying family by way of title deeds on the property. In sentence T 2008-210 the Criminal Judge in the Circuit of Fusagasugá ordered the municipal administration to allow the families to remain in the houses as a provisional shelter until such time as there is a real and effective solution to their housing problem. Other tutelas have come down along the same lines of guaranteeing the right to housing of the displaced populace. However, the administration insisted on carrying out the evictions in clear contempt for the findings of the tutelas.

⁴ Sentence T-025 proffered by Constitutional Court on 22nd of January 2004 covers a wide range of rights that the constitutional judge stated were being violated in the country by an evident “*state of matters unconstitutional*”. (...) The Court formally declared “ordering as a remedy that the national and territorial authorities charged with attending to the displaced populace ensure a coherence between obligations laid down for the relevant authorities and the volume of effective resources set aside to protect the rights of the displaced.” See summary of sentence drawn up by Protection Unit of UNHCR, February 2004 available at <http://www.acnur.org/biblioteca/pdf/2523.pdf>

instead of being exposed to the elements they could count on a home in a place that was in the end unoccupied and their occupation of it harmed nobody.

This reasoning did not seem to convince the municipal authorities who began eviction proceedings against them as well as cutting off basic services. The occupiers filed tutelas to protect their fundamental rights. The judges began to find in their favour, considering public services such as water to be indispensable requirement for the exercise of fundamental rights and recognised in various judgements that these people’s problem should be dealt with taking into consideration their situation as victims of forced displacement which made it necessary to consider the possibility of giving deeds on these houses to the occupying families or to allow them remain there as a temporary shelter until such time as they are guaranteed a real and effective right to housing. Or as a last resort the eviction should be accompanied by a relocation plan in dignified conditions.³

In contravention of the judgements, the evictions continued by the Second Police Inspection, on behalf of the Mayor’s office in Fusagasugá which now defended the need to hand over the property to the private real estate sector.

On may 15th 2009 in the middle of a eviction proceeding, in a dialectal exercise, the displaced verbally justified their occupation. They manifested what was already well known to the administration, by way of reply to the complaint and numerous rights or petition and in the bases for the tutelas they had won. They emphasized their condition of displacement, their degree of vulnerability and the need to apply the principle of equality as conceived in article 13 of the National Constitution i.e. that they made an interpretation *pro homine* (or in favor of human dignity) of the relevant legislation to the case. They also asked the authorities to apply the Infants and Adolescents Code in relation to co-responsibility of the family, society and the State to guarantee the appropriate surroundings for minors and their rights as well as the considerations of the mandates emitted by the Constitutional Court to overcome the “*state of matters unconstitutional*”⁴ generator of systematic and massive violations of the human rights of the displaced populace.

Once again the mayor’s response was averse: the occupiers had no alternative but to hand over the dwellings in order to later take part under “equal conditions” in a public auction that mayor’s office would hold in the framework of **decree 4444 of 2008** issued by the Department of National Planning. This decree regulates the transfer of ownership of State assets by entities that fall under the General Statute of Contracting of the Public Administration which in article 2 establishes the possibility that the transfer of assets (in this case social housing) may be carried out subject to a contract with the interested public entity

by “promoters, investment banks, auctioneers, stock brokers and agricultural, agribusiness producers or other commodities or any other ideal intermediary according to the type of asset to be transferred. It may also be done through a Central Investment Society plc. in which case the relevant inter-administrative contract will be signed.”

One has to ask what type of equal conditions could exist for dispossessed people to enter into competition with magnates from the real estate business? And also what is the Mayor’s interest in auctioning off this fiscal asset before coming up with a solution to the effective problem of housing for victims of displacement? He even trod over the agreements that emanated from the Municipal Council that classify these as social interest housing and also ignores the protective mandates of the Constitutional Court.⁵

However, the most interesting debate of the case revolves around the **social and ecological function of property**. This notion was conceptually consolidated by the jurisprudence of the Supreme Court in relation to the urban reform law 9 of 1989, which highlighted the importance of urban property, its exercise and the need for the State to generally intervene in urban planning. Later this concept acquired full validity with its constitutionalization (article 58) and the constitutional jurisprudence. Sentences C-006 of 1993 and C-595 of 1995 inclined towards a dual understanding of property in its economic and judicial aspects. “Both notions even when there is a presumed individual interest in as much as property is conceived as a means of production, it is also elevated to the level of social interest; that is to say that depending on the form in which this right is exercised in the individual arena it will have repercussions in social terms.”⁶

However, if the previous statement applies to common private property more so does it apply to fiscal assets, in other words patrimonial assets of the State or the territorial bodies that supply public services that the administration has immediate access to. That is to say, even though they are governed by common legislation they cannot be dissociated from the constitutional aims that property must comply with. That means, the State must maximize the social and ecological functions of the property of these assets with the aim of complying with the essential aims noted in the Constitution, amongst which are the following: “to serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties consecrated in the Constitution; facilitate the participation of everybody in the decisions that affect them and also in the economic, political, administrative and cultural life of the Nation; defend national independence, maintain the territorial integrity and ensure peaceful coexistence and maintain a just order” (article 2 of the P.C.).

⁵ By way of Sentence C-351 of May 2009 the Constitutional Court pronounced itself on the lawfulness of article 40 of Law 3 of 1991, which modified article 64 of law 9 of 1989 which indicated that article 311 of the National Constitution stipulates the powers of the municipality as a fundamental political entity in the political administrative division of the State and that it should seek the development of its territory promoting the participation of the citizenry and the social and cultural improvement of its inhabitants in concordance with numeral 13 of article 313 that gives Municipal Councils the power to regulate land use, within the limits established by law, supervise and control the activities related to the construction or transfer of properties allocated to housing. (Italics not in original).

⁶ See an analysis of property rights in the jurisprudence of the Constitutional Court in: *hacia una redefinición del derecho de propiedad* (Towards a redefinition of the right to property). Catalina Villegas de Castillo. Summary of dissertation to obtain the title of lawyer, Universidad de los Andes, 2004.

However, these higher values do not seem to concur with the logic and actions of the public administration of the municipality of Fusagasugá which has systematically ignored the rights of the displaced populace of Prados de Alta Gracia and has almost paid no heed to the application of the international legal standards of the UN in terms of forced evictions contemplated in General Observation No.7 of the UN Committee on Economic, Social and Cultural Rights.

"IF A AN INDIGENT PERSON GETS HIV, WHAT ARE THEY GOING TO SEIZE?"*

“ (...) the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”
General Comment No. 14 para. 8.

People walk through the door of the University Hospital all the time. The nurses are dressed in white, the residents in grey and the interns in blue; all the rest are patients or visitors. The white uniforms tend to walk a little slower, the grey ones their speed is noticeable and the blues a little less so. It is very difficult to talk to a resident, they all tell me that they have no time; the interns tell me the same thing, but are more polite about it: “I am sorry but I have to start my shift” is the almost unanimous reply.

Catalina has a blue uniform and I meet her while she smokes a cigarette a few meters from the entrance to the hospital in the middle of break in her shifts. When I ask her for her opinion on the declaration of the social emergency¹ that reforms the health system she agrees to talk to me but she makes it clear that she doesn't have much time as she has to attend to patients.

I don't have to ask her many questions. Catalina is clear and explains:

“I am a medical intern. At the moment I am in my last semester and as we have the option of taking turns at the specialties that we like most I am in Ophthalmology. Truth be told the reform is affecting us a lot. I'll give you an example, the medicines that we use to treat certain infectious pathologies: the POS only covers two medicines, acetaminophen and sulfacetamide and the rest of the medicines have to be covered by the patients, as they are not included in the POS and many of them are expensive. We know that the medicines in the POS are not the best as they may have higher toxicity levels... we prefer to use other types of medicines”

* Chronicle elaborated by Alejandro Mantilla Quijano, based on field interviews and the communiqué of the Colombian Platform for Human Rights, Democracy and Development “Los decretos de emergencia social: un atentado contra la salud de los y las colombianas, y una clara violación de obligaciones internacionales en materia de derechos humanos”. (The Social emergency decrees: an attack on the health of Colombians and a clear violation of international obligations in the area of human rights) Available at: www.plataforma-colombiana.org

¹ The National Government declared the social emergency on December 23rd 2009 on the pretext of obtaining economic resources for the health system. Both the content of the declaration and the decrees issued under it seriously violate the right to life and health of the Colombian people.

2 El Tiempo. Médicos denuncian que EPS los intimidan para que no pasen toques de fórmulas y exámenes. (Doctors denounce that EPS intimidate them in order to not to exceed limits on prescription and examinations. Bogotá. Noviembre 24th 2007. Available at: <http://www.gonzalodiaz.net/1100/ley100/limitar.shtml>

The health professionals don't have much choice in the matter as shown by the survey of the Public Defenders Office carried out amongst 1,544 doctors in 310 municipalities (representative sample of 41,252 professionals), which concluded that "the greatest inconformity amongst them are the limits the insurance and health administration models place on them. (...) According to the report [of the Public Defenders' Office] they impede the application of academic protocols and prioritize keeping down costs:² This was confirmed by the medicine student;

"(...) when we prescribe, some EPS send letters saying that medicines that cannot be covered and whose cost must be covered by the patient are being prescribed. Even though I can't prescribe yet I notice that the doctors receive letters where they say that they are prescribing medicines that the plans cannot cover, but as professionals we don't have much choice as it is what is best for the patient that is paramount... we can't just prescribe any medicine just because it is cheaper if it doesn't have the effect that we are seeking. We prescribe it because the patient needs it."

For its part, the situation is made worse by the social emergency decrees. For example, the decree 131 of 2010 reduces the number of medical services that form part of the Obligatory Health Plan by conditioning their reformulation and updating to the financial capacity of the system. This situation is even more acute for those patients that require procedures not contemplated in the Plan.

"It is quite clear that if a doctor prescribes a medicine that is inadequate he/she can be taken to a medical ethics tribunal and such control is necessary; but prescribing a medicine that is not included in the POS is not a crime as the intention is to offer the patient other alternatives... moreover, it is not the case that everything not included in the POS is more expensive. Many medicines not covered by the POS are reasonably priced and have a proven effectiveness, which can be seen with some of the drugs for psychiatric treatment."

The emergency norms also put at risk medical ethics, as it obliges the doctors to restrict their prescriptions and treatment orders to previously establish guidelines under pain of economic or disciplinary sanction. Catalina is emphatic when asked for the profile of medical practice imposed by the reform:

"It is worrying that they restrict our knowledge to medical guidelines that are not updated and turn each patient into an illness; now we have guidelines that say" "Guidelines for the management of a heart attack patient", "Guidelines for thrombosis patients", so the patient becomes the illness, the patient becomes a heart attack or a thrombosis... but a patient is not an illness, but rather a person." What happens if a person develops various illnesses? How do you prescribe a medicine?... It is terrible to introduce medical protocols

that have no basis, thinking that a certain medicine should be prescribed for each illness... as each patient should be individualized, there should be a study of each case. This is not what studying medicine is about, it is turning it into a technical exercise.”

“One becomes sort of automaton, a kind of monkey with a gown prescribing things... the emergency hasn’t solved anything, what it does is put pressure on the doctors and moreover we are presented as being the cause of the failure of the system... and nobody studies for 12 or 15 years to go out and harm the patients. We do all we can to help them. However it is true that in the end the patients are the ones who are going to be most affected as they will no longer have medical care but rather a person prescribing from guidelines... They are restricting the actions of the doctors, limiting their ability to think... us doctors will end up being technicians or typists according to the parameters of the Government.”

“There are decrees which prevent us from complying with our first commandment” Do no harm; and in order not to do harm you can’t omit things that you are in a position to do but can’t because you might be fined or sanctioned... or as has happened to many doctors even before this reform; they are fired or not hired...”

The following point deals with the financial implications of the reform. Decree 128 of 2010 states that the cost of medical services not included in the Obligatory Health Plan (POS) must be met by patients using their severance payment contributions (Cesantías), pension savings and even bank loans. The State will only pay if one can show a complete lack of means to pay for services not in the POS, however, this will be limited by the availability of resources for these matters.

“The decrees are supposed to be about obtaining more resources for health, and we are not going to oppose that, but the proposal to use seizures as a means of payment for treatments is terrible. They could embargo everything a person has, even the grave, but the majority of people don’t have enough to pay for a catastrophic illness... imagine the case of an indigent person who is infected with HIV and whom we must treat, what are they going to seize? The doctors capacity to act is limited and the patients are limited in requesting adequate treatment to cure an illness, no matter what it is”.

“What can so called ‘high cost’ patients expect? Nothing, they can just let themselves die after the diagnosis is made, or in very simple terms: if you have no money, you die. If you are diagnosed with cancer and you need chemotherapy, radiotherapy or what ever, and it is really expensive, it is a high

cost illness, if the POS doesn't cover it and you are poor, there is nothing you can do, you must resign yourself to dying because you won't have enough to pay."

"The resources are there, but they must be used and distributed, with the control mechanisms for those resources. I don't think the EPS system is bad in and of itself, but rather the EPS have turned health into a business; health needs to stop being a business and the patient a client and become a person who is treated with dignity and the EPS need to be better controlled in such a way that the right medicines are given to patients on time and they don't have to sue them in order to get a medicine that they need. It is also fundamental that the EPS stop absorbing money from the system as they have been doing, as this tilts the economy towards a handful of companies that are getting rich due to the advantages that the contributive regime gives them."

Catalina knows that the situation is terrible, but she remembers that last February 6th a large part of the medical community, patients, and citizens in general, protested against the Decrees of the so called Social Emergency. Faced with such discontent, I ask her about the possibility of a new health system more in line with human dignity, how do you see it?

"The main thing is coverage, a system that covers every stratum would be an advance because the current system has not achieved it and this is important, because there are still many deficiencies; I think that you need a lot of money for an ideal health system and I think that the money is being swallowed up by the EPS or through corruption or by the administration. Secondly, quality is fundamental, that doctors can apply their knowledge, there are many long years of study for a doctor to come out and be limited to prescribing acetaminophen because if you do otherwise you will be fined. That is how quality is circumscribed. If you are a doctor you know what is best and what is the most appropriate for your patient, its not done on a whim, it is because you studied for a long time to be able to prescribe and if you can't do that it is best that the government hire people to prescribe what they want them to prescribe. Medicine is becoming technical and no more, so why do they need doctors?"

"Consultation times are also paramount. It is just ridiculous that in 20 minutes one can know the entire clinical history of a patient, that one can conduct a detailed physical examination and also explain it to them and handle it well. It can't be done in 20 minutes and in many cases one has even less time. Sometimes we only have up to 10 minutes per patient. One has almost got to run, one has to be very efficient but it is almost impossible. On the other hand the Obligatory Health Plans should include many more medicines. I was

an intern in a small town and it is very difficult when you the characteristics of the medicines and knowing what is of use to each person and that many people have no money to pay for them, so you have to either not give them anything or give them something from the list that the EPS covers knowing that it is not going to be effective.

Catalina puts out her cigarette and with a gesture she tells me she has no more time, the hospital and a patient are waiting for her. We say goodbye, she goes through the door along with other blue uniforms. I know that as well as the patient there is a guideline book to treat the illness and not the person; but I also know that she won't forget that it is a person who is waiting on her to save their life.





José René Arcos Bacca. *La alegría de la minga*. Escuela Nacional Sindical.

CHAPTER VI

PEASANTRY

The Committee is deeply concerned that the State party has not yet undertaken genuine agrarian reform in order to address effectively the problems of poverty and economic disparities in the rural areas.¹

328. After almost three years without any information on poverty, indigence and inequality levels Colombia, once again in 2009 had statistics on the issues. The new figures calculated by the Follow Up Mission for the Employment, Poverty and Inequality Reports (MESEP)² confirm what some studies had already revealed; the economic growth of the years 2006 and 2007 was inequitable and did not represent an improvement in the quality of life of lower income persons; that there has been no respite in inequality and it remains at the same level as 2002; indigence increased between 2005 and 2006 and affects 17.8% of the population; that almost half of Colombians live in conditions of poverty³

329. In the countryside the situation is even worse, as poverty affects 65% of the inhabitants and indigence 32%⁴. A large part of the peasantry⁵ live in remote areas affected by the presence of armed actors that cause forced displacements without any access to productive resources, local markets, expansion of services or basic infrastructure such as water supply and sewerage, paths, aid with agricultural production etc.

330. Insecure land tenure prevents the peasant from gaining access to credit. Furthermore, women are victims of a double discrimination, as women and as peasants they have difficulty in acceding to and registering their rights over land or that they recognize their rights to the territory, water, seeds and other agrarian rights.

331. Below are some of the problems facing the peasant sector, which constitute violations of their economic social and cultural rights, are detailed.

MONITORING OF THE CESCR RECOMMENDATIONS

332. Both in 1995 and 2001 the CESRC recommended that the Colombian State adopt a real integral democratic rural reform, which contemplates the political

1 CESCR Concluding observations of the Committee on Economic, Social and Cultural Rights E/C.12/1/Add.74.para. 23

2 National Planning Department, "Misión para el Empalme de las Series de Empleo, Pobreza y Desigualdad (MESEP) entrega series actualizadas al Gobierno Nacional", (Follow Up Mission for the Employment, Poverty and Inequality Reports hand over up to date reports to the National Government" 24 August 2009, Available at: www.dnp.gov.co

3 Cf. Colombian Commission of Jurists *¿Cohesión social? Colombia sigue siendo uno de los países más inequitativos de la región más inequitativa del mundo, (Social Cohesión? Colombia continues to be one of the most inequitable countries in the most inequitable regions in the World) Boletín No. 4 Serie sobre los derechos económicos, sociales y culturales*. Available at: <http://www.coljuristas.org>

4 MESEP Op. Cit.

5 For the purposes of this document peasantry is understood as the rest of the municipality (resto municipal) a concept used by the National Statistics Department, (DANE); that is the total population minus those that live in the main towns. According to the National Population Census of 2005 the total rural population was 10,524,226 (52% male and 48% female). Of this total at least 60% are peasants.

6 See Ministry of Foreign Affairs V Report, Op. Cit. paras. 371 - 372

7 Based on data taken from: Benítez Vargas, Regis Manuel. La reforma agraria en Colombia: vigente y por hacer. (Agrarian reform in Colombia; current and yet to be done) In: Economía Colombiana No. 309. Contraloría General de la República. Bogotá. p. 49

recognition of the peasantry as a differentiated social actor, as they have done with the Indigenous and the Afroc-Colombians. The V Report of the National Government presented to the CESRC in 2008 explicitly recognized that the results in area of agrarian reform have been very poor⁶

333. One could say that contrary to the adoption of measures to comply with the Committee's recommendations, in the period under study there has been a *de facto* agrarian counter-reform through which a dramatic retrogression has taken place. This counter-reform was promoted by the State through policies conducive to theft, displacement and eviction, increasing the disprotection and marginalization of the peasantry reducing the possibility of access to land and other agrarian rights.

334. The "Rural Development Statute" recently declared unconstitutional along with other norms (laws and decrees) promulgated in the last three years corroborate the previous affirmation.

2. THE SITUATION OF THE ESCR OF THE PEASANTRY.

Right to free determination, cultural integrity and territory (article 1 of ICESCR).

335. The land conflict in Colombia has various very complex historical causes, amongst which are: i) difficulties of the rural population to obtain land and the concentration of landownership in a few hands; ii) land is seen as an asset of capital accumulation and its importance for agricultural production is never taken into account and there has never been an integral agrarian reform; iii) high levels of rural poverty; iv) state agrarian policies are insufficient in terms of credits, subsidies and incentives for peasant family production; v) the rural areas of the country have been the scene of incessant waves of violence, displacement and theft. This is aggravated by the inclemency of nature, which has left two million flood victims, without the State making a real intervention in the regions.

336. In synthesis, land in Colombia instead of being considered a public asset of social and environmental use is on the contrary considered to be a source for exploitation, speculation, the extraction of resources and the accumulation of capital in a few hands.

337. The agrarian counter-reform, which is applied in Colombia can be seen in two phenomena. First, the dismantling of the agrarian reform institutions and those charged with promotion of agrarian production, under which some land distribution policies were carried out. These declined immediately before and after the beginning of Uribe's government as can be seen in following graph⁷.

Secondly, there is a strong tendency towards the concentration of land in a few hands.

Adjudication of land in Colombia Incora-Incoder 1962-1994 (in hectares)



338. The concentration of land in Colombia, generally linked to violent processes of theft and the displacement of peasantry, is an historic tendency in the country which increased in the 1980s. According to data from the Agustín Codazzi Geographical Institution (IGAC) at the end of the 1990s 61.2% of the registered rural property land area in Colombia was controlled by 0.4% of the owners (equivalent to 47,147,680 hectares all of which correspond to plots of over 500 hectares); whilst 24.2% of the national rural property land area (18,646,473) is in the hands of 97% of the registered owners in the Cadastre. Of these the majority are plots of less than 3 hectares (57%)⁸.

339. Another measurement taken by the IGAC in 2004⁹ showed that this tendency towards land concentration grew by two percentage points: 0.4% of the owners own 62.9% of the land.

340. This accumulation of land by large landowners is directly related to dynamics imposed by the armed conflict that has pushed different actors to exercise control in wide geographical areas, which are strategic to their military, economic and political interests. Areas where there are natural resources (oil, gold, minerals, timber, crops for illicit drug production etc.) and where the development of large scale mega-projects are planned. The 'political ecology of war' is dependent on these, i.e. the push to control, use and take advantage of these resources finances the hostilities, strengthen local elites and have an impact on the duration and intensity of the conflict.

⁸ IGAC, Corpoica. Op. Cit.

⁹ Ibid., op. cit. p.83

¹⁰ Procurator General of the Nation. Proyecto de control preventivo y de seguimiento a las políticas en materia de reinserción y desmovilización. Tomo I. (Project of preventive control and monitoring in reinsertion and demobilisation policies) Bogotá: PGN, 2007, p. 158

¹¹ The Comptroller General of the Republic (2005) calculated the theft of lands of the displaced population as being 2.6 million hectares which is equivalent to 5.8% of the land best suited to agriculture. The CEDE of the University of Los Andes (1999) calculated it to be 3 million hectares; The Colombian Institute for Agrarian Reform (INCORA) the World Food Program (2001) calculated the theft at 4 million hectares representing 48% of agricultural lands; The Consultancy for Human Rights and Forced Displacement; (CODHES) has claimed that between 1997 and 2003 five million hectares were stolen from the displaced population and finally the Consultancy hired by Acción Social for the protection of patrimonial assets of the rural displaced population and the strengthening of the social fabric put the figure at 6.8 million hectares. See Procurator General of the Nation. Proyecto de control preventivo, Op. Cit., p. 154

¹² Ibid., p.155

¹³ The Court's decision was mainly based on the fact that the Law was approved without having consulted the peasant, indigenous and afro communities.

341. The effects of the territorial control of natural resources is manifested with in all its severity in the continual human rights violations of civilian population and of international humanitarian law. At the same time this control weakens local and regional governability as it is the armed and criminal powers, through a parallel institutionalism that subordinates the authorities to their objectives, exercise control over the development powers, budgets and public contracts and even replace the State in providing public services, administering justice, security and tax collection¹⁰.

342. Although the exact scale of the theft of land from the peasant and ethnic communities by armed actors, narcotic traffickers and other groups has not been determined, various sources have made calculations of between 2.6 and 6.8 million hectares¹¹. The Comptroller General of the Republic, which calculates the theft to be 2.6 million hectares has also made projections on the cost of reparations that the State owes the victims of forced displacement for the abandoned land and the loss of income and reached the conclusion that the damages are somewhere between 8.2 and 11.7 billion pesos at 2005 levels¹².

Statute for Rural Development; a regressive measure

343 With that, the aspiration of a democratic distribution of land as recommended by the CESCER and the constitutional mandate to promote the access of agrarian workers to land are a long way from being complied with. The State has even tried to go backwards with the issuing of the Rural Development Statute (Law 1152 of 2007) whose agroindustrial focus (under the principles of productivity, competition and profitability) imposed an even more exclusive model that favored business interests in the countryside. Furthermore, it laid down the judicial basis for limiting the territorial rights of the peasantry and ethnic groups as well as legalizing the violent theft of land and territory.

344. Despite Law 1152 being declared unconstitutional the rural populace fears that the current government will once again put forward an initiative, which circumvents the objections of the Constitutional Court¹³. This fear is based on the clearly regressive nature of the Rural Development Statute which sought to increase the limitations of peasants' access to land as well as the exercise of sovereignty and rights on collective lands by the indigenous and Afro-Colombians communities.

345. Given the latent threat of proposals like the Statute we believe it important to point out some of the more damaging features:

- The Statute contemplated a subsidy for land purchases, which only businesspeople from the rural sector could apply for (article 2.7) if they had the capacity to present a productive project within the guidelines on agricultural exploita-

tion priorities of the Ministry for Agriculture (articles 56 & 60). Consequently peasants engaged in food production were excluded from this subsidy; also in the ten years following the award of the subsidy the beneficiary ran the risk of losing their land and returning the value of the subsidy if at the discretion and consideration of the INCODER the land was not being exploited properly (article 67). However, there was no sanction for speculative uses of land, its under use or over exploitation by large land owners.

- It restricted peasant reserve zones to state lands (baldíos) without touching the private lands responsible for the concentration of land. With this it stimulated the expansion of the agricultural frontier towards ecologically strategic areas with consequent grave social and environmental impacts. Article 88 ordained that the peasant reserve zones, the zones for business development and colonization be expanded towards the state lands (for the most part tropical forests) with the possibility of these lands being awarded to the societies that requested them (article 90).
- Also the projects for improving lands administered by the INCODER, but mainly by fiduciaries and the private sector limited (article 100) the business tenders to agroindustrial productive projects prioritized by the Ministry for Agriculture, which meant the peasant economies engaged in the production of food were not favored with technical assistance.
- The expansion, restructuring and ‘regulation’ of the indigenous legally recognized territories (resguardos) and the collective territories of the black communities were subordinated to territorial ordinance plans which violated the right to ethnic autonomy (article 116). The Statute also ordained that the relevant authorities refrain from proceeding with the acquisition of lands for ethnic groups when the plots had been “claimed or acquired through acts of violence” (article 124) in contravention of constitutional postulations of good faith and the protection that article 58 of the Political Constitution gives in favor of the “rights acquired in line with civil law” such as possession considered by the Constitutional Court to be a fundamental right.
- The Statute invoked the social function of the property of the black and indigenous communities (articles 119 & 125) when these demanded their conservation or access to land, unlike the large land owners that have concentrated and inadequately exploited the best lands in the country. Article 136 maliciously extended the concept of possession to any “productive, regular economic and stable use of the land” with which possession of the under and over exploited lands of the large land owners was presumed and thus passed the examination of the social function of the property and protected it against any administrative process of extinction of domain or expropriation.

¹⁴ See Ministry for Foreign Affairs, V Report, Op. Cit., paras. 371 & 954

- It restricted the administrative extinction of domain to those who did not exercise possession of the land in conformity with the terms mentioned and endorsed judicial expropriation processes only in order to develop agroindustrial projects in areas where the government and the industrialists have been planning to exploit commercial crops (article 169). This means that in agroindustrial areas if there is a peasant economy or there are community productive projects these could be subject to administrative expropriation.
- Lastly, the Statute adopted measures to legalize the theft of the lands of the displaced population. It facilitated the legalization of private deeds ‘fabricated’ in public notaries up to 1997 by recognizing the rights of those who had transfer deeds of no less than the terms of acquisitive prescription, which under Law 791 of 2002 is ten years. This benefited the illegitimate holders of lands abandoned by displaced people.

Difficulties accessing the right to land

346. The effective guarantee of the right to land supposes the adoption of coherent measures to eliminate the concentration of land, prohibit and sanction its inadequate use and ensure its equitable redistribution in conformity with the social, economic and cultural particularities of the communities. However, the Statute did not include any norms geared towards compliance with these aims, as it was only interested in agroindustrial productivity in the countryside.

347. The problems of the lack of lands for peasants are linked to the lack of serious land reform and land redistribution measures. Likewise we are perturbed by the promotion of change in land use policies to implement agroindustrial and extensive cattle ranching programs that affect employment in the countryside and give the national and transnational companies guarantees to carry out their mega-projects in the regions, sacrificing the rights of the peasantry.

348. In relation to the right of access to land and other benefits for rural workers (credit, use of technology, social services) we find that the programs for reactivating the countryside¹⁴ pointed to by the State have turned into barriers that exclude the peasants. In order to participate in the productive projects that the Ministry for Agriculture finances, complicated and expensive studies and procedures are required that poor peasants cannot afford and less so now with the dismantling of the institutional framework that supported work in the countryside.

349. In relation to the quality of rural work, it is carried out without any protection from the State. The majority of labor rights are denied to agrarian workers: there is no employment stability, no social security and the minimum wage is not complied with. There are no adequate policies to promote peasant economies nor

environmental protection, nor the inclusion of women as beneficiaries of social programs, unless they are housewives.

350. On this last point, whilst Law 731 of 2002 which dictated norms to favor rural women and aims to improve the quality of life of rural women, this norm has not been implemented. In order to comply with the spirit of Law 731, the National Government and various state bodies are charged with the development of plans, programs and projects related to access to health and social security, housing, education, information, credit and economic participation, all of which must be free from any obstacle that impedes rural women's access to them. At the same time the law lays down the design of a plan to revise, evaluate and monitor these programs and laws, which benefit rural women, through the Council for equity for women with the support of the Ministry for Agriculture. Despite the benefits of the law, which gives a positive differential treatment based on gender it has not been effectively developed, which is why peasant organizations have decided to seek recourse in an action of compliance, on which a judicial decision is pending.

Right to work (articles 6 & 7 of ICESCR)

351. A brief review of some figures allows one to characterize jobs in the rural labor market as poor, low quality employment (in terms of formality and full employment), highly informal and low rate of occupation, low income and inferior labor guarantees when compared to the urban sector.

352. According to the Household Survey (2005)¹⁵ the rate of occupation in Colombia has hovered around 53% in the last few years both in urban and rural areas. In 2005 the calculation for the population of working age was 25.2 million and 9 million respectively. In absolute terms, by the end of 2005 13.7 million urban inhabitants and 4.8 million rural inhabitants were in work¹⁶. The rate of employment of males in rural areas was 75% whilst that of women was 25%. Between January and February 2006 the population at work in the agricultural sector fell by 7%¹⁷,

353. Depending on the occupational position, the rural wage earners represent 42% and are distributed as follows: 17% are employees and workers, 2% are public employees, 3% are domestic workers and 20% are day laborers (day laborers or price workers). The distribution of the rest of rural workers is: employers 5%, self employed 44% and unpaid family laborers 10.8%¹⁸.

354. From these figures one can conclude that more than 40% of the economically active population in the Colombian countryside, i.e. 3.6 million peasants are not in formal employment or are excluded from decent jobs with minimum guarantees.

15 National Statistics Department (DANE). Encuesta Continua de Hogares 2005 (Household Survey 2005). Bogotá: 2005.

16 Leibovich, José; Nigrinis, Mario y Mario Ramos. Caracterización del mercado laboral rural en Colombia. (Characterization of the rural labor market in Colombia) Documentos del Banco de la República. Bogotá: 2005, p. 12. :Available at: www.banrep.gov.co/docum/ftp/borra408.pdf

17 Sarmiento Anzola, Libardo. La rumba de la economía colombiana. Paradoja entre crecimiento y desempleo. (The direction of the Colombian economy. Paradox of growth and unemployment) Desde abajo. Edición digital. Bogotá: 21 de febrero de 2007. Available at: <http://www.desdeabajo.info/index.php/ediciones/143-edicion-120/615-la-rumba-de-la-economia-colombiana-paradoja-entre-crecimiento-y-desempleo.html>

18 Leibovich, José; Nigrinis, Mario y Mario Ramos. Op.cit., p. 16

19 Ibid., p.21

20 Suárez, Aurelio. El modelo agrícola colombiano y los alimentos en la globalización. (The Colombian agricultural model and food under globalization) Bogotá: Ediciones Aurora, 2007

21 Ibid. p.3

22 Compare this figure on migrations and violence with the data reported by the Government's Single Register System (SUR) which gives an annual average of forced displacement due to violence of 366,933 between 2000 and 2005 with the annual average of displacement according to the Consultancy of Human Rights and Forced Displacement which in the same period was 375,485. Projections based on: Noguera, Diana, "Algunos datos sobre el desplazamiento en Colombia", artículo incluido en Serrano, Miguel (Ed). Evaluando el impacto de intervención sobre el desplazamiento forzado interno. Hacia la construcción de un índice de realización de derechos. "Some data on displacement in Colombia" articles included in Serrano, Miguel (Ed) Evaluating the impact of intervention on internal forced displacement) Bogotá: PCS, 2007, p. 97

355. In addition to this worrying labor panorama, there is the low quality of employment and the poor remuneration of rural workers. At the end of 2005, the average monthly income of a rural worker was \$340,800 pesos i.e. 90% of legal minimum monthly wage. It is important to bear this figure in mind as more than 60% of rural workers are in the agricultural sector and of those almost 70% of those at work do not receive a legal minimum wage¹⁹. The percentage of workers in the rural sector who earn less than a minimum wage is 68%, whereas in the urban areas it is 38%.

356. The agroindustrial sector, which has a significant participation in rural employment, has increased the casualization of labor by hiring peasants through associated work cooperatives, through outsourcing (intermediaries) and making the work contracts more flexible avoiding any basic labor guarantees.

357. The drastic reduction in the land under food crops and the expansion of the agricultural frontier with long cycle commercial crops for exportation (sugar cane, African palm, timber etc) has imposed the intensive use of technology to increase productivity per unit, sacrificing rural employment²⁰.

358. These poor working conditions have a direct impact on two problematic situations: the first is the use of peasant labor in the illicit crop economy, which offers better remuneration and survival conditions for the peasants compared to the traditional agricultural activities; in second place the forced migration of people for economic reasons to the cities.

359. Estimations made from the Household Survey (2005) show that recent migration from the countryside to the towns in the five year period 2000-2005 represented on average almost 100,000 people per year.²¹ Sixty percent of this migration was due to economic reasons, whilst 40% is explained by the violence in the countryside²².

360. The lack of adequate economic means of subsistence has progressively impoverished the peasantry and affects the guarantees of their other rights. This is exacerbated by the lack of responsible planning of production and the unjust market conditions. In relation to this the State should guarantee the right to work of the peasantry, starting with access to land and the income obtained from it through the establishment of decent conditions for its realization.

Right to social security (Article 9 of ICESCR)

361. Due to the level of poverty and the poor working conditions in the countryside the rural population suffers a deficit in access to and enjoyment of the benefits covered in the General System of Social Security in Colombia in three areas

(health, pensions, professional hazards), social policy being concentrated on the expansion of government programs based on conditional subsidies and focused on the very poorest²³. These programs do not solve the deep causes of social exclusion and their measures are inefficient for the protection of the peasantry against contingent risks and economic insecurity²⁴.

362. The fact that 6% of the 9 million peasants of working age are unemployed and 32% under employed indicates that a high percentage of the rural population is not in position to make contributions to the social security system's insurance scheme. For that very reason in the area of health most are affiliated to the subsidized regime and the family association scheme, modalities that just offer a basic residual service plan which does not respond to the needs of this sector of the population. For example, there is a need for priority specialized and immediate attention to country dwellers affected by anti-personnel mines that have produced approximately 7,850 victims, men, women and children, in the last few years.

363. In respect of pension rights and the right to be protected against professional hazards, the high number of disaffiliations from the General System of Social Security. In the general statistics for the country only 24% of the economically active population are affiliated to the pension system and less than 25% of those of a pensionable age have one.²⁵ Although the number of contributors has increased nationally due to the administrative measures that oblige self employed workers to pay pensions the low incomes of rural workers and the informality in employment forces them to desist from making health and pension contributions. The right to a pension and to be insured against every hazard in the workplace are practically unknown rights in the countryside.

The right to an adequate level of life

Right to housing (Article 11.1)

364. The total number of lived in occupied dwellings in rural areas (low density and high density) is 2,254,094. The housing deficit in the rural areas is not only in terms of quantity but also in terms of quality of the houses. In 2003, 85% of rural houses lacked one or more basic household services. In addition to that 62.2% had a deficit in terms of the poor quality of walls or floors²⁶. The main problems identified with peasant housing are: generally the houses are in dreadful conditions and do not have sanitary units and access to potable water is scarce.

365. In addition forced evictions take place without there being a public policy to avoid them and guarantee the right of the peasant to a decent home free from interference by third parties.

23 The 'Families in Action', 'Forest Ranger Families' and 'Entrepreneurial Bank' are some of them, and are without exception referred to in glowing terms by the V Report of the Republic of Colombia to the CESCER.

24 Garay, Luis Jorge y Adriana Rodríguez. Op. Cit., p. 27

25 Ibid., p. 33

26 Garay y Rodríguez. Op. Cit. P. 210 y 211

27 Up until 1989 Colombia met up to 92% of its food needs but by the beginning of the 1990s it already imported 50% of the calories and proteins and 33% of vegetable fats. In this period the number of homes suffering from food insufficiency increased from 20% to 43%. See Suárez, Aurelio Op. cit p. 120 See in this report Chapter III, Right to food.

28 See: http://www.presidencia.gov.co/prensa_new/sne/2004/diciembre/23/21232004.htm

29 Suárez, Aurelio. Op. cit., p. 110.

30 <http://www.virtual.unal.edu.co/cursos/IDEA/98624/lecciones/doc15/Sintesisgeneral1.html>

The Right to adequate food (Article 11.2)

366. The ICESCR consecrates the fundamental right of every person to protection from hunger for which it indicates (i) there should be improvements in the methods of production, conservation and distribution of food and the perfecting of the agrarian reform regimes and (ii) ensure a equitable distribution of food.

367. In this sense the right to food is inseparable from the right to land and territory. In Colombia there are two elements which limit the enjoyment of the rights to food and land: on the one hand, the violent agrarian counter reform that has stolen land from thousands of people from the peasant, indigenous and Afro-Colombian communities increasing the concentration of rural property; and the economic aperture policies which have geared the country towards the exportation of tropical products with a notable neglect of internal food production for internal human consumption.

368. From the beginning of the 1990s the State has promoted free trade policies. These policies have in ten years changed Colombia from being self sufficient in food production (only 800,000 tonnes were imported) to being dependent on food importations. By the end of the decade it imported around 8 million tonnes²⁷.

369. Parallel to this weakening of the peasant economy geared towards internal consumption, the agricultural institutions through which public policies for the distribution of land, credit and technical assistance, were also weakened. Amongst them was the Colombian Institute for Agrarian Reform (INCORA), the National Institute for Improvement of Lands (INAT), the Co-financing Fund for Rural Investment (DRI) and the National Fisheries Institute (INPA)²⁸. These institutions were replaced in their roles by the Colombian Institute for Rural Development (INCODER), which has prioritized the corporatization of the countryside through the so called agro-chains, benefiting medium and large scale agricultural producers linked to export businesses and excluding or leaving very little opportunity for the peasant economy food producer to access credit and other technical measures.

370. Between 2002 and 2005 the short cycle or transitory crops (food) received 20.9% of all agricultural credits whilst credit for long cycle crops had already overtaken this percentage²⁹.

371. Until the beginning of the century, the participation of peasant production in the national economy and the use of land per area harvested continued to be greater than so called commercial agriculture: the predominantly peasant produced agricultural products represent 68% of the total agricultural production in

the country and are the source of the basic shopping basket³⁰. This tendency is being reversed with the agricultural model of the concentration of rural property, the speculative use of land and the expansion of long cycle commercial crops which endanger internal food production.

372. In relation to land use, for example, there is some evidence of the over use of land in livestock raising in detriment to the agricultural and forestry uses of the same. Of the potential land suited to agriculture only 24.2% of it is exploited, whilst the land suitable for pasture and grazing is over exploited by 231.9%. In the case of small properties, 26.9% of their area is used in agriculture and 58% for pastures, whilst with large properties the agricultural use is 0.6% and pastures for extensive livestock raising represent 89.2%³¹. The use given to the land reflects the speculative nature which has been given to real estate in the countryside, which is accumulated as a symbol of social status, economic and political power rather than for productive purposes.

373. In this context the food available is increasingly dependent on more importations and market rules in the absence of public policies that protect agriculture and defend national sovereignty in the area of food production. Policies have been adopted that increase dependence on the market and international capital through the change in land use (for livestock and fuel crops) and this has increased the dependency on food imports.

374. With regards to the quality of the food and productive processes the State supports the use of contaminating technologies that deplete the soils and threaten the environment. There are no incentives for organic agriculture or for other ecologically sustainable processes.

Right to enjoy the highest attainable standard of physical and mental health (Article 12 of ICESCR)

375. There are big differences in health insurance between the city and the countryside. In 2003 it was 13 points lower in the rural area and at the same time strong regional contrasts appeared so that in the large cities it was in excess of 70% whereas on the Pacific Coast it was at 50% for the same year.³²

376. The economic access barriers to the health system are the ones that stand out most: 62.5% of sick people did not go to the doctor due to a lack of means³³. Amongst the peasantry charging co-payments impedes access to medical services, these payments are related to the socio-economic level attributed to them by the SISBEN survey which pays more attention to the electro-domestics per dwelling than on the real income the families receive.

31 Suárez, Aurelio. Op. cit., p. 119

32 Procurator General of the Nation and the Center for the Study of Law, Justice and Society (De-Justicia) El derecho a la salud en perspectiva de derechos humanos (The right to health from the perspectiva of human rights). Bogotá: mayo de 2008, p. 75

33 Garay, Luis Jorge y Adriana Rodríguez. Op. cit., p. 31

377. The physical and geographical access barriers to health centers continue. The poor state of the roads in the rural areas and even those of the municipality (the Government only deals with the primary and secondary network of roads of which many are in concession) impedes the real access of the peasants to the hospitals. This makes it impossible to arrive in time in emergency cases. Also it has a disheartening effect on peasants which means that they only go to the doctor when the impact on their health is critical.

378. To all of this is added the process of restructuring and closing of health institutions belonging to the public hospital network, on efficiency grounds, according to the justification of the Ministry for Social Protection, which deepened the problems related to availability and access to medical services. The majority of these interventions of health institutions were in regional and local hospitals which peasants used, which have been affected by the closure or transfer of medical services and new payments.

379. In the second semester of 2006 the Government signed performance agreements to carry out the “*processes of adjustment and modernization of hospitals*” in the departments of Cauca, Córdoba, San Andrés, Santander, Sucre, Valle del Cauca, Magdalena and Vaupés that included the intervention in more than 60 health provision providers (IPS). Although the Government defense is that these changes mean a better quality and more efficient service the citizens end up paying for the costs of many privatized services and the health workers lose their jobs or give up the rights recognized in the work conventions.

338. Due to this the peasant population does not count upon sufficient health centers. Whilst the Government says that coverage of the health system has increased, what has really increased is the issuing of SISBEN carnets, which does not mean that there is a greater availability of sufficient and efficient services. The doctors don't go into the countryside. The medical missions are few and the majority are carried out by third parties and not the State.

Right to education (Articles 13 & 14 of ICESCR)

381. The total population of rural areas over the age of three is 9,222,098 of which 4,351,632 are women. The educational level is very poor, according the statistics of the DANE. Of the total population, 1,804,596 have no educational qualification and 1,897,987 cannot read or write. And 3,265,626 people did not complete primary education and 967,696 secondary education. Semi technical education was achieved by 521, 653 people and higher education by 159,992. According to the household survey³⁴ the average educational level of the rural population over the age of 15 is 4.9 years of study, whilst in the urban population it is 8.7 years.

382. There are no adequate public technical training programs for peasants, or literacy programs for adult peasants.

383. Whilst there are places available in primary education the children cannot access them because of the fees that they are charged and the long distances to the educational institutions or because the school term often coincides with work on the land in which the children must participate in order to gain the family's sustenance. Another barrier in accessing education is the difficult nutritional situation of the peasant children, which leads to educational desertion. The places available at secondary level and for university studies are not sufficient.

384. The increase in the available school places at primary level was achieved through overcrowding and a shortage of pedagogical materials. In the rural zones one teacher usually teaches children of all ages and levels. So, one teacher has to teach all levels of basic education in the same room and at the same time. The quality of education is also affected by the lack of respect for the professional conditions, wages and benefits of the teachers.

385. Peasant education is imparted with the same urban contents with which the principle of cultural acceptability is violated. Also the curricula tend not to be relevant and create a lack of relevance and belonging to the peasant culture.

CONCLUSIONS

386. Given this panorama there are various basic elements that should guide the Colombian State's actions over the next few years in relation to the peasant sector.

- Recognition of the peasantry as legal and political actors.
- Respect, protect and guarantee the right to life and personal integrity, freedom and judicial guarantees for peasants
- Recognize, reconstruction and defense of the peasant economy with respect for their identity, belonging to and relationship with the land, the territory and biodiversity.
- Guarantee the infrastructure for production, credit, technical assistance, rural services and education that allow the peasantry access to the territory and productive capital.
- Special protection for female peasants and guarantee the gains of rural women that appear in Law 731 of 2002.
- Restore territories stolen through violence and create the conditions for the peasants return in conditions of dignity with guarantees.

387. As regards the right to land and territory it is of vital importance to insist on the development of a new agrarian policy in which the integral democratic rural reform contemplates a regulatory framework of territorial and environmental ordinance. As part of the reform, mechanisms should be formulated and created that make a real integral, democratic agrarian reform possible, which should, at least, achieve the following aims:

- Respect, create and consolidate peasant and ethnic territories recognizing the diverse forms of peasant production and their economic, social, cultural and environmental development.
- Democratize and regulate the land market with a democratic, inclusive, fiscal policy specific to the countryside.
- Public policy on land production and environmental criteria for its use, which takes into account food, sovereignty, security and autonomy.
- Support for commercialization and exchange proposals for peasant production and the economic viability of the small and medium sized producers promoted under the principles that constitute Food Sovereignty

CHAPTER VII

INDIGENOUS PEOPLES

The precarious human rights situation of Colombia's indigenous peoples reflects the gap between progressive domestic legislation and the ineffectiveness of the institutions responsible for protecting these peoples,¹

388. In 2009, the Special Rapporteur of United Nations on the situation of the human rights and fundamental freedoms of the indigenous peoples, James Anaya, carried out a visit to Colombia between the 22nd and 27th of June. Having concluded his visit the Rapporteur confirmed that the situation of the indigenous peoples in Colombia continues to be **grave, critical and of deep concern**² as his predecessor Mr Rodolfo Stavenhagen³ had confirmed. In effect, four years after Stavenhagen's report and despite the Recommendations of the Rapporteur and the Council on Human Rights the high index of violence continues, reflected principally in the high number of homicides, increase in forced displacement, restrictions on freedom of movement and criminalization', all violations associated with the existence of a long armed conflict and the lack of respect for the principle of distinction between the actors; militarization of the indigenous territories and the unconsulted development of mega-projects.

389. Herein are some general considerations on legislative policy, public policy and the non-compliance with the obligations undertaken by the Colombian State in the light of the ICESCR and some recommendations of the organs of the United Nations system for protection of human rights are presented. Following that, an integral perspective of the state of the exercise of human rights is presented. Finally the particular exercise of the rights to territory, education, food and health are detailed supported by case studies that have been compiled by regional indigenous organizations.

1. RECOMMENDATIONS TO THE ICESRC

390. The CESRC commented on the rights of indigenous peoples in the recommendations of 1995 and 2000:

“194. The Committee recommends that the Government continue to give priority to the efforts to alleviate the situation of the indigenous communities,

¹ Economic and Social Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen 8 to 17 March 2004. E/CN.4/2005/88/Add.2, 10 December 1994, para. 81

² OACNUDH. *El Relator Especial de Naciones Unidas sobre pueblos indígenas concluye visita a Colombia*, (The Special Rapporteur of the United Nations concludes his visit to Colombia 27 July 2009. In: <http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/Comunicado%20Prensa%20Pueblos%20Indigenas.pdf>

³ Report of the Special Rapporteur Rodolfo Stavenhagen. Mission to Colombia. Op. Cit., para. 5

4 CESCR. Concluding Observations 1995, Op. Cit.

5 CESCR. Concluding Observations 2001, Op. Cit.

displaced persons, the homeless and others who live on the margins of society. The Committee urges the Government to guarantee the attention of the most basic needs of these people, independently of any other long term strategy”⁴.

“33. The Committee urges the State party to ensure that indigenous peoples participate in decisions affecting their lives. The Committee particularly urges the State party to consult and seek the consent of the indigenous peoples concerned prior to the implementation of timber, soil or subsoil mining projects and on any public policy affecting them, in accordance with ILO Convention No. 169.”⁵.

391. In general terms the most pressing situations faced by the indigenous people, poverty, forced displacement and the permanent violations of their right to self determination over their territories and the natural resources found in them have not been dealt with by the State.

392. The violations of the social and collective rights of the indigenous peoples are the cause of active social mobilization of the ancestral, Afro-descendent and peasant communities which gave rise to the Minga of Social and Communitarian Resistance* which has been calling the country to debate the structural causes of poverty and exclusion without any willingness on the part of the Colombian State to engage in dialogue and negotiation. The Minga put forward five points that summarize the problems of the sectors that comprise it; defense of Life and Human Rights; defense of the land and the territories through the repeal of the laws of plunder; the rejection of commercial treaties that attack national sovereignty and autonomy; the compliance by the State of the agreements arrived at with social organizations and the adoption by the State of the Universal Declaration of the Rights of Indigenous Peoples, which has been formally accepted but in practice has been ignored.

2. ON THE V PERIODIC OFFICIAL REPORT.

393. The report presented by the Colombian State demonstrates various difficulties that exist in establishing compliance by the State with its obligations in the framework of the ICESCR. In first place the report lacks a diagnosis that allows one to observe the state of the exercise of the rights of the indigenous peoples. There is no analysis of ethnic rights nor does it contain quantitative data which would allow one to monitor the advances and setbacks in the exercise of these rights. In the same way there is no reading of the adaptability, accessibility and acceptability of its policies and its legislative agenda in terms of facilitating the exercise of collective rights by the indigenous peoples in Colombia. In addition to this the State has not developed a system of indicators to monitor rights from an ethnic based perspective given that rights like health and education require the

* *TRANSLATOR'S NOTE:* The term Minga is an indigenous term meaning a coming together, where people would share and discuss and work together on a common problem often around a camp fire. It has no translation. The Minga referred to here is a process that began in October 2008.

monitoring of particular variables that show the adaptability of the right to the cosmivision of the indigenous peoples in terms of Convention 169 of the ILO. The lack of adequate instruments for the monitoring of the exercise of the rights is of itself a neglect of the Colombian State's international obligations. Also the report cites judicial sentences of the recognition of the rights but doesn't explain what administrative actions, if any, were taken to comply with them, which does not help one see the scale of the effective state of the right.

3. CONSIDERATIONS ON THE POLICIES FOR INDIGENOUS PEOPLES.

394. During the last two periods of government the situation of the indigenous peoples in Colombia tended to worsen in an increasingly disturbing fashion. The passing of laws which harm the territorial and cultural integrity; the situation of permanent violence against their members; the expansion of economic projects which destroy their traditional cultural customs; the habitual violation of the right to prior consultation and the sudden outbursts of hostility from high ranking government officials, set the context in which the violations of indigenous rights are a constant element.

395. It has been shown that in the period 2001-2006 and further on there have been a series of legislative and administrative measures taken that systematically reduce the collective and social rights of the indigenous communities, harming the intangibility of the ancestral territories and the fundamental right to prior consultation. Amongst these norms are the Mining Code (Law 685 of 2001), the law approving the Free Trade Agreement between Colombia and the United States (Law 1143 of 2007), the Rural Development Statute (Law 1152 of 2007) and other legislative initiatives such as the forestry law (declared unconstitutional by the Constitutional Court) or the law on highlands which has faced serious difficulties in obtaining approval.

396. The negative position of the Government in accepting the principles of the Universal Declaration of the Rights of Indigenous Peoples sums up the focus of the policy which they have been implementing in relation to the rights of this population. In the context of the discussion on the "Universal Declaration of the United Nations on the Rights of Indigenous Peoples" (UDUNRIP) the Colombian government abstained from supporting the approval of this instrument. In the opinion of the Government, at least three of the provisions clash with Colombian law, such as: a) The prohibition on carrying out military operations in Indigenous Territories and the Consultation related to the presence of the Armed Forces in these areas (Art. 20 UDUNRIP); b) Free previously informed consent of the Indigenous Peoples as regards development strategies that affect their territories or their resources (Art. 19, 29 & 32); and c) The right of the Indigenous Peoples to maintain a spiritual relationship with their land, water and resources, the right

⁶ See the press release of the Constitutional Court in relation to Sentence C-030/08 available at: <http://www.semillas.org.co/sitio.shtml?apc=d1d1--&x=20155468>

to possess, use, develop and control the land, territories and resources that they have on the basis of their traditional property and the right to draw up their own development priorities and strategies (Art. 25,26,27 & 32).

397. The position of the Government in highlighting those contents shows its absolute lack of an orientation towards guaranteeing the Right of Indigenous Peoples if one keeps in mind that:

- i On not a few occasions the presence of the Armed Forces has constituted an element of risk for these peoples. The provisions of the Declaration are geared towards guaranteeing the lives of the indigenous, provisions which the Colombian Government has flatly rejected.
- ii The norms contained in the Declaration refer to the right of consultation and the rights related to the control of their territories and resources were not contrary to the National Constitution as the Colombian Government has wrongly stated on repeated occasions. In Sentence C-030 of 2008 declared Law 1021 of 2006 or the Forestry Law considering that *“as regards the indigenous and tribal peoples, one of the democratic forms provided in the Constitution is the right to prior consultation which is provided particularly in articles 329 and 330 of the Constitution which ordains the participation of the communities for the conformation of indigenous territorial entities and for the exploitation of the natural resources in their territories... This consultation, which has some special characteristics was not complied with in this case”*⁶ The Court took the same position in relation to the National Development Plan and currently there are large number of mining and oil projects and the establishment of extensive crops being promoted which have not gone through the right of prior consultation. Through Sentence C-175 of 2009, the Law 1152 of 2007, otherwise known as the Rural Development Statute shared the same fate when the Court reiterated its jurisprudence on the Prior Consultation and thus corroborating the repeated violation by the Colombian State of Convention 169 of the ILO and other constitutional rights.

398. The same position expressed in the V Report is alarming. The report states that *“in the cases of the consultation of the indigenous and black communities for the exploitation of natural resources within their territory – in line with the guidelines of the ILO – Decree 1320 of 1998 is applied”*. The Government forgets to point out that it was none other than the Administrative Council of the ILO which explicitly stated that the said decree is contrary to the spirit of Convention 169 and urged the Government to derogate it. That the State has not derogated it, is serious; but that it also points to its application as compliance with its international obligations regarding Convention 169 of the ILO is disgraceful.

4. HUMAN RIGHTS SITUATION OF THE INDIGENOUS PEOPLES

399. Although the Colombian Government has permanently insisted on presenting its policy of “**democratic security**” as a human rights policy⁷ the implementation of it has generated greater violations of the rights and freedoms of the citizenry due to being based on a deliberate ignorance of the elemental principles of humanitarian law⁸ and the weakening of the rule of law. In the case of the indigenous peoples this policy has translated into a militarization of their territories and sacred sites with the persistence of programs such as peasant soldiers, soldiers for a day and the informers network⁹, arbitrary arrests and the increase in extrajudicial executions presented as successes in the struggle against terrorism. This undertone is reflected in the speech the President made in a Community Council on March 15th 2008 in which he offered economic rewards for handing in indigenous people who had taken part in land recuperations, in other words, comparing the vindication of a right with a crime against the State. Next we will present some figures on the violation of the civil and political rights against the indigenous peoples and their members.

VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND PERSONAL INTEGRITY

400. According to the figures of the National Indigenous Organization of Colombia, ONIC, between 2002 and 2009 more than 1,000 indigenous were murdered. The peoples most affected were the **Nasa**, **Wayúu**, **Kankuamo** and **Embera Chamí**. Approximately 15% (151 victims) were women and children. In the last two years this high rate of violent death has continued. In 2008 alone, 99 indigenous were murdered and between January and September 2009, 85 indigenous were murdered. One of the most affected peoples is the Awá, which was the victim of three massacres against their members in the last seven months, included amongst the victims were women and children.

401. In the period 2002-2009 it is calculated that **176** indigenous were victims of forced disappearance, **187** were victims of sexual violence and torture and **633** of arbitrary arrests. The indigenous peoples and their organizations have received approximately **5000** threats in the last seven years.¹⁰

402. The increase in extrajudicial executions directly attributed to the armed forces¹¹ is a situation of national concern. Between Julio 2002 and December 2007 at least 1,122 cases of judicial executions directly attributable to the armed forces were carried out. According to the report of the Colombia, Europe, United States Coordination between January 1st 2007 and June 30th 2008, 535 people lost their lives in extrajudicial executions directly attributable to the armed forces. In those cases in which the socio-economic condition of the victim was known (291 cases), the fifth most affected population were the indigenous (10

7 “*Esta política de Seguridad Democrática es una política de derechos humanos*” (This Democratic Security Policy is a human rights policy). See speech of President Álvaro Uribe in the promotion ceremony of General Edgar Alfonso Lesmez, as Commander of the Colombian Airforce September 8 2003.

8 Platforms of human rights and peace report of the NGOs to the periodic universal examination by UN Council on Human Rights, . 21 July, 2008.

9 In the report of the Rapporteur Stavenhagen he had recommended the cancellation of these programs Cf. Report of Rodolfo Stavenhagen, Mission to Colombia, Op. Cit. para. 101

10 Calculations made on data supplied by the ONIC.

11 So, between July 2002 and December 2007 at least 1,122 cases were registered. The UN Rapporteur on Extrajudicial Executions recently pointed out that “(t)he very quantity of cases [of extrajudicial executions attributed to state agents], their geographical spread and the diversity of military units implicated, indicates that these were carried out in a more or less systematic fashion by a significant number of elements in the army” Press Bulletin in Spanish. Mission to Colombia 8th of 18th of June 2009.

12 Cf. National Indigenous Organisation of Colombia, Onic, <http://colombia.indymedia.org/news/2009/08/105364.php>

13 Cf. Onic, <http://www.onic.org.co/actualidad.shtml?x=36230>

14 Colombia Europe, United States Coordination. Executions an unconcealable reality , p. 13 <http://www.ddhhcolombia.org.co/node?page=8>

15 See for example Permanent Ministerial Directive No. 29 of 2005

16 Cfr Rodolfo Stavenhagen Report, Mission to Colombia, Op. Cit. párr. 57

MASSACRE AGAINST THE AWÁ PEOPLE

On August 26th 2009 at five o'clock in the morning a new massacre against the AWA people took place. The events occurred in the Indigenous Reserve of Gran Rosario in the municipality of Tumaco. According to information received, men wearing military clothing, without any identifying insignias, and balaclavas indiscriminately shot at the house of an Awá family. As a consequence of this macabre act approximately eight people, members of the Awá were murdered. According to information received three children, aged one, eight and ten were killed. Mrs Tulia García was also killed with her two children. This woman was an eye witness to the death of her husband Mr Gonzalo Rodríguez last 23rd of May 2009 who it would seem was killed at the hands of the army¹². After the massacre the communities of the Gran Rosario Reserve and neighboring communities in fear began a mass displacement on September 2nd and now there are more than 200 displaced people. However, a further 100 people are on the road between Pasto and Tumaco at kilometer 78 and 80. Amongst the displaced there are no less 100 children, one pregnant woman and some old people who are sleeping out in the weather, as there are no housing conditions in the area.¹³

cases, 3.4%)¹⁴ in just 18 months. The existence of official directives that establish bounty payments and benefits to soldiers for the “capture or killing in combat of leaders of groups outside the law”¹⁵

On December 16th 2008 in the area of “Gabriel Lopez” in the municipality of Totoró (Cauca), **José Edwin Legarda Vásquez** was executed by members of the National Army assigned to the Battalion José Hilario López, of the III Brigade of the National Army. The victim was the husband of the Elder Counselor of the CRIC, Aída Marina Quicue Vivas. The homicide took place after the vehicle in which the victim was traveling was the target of 17 shots fired by the soldiers.

403. The situation described by the Special Rapporteur Stavenhagen in “relation to the extremely vulnerable situation of some small indigenous communities in the Colombian Amazon region that may be in danger of extinction as result of the violence”¹⁶ continues to be the case. Of the 102 indigenous peoples that

exist in Colombia, 32 of them have populations of less than 500 inhabitants, 18 have less than 200 and 10 have less than 100. These peoples are physically and culturally in danger of extinction.

404. The Constitutional Court warned that the indigenous peoples of Colombia are in danger of extinction “*from the cultural point of view as a result of the dispersion and displacement of their members as well as from the physical point of view due to the natural or violent death of their members*”¹⁷ and classified 34 peoples as being in particularly vulnerable conditions. Recently the Public Defenders Office in its Risk Report No 017 of July 9th, 2009 issued an alert on the situation of various communities of the Wayúu, Wiwa and Kogui peoples as well as the Afro-descendants of Riohacha and Dibulla. This is addition to Risk Report No 002 of 27th of January 2009 (IR No. 002-09) which was issued for Maicao at the beginning of 2009 by the Early Warning System (SAT) and is currently in force. In it, it identifies the risk to various Wayúu communities, to the Muslim Arab community and the dignitaries of the Communal Action Committees amongst other sectors of the civil society of this frontier municipality.¹⁸

(..) as regards the communities of the Wayúu people they are considered merit special protection measures the leaders of the movement Wayúu Women’s Strength that live in and carry out their activities in Riohacha and Dibulla. The political and organizational work that they have been carrying out in La Guajira in defense of the territory, the rights of Wayúu victims and the truth, justice and reparations, as well as the formulation of a critical discourse in relation to the mega-projects has caused in the last few weeks an increase in following, harassments, intimidations and threats by the armed illegal post demobilization structures of the AUC which it seems view their demands and vindications as an obstacle to their interests. (Public Defenders Office Risk Report No 017, July 2009).

Impunity in the face of the violations of the human rights of the indigenous peoples.

405. On October 30th 2006, the ONIC presented 1,940 cases to the National Commission on Human Rights, related to homicides, kidnappings, arbitrary arrests and forced disappearance of indigenous in order that the Prosecution Service carry out the relevant investigations. On November 1st of the same year the Prosecution Service only rendered information on 100 cases and clarified that the majority of cases had been closed or due to lack of proof had acquitted the accused¹⁹. In relation to judicial executions; despite the constitutional mandate

17 Constitutional Court, Court Order 004 de 2009, 26th January 2009, p.2

18 Cf. Lawyers’ Collective José Alvear Restrepo, Situación de derechos civiles y políticos de los pueblos indígenas en Colombia, (Situation of civil and political rights of the indigenous in Colombia document drawn up with data from the ONIC y presented to the Special Rapporteur. James Anaya, 23rd July 2009

19 Interamerican Commission on Human Rights, 134 session, March 23rd 2009. Hearing on the human rights situation of the indigenous peoples in Colombia.

20 Lawyers' Collective José Alvear Restrepo. Situación de derechos civiles y políticos de los pueblos indígenas en Colombia, Op. Cit.

21 Comptroller General of the Republic. Extinción de dominio, reforma agraria, democracia y paz, (Extinction of domain and peace) speech given by Luis Bernado Flórez Enciso, Vice-Comptroller of the Republic in the Forum La extinción de la propiedad ilícita ¿una vía para la reforma agraria? (Extinction of illicit property, a path for agrarian reform? Available at: http://www.contraloriagen.gov.co/html/revistaEC/pdfs/309_2_1_Extincion_de_dominio_reforma_agraria_democracia_y_paz.pdf

22 Cf. Ministry of Foreign Affairs, V Report Op. Cit, para. 732

23 Juan Houghton, Estado del derecho a la tierra y al territorio de los pueblos indígenas de Colombia. (State of the right to land and territory of the indigenous lands of Colombia. In: Cecoin, Indígenas sin derechos, situación de los derechos humanos de los pueblos indígenas (Indigenous without rights, situation of the human rights of the indigenous peoples) Bogotá: Ediciones Antropos, agosto de 2007, p. 195

and the recommendations of the organs of the Inter-American and Universal System of Human Rights and the ministerial directives, the military jurisdiction continues to receive the investigations of these crimes.²⁰

Right to self determination, cultural and territorial integrity (Article 1 of the ICESCR)

Ignorance and violation of the right to territory

406. The report of the State in the area of the indigenous people's right to the territory is timid. It points to the promotion of the constitution of Indigenous Reservations. According to the report between Julio 2004 and June 2005 15 prior concepts were issued for the constitution of reservations in the departments of Putumayo, Vichada, Guaviare and Nariño. Between 2002 and 2006 it only managed to adjudicate 60,000 hectares to 4,026 families of the 150,000 hectares that it had programmed to hand over to 15,000 families. This can be explained mainly due to the slow processing of title clearance of lands subject to an extinction of domain and the delays in the valuations and the difficulties in the execution of programs through the delegation of responsibilities to territorial entities. In 2005, a supply of 40,000 hectares were forecast through extinction of domain. In 2006, a similar amount. The Comptroller's report shows that only 5,000 hectares were recovered through extinction of domain, 3% of what was forecast²¹. Neither were all the government targets met in the adjudication of lands. In some cases due to limitations in the definition and methods of financing it and in others due a lack of technical conditions for proper drainage and the high salinity of the lands²².

The Rural Development Statute; regressiveness in guaranteeing the rights of the peoples

407. The right to the territory is made real in as much as they exist as an autonomous entity within the State, as it is a right associated with the right so self determination and the existence as peoples which obligates their recognition as a political community within the State²³. The Political Constitution recognizes the indigenous territories as territorial entities under the figure of Indigenous Territorial Entities (ETI), in article 286, however, its regulation was subordinated to the Organic Law of Territorial Ordinance, which after 17 years and 15 Bills has still not been issued. The State has denied the constitutionally recognized autonomic rights and in the absence of regulations denies the existence and faculties of these entities, which have full standing in law.

408. At the same time the State has promoted norms that not only deny the autonomy but also create instability in the property and the usufruct of the resources

of the territory such as the Rural Statute Law (Law 1152 of 2007)²⁴. Due to the violation of the collective rights of the ethnic and peasant communities in the country three cases were taken against Law 1152. The first, for having ignored the right to prior consultation of the indigenous people. The second, for procedural irregularities of the process as the opposition had tabled an Agrarian Bill designed by ethnic and peasant organizations and NGOs, but the Chair of the House did not group the Bills together and only proceeded with and discussed that which was presented by the Government which was approved by the wide support it had in congress as is said popularly “a clean sweep” was made. The third suit which was presented centered on the 23 substantial charges against the Law in its entirety, for contravening international instruments in force in Colombia and also the Constitution. The Constitutional Court through Sentence C-175 of 2009 declared the Law unconstitutional, referring only to the first case, whose main charge was the lack of prior consultation with ethnic organizations. Nevertheless the social organizations are wary about new legislative initiatives that the government may present and revive the content of the rural statute that was declared unconstitutional or that they put into practice many of the measures, as is in fact happening with the support for the expansion of large long cycle crops plantations²⁵ that put at risk the ancestral territories and the resources of the ethnic communities.

Titled land is insufficient

410. The indigenous peoples with out recognized territories: the indigenous territories legalized as collective properties in the figure of reservation cover a total of 31,695,421 hectares or 22% of the national territory. Of this surface area 435,419 fall under the legal figure of colonial reservations. The indigenous territories that do not yet have legal status as property, but have been claimed by the indigenous and are under consideration by the Institute of Agrarian Reform (INCORA) now the Colombian Institute of Rural Development (INCODER) total 1,627,758 hectares where at least 380,000 indigenous live according to the data to 2004 from that organism²⁶.

411. The titled lands are totally insufficient in the areas of the agricultural frontier and in a vulnerable situation in the low lying zones (jungles, plains, deserts). In the Andean zones (excluding the natural parks which have similar protection characteristics to the low lying zones due to their environmental fragility) 64.1% of the entire indigenous population is found, according to the 2005 Census. This is a total of 885,000 people that possess 1,290,000 hectares, which gives an average of 1.4 hectares per person and 7.2 hectares per family, that is to say an infinitesimal part of the average held by the large land owners.

24 On the Law 1152 2007 see in this report chapter 6 on the situation of the peasantry.

25 See in this report chapter on right to food and the situation of the peasantry

26 Juan Houghton, Op. Cit., p. 225

27 Cf. The Round Table of Indigenous Peoples and ESCR. Ni una hectárea más para los indígenas (Not one more hectare for the indigenous). In: Colombian Platform for Human Rights, Democracy and Development. Sin democracia, sin derechos, Quinto año de Gobierno de Álvaro Uribe Vélez. (No democracy, no rights the fifth year of Álvaro Uribe Vélez's Government) Bogotá: Ediciones Antropos, April 2008, p. 105

28 Ibid.

29 Regional Indigenous Council of Cauca. Liberación de la Madre Tierra (Liberation of mother Herat). In: Revista Etnias y Política No. 2 Bogotá: Cecoin, December 2005

412. The territories handed over had always been in indigenous hands and any sustainable productive model in jungle or savannah requires that there be no limitations on the territorial material, under pain of environmental degradation, reduction in the food supply of the flora and the fauna and in the end the disappearance of the indigenous people.

Systematic reduction in the national budget for the acquirement of land for indigenous peoples.

413. The economic model gives support to and protection of large capital, but it does not contribute to the development and welfare of the indigenous people. The tributary, fiscal and legislative measures adopted in the last few years show this tendency. Whilst the ownership of land is concentrated in a few hands there is an evident regression in the governmental acquisition of lands for the indigenous. On November 27th 2006 the Minister for Agriculture Andrés Felipe Arias stated that due to the unfortunate events that took place that day in Caloto (Cauca) the Government was not going to buy the land the indigenous claimed. In May of that year, the Minister had already stated that there would “not be one more hectare for the indigenous”.²⁷

414. The allocation of the budget for land acquisition for the indigenous peoples evidently confirms systematic regression in policies adopted by the Colombian State in the last period. Almost 80% of the indigenous territories were titled before 1991 and only 20.42% were legalized after it. Between 2001 and 2007 the budget allocations for land acquisitions for indigenous reservations were reduced by 70% to 80% passing from 3,000 million to 1,000 million pesos²⁸. The Regional Indigenous Council of Cauca in the debates on the titling of reservations recalled that in the department that:

In 44 years the State has only acquired 200,000 hectares for indigenous people in the entire country. The titling of land has happened only in recognition of millenary occupations by those peoples in the forests and ecological reserve areas and pressurizing the colonization, or colonial reservations still occupied by centuries long resistance but by no means is it due to agrarian reform. According to the Comptroller “for every hectare adjudicated through purchases, 29 hectares were titled on state lands.”²⁹

415. In the period 2001-2007 the budget allocations for land acquisitions for indigenous reservations, fell from 3,000 million to 1,000 million pesos or less. Amongst the indigenous peoples with greatest instability in terms of access to territory is the Mokaaná people (Atlántico) who live in conditions of urban overcrowding, with no ownership over their lands and the refusal of the State to recognize them as indigenous. In the department of Córdoba there is also a

grave situation where every ten Zenúes must live on just one hectare whilst the regional landlords have an average of 2,000 hectares per person. In the case of **Muisca** people in Cota (Cundinamarca) their reservation was dissolved in 2002 arguing their lack of ethnicity. There are peoples whose situation has been officially resolved such as the **Betoyes** in Arauca and the **Chimilas** in Magdalena although they have only managed to obtain the deeds on 6% and 7% of their territories respectively³⁰.

Obstruction of land title procedure

416. There are currently 1,623,965 hectares being processed by the INCODER (some of these processes date back to ten years ago), and a further 280,445 hectares which have not been processed at all and for which no valid reason has been given. In short, there is no desire to realize the territorial rights of the indigenous people, reflecting the state position of “not one more hectare for the indigenous people”.

417. The internal titling procedures and others are slow. Moreover, the mechanism for land acquisition and the reduction in qualified personnel to do it at the Colombian Institute for Rural Development (Incoder), which is charged with approving the requests for land by the indigenous, creates obstacles in all the procedures. On this point one should pay attention to the denouncement made by the Procurator General of the Nation in the document “Analysis of the execution of the Social Agrarian Reform”, published in February of 2006 by the Delegate for Environmental and Agrarian Affairs³¹ which confirms that a significant number of title procedures or the expansion of indigenous reservations (484) have not been finished, even though many of these cases began as voluntary sales by the Incoder. At the time of the Procurator’s study more than 207 of these processes had been six years in the waiting since the indigenous authorities started them, without any advances being made. The review of the INCODER’s information shows that many of these processes started in 1995 and 1996 and others earlier still. Also, the Procurator confirmed that at the stage of physical inspection there is also a significant number of files that have not been processed³².

418. The Information System of the Observatory on Public Policy of Cecoin indicates that by June 2007 this figure had not decreased. Although 29 processes had been finalized from the time of the Procurator’s Report, 488 requests for constitution and expansion were still pending (without counting the processes for the restructuring of the colonial reservations that number 60 and some claims for clarification and amendments that had been included by the Procurator in its report): this increase is not due to new requests as the majority were presented many years ago, but rather from a detailed revision of requests in the regional organizations in Cauca, Tolima and Caldas, Putumayo and Antioquia.³³

30 Cf. The Round Table of Indigenous Peoples and ESCR Ni una hectárea más para los indígenas. Op. Cit. p. 108

31 Procurator General of the Nation, delegate for environmental and agrarian affairs. Análisis a la ejecución de la Reforma Social Agraria. (Analysis of the Social Agrarian Reform). Bogotá: 2006

32 Juan Houghton, Op. cit., p. 213

33 33 The Indigenous Observatory on Public Policies and Development and Ethnic Rights of Cecoin continues with this revision which as will be seen later does not satisfy the territorial expectations of the indigenous Cf. Juan Houghton, Op. Cit. p. 213

34 Decree 1397 of 1996. Art. 2.2. *"Access and update information on the needs of the indigenous communities for the constitution, expansion and restructuring and Saneamiento xxx of reservations and the conversion of these in reservations ; and on requests presented, files opened and the state of progress.*

35 Cf. Colombian Platform for Human Rights, Democracy and Development. *Elementos sobre la situación de los derechos económicos, sociales y culturales de los pueblos indígenas* (Elements on the situation of the economic, social and cultural rights of the indigenous peoples). Document presented to the Rapporteur on the human rights and fundamental freedoms of the indigenous people James Anaya on his visit to Colombia, 24th July 2009. Available at: www.plataforma-colombiana.org

Case of Tolima

There are at least 250 processes or requests for reservations and a further 239 for expansion. The Pijao people of Tolima are the most affected by the slowness of the processes for the constitution of reservations given the large number of families without a reservation and the economic methods they must employ in order to survive (day laboring and proletarianization). Seventy seven communities recognized by the Ethnic Affairs Board have requests for titles that have not been resolved, more than 69 communities have not been recognized by that institution, but have demanded a solution to their land problems. The Nasa people in Cauca and Putumayo have three constitution processes pending although their biggest problem is the expansion and recognition of the colonial reservations recovered in the 1970s of which there are at least 62. The Senú people, which were forced to displace themselves along the valleys of the river Cauca and Sinú due to the expropriation of their lands, have made no significant progress in the 25 processes for reservations that they began, particularly in lower Cauca, Antioquia.

419. Finally it is pertinent to make an additional reference to the inoperativeness of the National Commission of Indigenous Territories, entity set up by Decree 1397 of 1996 in order to process the territorial demands of the indigenous. This body has as its aim the legalization of the territories and to prepare each year the following year the budget required in the following year in order to carry out the socio-economic studies, land purchases and improvements as well as recommend changes in the agrarian legislation. The weak operation of this Commission having not been convened by the Government led to its failure to comply with its main function: to identify land needs on a national level.³⁴ This body was not duly convened to begin a consultation on any of the national territorial initiatives that affected the indigenous people in the last five years, not even for the Rural Development Statute.

Right to an adequate standard of living (Article 11)

420. The situation of the economic, social and cultural rights of the indigenous peoples is particularly acute. The structural poverty that envelops more than half the Colombian population (54%) particularly affects the indigenous peoples; sixty three percent of the indigenous population live below the poverty line and 47.6% of them below the line of misery (they do not have sufficient income to acquire the daily food basket that covers the minimum daily food requirements)³⁵.

421. In his 2004 report the Rapporteur Stavenhagen made specific recommendations in the areas of health, education and food taking into account the ethnic particularities, customs and culture of the peoples³⁶. These have not been satisfied and in relation to the need to adopt structural measures that guarantee a decent life for the indigenous peoples the Colombian state has opted for an increase in the plans and programs (mainly assistentialist) sacrificing the quality, adaptation and cultural acceptability of them.

Right to adequate food (Article 11.2 of the ICESCR)

422. Despite the commitments made at the two World Summits on Food held in 1996 and 2002 the figures for Colombia show an ever increasing deterioration of this right and a long way to go to achieve the Millennium Development Goals. The State's report in numeral 681 points out that "in 2005 12% of children under the age of five suffered from chronic malnutrition, 7% from global malnutrition and 1% from severe malnutrition"³⁷.

423. In relation to the indigenous population the report to the CESCR does not contain any data. There are no known consolidated studies to date on the issue. The National Survey on Food has nothing to say on the issue and the state reports on food and public policy for food (CONPES Document 113 of 2008) only point to the principle but with no reference to identity and diversity. The figures and programs formulated only distinguish between rural and urban population prioritizing focalized actions on levels 1 & 2 of the SISBEN. In this way, these norms exclude the entire indigenous population as by law they cannot be affiliated to the SISBEN.

424. In terms of the acceptability/cultural identity, the respect for the concepts and culinary practices of the indigenous constitute the most important criteria for the realization of their right to food in terms that guarantee their social and cultural survival: "food must be acceptable to a culture... non nutrient-based values attached to food, must also be taken into account..."³⁸.

425. The traditional foodstuffs produced and consumed by the indigenous don't just obey a physiological need to feed oneself but are also a symbolic representation of what the foodstuff represents in the system of knowledge and the relationship with the territory. Some are easily accessed and managed products because of the common nature of the crop such as plantains and corn which form part of the ceremonies and rituals related to aspects of their cosmovision: "Within the network of meanings mobilized by the rites of passage corn is used to communicate strength and finesse, two conditions sought through a serious of gestures made by the first menstrual girl, the puerperal woman and the widower"³⁹. Also, hunting and fishing of wild fauna have been their principal source

36 Cf. Report of Rodolfo Stavenhagen, Mission to Colombia, Op. Cit. paras. 107-111

37 Seguimiento Aplicación del Plan de Acción de la Cumbre Mundial sobre Alimentación. Informe Nacional 2002-2005. (Monitoring the Application of the Plan of Action of the World Summit on Food. National Report 2002-2005)

38 CESCR General Comment No. 12, Op. Cit

39 Gálvez, Aída. El binomio maíz-plátano; alimentación y símbolos en la cultura Embera. (The Biome of corn-plantain; food and symbols in the Embera culture) Boletín de Antropología de la Universidad de Antioquia. Medellín: Universidad de Antioquia, 1997, p. 66

40 Indigenous Organization of Antioquia, The Round Table of Indigenous Peoples and ESCR. La institucionalidad pública frente a la garantía del derecho a la alimentación. (Public Institutions and the guarantee of the right to food) In: *Indígenas sin derechos*, Op. Cit., p. 347

41 *Ibid.*, p. 339

42 *Ibid.*, p. 342

of protein. These foodstuffs cannot be substituted for food bought in the towns or supplied by the State, such as tins of sardines, some grains or food supplements (Bienestarina), as a cultural type of limitation arises in the access to food.

426. The food supplements or substitutes supplied by the State have met with difficulties in being accepted by the indigenous communities that have to walk for hours or days to get to the towns where they can receive these products. The consumption of calories required by the displacement is very high compared to the energy contribution received. They point out that the Bienestarina, which is the main foodstuff delivered by the ICBF, causes diarrhea and abdominal distension in the children. Likewise the powdered milk supplied in Antioquia by the MANA Program causes diarrhea as the majority of indigenous communities do not consume milk as they lack the lactase enzyme needed to digest it. This, linked to the high level of parasitosis and the not very sterile practices for the preparation of food make the supplement an inadequate product for this population⁴⁰.

427. In relation to the component of availability the indigenous communities do not have the quantity of food required for a balanced diet for their members. The indigenous that inhabit jungle ecosystems, who define themselves as hunter-gatherers have seen these customs increasingly limited due to changes in their ecosystem generated by the permanent exploitation of natural resources in their own or neighboring territories led by companies and colonists who have been appropriating these spaces and considerably reducing the supply of fruits of the forest. Likewise with access to animal protein, the indigenous communities used to obtaining food near their houses have had to establish hunting zones situated in the furthest reaches of the forest, hours and even days away. The indigenous can go out to hunt for various days and not always catch an animal⁴¹.

428. In relation to the access to food, the armed conflict of illegal and legal armed groups permanently restricts the mobility of the indigenous in their territories, bring with it a consequent progressive loss of territorial control and access to the natural resources that are in it. Only those indigenous with some economic means can purchase food like butter, salt, sardines and some grains, in the urban towns, but generally the purchases are small due to a lack of money and the long distances that must be traveled. On some occasions members of the Armed Forces control the purchases, limiting the quantity or confiscating what they consider to be excessive or forbidden items, whilst the guerrillas occasionally ask the community for food⁴².

429. Faced with this problem the State has intervened with assistentialist shock food programs which have not had a positive impact on the communities due to a lack of engagement with the realities and indigenous cosmovision, in order to arrive at an agreement that would facilitate the adequate execution of projects

adjusted to the dynamics and forms of production. There are no prior studies or diagnoses to orientate an intervention that would improve the nutritional situation of the indigenous communities.

430. Given the lack of consolidated data in the area of the malnutrition of the indigenous population the Round Table of Indigenous Peoples and ESCR documented a case study on malnutrition of indigenous people in the jungle belonging to the Embera people in five municipalities of Antioquia. Below is the data supplied by the hospitals.

Municipality and year	Total indigenous population of the municipality	No. of children attended to for malnutrition	No. women	No. men	Age range
Mutatá 2005-2006	691	47	23	24	2 months-3years ⁴³
Dabeiba 2006-2007	1.906	30	19	11	1 month -5 year ⁴⁴
Murindó 2003-2005	1.200	89	SD	SD	1month-6 years ⁴⁵
Urrao 2006	1.093	17	9	8	3 months-3 a year ⁴⁶
Vigía del Fuerte 2006	408	14	SD	SD	6 months-6 years ⁴⁷

431. According to data from the hospitals these children had no full course of vaccinations nor were they beneficiaries of any departmental nutritional program and all were diagnosed with acute, global or chronic malnutrition. All had complex symptoms of acute diarrheic illness, gastroenteritis, malaria, parasitosis, dehydration, vomiting, acute respiratory infection and bronchopneumonia. The Embera mothers did not identify malnutrition as an illness in itself, which they did do with the illnesses for which they were treated and for which they attended the service. This is why when they attended the doctor their state of malnutrition was very advanced and all of them were diagnosed with one of the three types of malnutrition⁴⁸.

432. These figures are higher than those given by the Government for the rural population. It is clear that those most affected are children under the age of one which leads one to think that they were born with nutritional problems and that breast milk does not provide them with the required quantity of nutrients. It is possible that the problem has its origin in the nutritional deficiencies of the mothers, which are transmitted to the newborn children and cannot be overcome

43 Data from the nutritional recovery center Sueños de Vida, 2005-2007.

44 Data from the nutritional recovery center Angelitos soñadores-Nuestra Señora del Perpetuo Socorro, 2005-2006.

45 Data from ESE Hospital San Bartolomé, 2003-2005.

46 Data from the nutritional recovery center Guillermo Gaviria Correa, 2006.

47 Data from ESE Hospital San Bartolomé, 2003-2005.

48 Cf. Indigenous Organization of Antioquia, Round Table of Indigenous Peoples and ESCR. Op. Cit., pp. 337-339

49 Lucy Guama. Estado del arte de los DESC, la salud de los pueblos indígenas (State of the ESCR, health of the indigenous peoples). In: *Indígenas sin derechos*, Op. Cit., p. 248

50 Cf. *Ibid.*, p. 253

51 Cf. *Ibid.*, pp. 252 - 253

whilst they depend on breast milk. This is also found in children aged 1 to 6 when they continue to depend on the food provided by their parents.

Right to the highest attainable standard of physical and mental health (Article 12 of ICESCR)

433. Neither is the V Report by the State explicit in showing advances in the right to health. According to the figures of Ministry for Social Protection on coverage up to December 2006, of the 1,378,884 indigenous living in Colombia, according to the 2005 Census, 931,647 are affiliated to the subsidized health regime, i.e. 67%, with a 32.4% shortfall for universal coverage⁴⁹. However, these people experience great difficulties in accessing services due to the geographical barriers and the dispersion of the population as the establishments where the service is provided are located at a great distance from the beneficiaries, hours and even days away on foot or by river through the jungle as is the case with the Indigenous in Amazonas and Antioquia⁵⁰. Adequate prevention and early diagnosis programs are not carried out. They are limited to treating the sick person and inadequate diagnoses are common with the result that illnesses that could be treated in time end up getting worse and even resulting in the death of the patient in undignified conditions due to administrative and medical negligence. The services provided by the system are not really beneficial, they are services sold to the user and the possibility of access is measured according to means including the indigenous who are denied medical attention and treatment in many cases⁵¹.

434. The principal problem is the lack of adaptation of the health services to the indigenous communities. The report points to Law 691 of 2001 as an advance in the area of coordination between traditional medicine and western medicine. But the report does not provide a list of actions carried out in order to make that coordination effective nor of the adaptation to the needs of each people. The testimony of the Indigenous Organizations that take part in the Round Table do not demonstrate an advance in this area, except for the creation of an Indigenous EPS. The norm places a duty on the municipalities to draw up basic attention plans adapted to the life plans of the communities as well as food subsidies for children under five and pregnant women and the adaptation of the information system of the Ministry for Health to include indicators of illnesses and traditional medical concepts. None of these obligations have been complied with. The lack of adaptation is most evident in bad service provision. Indigenous people who travel for hours or days to be attended to have to go through long queues and procedures and are often not attended to because the appointments for that day are finished and nor do they give them the medicines. When they speak another language they are frequently not understood in the hospitals, which in the majority of cases do not have a special treatment for this population.

435. In general there is no support for or promotion of traditional medicine. We can conclude that it was better under Decree 1811 when the medical attention was free and universal for the indigenous population, which did not have to be affiliated to the general system of social security in health.

Right to Education (Articles 13 & 14 of ICESCR)

436. The education of the indigenous people is based on communitarianism, the cosmovision and interculturalism, three aspects which are consolidated as central axes and are linked to processes of constructing their own education system, where knowledge is collective. The school place is immersed in the daily reality; the policies, the guidelines, the content, the methodologies, the administrative methods, the monitoring and evaluation are all defined in the communitarian projects; the teachers are catalysts in the teaching and learning processes and they guide the child and the community. The school is the appropriate space for reflection and the projection of communitarian life. The permanent systematization of the local educational experiences is necessary in order to feed back into the thought processes and educational activity⁵².

437. Norms such as Decree 804 of 1995 and Law 115 of 1994 do not necessarily reflect the expectations and current pedagogical needs, of the indigenous peoples nor indeed the educational aims and qualities of the teachers. On the contrary, they ignore the requirements established in the central point of this right and moreover the recommendations of Rodolfo Stavenhagen⁵³ on the autonomy and self determination of the peoples in managing their own educational proposals.

438. This situation becomes even more complex now when the Program for ethnoeducation is developed along the lines of the educational revolution that has imposed a new logic on the functioning of and the compliance with the right to education where, as the UN Special Rapporteur, Katarina Tomasevski⁵⁴, points out, they no longer talk of the right, but rather propose democratic access to the “educational service” revealing the commercial nature that education has acquired.

439. According to data from the Quality of Life Survey in 2003 the illiteracy rate for the Colombian population over the age of 15 was 7.8% whilst for the indigenous peoples it was 17.7%; greater than the national average. In this case the indigenous women have an illiteracy rate of 22.5% compared to the rate of 13.1% for men.⁵⁵

440. Access to education can also be evaluated through educational coverage in terms of attendance at the educational institutions by that part of the population of school going age. In the case of the indigenous population in 2003 the non

52 Regional Indigenous Council of Cauca (CRIC). Programa de educación bilingüe e intercultural. (Bilingual & Intercultural Education Program) Popayán: 2004, p. 275.

53 Report of the Rapporteur Rodolfo Stavenhagen. Mission to Colombia, Op. Cit.

54 Report of the Special Rapporteur, Katarina Tomasevski. Mission to Colombia, Op. Cit.

55 Procurator General of the Nation, El derecho a la educación. Op. Cit, p. 154

56 Ibid..

57 The net rate of schooling is the relationship between the total number of students enrolled of normal age to participate in a particular educational level and the total population that should take that level.

58 Procurator General of the Nation, *El derecho a la educación* (The right to education). Op. Cit. p: 154.

59 Ibid

attendance rate was 25.4% with a greater rate for the female population which was above the national average of 22.6%.⁵⁶

441. In terms of availability the Colombian educational system does not satisfy the educational demands of the indigenous population, which continues to have schooling rates below the national average. The net rate of schooling⁵⁷ in basic education for indigenous children between the ages of 5 and 15 is 77.3%, five points below the national rate. In secondary education the net rate of schooling is 17.5%, which highlights the non compliance of the State's obligations in the area of access to education for the indigenous peoples given that the net rate of schooling nationally for secondary education is 27%⁵⁸.

442. There is big difference between the educational level achieved by indigenous communities and the national averages; only 27% of this population has studied the complete secondary level cycle compared to 37% at national level; and the percentage of people among the indigenous groups who have not taken their first year in education is 18% whereas the national percentage is, at 8%, much lower. Amongst the indigenous population over the age of 18 the educational level is the lowest in the nation given that 77% of this population has not finished secondary education and only 29% have finished primary education⁵⁹.

443. The departmental round tables on education carried out with the indigenous organizations and public functionaries identified the main problems for access to education as the lack of adjustment of the educational programs to the disperse geographic conditions, the difficult access and the displacement of the children to the schools and the high cost of maintaining the school children which is beyond the means of the families.

444. In response to the recommendations of Stavenhagen the Colombian Government replied with figures on the expansion of coverage, figures which do not include any consideration of the type of education given in the communities. The evaluation and monitoring of the right to collective education of the indigenous peoples has elements that require the incorporation of indicators capable of integrating the specifications of the provision of and compliance with this right of the indigenous communities. In first place, and keeping in mind the recommendations of Stavenhagen and Katarina Tomasevski, these indicators should be designed in order to understand the functioning, efficiency, impact and quality of the educational system in the indigenous communities, aiming to orientate the evaluation towards the integral development of this system in order to be able to measure the cultural appropriateness and the quality of education amongst these populations.

CONCLUSIONS

445. From this balance sheet one can conclude that the rights of the indigenous peoples are in a situation of chronic in compliance. To the threats and the violations of the right to life, physical integrity and personal freedom is added the permanent ignorance of their collective rights to self determination, self government and territory. There is a flagrant ignorance of Convention 169 of the ILO particularly the right of the indigenous people to be consulted on measures that affect them. This has been corroborated by the sentences of the Constitutional Court proffered in the period under examination.

446. To make progress in the respect, protection and guarantee of the rights of the indigenous peoples the Colombian State is required to at least do the following:

- Investigate, process and sanction those responsible for the serious human rights violations against the indigenous peoples.
- Comply with the recommendations made by the Special Rapporteur on the Human Rights and Fundamental Freedoms of the Indigenous Peoples, Rodolfo Stavenhagen.
- Refrain from promoting laws contrary to the rights of the Indigenous Peoples as has occurred to date with the Laws 1021 of 2006 (Forestry Law); Law 1151 of 2007 (National Development Plan 2006-2010; Law 1152 of 2007 (Rural Development Statute).
- Adopt procedures to comply with Convention 169 of the International Labor Organization (ILO) and the Universal Declaration of the United Nations on the Rights of Indigenous Peoples, particularly in order to guarantee their territorial rights and their participation in decisions that affect their lives.

CHAPTER VIII

AFRO-DESCENDENT, PALANQUERO* AND RAIZAL POPULATIONS

Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation¹

448. Next we will take a general look at the situation of the individual and collective rights of the Afro-descendent populations in the country from an integral, interdependent and indivisible human rights focus. Taking as a starting point the obligations that stem from the ICESCR, proposals will be made that integrate other economic, social and cultural rights related instruments that Colombia is party to.

449. In the last three decades the Afro-Colombian communities have experienced a social and political rise due to the struggle that they undertook for the recognition of their collective rights as ethnic communities. Aspects such as state recognition of collective and ancestral property of the territories that they have occupied vindicates for these communities their particular cultural forms of understanding, appropriating and coming to terms with their surroundings.

450. As an ethnic group the Afro-Colombians have also undertaken the task of making visible the forms of racial discrimination to which they were historically subjected (on this point the fundamental antecedent is the treatment as slaves to which their forebears were subjected to in colonial times) and those they continue to be victims of nowadays. The claims made on the Colombian State in these terms constitute the basis for the recognition and guarantee of their collective rights both as a people and as individuals.

* *TRANSLATOR'S NOTE:* The term Palanquero refers to the black populations of Palanque de San Basilio and nearby areas. Raizal refers to the black populations of the department of San Andrés and Providencia. Neither term is translated into English.

¹ Convention for the elimination of all forms of racial discrimination article 2(a)

2 Unfortunately due to the urgencies imposed by the armed conflict these communities did not emphasize the worrying historic situation of poverty and discrimination in which these Afro-Colombian communities live.

3 CDESCR Concluding Observations Op. Cit.

4 Consultoría para los Derechos Humanos y el Desplazamiento (CODHES). *Afrocolombianos desplazados, un drama sin tregua*, (Afro-Colombians a drama without respite) 22nd of May 2008. Available at: http://www.codhes.org/index.php?option=com_content&task=view&id=157, consulted August 23rd 2008.

5 Colombian Commission of Jurists (2007*) *Los derechos de las comunidades afrocolombianas en riesgo y en situación de desplazamiento forzado no cuentan con las garantías a las que está obligado el Estado Colombiano. Informe de seguimiento al cumplimiento de la sentencia T-025 de 2004 de la Corte Constitucional, octubre 18 de 2007.* (The rights of Afro-Colombian communities at risk and in a situation of forced displacement do not count on the guarantees which the Colombian State is obliged to provide. Monitoring report on compliance with Sentence T-025 of the Constitutional Court) October 18th 2007 Available at: www.coljuristas.org.

6 Association of displaced Afro-Colombians (Afrodes) & Global Rights. *Luces y contraluces sobre la exclusión (Opinions and counter opinions on exclusion)*. Afrodes y Global Rights. Bogotá, 2007.

7 Rodríguez Garavito, César; Alfonso Sierra, Tatiana; Cavellier Adarve, Isabel. *Raza y Derechos humanos en Colombia. Observatorio de Discriminación Racial ODR, Primer informe sobre discriminación racial y derechos de la población afrocolombiana (Race & Human Rights in Colombia. Observatory on Racial Discrimination ODR. First report on racial discrimination and the rights of the Afro-Colombian population)*. Bogotá: Ediciones Uniandes, 2009.

1. RECOMMENDATIONS OF THE ICESRC

451. In its parallel report presented in 2000 the Colombian Platform for Human Rights Democracy and Development (PCDHDD) the Afro-descendent organizations concentrated on making visible the serious impacts of forced displacement on the black communities² in the departments of Chocó, Valle del Cauca, Nariño, Cauca and various areas of the Caribbean Coast in the midst of a severe escalation of the war in their collective territories in which the armed actors seek control of natural resources and strategic positions. Also the purpose of the information sent to the CDESCR was to place an onus on the State to proceed with a differential public policy for the victims of displacement belonging to ethnic communities.

452. Taking on board the concerns raised in the report the Committee called on the Colombian State “to take measures to improve the living conditions of the internally displaced, in particular women, children, peasants and members of indigenous and Afro-Colombian communities”.³

453. However, the situation denounced at that time has not changed substantially. The available statistics confirm that forced displacement has particularly affected this sector of the population. According to the Consultancy for Human Rights and Displacement (CODHES) we are dealing with the most numerous ethnic minority amongst the displaced population in Colombia. In 2008, 12.3% of the Afro-Colombians were in a situation of forced displacement⁴. There are reliable reports of mass displacements that have particularly affected indigenous peoples and Afro-Colombian communities⁵.

454. The situation is particularly acute in the collective territories of the black communities of the Pacific. A total of 252,541 people have been expelled from these territories, located in 50 municipalities. This figure represents 79% of the registered population entitled to the right of collective property⁶.

455. The data also shows that the Afro-descendent population have worse living conditions than other displaced groups. Effectively, 30% of Afro-Colombians in this situation did not have enough money to eat on at least one day of the week compared to the already worrying figure of 15% of the mixed race displaced population and the 69% that do not attend any educational institution⁷.

456. The situation is even more dramatic because as well as displacement the black communities are victims of another less visible phenomenon, but just as much a violation of their rights: confinement. As the Constitutional Court detailed, even when the communities don't abandon their territories the pressure of the actors who aim to occupy them may leave them trapped within them and impede their movement within and outside of them.

457. The Constitutional Court noted three specific elements in the neglect of black communities:

“(i) a structural exclusion of the Afro-Colombian population which places it in a situation of greater marginalization and vulnerability; (ii) the existence of mining and agricultural processes in certain regions that places great pressures on the ancestral lands and has favored their theft; and (iii) the deficient judicial and institutional protection of the collective territories of the Afro-Colombians which has encouraged the presence of armed actors that threaten the Afro-descendent population to make them abandon their territories”⁸.

458. The elements identified by the Constitutional Court in Court Order 005 of 2009 show the lack of compliance with the recommendation formulated by the CESCR.

2. SITUATION OF ESCR OF THE AFRO-DESCENDENT POPULATION.

459. Approximately 11% of the Colombian population describes themselves as Afro-Colombian, Palanquero or Raizal⁹. According to the data from the 2005 Census this population is to be found mainly in the Pacific and Atlantic regions and the department of San Andrés, Providence and Santa Catalina¹⁰. This demonstrates their strong concentration in a few departments of the country, even though the Afro-Colombian population has recently experienced relative increases in big cities due to the forced displacement and the extreme poverty which characterizes the regions the majority come from¹¹.

460. The effects of slavery, which brought the Afro-descendent population to Colombia are still felt to day and this is manifested in a marked discriminatory attitude by the mixed race population towards them. The structural racism is evident from the severe poverty in which the Afro-Colombians live: in 2003 47.2% of this population did not have its basic needs satisfied and lived in extreme poverty¹² and their wage income was approximately 20% less than the average non afro person¹³ and only 51% had access to the health social security system¹⁴

Situation of Afro-descendants on the Caribbean Coast

461. One needs to mention the specific situation of the Afro-descendent people and communities on the Caribbean Coast where a significant part of the Afro-Colombian population live; in the cities of Cartagena and Barranquilla 36.4% and 13% of their total respective populations are black. According to the 2005 Census Cartagena has a population of 895,400 inhabitants, of which 319,773 described themselves as Afro-Colombians, the majority of them affected by poverty. According to the Mission for the design of a strategy to reduce poverty

8 Constitutional Court, Court Order 005 2009 Protección de los derechos fundamentales de la población afrodescendiente víctima del desplazamiento forzado (Protection of fundamental rights of the Afro-descendent population victims of forced displacement), P.M. Manuel José Cepeda Espinoza, 26th January 2009

9 The ethnic group Raizal is composed of the ancestral natives of the Archipelago of San Andrés, Providence and Santa Catalina. Their insular character, customs, religious practices and language make this clearly a differentiated ethnic group from the rest of Colombian society. Grueso Libia (*et al*). Plan Integral de largo Plazo para la Población negra/afrocolombiana, palenquera y raizal. Propuestas para el capítulo de fortalecimiento de grupos étnicos y de las relaciones interculturales del Plan Nacional de Desarrollo 2006-2010. (Long term integral plan for the black/Afro-Colombian, Palanquero and Raizal populations. Proposals for the chapter on intercultural relations of the National Development Plan 2006-2010). Bogotá D.C., January 2007, p. 5.

10 According to figures from the 2005 Census the highest concentration of Afro-Colombian population is to be found in the Pacific Region (Departments of Chocó, Valle del Cauca, Cauca and Nariño) with 1,904,739 people which is equivalent to 44.1% of the Afro-Colombian population. In second place is the Atlantic Region (Departments of Bolívar, Atlántico, Córdoba, Sucre, Magdalena, Cesar and La Guajira) with 1,346,281 people which represents 31.2%. The rest of the national territory houses 24.7% of the total Afro-Colombian population. Grueso, Libia Rosario. Documento Propuesta para la formulación del Plan Integral de largo plazo población negra/afrocolombiana, palenquera y raizal. 2007-2019 (Documented Proposal for the formulation of a long term integral plan for the black/Afro-Colombian, Palanquero and Raizal populations 2007-2019. Bogotá D.C, 31st May 2007, p. 15. Available at: www.dnp.gov.co

11 Plan Integral de largo plazo. Op. Cit., p. 4.

12 Fernando Urrea. Informe Final Grupos Étnicos. Misión para el Diseño de una Estrategia para la Reducción de la Pobreza y la Desigualdad (Final Report on Ethnic Groups. Mission for the design of a strategy to reduce poverty and inequality). DNP. Bogotá, 2006, p.46.

13 Rodríguez Garavito; Alfonso Sierra; Cavalier Adarve. Raza y Derechos Humanos en Colombia. Op. Cit. Analysis of the Household Survey June 2004. Bogotá, 2008.

14 *Ibid*. The report clearly shows that the Afro-Colombian homes are seriously disadvantaged in accessing the social security system compared to the non ethnic or indigenous populations. The non ethnic homes have no access to health; 45% in towns and less than 50% in rural areas. The indigenous population have rates of a lack of access of 50% in towns and 41% in rural zones.

15 Mayor's Office Cartagena; Cartagena Chamber of Commerce; Fundación Corona and others. Una mirada integral a la pobreza y a la desigualdad en Cartagena. Proyecto Cartagena Cómo Varnos. (An integral look at the poverty and inequality in Cartagena. Project *Cartagena Cómo Varnos* Cartagena, 2006, p. 12.

16 National Department of Statistics (DANE) Census 2005

17 Bank of the Republic. "La pobreza en Cartagena: un análisis por barrios" (Poverty in Cartagena: a neighborhood analysis. Cartagena, August 2007, p. 54.

18 In 2004 the poverty index for unsatisfied basic needs in Cartagena was 25,3% greater than the average figure of 20,6%. Ver: Mayor's Office of Cartagena; Cartagena Chamber of Commerce; Fundación Corona & others. Op. Cit. p. 14.

and inequality (MERPD) in 2004 the rate of poverty in Cartagena rose to 42% of the population. According to the MERPD data in 2004 the rate of indigence, for Cartagena was 10.3%¹⁵.

462. In this region the urban Afro-Colombian communities (72.7%)¹⁶ also face grave racial discrimination problems and explicit and implicit deeply rooted socio-cultural manifestations of racism which impact on the low levels of the quality of life in the geographic segregation of the areas where they live (which are characterized by extreme poverty and a lack of basic public services) and in the type of work they are engaged in, the majority being unqualified and informal work.

463. A recent study by the Bank of the Republic states that "Cartagena has significant ethnic diversity, product of its colonial legacy and its history of slavery. However, the Afro-descendants have been at an historic disadvantage which has marginalized them in accessing public assets such as education"¹⁷. In the same investigation it shows that there is a spatial focalization of poverty towards the slopes of the Cerro de la Popa and the surrounding neighborhoods of the Ciénaga de la Virgen where, in the main, black communities live in the midst of unacceptable conditions of state abandonment and ill health due to the lack of water supply, sewerage works and inadequate electricity services as well as a large deficit of health and education centers.

464. The rural Afro-Colombian populations of the Caribbean region also suffer dramatic quality of life conditions. In 2005, localities inhabited by Afro-Colombians such as Ararca, Archipiélago de San Bernardo, Barú, Bocachica, Manzanillo, Islas del Rosario, Tierra Bomba, among others, with a population of some 50,000 people had a complete lack of potable water services and sewerage works. In a similar fashion in the municipality of Soledad (department of Atlántico) there are Afro communities that spent a decade relocated in social housing projects without access to potable water. The lack of basic water and sewerage services has had a great impact on the index of basic unsatisfied needs in Cartagena¹⁸ and the region in general.

465. The development model of the Caribbean region centered on tourist complexes and the coal mining (a swathe of land which includes municipalities of the departments of Magdalena, Cesar and Guajira) is an attack on the ancestral territories of the black communities. Such is the case of the Raizal communities of the islands of Barú and Tierra Bomba which are currently being pressurized by business people from the tourist sector who claim property rights over those territories. In the department of La Guajira, the case of the Afro community of Tabaco which was forcibly displaced from their land in order to expand the Cerrejón coal mine, is sadly well known. This [mine] is now putting other Afro

communities at risk of being displaced. To this is added the violations of social and collective rights of the Afro populations, the building of works for contaminated water (under water emissions) in the cities of Cartagena and Santa Marta which harm the environment, public health and craft fisheries of some black communities.

467. The socio-economic indicators, both at national and regional level, show that their ethnic-racial status causes inequalities for the Afro-Colombian community, independently of other variables which determine poverty in any modern society¹⁹. In addition to the greater probability that Afro-Colombian homes have of finding themselves in situations of poverty, the regions that have large Afro-Colombian population show considerable backwardness in terms of human development compared to the most important regions and urban centers of the country²⁰.

The right to self determination, cultural integrity and territory (Article 1 of ICESCR)

468. For the Afro-Colombian population the territory is a vital space for conservation, expression and recreation of their cultural manifestations. By virtue of this, the Political Constitution of 1991 recognized the traditional collective territory. According to official statistics²¹ between 1996 and 2006 the Colombian State issued 155 collective deeds to Afro-Colombian communities in virtue of Law 70 of 1993. According to the Government this benefited 62,474 families in the departments of Antioquia, Cauca, Chocó, Nariño, Risaralda and Valle del Cauca. It also reports that 268 Community Councils have been established as forms of administration and government exercised by the highest authority of internal administration in the Black Community Lands.

469. Despite this, these measures have not been sufficient to guarantee the protection of Afro-Colombian communities who suffer a permanent state of legal insecurity on the ownership of their ancestral territories²². Whilst the State is far too slow in recognizing traditional territories the armed actors interested in the economic exploitation of them as well as the strategic military control of zones where they are located have been very quick and effective in taking the community's land. Effectively the Afro-descendants are the most numerous ethnic minority amongst those in a situation of forced displacement in Colombia and are those who suffer the worst of this drama. Scourges such as misery, violence and discrimination have taken their toll on them. More than 12% of this population suffers the impacts of displacement and 98.3% of displaced Afro-Colombians live below the poverty line.²³

470. In addition the Afro-descendent communities' ancestral territories are not just threatened by actors in the armed conflict. The usurping of their land is a

19 On this matter a recent study points out that "although the indices of poverty are far higher for Afro-Colombians, perhaps what is most worrying is that when the effect of being Afro-Colombian is measured, keeping all other variables of the probability of being poor constant, it was found that there was a positive and statistically significant effect compared to non ethnic homes when poverty is measured by the method for unsatisfied basic needs (NBI) Plan Integral de largo plazo. Op cit., p. 10.

20 Thus according to the Report on the Quality of Life in Colombia (ICV) 2006 "The Pacific has the worst conditions of life in the country being 15 points below the national average (62 to 77). In the last 6 years the region has had negative growth rate in living conditions (-4.7%). Between 1997 and 2003 all the factors that measure the quality of life fell, so 63% of homes had no toilet connected to the sewerage works or tidal flows; 30% lack water supply, from pumps, tanks, water delivery or public water supply. Forty one percent still cook with charcoal, wood or waste; 60% have no garbage collection service; 46% of homes are overcrowded. In the region, the municipalities with the lowest standard of life are Carmen del Darién (47,8), Alto Baudó (49,4), Piamonte (49,4), Medio Atrato (49,8) y La Vega (50,1) (...). At a departmental level Chocó has the lowest ICV in the region and the country (58 points)". DANE. Informe de Calidad de Vida, (quality of life report) 2006, p. 23.

21 See: http://www.vicepresidencia.gov.co/iniciativas/c_afrocolombiana/titulos.asp

22 Rodríguez Garavito; Alfonso Sierra; Cavellier Adarve. Op. Cit.

23 Codhes. Afrocolombianos desplazados, un drama sin tregua, (Displaced Afro-Colombians a drama without respite) 22nd May 2008. Available at: http://www.codhes.org/index.php?option=com_content&task=view&id=157

24 Cf. Diócesis of Quibdó (*et al*). Informe Sobre los derechos económicos, sociales y culturales de las comunidades indígenas y negras de la Costa Pacífica Colombiana, presentado a consideración del Comité DESC, noviembre de 2007. (Reporto on the economic, social and cultural rights of the black and indigenous communities on the Colombian Pacific Coast See also: Public Defenders Office, Explotación de maderas y derechos humanos –Bajo Atrato-Chocó, (Exploitation of timber and human rights Bajo Atrato- Chocó Bogotá, 2002; Constitutional Court Sentence T-955 de 2003.

25 Rodríguez Garavito; Alfonso Sierra; Cavelier Adarve. Op. Cit.

26 *Ibid.*.

27 *Ibid.*.

28 *Ibid.*.

constant element, at the hands of private companies interested in developing mega-projects of an agroindustrial nature of the extraction of natural resources and the construction of road, energetic, military or tourist infrastructure²⁴.

Right to an adequate standard of living (article 11 of the ICESCR)

Right to housing (Article 11.1 of the ICESCR)

471. The production of reliable differentiated information that describes the real and current situation of Afro-Colombians' housing should be the basic premise for the creation, design and implementation of any public policy aimed at improving this situation. The absence of the ethno-racial variable in the available information is one of the main obstacles to the realization of this right in the Afro-descendent population.

472. The serious lack of recognition of the housing problem suffered by this population group is in itself a violation of the obligations and an obstacle to carrying out actions that enable the elimination of the difference between this historically discriminated group and the rest of the population²⁵.

473. In relation to this failing the Observatory on Racial Discrimination asked the Government to supply information on the matter. The only differentiated information provided by the Government was on the number of subsidies sought and given by the National Housing Fund (Fonvivienda) to the displaced Afro-Colombian population. The process of allocating subsidies for urban housing to the displaced population does include the ethnic-racial variable and the results are known to the Ministry: in total 267,412 people have requested this subsidy of which 13,279 were Afro-descendents. Of these requests 51,377 families were benefited and of them only 1,199 were Afro-Colombian families²⁶. There is no information on the effective handing over of these subsidies²⁷.

474. Given all this, the Colombian State has ignored, by a wide margin, its obligation to gather, analyze, disseminate and publish reliable information at local and national level and to take steps to periodically evaluate the situation of groups or individuals who are victims of racism and discrimination in the right to adequate housing. Non-compliance with this obligation, which according to the Committee on Economic, Social and Cultural Rights, is immediately applicable, has the direct effect of impeding the design and formulation of adequate sound public policies that seek to improve the housing situation of the Afro-Colombians²⁸.

475. The forced displacement by violence is the biggest obstacle that the Afro-descendent population faces in its effective enjoyment of its right to adequate housing and legal security on land tenure. This is associated with threats and

other violent factors²⁹ which generate multiple violations of the human rights of this population.

476. In terms of urban housing, the ODR has been able to show that whilst various local governments, amongst them Barranquilla, Bogotá and Medellín have programs to legalize or/ give deeds on plots of land, Barranquilla is the only one that includes in its public policy a program on land deeds “where the Afro-Colombian community is settled” (Decree 053 of 2007)³⁰. According to the ODR study the situation in Bogotá is different as the public policy of formalization and or / title deeds for housing seeks to resolve the problems that mainly affect the poor population of the city following a development model of informal neighborhoods based on geographic criteria and not those related to race or ethnic group. In Medellín and Cartagena the absence of differentiated policies is even more explicit. The study lamented not being able to obtain information from the local authorities in Cali, Buenaventura, Quibdó and Tumaco, all of which have a considerable Afro-Colombian population.

477. In addition, the availability of services, materials, infrastructure and the necessary facilities for adequate housing continue to be precarious and are an element in the impoverishment of the quality of housing of Afro-descendants³¹. The most precise indicators that currently exist on the quality and housing deficit in Colombia are the results of the Censuses carried out in 1993 and 2005. Unfortunately they cannot be consulted by the category of ethnic group as happens with the majority of data available from the National Statistics Department (DANE)³².

478. Faced with the non existence of differentiated data on ethnic matters, the ODR carried out a study based on the population censuses comparing the departments with greatest concentration of Afro population with the rest of the country. The results show that the percentage housing deficit in many of the departments with a large Afro-descendent population was greater than the national average, both in 1993 and in 1995. For example, the average national deficit in 1993 was 53.6%, whilst in the department of Chocó it was 94.1%, in San Andrés 78.9%, in Bolívar 74.4%, in Nariño 74.4% and in Cauca 68.7%. The situation in 2005 had not improved much in relation to 1993; whilst the national average was 36.2%, that is to say that the deficit fell by 17.4%, in the department of Chocó the deficit only fell 1.2%, in San Andrés 0.32%. Although the situation of other departments with an Afro-descendent presence is less dramatic it continues to be worse than the national average given that the reduction was between 12% and 17%³³.

479. In addition the ODR analyzed the percentage deficit in housing in three of the municipalities with the greatest proportion of Afro-Colombians in each of the departments studied and concluded that with few exceptions, their housing

29 Amongst them, the armed conflict, illicit use crops and aerial fumigations with glyphosate, monocultures, colonists, the lack of basic services etc.

30 Rodríguez Garavito; Alfonso Sierra; Cavellier Adarve. Op. Cit.

31 Ibid..

32 Ibid..

33 Ibid. See also: Observatory on Racial Discrimination with data from the censuses of 1993 and 2005.

34 Ibid..

35 Ibid..

36 Newspaper, El Espectador, "Diez niños han muerto de hambre en Chocó" (Ten children have died of hunger in Chocó), 2 June 2008; Newspaper, El Tiempo, "Son 17 los niños muertos por hambre en el Chocó" (17 children have died of hunger in Chocó), 26th March 2007

37 Cf Platform of Organizations of the Pacific. Informe Sobre los derechos económicos, sociales y culturales de las comunidades indígenas y negras de la Costa Pacífica Colombiana. (Report on economic social and cultural rights of indigenous and black communities on the Colombian Pacific Coast.) Presented to the CESCR in November 2007.

38 The figure is projected for 2006 based on food insecurity reports by the FAO (1999-2005) by the Colombian Platform for Human Rights, Democracy and Development. Campaña por el derecho a la alimentación. Por una alimentación digna, sana, equilibrada y suficiente. (Campaign for the right to food. For decent healthy balanced and sufficient food) Bogotá, 2006.

39 DNP, PDH, GTZ. Los municipios colombianos hacia los Objetivos de Desarrollo del Milenio. Salud, educación y reducción de la pobreza. (Colombian municipalities towards the Millennium Development Goals)Bogotá, 2006.

40 ICBF, Profamilia, Ministry for Social Protection, UNFPA. Encuesta Nacional de Demografía y salud (National Demographic Survey). Bogotá, 2005

41 Ibid..

situation was even worse than the departmental average. This situation is more acute in rural areas³⁴.

480. In the 12 years between the census of 1993 and that of 2005 the State had the opportunity to take affirmative action for the Afro-Colombian population in the area of housing. However, the figures show that in the places where there were improvements in the situation it was in the departments with a lower Afro-descendent population. It concludes that State did not meet its obligation to progressively improve the right to adequate housing in the regions where the Afro-descendent population is representative.³⁵

The right to adequate food (Article 11.2 of ICESCR)

481. The conditions of extreme poverty which many Afro-descendent settlements face (particularly in the pacific region) added to state neglect and abuses by armed groups (food blockades, displacement, burning of homes etc.) have produced a tragic effect on the enjoyment of the right to food. In the last months reports on deaths due to severe malnutrition in the pacific region of Colombia have been common³⁶. According to calculations made by Afro-Colombian organizations in the first trimester of 2007 alone more than 70 children died in this zone.³⁷

482. The preceding statement can be understood if we analyze the figures on malnutrition in the departments inhabited by Afro-Colombians. From 1996 to 2002 each year around 110,000 more Colombians suffered acute hunger i.e. with terrible nutritional limitations due to little or no access to food³⁸. In particular, the departments of Nariño and Cauca have the highest rates of chronic malnutrition (24%), whilst the national average is 13.6%³⁹. Compared to the rest of the country the Pacific region has the highest rate of malnutrition for low stature by age in the range of 10 to 17 years⁴⁰ as the possibility for pregnant women to ingest nutrients such as folic acid and other vitamins in the period of pregnancy is barely 38.7%, whilst the national average is 51.3%; in relation to the possibility to ingest calcium in this same period the average was 36.9% whilst the national figure was 49.3%.⁴¹

The right to the highest attainable level of physical and mental health (Article 12 of ICESCR)

483. In Colombia there is a structural discrimination in the enjoyment of the right to health. The health conditions of the Afro-Colombian population are more precarious than the mixed race population. Despite this the Colombian State has not made any clear convincing efforts to improve them.

484. The disadvantage of the Afro-Colombian population in access to health is

evident when one considers that 53.5% of poor homes in the towns and 73.8% of rural homes have no health regime⁴². Their life expectancy is less than the national average; whilst for the general population it is 65 years, for Afro-Colombians it is 55⁴³. The same thing occurs with food; according to the 2005 Census, 14% of the Afro-Colombians went one entire day of the week without food, more than double the equally disturbing figure for mixed race people that go hungry.

485. The percentage of Afro-Colombians affiliated to the health system is notoriously inferior to that of the mixed population. According to official data from the Survey on the Quality of Life by the DANE in 2003⁴⁴ only 49% of the Afro-Colombians are affiliated to the health system. This percentage is clearly inferior to the already disturbing levels of access for mixed race people that the same source places at 65%.

486. The health services for the Afro-Colombian population are provided in precarious conditions that do not guarantee the fundamental right to enjoy a state of complete physical and social well being. The geographical difficulties, the lack of access roads, the poor quality of means of transport and the internal armed conflict make it so that on the Pacific Coast and the Atlantic Coast – where the Afro-Colombian population has a significant presence – access to health institutions, goods and services is not guaranteed. In addition, in these areas the quality and availability of health infrastructure, institutions, goods, services as well as programs, medical personnel, potable water and medicines are deficient. This precarious situation is worsened because the hygiene services such as municipal water supply, access to potable water and sewerage have lower rates of coverage in these regions.⁴⁵

487. Nevertheless the Colombian State has not established effective affirmative actions for the Afro-Colombian population in the area of health. On a national level, despite some initiatives undertaken by the Ministry for Social Protection, the National Public Health Plan does not include a specific policy line aimed at improving the health situation of the Afro-descendants and as regards the diagnosis it is limited to citing some words on the problem of malaria on the Pacific Coast⁴⁶. Neither does the National Development Plan 2006-2010⁴⁷ nor the Program to Support Health Reform (PARS)⁴⁸ nor the Amplified Immunization Program (PAI)⁴⁹. All these are health public policy documents in which the National Government has not complied with the obligation to include an ethnic – racial variable as a central criteria for the analysis, diagnosis and policy design.

488. In the area of local health policies with differentiated measures for Afro-Colombians the ODR research found that of the 16 territories studied (departments and municipalities) only five had taken any initiative on the health of Afro-Colombians. Of those, three had a policy but there was no data on its

42 Rodríguez Garavito; Alfonso Sierra; Cavellier Adarve. Op. Cit, p. 38. See also Ministry of the Interior. Visión, Gestión y Proyección de la Dirección de Asuntos para las Comunidades Negras (Management, and Projection of the Board for Black Community Affairs) (DACN), 1997. Cited in Centro de Estudios Jurídicos de las Américas (CEJA), Sistema judicial y racismo contra afrodescendientes). Brasil, Colombia, Perú y República Dominicana (Judicial system and racism against Afro-descendants Brazil, Colombia, Peru and the Dominican Republic). 2004, p. 32

43 National Statistics Department (DANE) Census 2005

44 Figures collected by the Conpes Document 3310 de 2004

45 Rodríguez Garavito; Alfonso Sierra; Cavellier Adarve. Op. Cit.

46 Ministry for Social Protection. Decree No. 3039 of 2007. Plan Nacional de Salud Pública (National Public Health Plan) 2007-2010. Bogotá, 10 de agosto.

47 National Planning Department. Plan Nacional de Desarrollo 2006-2010. Estado comunitario: desarrollo para todos. (National Development Plan 2006-2010. Communitarian State: development for all) 2006.

48 Ministry for Social Protection. Programa de Apoyo a la Reforma en Salud – PARS (Program for Support of Health Reform). 2008. Available at: <http://www.minproteccionsocial.gov.co/pars/newsdetail.asp?id=16174&idcompany=39>,

49 Ministry for Social Protection 2007. Decree No. 3039 of 2007.

50 Rodríguez Garavito; Alfonso Sierra; Caveller Adarve. Op. Cit.

51 Ibid..

52 Ibid..

53 Ibid..

54 Ibid..

55 National Statistics Department (Dane), Census 2005.

implementation or monitoring (Nariño, San Andrés and Providence, and Baranquilla). Another, Bogotá has a policy and an allocated specific budget, but neither are there any details on its implementation and only one, Valle del Cauca, has a defined specific policy of inclusion in health for this population group with results on its implementation and monitoring available.⁵⁰

489. The implementation of actions aimed at guaranteeing the full enjoyment of the right to health of the Afro-Colombian population requires the generation of information, the elaboration of diagnoses and the design of public health policies that include the ethnic-racial variable. None of the Colombian State's obligations in the area of health could be fully complied with in the absence of reliable information that includes this variable and allows a proper useful analysis for the design of health initiatives in favor of the Afro-Colombian population. Unfortunately, Colombia does not have systematic mechanisms to gather and analyze information on the health conditions of this population.⁵¹

490. In addition, the plans and health programs that exist to not include the traditional medical practices of the black communities⁵². Given that traditional medicine is the only one available in many of the regions with a majority Afro-descendent population the few public programs that have incorporated it or considered it (except for Valle del Cauca and Bogotá) did so in order to resolve a public health problem and not with the aim of recognizing it or including it in the lines of public policy.

491. In the 2005 Census the DANE included a question to count the people who considered themselves to be members of an ethnic-racial groups. However, it did not gather fundamental information on health matters that afflict the black and general population such as the prevalence of tropical diseases, maternal and child mortality rates, sexual and reproductive health. Consequently the ethnic-racial variable cannot be cross-referenced with this type of information in order to analyze in an exhaustive and systematic manner the levels of realization of the right to health of the Afro-Colombian population.⁵³

492. To conclude: the initiatives to include the Afro-Colombian population in the area of health are dispersed. They are not systematic and neither are there clear monitoring mechanisms nor coordination amongst the different state entities that carry them out.⁵⁴

Right to education (Article 13 of the ICESCR)

493. The educational levels of the Afro-descendents are also inferior to those of the mixed race population; whilst 12.4% of Afro-Colombian males finish higher education, 18.5% of mixed race males did so⁵⁵. At the same time 13.5% of Afro-

Colombian women finished higher education compared to 19.7% of mixed race women that did so. The illiteracy rates of Afro men and women are also higher than their mixed race counterparts: 18.4% of Afro males and 16.9% of females are illiterate, whilst 13.2% of mixed race males and 11.7% of mixed race females are⁵⁶. The children have less time to study as they work more than mixed race children; as regards the question, how many children under the age of 12 years of age worked in the last week? 2.5% of Afro-Colombians did so in comparison with 0.7% of mixed race children.⁵⁷

494. The figures and cases looked at by the ODR on education showed discrimination in access, continuance in the same, quality and the achievements of the Afro-Colombian population at all levels. What's more is that the system does not combat the racist stereotyping of this population. So it contributes to reproducing the cycle of poverty, exclusion and discrimination of the black communities.⁵⁸

495. The Afro-Colombian population face varying types of discrimination in access to and continuance in the educational system⁵⁹. Even the Minister for National Education has recognized the failings in this matter. For example, in a reply to a right of petition, his office pointed out that one of the specific problems is the *“limited and low implementation of the Course in Afro-Colombian Studies in the educational establishments of the country”*.⁶⁰

496. This answer is of concern in so far as the Course in Afro-Colombian Studies has as one of its main objectives the eradication of the racist stereotypes that subsist in the educational system of the general population. This being so, the educational system has no programs against racism nor any that promote the values of acceptance, tolerance and diversity and respect for cultural minorities, including the Afro-descendent population.

497. Another of the principle barriers to access is the non-compliance with the state obligation to guarantee free primary education to all children. The Afro-Colombian families, even the poorest of them, must take on a high economic burden in order for their children to go to school. When they can't do so, the children must resign themselves to not entering the educational system⁶¹.

498. Faced with the lack of public resources that guarantee an adequate infrastructure, a complete teaching staff, availability of adequate educational materials and access to resources that permit the closing of the technological gap, the Afro-Colombian families, -even the poorest of them- have been forced to take on a responsibility that mainly corresponds to the State. The children that overcome these obstacles and manage to gain access to the educational system face a discriminatory structure that does not respect their cultural identity and does not create incentives to retain students and does not adapt to their educational needs⁶².

56 Ibid

57 Ibid

58 Rodriguez Garavito; Alfonso Sierra; Cavellier Adarve. Op. Cit.

59 The report of the Special Rapporteur on the Right to education highlights that “the Afro-Colombian and indigenous communities continue to be victims of systematic discrimination (A/54/18, 1999, párr. 432) There is as yet no prohibition on racial discrimination nor a strategy for its elimination as demanded by international human rights” See: See Report of Special Rapporteur, Katarina Tomaševski. Mission to Colombia, Op. Cit., para. 36

60 Rodriguez Garavito; Alfonso Sierra; Cavellier Adarve. Op. Cit.

61 Ibid.

62 Ibid.

63 Notwithstanding, the State recognizes that in 2005 on a national level 12% of children of a basic school going age were not in the educational system, Ministry for National Education Sector Statistics, http://menweb.mineducacion.gov.co/info_sector/estadisticas/index.html

64 Rodríguez Garavito; Alfonso Sierra; Cavalier Adarve. Op. Cit.

65 Ibid..

66 According to the Special Rapporteur on the right to education "the ethnoeducation foreseen in Law 115 of 1994 for groups or communities that have their «own language, culture, traditions and autonomous laws and» requires differential treatment." See: Report of the Special Rapporteur, Katarina Tomaševski. Mission to Colombia, Op. Cit., para. 38

67 XIV Periodic report of the Colombian State given to the UN Committee for the elimination of all forms of racial discrimination para. 327.

499. The Colombian State does not have consolidated up to date figures on educational exclusion. The statistical information related to the right to education supplied by various official entities is scattered and is contradictory. Nobody knows how many children are outside the educational system⁶³. Neither is it known how many of them are Afro-Colombians. According to data presented by the State in its report to the UN Committee on the Elimination of all forms of Racial Discrimination in Colombia there are 1,715,456 minors that describe themselves as Afro-descendants. Thirty four percent of them are children between the ages of 0 and 5 years of age, 39% between the ages of 6 and 12 and 27% between the ages of 13 and 17.

500. According to data from the 2005 Census, 16% of the Afro-Colombian under age population (three years and upwards) do not attend any educational institution. The situation is most critical with the preschool population where coverage barely reaches 39% of children under the age of five. With regards to basic education, whose universalization is an immediately compliable obligation, at least 14% of children of school going age do not attend any institution. Likewise with secondary education 25% of the Afro-descendent population is in the same situation⁶⁴.

501. The figures become even more evident when regional comparisons are made. Whilst 39% of the all families at a national level that have children of preschool age stated that they attended an educational institute only 30% of families in Chocó in the same circumstances responded affirmatively. This means that the department is 8 points below the national average⁶⁵.

502. This translates as a flagrant violation of the guarantee of the right to education of these children condemning them to repeat the cycle of discrimination, defenselessness and poverty.

503. Also, the State does not recognize differential needs of Afrodescendent children⁶⁶, other than the courses in ethno-education. In its report to the CDESC it stated that "*the large majority of Afro-Colombian children share the same educational conditions as their mixed race counterparts and the difficulties that they face are of a general nature (problems with coverage, local infrastructure, continuance etc.) more than particular problems related to their Afro-Colombian origin*"⁶⁷. That means that it does not recognize the existence of specific barriers to Afro-Colombian children accessing a quality educational system.

504. The implementation of ethno-education has other serious failings, amongst which are that it was only proposed in terms of technical and financial support to private initiatives without even deciding upon the sums involved.

3. STATE RESPONSE TO AFRO-COLOMBIAN PROBLEMS

505. Since the coming into force of the 1991 Constitution the State has adopted some legislative measures that recognize certain collective rights of the Afro-Colombian communities. The Constitutional Court has also issued various judgments through which it has reaffirmed the special obligations the State has as regards their rights, amongst them the recognition of the right to prior consultation and the property rights of collective territories. In the period reported various governments have formulated policy instruments through which recommendations for the recognition, protection and improvement of the quality of life of the Afro-Colombian population⁶⁸ have been made. Notwithstanding the implementation of these policies has been practically non-existent. Also the policies of a general nature are characterized by the non-inclusion and invisibilization of the problems of the Afro-descendants⁶⁹.

506. Once again these failings have been recognized by the State. This can be seen in the diagnosis elaborated for a new state policy on the subject called “Integral long term plan for the black/Afro-Colombian, Palanquero and Raizal populations”. In this document it is recognized that institutionally various levels of government have weaknesses as regards the recognition, application and compliance with the special legislation on ethnic groups. Also that *“the national policies are not appropriate as regards territory and there are no permanent control and monitoring mechanisms of the actions carried out.”*⁷⁰

507. Along the same lines in its XIV periodic report presented to the UN Committee for the Elimination of all forms of Racial Discrimination the State indicated that it is “necessary to recognize that the Afro-Colombian and indigenous communities are still victims of various forms of racial discrimination in the country”. In the same document it sustained that “it can be argued that there is a passive segregation in the area of housing, especially against the Afro-Colombian population, as much at regional level (where the Colombian Pacific is both the region with most Afro-Colombians and the poorest in the country) and in the area of urban housing in the large cities”⁷¹.

508. The gravity of these diagnoses contrasts with the paltry effort by the State to adopt measures aimed at combating the situation. It is very telling that in the V Report presented by the Government to the CESCR, beyond a few isolated and decontextualized references it does not present the situation of the Afro-Colombian population. Neither is there evidence of any plan to progressively advance towards guaranteeing the rights denied to this population.

68 In 2004 a program to achieve a greater access to the social programs of the State for the Black or Afro-Colombian, Palanquero and Raizal populations was designed (CONPES document 3310: “Política de acción afirmativa para la población negra o afrocolombiana” [Affirmative action for the black or Afro-Colombian population].) The program was based on a policy of affirmative action aimed at the black or Afro-Colombian population that lived in the national territory with a focus on the poorest and the displaced.

69 Programs such as the Plan For Social Reactivation (2003) the Presidential Program for human rights and international humanitarian law (2004), the National Plan for integral attention to the population displaced by violence (2005) and the programs to prevent forced displacement of the Social Solidarity Network (now called Social Action) do not specify targets or results for the Afro-Colombian population

70 Plan integral de largo plazo. Op. Cit., p. 15

71 XIV Informe periódico del Estado Colombiano remitido al Comité de las Naciones Unidas para la eliminación de todas las formas de discriminación racial, Op.cit. para. 185.

CONCLUSIONS

509. In relation to the dramatic situation of structural discrimination that is faced by members of the Afro-Colombian population, the State has not adopted effective measures to comply with their obligations under the ICESCR. It also lacks a coordinated policy strategy that in an urgent manner seeks to make effective the rights of the members of this population and through its inaction has neglected its general obligation of immediate compliance in relation to the adoption of measures to eradicate discrimination in the guarantee of the rights recognized in the second article, as well as neglecting other specific obligations of the ICESCR.

510. This grave failing in its compliance with its international obligations has not been duly highlighted by the CESCR. To date the Committee has not studied this specific situation and has not issued a precise recommendation to the Colombian State to eradicate structural racism. For this reason the civil society organizations wish to reiterate the importance that the Committee in its following comments include, as a priority, the situation of the denial of the economic, social and cultural rights of the Afro-descendent, Palanquero and Raizal populations.

CHAPTER IX

WOMEN IN COLOMBIA

Discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,¹

1. RECOMMENDATIONS TO THE CDESCR

511. In 2001 the CDESCR manifested its concern when it saw that “*gender equality has stagnated and even deteriorated since 1997, exposing women to the general impoverishment of the country*”² In the face of this grave situation the Committee recommended:

- The Committee reiterates its 1995 recommendation that the employment status of community mothers should be regularized by treating them as workers, so that they are entitled to the minimum wage.³
- The Committee calls upon the State party to ensure that the minimum wage enables workers and their families to have an adequate standard of living. It also urges the State party to adopt a policy of equal pay for work of equal value as provided for in the Covenant and to reduce the wage gap between men and women.⁴
- The Committee calls upon the State party to take steps to improve the living conditions of IDPs, in particular women and children, peasants and members of the country’s indigenous and Afro-Colombian communities.⁵
- The Committee requests the State party in its next periodic report to provide detailed information based on comparative data about the problem of abortion in Colombia and the measures, legislative or otherwise, including the review of its present legislation, it has undertaken to protect women from clandestine and unsafe abortion.

¹ Cf. Preamble to the Convention on the Elimination of All Forms of Discrimination Against Women, A.G. res. 34/180, 34 U.N. GAOR Supp. (No. 46) p. 193, ONU Doc. A/34/46, entry into force 3rd September 1981.

² Cf. CDESCR, Concluding Observations of the Committee On Economic, Social and Cultural Rights (2001), Op. Cit, para. 13

³ Ibid., para. 35

⁴ Ibid., para. 37

⁵ Ibid., para. 43

6 Ibid., para. 45

7 Ibid., para. 49

8 Between July 2002 and December 2007 at least 23,814 people lost their lives as a result of the socio-political violence. This figure included people killed in combat. Cf. Plataformas de derechos humanos y paz (Peace and Human Rights Platforms), informe de las organizaciones no gubernamentales al Examen Periódico Universal del Consejo de Derechos Humanos de Naciones Unidas (Report of the non-governmental organizations to the Periodic Universal Examination of the Council for Human Rights of the United Nations)

9 Included in the group of women, girls and adolescents.

10 Preliminary Report on the International Misión of Observation on Extrajudicial Executions and Impunity, 10th of October 2007, Bogotá. Cited in: Plataformas de derechos humanos y paz, Op. Cit.

11 Plataformas de derechos humanos y paz, Op. Cit.

12 CIDH. "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" (Women in the face of violence and discrimination produced by the armed conflict in Colombia) A/Ser.L/V/II. Doc. 67, 18th October 2006

- The Committee recommends that the State party implement vigorously its National Sexual and Reproductive Health Program.⁶

512. None of these recommendations have been complied with. In addition to the considerations we will develop further on. An overview of some of the recommendations can also be found in the chapters on the right to work (paras. 127 and 131), right to health (paras. 91 -96), situation of children (Chapter 10) and the situation on people in a situation of forced displacement (Chapter 11).

2. ON THE V PERIODIC OFFICIAL REPORT.

513. Despite the CESCR warning the Colombian State "to provide in its fifth periodic report detailed information, including comparative statistical data over time, disaggregated on the basis of sex, age and urban/rural areas, on the extent of poverty in the country"⁷ this data was not desagregated.

514. In its V Report the Colombian Government does not provide clear and precise data on the progress and setbacks on the situation of women in relation to the ESCR. The information supplied is limited to describing a series of fragmented and focalized programs which do not allow on to verify the effective enjoyment of these rights by women. This document aims to report on some of the more worrying situations surrounding the *violence* against women, many of them *normalized* and made *invisible* in the official reports on daily life in the country.

515. As shall be seen further on, in the period under examination the advances that can be found in public policy to overcome the structural discrimination faced by women are scarce and this impedes the full exercise of their civil and political rights and their economic, social and cultural rights.

3. SITUATION OF THE CIVIL AND POLITICAL RIGHTS OF WOMEN.

516. In the period between July 2002 and December 2007 at least 13,634 people lost their lives due to the socio-political violence⁸ outside of armed confrontations of which 1,314 were women⁹ and 719 were children¹⁰. Between July 1st and June 30th 2008 there were at least 3,018 violations of life, liberty and integrity against unionized workers (both male and female) of which 480 correspond to the murder of trade unionists (392 men and 88 women)¹¹.

517. The context of the armed conflict that the country is going through has a particular impact on the lives and the human rights of women, who are direct and indirect victims of it. In this respect the Inter-American Commission on Human Rights verified in 2004¹² that the situation of women in Colombia is particularly

critical due to the historic situation of discrimination and the impact of the armed conflict with a particular impact on the indigenous and Afro-descendants.

“The situation of indigenous and Afro-Colombian women is particularly critical being victims of multiple forms of discrimination due to their race, ethnic group and as women. This situation is aggravated by the armed conflict. They face these two types of discrimination from birth: first for belonging to an ethnic and racial group and the second because of their sex. Being historically exposed to two forms of discrimination they are doubly vulnerable to being abused and victimized by the armed groups in their struggle to control resources and territories”¹³

Impacts of the internal armed conflict on women

518. The V governmental report does not recognize the persistence of the armed conflict in the country, which however, has a particular consequence for the lives of women, who are direct and indirect victims of it. According to figures from the Colombian Commission of Jurists (CCJ) between July 2006 and June 2007 they registered the death or disappearance of 127 women caused by violence in the context of the internal armed conflict. Of them 98 were murdered or disappeared outside of hostilities (in the street, at home, at work). In relation to the registers for violations of human rights and international humanitarian law 78% (39 victims out of 50) were attributed to the State ; directly committed by state agents 44% (22 of 39 victims) and for omission, tolerance or support for paramilitary groups 34%(17 out of 50). Twenty two percent of the cases (11 victims out of 50)¹⁴ were attributed to the guerrillas.

519. As regards sexual violence against women the Constitutional Court¹⁵ on the 14th of April 2008 highlighted that it “*is habitual, extensive, systematic and invisible in the context of the armed conflict, as are sexual abuse and exploitation.*”. This practice is attributed to all the groups that participate in hostilities including the security forces. In a similar fashion, the UN High Commissioner for Human Rights pointed out that she “*had received various complaints about women who had been victims of acts of sexual violence whose responsibility was attributed to both members of the armed groups outside the law and members of the security forces.*”¹⁶

520. Sexual violence against women is used as weapon of war and a as strategy to dishonor the enemy. According to the National Board of Prosecutors in the last four years 127 cases of sexual violence were reported; in the majority of the cases the aggressors were identified as members of illegal and legal armed groups. However, these figures do not reflect the totality of the phenomenon as some women do not report for fear of reprisals against them or their families¹⁷.

¹³ Ibid., párr. 122

¹⁴ Mesa de mujer y conflicto armado (Roundtable of women and armed conflict), VII informe sobre violencia sociopolítica contra mujeres, jóvenes y niñas (VII Report on sociopolitical violence against women, youths and girls) , p. 11 Available at: <http://alainet.org/images/MESA%20mujer%202007%5B1%5D.pdf>.

¹⁵ Constitutional Court, Court Order N°092 14th of April 2008 on the protection of the fundamental rights of women victims of forced displacement caused by the armed conflict, expedited as part of the monitoring of compliance with Sentence T-025 of 2004. Cited in: Plataformas de derechos humanos y paz, Op. Cit.

¹⁶ Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia 2006, A/HRC/4/48, para. 81. Cited in: Plataformas de derechos humanos y paz, Op. Cit.

¹⁷ Mesa de mujer y conflicto armado, Op. Cit., p. 24.

18 Newspaper, El Espectador, electronic edition. El 16 % de mujeres desplazadas sufren violencia sexual, (16% of displaced women suffer sexual violence) 18th of 2008. Available at: <http://www.elespectador.com/articulo-el-16-ciento-de-mujeres-desplazadas-sufren-violencia-sexual>.

19 Confluencia Nacional de Redes de Mujeres (National Confluence of Women's Networks), Cladem, Corporación Colombia Diversa, Profamilia., Shadow Report on Colombia to CEDAW, p.11

20 Mesa de mujer y conflicto armado, Op. Cit., p. 24

21 Profamilia, National Demographic and Health Survey (ENDS) 2005. Sexual and Reproductive health in marginalized zones, situation of displaced women 2000-2005. National Project of Sexual and Reproductive Health in low income families and displaced populations pp. 313-335. Available at: <http://www.profamilia.org.co/encuestas/04desplazadas/01capitulos.htm>

521. In the *Report on Promotion and Monitoring of Sexual and Reproductive Rights of Female Victims of Forced Displacement with an Emphasis on Domestic and Sexual Violence*, the Public Defenders' Office stated that 15.8% of displaced women surveyed in the study said they had suffered sexual violence (from beatings to rapes) before or after their forced displacement¹⁸. Added to this violence the women have to deal with the terrible consequences of these acts: sexually transmitted diseases, lesions and traumas of the reproductive organ, urinary infections and in the majority of cases unwanted and/or medically neglected pregnancies¹⁹.

522. With great frequency the sexual violence perpetrated against women by armed actors remains in impunity. For example, during the process of implementing the Justice and Peace Law, norm that regulates the process of demobilization of paramilitary groups sufficient efforts were not made to make visible the crime of sexual violence committed against women, youths and girls. Of the 80,000 reports received by the prosecutors that investigate the paramilitaries there were barely 625 cases among them of women from various areas of the country victims of sexual assaults by members of those groups²⁰. This is aggravated in as far as there are limits on women's access to justice such as placing the burden of proof on them in processes against armed actors.

Violence against women

523. The violence against women in Colombia has come out from being a hidden and mainly silenced fact to being publicly debated as a problem of dramatic dimensions that challenges all social sectors. According to the National Institute of Forensic Medicine (INML) in 2007 77,745 victims of domestic violence were evaluated. Of the total number of acts the greatest percentage corresponded to violence against the partner (46,615 cases) followed by violence against other family members (17,510). In 2007 the Years of Healthy Life Lost (AVISIA) due to domestic violence rose to 89,025.

524. As regards physical conjugal violence the National Demographic and Health Survey (ENDS) of 2005 found that 39% of women who had once been married or cohabiting reported having suffered physical aggression from their husband or partner. This result represents a fall of only two percentage points compared to the ENDS report of 2000 in which 85.4% of women attacked suffered some injury as a consequence of the aggression. It is striking that 76% of the physically ill-treated women did not go to the relevant authorities to report the aggression²¹.

525. As regards sexual violence, women, particularly the youngest, are the most affected. The percentage of cases registered was 84% with the most frequent

place of occurrence being the home, representing 66% of the total. The number of sexological reports for minors stood at 15,353 (85.7%) with girls between 10 and 14 being the most affected (35.3%) and in boys the group that had the highest percentage was that aged 5 to 9 years of age (41.3%).

526. This evidence shows that the “*normalization*” of violence against women persists, i.e. the normality with which these types of actions are thought of. This shows the continuance in our culture of a norms belonging to a patriarchal order in which a control is exercised over women of their sexuality and reproduction, their erotic expression, their maternity, their access to work and the public world, their participation in and the conditions of their life in general.

527. The recognition and treatment of the types of violence carried out against women, both in public and private spaces, produced by the unequal power based relations due to their sex or age have become relevant due to the strong pressure brought to bear by women’s and feminist groups. An issue that for a long time was kept and repeated in private has now become public. To date various political actors, the women’s movement and other social sectors have taken on the task of turning intentions into concrete actions and in this way contribute to achieving the political, judicial, social and cultural transformations necessary to counteract the structural causes of violence against women, boys and girls within the family.

Rights of political participation

528. In Colombia parity of representation of men and women in publicly elected posts has not been achieved. Moreover, the percentage of women elected to these posts has stagnated and has not exceeded 12% in the last decade²². In October 2005 the “Agreement on the effective inclusion of women in politics” was signed. With this a commitment to dedicate “*a significant number of places to women in the slates presented at elections and in the leadership bodies of the party or political movement*” was subscribed to. In evaluating the election results in March 2006 it can be seen that only one party²³ complied with the agreement by including in its slates 43% of women candidates²⁴.

529. In the last municipal elections for the term of office 2004-2007 of the 1,098 municipalities in the country parity was achieved in only nine of them, 73 obtained female representation of between 30% and 49% and in 184 municipalities the women only obtained between 1% and 9% of the positions. More than half of the municipalities (758) in the country have never elected a woman as mayoress; of the 32 departmental capitals only eight have had a woman elected to the post²⁵. At a departmental, level since 1991, year in which direct election for governors was established only seven women have held the post of governor.

22 Confluencia Nacional de Redes de Mujeres y otras, Op. Cit., P: 15

23 The party MIRA, which is a political party that elected two senators to the Congress. It is a party with a christian orientation and its militants are mainly women.

24 Ibid. p.15

25 Lina María Arango y Fresia Guacaneme. Participación Política de la Mujer en Colombia (Political participation of women in Colombia). GTZ, Fescol, USAID. Bogotá: 2006.

26 Confluencia Nacional de Redes de Mujeres y otras. Op. Cit., p:15

27 Procurator General of the Nation, Bulletin 086 7th of March 2006

28 Confluencia Nacional de Redes de Mujeres y otras. Op. Cit., P: 16

29 Ibid

30 Rosa Emilia salamanca. Falta de condiciones, garantías y oportunidades para la realización de los DESC (Lack of conditions, guarantees and opportunities for the realization of the ESCR). Tribunal Nacional de Mujeres y DESC, caso 4 (National Tribunal of Women and the ESCR, case 4) . ILSA, ATI, Casa de la Mujer. Bogotá: 2006, p. 138.

31 UNDP (2007). La equidad de género en Colombia (Gender equality in Colombia), p. 24. Available at: http://www.pnud.org.co/img_upload/196a010e5069f0db02ea92181c5b8aec/La%20equidad%20de%20genero%20en%20Colombia%202007.pdf.

32 See Chapter 6 of this report on the peasantry paras. 330, 349 and 350

530. In the elections carried out for the Congress in 2006, the Senate had twelve women elected which represented 12% of the organism, whilst in the House of Representatives only 14 women were elected, 8.5% of the total. The problem is that those who put themselves forward are not elected. In the last elections to the Senate there were 162 candidates but only 7.4% of them were elected. Twenty two of the 32 departments have no female representative in the House²⁶.

531. The quotas for participation in the public administration posts in the country is regulated by the Law 581 of 2000. This stipulates that in high ranking decision making posts at least 30% of them should be held by women. According to the Procurator General of the Nation, six years after the coming into force of this law around 35 public bodies had not complied with this law²⁷.

532. In the social organizations the situation is no different. In the north of Cauca, where there is a significant indigenous population, of the 16 indigenous legally recognized authorities (cabildos) only two governors and five substitutes are female. In the delegation of the Regional Indigenous Council of Cauca (CRIC) there are no female counselors and in the Association of Cabildos in the North of Cauca there is only one woman amongst the seven members. Of the 708 indigenous governors registered with the Ministry of the Interior in 2003, 91 or 12.85% were women²⁸.

4. Situation of the economic social and cultural rights of women

533. According to the data of the 2005 Census, 51% of the population is female and 49% male. The rate of economic growth, close to an average of 5%, in the last few years did not translate into a reduction in poverty. On the contrary this has worsened. In 2005 60% of the Colombian population lived in poverty. Of these families, 26.6% of the heads of the household were woman. In the same year 25% of the Colombian population was indigent (complete lack of resources to obtain basic daily food). Of these homes, 31% had a female head of the household²⁹. In Colombia the rate of poverty amongst women rose from 75.5% to 78.1% between 2000 and 2004. Likewise the indigence rate increased from 41.3% to 43.6% in the same time frame³⁰.

534. Colombia is one of the countries in which there is a great concentration of land as is shown by the Gini coefficient for land, which is higher than 0.83. This inequity has been favored by persistence of the armed conflict with a special impact on women³¹. Some studies carried out on the issue point out that legislative advances on the issue of the right of women to own land are restricted by the paltry degree of implementation of the agrarian reform and by the inequality of rural women which is translated into the social undervaluing of the work they do, the limited access to education, technical training and social security³². To

this is added the barriers that exist for the participation and input of rural women in decision making spaces³³.

Right to work (Articles 6 & 7 of the ICESCR)

535. In the last decades there have been substantial changes in the conditions of women's access to the labor market. However, the collective social consciousness, the cultural and historical constructions and the political and economic arrangements still constitute a barrier to women not being exposed to inequity and inequality in this area.

536. According to the Global Household Survey of the DANE in the trimester of March to May 2008³⁴ 53.2% of the population of working age (PET)³⁵ was made up of women and 46.8% by men. This tendency is reversed with the Economically Active Population (PEA)³⁶ of which 57.3% are men and 42.7% are women whilst the Economically Inactive Population (PEI)³⁷ is made up of 68% women and 32% men. If one breaks down the PEI by sex one finds that: of those studying 59.9% were women whilst 29.8% were men; of those that did household chores 61.4% were women and 10.9% men; and those who engaged in other activities (permanently incapacitated for work, people of independent means, pensioners or retired people and those who were not interested in or believed it was not worth working 29.2% were women and 8.8% were men.

The Committee is concerned that the national minimum wage is not sufficient to ensure an adequate standard of living for workers and their families. The Committee is also concerned that there is still a large disparity between the wages of men and women, particularly in the commercial sector, and that according to the Presidential Advisory Office on Women's Equity, women's wages in general are 25 per cent lower than men's.³⁸

537. The difference in salary incomes between men and women still persists. According to the DANE "the biggest wage gap between men and women is in the group of employees; service providers, professionals, technicians, executives and salespersons; groups in which the average salary of men is on average 30% higher than the salary of women"³⁹.

33 Donny Mertens. *Tierra, derechos y género leyes, políticas y prácticas en contextos de guerra y paz*. Informe final de la Consultoría sobre Derechos de las Mujeres a la Tierra (Land, rights and gender, laws, policies and practices in contexts of war and peace). UNIFEM, Programa Paz y Seguridad. Bogotá: UNIFEM, 2006, p. 43

34 National Statistics Department DANE, 2008. Global Household Survey, GEIH. Available at: http://www.dane.gov.co/daneweb_V09/index.php?option=com_content&view=article&id=121&Itemid=67

35 PET: this is comprised of those people over the age of 12 in the urban area and over 10 in rural areas.

36 PEA: It is also referred to as the labor force and it is those people of working age who are actually working or are looking for work.

37 PEI: comprises all those people of working age that do not take part in the production of goods or services because they don't need to, can't or are not interested in having an economically remunerated activity. This group includes students, housewives, pensioners, retired people, disabled, people who are not interested or believe it is not worth working.

38 CESCR Concluding Observations (2001), Op. Cit., para. 16.

39 DANE & UNDP (2004). *La perspectiva de género: Una aproximación desde las estadísticas del DANE (Gender perspectiva: An approximation from the statistics of the DANE)*. Bogotá, p. 37

Concept	April – June						
	2001	2002	2003	2004	2005	2006	2007
All 13 areas							
Wage Earnings	481	517	558	613	688	703	870
Informal Wage Earnings - Total	318	340	365	420	443	494	614
Formal Wage Earnings - Total	721	779	834	875	1.024	988	1.190
Men							
Wage Earnings - Men	542	580	654	697	775	793	987
Wage Earnings - Hombres	367	407	437	499	523	586	735
Wage Earnings - Hombres	790	814	937	943	1.102	1.055	1.284
Women							
Wage Earnings - Women	412	450	454	524	590	604	733
Wage Earnings – Women	264	273	291	341	357	399	481
Wage Earnings - Women	638	738	710	794	929	906	1.073 ⁴⁰

40 The values in the table are in thousands of Colombian Pesos.

41 Taken from: National Union School Informe nacional de trabajo decente 2008, Op. Cit.

42 Dane, 2008. Op. Cit.

43 Rate of Employment: This is the percentage proportion between the active population (OC) and the number of people that form the population of working age (PET)

44 TD: This the percentage rate of the number of people that are seeking work (DS) and the number of people that make up the work force. (PEA)

Table No. 7 Average Wage Earnings of the population, total working population, formal and informal according to sex. Source: DANE⁴¹

538. Another type of information on the differences of the labor situation between men and women, shows the nature of female insertion in the labor force. According to the Global Household Survey, for the trimester March to May 2008⁴², the rate of female employment⁴³ (TO) was 40.5% whilst that of men was 65.5%, which reflects the difference in employment opportunities generated in the country for women and men. Also the Unemployment Rate⁴⁴ (TD) has a greater impact on women; in the period indicated it was 14% whilst the male rate was 8.7%.

539. The labor reform of Law 789 of 2002 which expanded the ordinary working day and reduced payment rates for Sundays by 35% has caused women to enter into informal working relations in order to compensate for the loss of purchasing power; they have shifts of up to 16 hours a day and they are forced to reduce

expenditure on education, health and housing. “Colombian women today work more and are poorer than before”⁴⁵

On the Community Mothers

540. In relation to the Committee’s recommendations on the issue there hasn’t been any progress made: the community mothers still receive less than the minimum wage and are not recognized as workers.

In 2001 the CESRC reiterated its 1995 recommendation in urging the Colombian State to regulate the status of community mothers in order for them to have the right to a minimum wage⁴⁶.

541. The Governments’ argument for not complying with this is that the community mothers’ program works as a *“model of social co-responsibility that seeks the participation of the community in the raising and development of minors”*⁴⁷ Such a proposal from the Government is detrimental to the social valuation of the work carried out by the community mothers and transfers responsibility to provide care services for infants from the State to these women. This is even the case when the tasks carried out by them are of great responsibility: *“in their daily work, looking after groups of up to 14 children, the 78,573 community mothers of the Colombian Institute of Family Welfare have to change diapers, prepare three meals per day that are given to the children and look out for their welfare and integrity.”*⁴⁸

542. Despite the recommendations of the CESRC in relation to the discrimination against women and the labor situation of community mothers by the Government and the Institution responsible for it, the Colombian Institute of Family Welfare (ICBF) no policies have been designed or implemented aimed at tackling the problem and guaranteeing the labor rights of these 78,573 women⁴⁹.

543. Whilst it is true that there has been progress made on an increase in the subsidy for community mothers as a result of the mobilizations of these women and their associations it is still lower than the legal minimum wage.

45 Confluencia Nacional de Redes de Mujeres and others, Op. Cit.

46 Cf. CESRC, Concluding Observations 2001, Op. Cit, para. 35

47 Cf. Senator Elsa Gladys Cifuentes. Speech in the first debate on the Bill No. 182 of 2007 Senate which guarantees the Labor and Social Rights of the Community Mothers of Colombia. Bogotá: Imprenta Nacional, Gaceta del Congreso 136.

48 Newspaper, El Tiempo, electronic edition. Incrementan \$100 mil de bonificación a madres comunitarias, pero su salario no llega al mínimo (Increase of \$100,000 in subsidy to community mothers, but their salary is not equal to the minimum). April 14th 2008. In: <http://www.eltiempo.com/archivo/documento/CMS-4098546>. Fecha de consulta: 1 de agosto de 2008

49 Contribution of CLADEM, Tribunal de Mujeres y DESC, ILSA y de la Mesa Nacional de Negociación de las Madres Comunitarias (en la que participan organizaciones como SINTRACHOBI, ADDHIP, AMCOLOMBIA, USTRAHBIN). (Womens Tribunal and ESCR, ILSA and the National Roundtable of Negotiation for the Community Mothers [in which organizations such as SINTRACHOBI, ADDHIP, AMCOLOMBIA, USTRAHBIN participate])

Year	Amount for full time 13 children	Amount for part time 13 children	Amount for Fami 24 users	Percentage Increase
	Mother / Month	Mother / Month	Mother / Month	
2002	143.130	119.340	109.956	
2003	153.270	127.530	117.468	7.1%
2004	161.070	133.770	123.348	5.1%
2005	168.480	139.620	128.904	4.6%
2006	185.250	153.660	141.792	10.0%
2007	200.070	166.140	153.132	10.0%
2008	300.300	214.110	184.596	50.1%

Table No. 8 Source: ICBF⁵⁰

⁵⁰ Document ICBF. Hogares Comunitarios de Bienestar, 20 años construyendo amor (Community Welfare Homes, 20 years building up love. Bogotá, April 14th 2008

⁵¹ Article 3 of the Regulatory Decree 1340 de 1995

⁵² Senator Elsa Gladys Cifuentes, Op. Cit.

⁵³ These contributions are paid as a percentage of the wages bill of the workers in the companies and finance the , ICBF (3%), Sena (2%) y Family Allowance Funds (4%).

544. As can be seen in this table the work of a community mother is valued at less than a minimum wage even though her dedication to the care of children requires great responsibility in daily working shifts of more than eight hours.

545. Some of the reasons given by the Colombian Institute of Family Welfare (ICBF) for not recognizing the labor rights of the community mothers are related to the type of connection these women have to the programs: *“the connection of the community mothers as well as other people and organisms of the community that participate in the Welfare Homes through their supportive work constitutes a voluntary contribution because the obligation to attend and protect the children corresponds to the members of society and the family⁵¹”*.

546. It is also said the ICBF has a large budget deficit for which recognizing its labor obligations to the community mothers *“could seriously alter and affect the national treasury.”⁵²* This economic crisis is linked to the reduction in the principal source of revenue of the ICBF: the parafiscal contributions⁵³. On the one hand there is the evasion of these payments by the companies and on the other the labor reform which the current Government promoted and which encouraged businesses to generate employment without having to make parafiscal payments.

The result: less resources for social investment. The increase in the budget of the ICBF was less than 7% in 2003, 16% in 2008 which was similar to 2007. The direct consequences of the budgetary deficit have been: the low subsidy paid to the community mothers in contravention of the standards of labor rights as has already been mentioned; the closure of the community homes, the reduction in the coverage of the infant care programs and the continuing deficiencies in the conditions for the nutrition, care of the children and the pedagogical work.

547. In relation to the closure of community homes⁵⁴; in 2003 there were 43,444 traditional full time homes and 17,732 part time ones. In 2004 the former had declined to 42,905 and the latter to 17,601. The closure of 670 homes in one year meant a reduction in coverage for 8,710 children that are no longer attended to under this scheme⁵⁵.

548. In relation to the right to social security for community mothers the progress made is poor. According to the ICBF the community mothers and the gardeners present the following picture in terms of access to the benefits of the System of Social Security in Health: Of almost 78,000 community mothers, 26,000 are affiliated to the Special Regime in Social Security; 9,440 are affiliate to the Contributive Regime; 37,000 are affiliated to the Subsidized Regime and 14,187 are not affiliated to any of these regimes. In the relation to the System of Social Security in Pensions only 6,385 community mothers are affiliated to the pension regime.

549. Whilst it is true that as a result of the mobilizations of the social movement of the community mothers there have been some advances in the conquest and vindication of some rights e.g. social security in health for them and their family unit, Law 509 of 1999, modified by Law 1023 of 2006, little or nothing has been achieved in the recognition by the State and the public institutions with responsibility for the labor rights of the community mothers and other rights such as housing and the education of the women involved in these programs.

550. What we have today as progress, from the perspective of the ICBF, is a policy of *subsidies* (Pension Solidarity Fund, Savings and Housing Fund, Literacy Programs) which in any case are not sufficient to allow the women and children to live in decent conditions nor to remove the causes of discrimination on the grounds of gender. What they really are, are focalized policies with which the States aims to obscure its inefficiency and lack of interest in the area of social investment and the satisfaction of the rights consecrated in the ICESCR and the Political Constitution.

551. The new social policy of the current Government is characterized by a series of subsidies aimed at various groups of the population in poverty or extreme poverty. With this policy the Government aims to reduce poverty from 46% in 2006

54 These Community Homes functioned in the houses of the community mothers in the whole country; they are generally located in poor sectors and they deal with on average 13 boys and girls (ages between two and seven years of age) as well as other beneficiaries such as lactating pregnant mothers (FAMI homes). Other schemes work from community spaces (Neighborhood Houses) and in installations built by the State but administered by the community associations (Multiple Homes)

55 It is true that one has to note that in 2004 there was a slight increase in women working in the Multiple Homes scheme but at the same time there was a reduction in community mothers in other schemes.

to 39% in 2010 without altering the causes that gave rise to the socio-economic exclusion, but rather resorting to barely palliative solutions.

552. These policies of focalized conditional subsidies are centered on the family as the axis of intervention. They are expressed in assistentialist style programs such as *Families in Action*, *Forest Ranger Families* and *the Bank of Opportunities*, *employment and income generating programs*, *housing and health for women in a situation of displacement*, amongst others that form an integral part of the policy of democratic security of the Government of Álvaro Uribe Vélez and are linked to the strategy called Network of Social Protection for overcoming extreme poverty –JUNTOS⁵⁶.

⁵⁶TRANSLATOR'S NOTE: JUNTOS means together.

553. It is the context of this logic that the ICBF conceives the social programs for the community mothers: stimulate savings for the purchase or improvement of housing through the National Savings Fund, access to the Solidarity Fund to subsidize the General Pension Regime and access to the sub account of Subsistence when they don't meet the requirements to access the Pension Solidarity Fund.

554. These subsidy policies are in contravention of the ESCR and the principles of universalization of health, pension and employment. They deepen the poverty, the exclusion and discrimination with a disproportionate effect on women. These programs don't solve the problems that women have by taking charge of care within the family as the programs don't recognize the women as being entitled to rights nor their demand to live a life free from violence.

555. The focus on assistance and/or protection reinforces the stereotype that considers women as a "vulnerable" group debilitating their right to decide for themselves and from this point of view none of the assistentialist programs aimed at them are acceptable nor are they adequate. Neither do they allow the democratization of the family, they renormalize and exacerbate the social role assigned to women by the patriarchal culture.

556. In the case of Families in Action the program makes the women responsible for what happens inside the family as "Essential Carers" and does not permit progress on a policy based on the rights of women widely recognized in international treaties. It apparently facilitates attendance at school by the children and also food, but in as far as it does not combine the program with productive and employment generation policies for the families they become transitory policies without the impact that is sought under sustainable human development criteria.

557. The process of formulating the policies has done without the participation of the women as social actors. The Presidential Council for Equity for Women (CPEM) has promoted a type of "participation" in the programs with no agenda

of the women themselves and with no possibility of participating in the design and evaluation of them. The conception and form in which the programs are implemented does not have a rights based focus nor does it respond to the strategic needs of the women. The Council has not carried out a monitoring of key issues such as the labor reform, the political reform, the “Justice and Peace” law and the victims law, the negotiations of the FTA with the United States etc in order to at least measure the impacts that these initiatives have had or will have on the rights of women.

Sexual and reproductive rights (Article 12 of the ICESCR)

558. According to the last National Demographic and Health Survey (ENDS)⁵⁷ adolescents had a birth rate of 90 per 1000 women. Compared to 2001 adolescent fertility in the urban areas increased from 71 to 79 births per thousand whilst in the rural zone it fell slightly from 134 to 128 birth per thousand women⁵⁸. Also it was found that one in every five women from 15 to 19 years has been pregnant at sometime, 16% are already mothers and 4% are expecting their first child. According to figures from the DANE the mortality rate for breast cancer increased from 7.2 to 8.58 between 2002 and 2005 whilst the mortality rate for cancer of the uterus had a not very significant fall from 10.05 to 9.7.

559. The National Nutritional Situation Survey (ENSIN) of 2005 revealed that 19% of pregnant mothers were below weight; that 16.1% of women between the ages of 13 and 49 suffered from iron deficiency; 32% from anemia with special emphasis on the Atlantic Coast where the rate was 56.9%. Also 41.1% of pregnant mothers between the ages of 13 and 49 years suffered from iron deficiency and 44.7% from anemia. Women from SISBEN⁵⁹ level 1 disproportionately suffered from this condition compared to other groups with 37.8% compared to 22.1% of Sisben levels 4, 5 and 6.

Right to Education (articles 13 and 14 of the ICESCR)

560. In the educational system sexist cultural and discriminatory patterns are not analyzed nor evaluated by the different institutions that participate in the educational process. There are no adequate monitoring and evaluation systems in place specially in relation to quality, and equity from a gender perspective⁶⁰. Despite the gains made by women in higher education access to doctoral programs continues to be highly inequitable. According to the Colombian Observatory for Science and Technology in 2004 there were 4,780 female researchers and 7,971 researchers. In the last few years the participation of women in the number of graduates of doctoral studies has risen above 30%⁶¹. Also despite the fact that women are present in almost 90% of research groups, they are only representative as research assistants⁶².

57 The survey shows that the youngest women are those who have greatest difficulty in controlling their fertility and exercise their rights and receive timely adequate information on their health and on sexual and reproductive health /

58 Profamilia. Op. Cit.

59 SISBEN: is the System for Identifying Potential beneficiaries of Social Programs. This an identification instrument that organizes people according to their socio-economic condition which permits the selection of beneficiaries of the social programs that the State manages. If a person has been identified as a potential beneficiary, i.e. was position between level 1 and 3 they may access subsidies awarded by the State through different programs depending on the regulations of each one. Taken from <http://www.sisben.gov.co>

60 Confluencia Nacional de Redes de Mujeres and others, Op. Cit., P: 12

61 Portafolio.com.co, June 7th 2008

62 Doris Olaya, La creciente participación de la mujer en la investigación en ciencia y tecnología a finales de la última década. (The growing participation of women in science and technology research) In: Colombia Ciencia y Tecnología. Ciencia y Género. Vol 21, N°1 January - March 2003. Colciencias, p: 17

⁶³ Article 10 of the Protocol states that "Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9". Of the 91 countries that have ratified the protocol only three have made use of this right (Bangladesh, Belgium and Cuba.)

⁶⁴ The interpretative declarations represent a unilateral declaration by a State or an international organization that has the aim of clarifying the sense in which they subscribe to the provisions of a treaty without contravening the original aim

5. OPTIONAL PROTOCOL OF THE CONVENTION FOR THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

561. This protocol incorporated into Colombian legislation through Law 984 of 2005 was an important step in the partial compliance of the Special Rapporteur Recommendations on Violence against women. However the Government in exercising the right established in article 10 does not recognize the competence of the verification Committee in this treaty⁶³ which prevents the Colombian State from being subjected to an investigation by this organism in relation to the grave and systematic human rights violations and thus avoids being on the receiving end of concrete recommendations that flow from the investigation.

562. In addition it also made interpretative declarations of article 51⁶⁴ that the provisional measures mentioned in the article exclude those that imply giving immediate effect to the ESCR "which will be applied according to the progressive nature of these rights". This ignores the fact that there are obligations of immediate compliance in the area of ESCR and limits the right to integral reparations given that integrality includes commitments in this area.

563. In any case the establishment of these restrictions on the application of the protocol, whilst it denotes the intention on the part of the Colombian Government to limit its responsibilities to the female population in no way does it limit its obligations to prevent, investigate, sanction and make reparations to women victims of violence.

CONCLUSIONS

564. As was already pointed out there has been a step back in the area of an integral guarantee of rights, which is aggravated by the impact on the lives of the women of the armed conflict. The State's lack of protection towards women and the existence of alarming inequalities in the female population according to age, socio-economic condition, ethnic group and sexual orientation constitute a barrier to the full enjoyment of the ESCR. The obligations undertaken by the State in the ICESCR and the recommendations of the Committee are not a priority in the Government's public policies.

565. The CESCR needs to insist on compliance with the Recommendations formulated in 1995 and 2001, particularly in relation to the laborization of the community mothers and the reduction in the wages gap between men and women. It would be important that the CESCR asked that the public policies that are designed and implemented have a special emphasis on women with the aim of reducing discrimination, promoting social inclusion and have an impact on the prevention of all types of violence against women.

CHAPTER X

CHILDREN

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.¹

1. MONITORING OF THE RECOMMENDATIONS OF THE CESCR

566. In its examination of the IV Report by the Colombian State on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) the CESRC made two recommendations² in relation to children:

“40. The Committee urges the State party to take effective measures to strengthen existing laws on child labor and to improve its monitoring mechanisms in order to ensure that those laws are enforced and to protect children from economic exploitation. In this respect, the Committee urges the State party to ratify ILO Convention No. 182.

41. The Committee calls upon the State party urgently to undertake measures to address the problem of street children and children affected by armed conflict and to prevent and discourage children from taking up arms.”

567. As shall be seen further on, the causes of concern that motivated these recommendations by the CESRC persist in the period 2000-2008. Despite the adoption of the Law on Infancy and Adolescence which derogated the previous Minor’s Code through Law 1098 of 2006³ and some special programs adopted by the Colombian State to attend to some situations that generate violations of the rights of children and the youth, the level of response continues to be contingent and does not remove the causes of it.

568. During this period other organs of the United Nations System have registered grave situations of the violations of the rights of children. Thus, in a visit to the country by the UN Special Rapporteur on the Right to Education, she indicated in her report that 36 years after Colombia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) “education is still not free nor universal”⁴; the Special Rapporteur on the human rights and

¹ Covention on the rights of the child art. 19

² CESCR. Concluding Observations (2001), Op. Cit.

³ It should be pointed out that there are serious flaws in development of Code, especially in area of system for criminal responsibility for adolescents, whose implementation began in 20007

⁴ Report of the Special Rapporteur, Katarina Tomaševski. Mission to Colombia, Op. Cit., para. 12.

5 Report of the Special Rapporteur Rodolfo Stavenhagen. Mission to Colombia. Op. Cit., para. 35, 70

6 Committee on the Rights of the Child. 42nd Session. Examination of the reports presented by the State Parties in conformity with articles 44 of the Convention Concluding Observations – Colombia. UN Doc.. CRC/C/CO/CO3, 8th of June 2006.

7 Report of the United Nations High Commissioner for Human Rights on Colombia 2007. A/ HRC/7/39, 28th February 2008, para. 73

8 Cf. Report of United Nations High Commissioner for Human Rights on Colombia 2006. A/ HRC/4/48, 5th March 2007, para. 72-75

9 Committee on the Rights of the Child. Concluding Observations. Op. Cit. para. 48

fundamental freedoms of the indigenous people described the serious cases of malnutrition in indigenous children⁵ and in June 2006 the Committee on the Rights of the Child (Hereafter CRC) presented its observations and formulated a series of recommendations to the Colombian State, as much in the area of civil and political rights as the economic, social and cultural rights of children and adolescents in the country.⁶

569. To these recommendations are added other areas of concern which have been noted by the Office of the United Nations High Commissioner for Human Rights with regards to the situation of children in the context of the armed conflict given that there continue to be “cases of children seriously affected by anti-personnel mines, acts of sexual violence, indiscriminate attacks and acts of terrorism continue to be recorded”⁷, “homicides, “recruitment of children” and the employment by the army of children as informants.⁸

570. Below we will present a general overview of the situation of the rights of children in Colombia in an attempt to identify central aspects of public policy in favor of children on the basis of which the State should intervene to advance in the integral satisfaction of their rights.

2. SITUATION OF CIVIL AND POLITICAL RIGHTS OF CHILDREN.

Right to identity

571. The recognition of the right to an identity, through the register of births implies the incorporation of children as subjects of rights within a State and the possibility of access to a whole class of civil and political rights and economic, social and cultural rights, in particular the right to health and education. It should be pointed out that the Committee on the Rights of the Child expressed its concern that “20% of Colombian children continue to lack a birth cert, especially in rural areas and amongst the Afro-Colombian and indigenous populations”⁹.

572. The Public Defenders’ Office and the Procurator General of the Nation let it be known in 2006 that of every 940,000 births per year 150,000 children are not registered and almost 20 out of every 100 lack a civil register causing difficulty in their access to the protection and guarantee of their rights by the State¹⁰. On the basis of the Demographic and Health Survey in 2005 the coverage of civil register reached 90.2% which was a significant increase in comparison to the 73.6% achieved in 2000: however, there are great geographical disparities as 6.6% of children are not registered in urban areas and 16.6% in rural areas.

573. This forced the expedition of Law 962 of 2005, which stipulated that the National Civil Registry authorized in exceptional and well founded circumstances

the registry by public notaries¹¹ municipal mayors, magistrates and police inspectors. However the obstacles continue as the process of modernization of the Registry has not been completed and in various parts of the country there is no online registry or inscription of local registries in the national data base; there are economic reasons which prevent parents from going to the Civil Registry and the judicial framework still demands that the inscription be in the place of birth which is very difficult for displaced people.

574. On this last point, the Constitutional Court determined through Auto 251 of 2008 – in monitoring Sentence T-025 of 2004 on the state of matters unconstitutional in relation to the attention of the population displaced by violence in Colombia¹² that the non-recognition of the right to identity of children in a situation of forced displacement, understood as the lack of a civil registry or identity document of a significant proportion of the population under 18 in a situation of forced displacement constitutes an element of invisibility of their situation and so, a violation of their fundamental rights recognized by the Colombian Constitution (Article 14 and 44) and International Law (Article 7.1 of the Convention on the Rights of the Child and the Guiding Principle 20 on Internal Displacement).

575. It warned that it was not clear the General Registry of the Nation was giving preference, due to their situation of vulnerability, to minors in situations of forced displacement in the procedures for issuing identity documents; and there was nothing which could be identified as the provision of a differential service to the displaced population with an emphasis on children and adolescents. This is also reflected in the figures cited by the National Survey of Verification 2008 which refers to how “there was an almost universal registry of children under seven years of age (99.1%) in the RUPD, whilst for minors between the ages of 7 and 17 the coverage was substantially lower at 69.3%, a difference of almost thirty percentage points”¹³.

576. In the face of this the desentralization, improvement and flexibilization of the administrative processes and activities of the National Registry and an adaptation to the realities of the internal armed conflict are key whilst at the same time developing activities to promote and disseminate information on registry (registry campaigns), particularly in rural and marginal areas of the country. On this point the Inter-American Court of Human Rights pointed out that it “is the duty of the [State] to put in place mechanisms that allow everyone to obtain their birth certificate and other identity documents ensuring that these processes are on every level judicially and geographically accessible to make effective the right to recognition of legal personality”¹⁴

10 Available at: <http://www.defensoria.gov.co>.

11 These were later authorized by way of Resolution No. 1436 of March 23rd of 2007 of the National Civil Registry to continue providing the service of civil registry along with the special registrars, assistant and municipal Registrars.

12 Constitutional Court. Court Order 251/08. Protection of fundamental rights of children and adolescents displaced by the armed conflict in the context of overcoming the state of matters unconstitutional declared in Sentence T-025 of 2004, after the public session of technical information held on June 28th 2007 before the Second Court of Revision, October 6th 2008.

13 Monitoring Commission on Public Policy on Forced Displacement. National Survey of Verification. Report presented at the Constitutional Court. February 2008.

14 Inter-American Court of Human Rights, Case of the girls Yean y Bosico vs. Dominican Republic. Sentence 8th of September 2005, para. 22 párr. 22.

15 National Institute of Forensic Medicine (2007) *Foresis -Datos para la vida- (Foresis – data for life)*. Available at: <http://www.medicinalegal.gov.co/drip/for2007.html>

16 Cf. Committee on the Rights of the Child. Op. Cit.

17 This instrument came into force in Colombia on 03 September 2004

18 Presidential Council for Equity of Women. Official Notice No. 0043635/AUV 12100 of 28th April de 200, sent to Humanidad Vigente Corporación Jurídica. Internal Archive.

Right to protection

577. Despite the significant subregistry one can highlight that in 2007 a total of 77,745 reports of domestic violence were made, of which 13,913 were related to the ill-treatment of children i.e. equivalent 18% of all cases¹⁵. The Public Defenders' Office and the Procurator General of the Nation have pointed out that in Colombia the presence of a father in the family is very limited to the extent that in 2003, 60,000 reports of the non payment of food support were made and in 2004 17,729 criminal cases were taken (for non payment of food support and violence) and from January to November 2005 73,009 criminal reports were made for these same crimes. According to the Colombian Institute of Forensic Medicine in 2007 20,273 cases of sexual violence were reported and 85% of these cases were related to minors under the age of 18.

578. On this point the Committee for the Rights of the Child recommended that the State strengthen the mechanisms to control cases of violence, ill-treatment, sexual abuse, neglect or exploitation in the home, educational arenas, institutions and communities and that it guarantee the access to victims support programs and psycho-social recovery and other forms of reintegration¹⁶

Sexual commercial exploitation

579. By way of Law 800 of 2003 the Colombian State ratified the Protocol to prevent, repress and sanction human trafficking, especially women, girls and boys¹⁷ complementing the UN Convention on Organized International Crime. Later by way of Law 985 of 2005 it was given legal status by the Inter-institutional Committee for the fight against Human Trafficking, a consultative body of the National Government which coordinates the actions that the State takes in the fight against human trafficking.

580. In 2006 through a process "*led by the ICBF as coordinator of the National System of Family Welfare, the Ministry for Social Protection and the Delegate Procurator for the Defense of the Family with national and departmental participation, public and private organizations, civil society and in alliance with international aid bodies*"¹⁸ the "National Plan of Action for the Prevention and Eradication of Sexual Commercial Exploitation of Children and Adolescents 2006-2011" was formulated. This document states that every Government body and every territorial entity shall include alternative solutions in their development plans and make budgetary allocations and sufficient human resources available to prevent and eradicate the problem.

581. However, the allocation of resources has not been sufficient for their execution which is why it is to all intents and purposes inactive at the moment, whilst

the number of cases of sexual exploitation of children rises. According to the complementary report presented to the CRC by various civil society organizations 350,000 children and adolescents are sexually exploited. Whilst it is very difficult to establish the exact number, NGOs that have studied the issue are of the opinion that there are many more exploited in prostitution, sexual tourism (in Cartagena alone there are more than 1,000 girls used in sexual tourism), child pornography, trafficking for sexual purposes (Colombia is the second country in the world in terms of human trafficking), mail order marriages and the sexual use of children and adolescents by the armed actors¹⁹.

Situation of Children in the armed conflict

582. Despite Colombia ratifying the Optional Protocol of the UN Convention on the Rights of the Child in relation to the participation of children in armed conflicts²⁰ and signed the Paris Commitments and Principles in February 2007 there continues to be numerous cases of children that take part in hostilities. Although there are no unified statistics it is calculated that the number fluctuates between 7,000²¹ and 14,000²² with the average of age for recruitment being 13.8 years²³. It has even been established that at least one in every four combatants is a minor²⁴ and it has been determined that in some cases they represent 30% of armed units²⁵.

583. Despite the waning of the different armed groups claimed by the National Government and the process of negotiations with the paramilitary groups the situation, far from improving, has gotten worse. On the one hand the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) continue this practice which is considered to be a war crime and an infringement of International Humanitarian Law (IHL)²⁶. On the other hand the so called new paramilitary groups have increased recruitment in areas such as Urabá (Antioquia), Medellín and the Atlantic coast and the south western departments of Colombia²⁷. It is of particular concern that between 2007 and November 2008 the Early Warning System of the Public Defenders' Office issued more than 90 Risk Reports, which expressed its concern on forced recruitment actions that were taking place in the country²⁸.

584. Also, whilst the Armed Forces do not formally recruit people under the age of 18 there is ample evidence of the indirect involvement of children for intelligence activity among other things²⁹. The Committee on the Rights of the Child has expressed its great concern of this as it places the children in grave danger in the face of combatant groups as well as being in contravention of the IHL, particularly the principle of distinction³⁰. The same point was made by the Colombia Office of the United Nations High Commissioner for Human Rights (UNHCHR) who affirmed that "the disrespect of these principles [of IHL] is also attributable to members of the Army for using children as informants"³¹.

19 Observatorio sobre Infancia, Plan Internacional and Visión Mundial. Colombia. *En deuda con su infancia: Informe Complementary al Informe de Estado Colombiano al Comité de Derechos del niño 1998-2003*. (In debt to its children: Complementary Report of the Colombian State's report to the Committee on the Rights of the Child 1998-2003) Bogotá, 2006.

20 Approved by Law 833 of 2003 and officially ratified May 25th of 2005

21 UNICEF. *La niñez Colombiana en cifras* (Colombian children in figures). Bogotá, 2002, P: 42.

22 Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia. Document E/CN.4/2003/13, 24th February 2003, para. 45.

23 Public Defenders' Office. *Informe sobre los derechos humanos de la niñez en Colombia durante el año 2001* (Report on the human rights of children in Colombia in 2001). Bogotá, March 2002, pp.22-25.

24 Human Rights Watch. *You'll learn to cry, child combatants in Colombia*, September 2003. Available at: <http://www.hrw.org/reports/2003/colombia0903/colombia0903.pdf>

25 *Ibid.*, p. 15

26 General Secretary of the UN General Assembly Report of the General Secretary on children in armed conflicts. A/62/609-S/2007/757, 21st December 2007, para. 114.

27 *Ibid.*, para. 116

28 On this, see: Public Defenders Office, *Campaña Humanitaria: No más niñez y adolescencia reclutada* (Humanitarian Campaign: No more children and adolescents recruited). Available at: <http://www.defensoria.gov.co>

29 See, amongst other sources: General Secretary of the UN General Assembly op. cit. para. 115; the Procurator General of the Nation, the Zone of Rehabilitation and Consolidation of Arauca: Special Report, Bogotá, Colombia 2003; and the Coalition against the involvement of children and youths in the Colombian armed conflict and the Center for Justice and International Law (CEJIL), Report on the situation of children and youths involved in the Colombian armed conflict: failings in the process of disengaging children and youths from the paramilitary groups. Presented to the Inter-American Commission on Human Rights., Washington D.C. USA, July 2007.

30 Committee on the Rights of the Chile Op. Cit.

31 Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia. Document E/CN.4/2006/9, para. 68

32 Public Defenders' Office, *Caracterización de los niños, niñas y adolescentes desvinculados de los grupos armados ilegales: inserción social y productiva desde un enfoque de derechos humanos* (Characterization of children and adolescents removed from armed illegal groups: social and productive insertions from a human rights perspective), p. 24

33 Colombian Institute of Family Welfare (ICBF). Official Notice No. 030558, 15th of July 2007, Sent to the Lawyers Collective, José Alvear Restrepo", Internal Archive.

34 Human Rights Watch, "You'll learn to cry, child combatants in Colombia", September 2003, p. 16

35 The Public Ministry shares this concern. On this point see, Procurator General of the Nation, "Seguimiento a políticas públicas de desmovilización y reinserción" (Monitoring public policies on demobilization and reinsertion"), Bogotá, Colombia, June 2006, Vol II, pp. 31

36 Cf. Report on the situation of children and youths involved in the Colombian armed conflict: failings in the process of disengaging children and youths from the paramilitary groups. Presented to the Inter-American Commission on Human Rights., Washington D.C. USA, July 2007.

37 *Caracterización de los niños, niñas y adolescentes desvinculados de los grupos armados ilegales: inserción social y productiva desde un enfoque de derechos humanos* (Characterization of children and adolescents removed from armed illegal groups: social and productive insertions from a human rights perspective) Chapter II, p.21

38 *Humanidad Vigente. ¿Dónde están los niños y las niñas reclutados y reclutadas por la estrategia paramilitar?* (Where are the children recruited by the paramilitary strategy Article Comunidad No. 6 (magazine) April 2009.

39 Procurator General of the Nation. División de Registro y Control y Correspondencia Registration, Control and Correspondence Division. Official Notice No. DRC 2860, 4th of September 2008, sent to Humanidad Vigente.

Process of separation

585. The Public Defenders' Office said that "that to date no integral, public multi-sector, permanent sustained policy for attending to child victims of the armed conflict has been designed"³².

586. As regards the negotiation process with the paramilitary groups, whilst it is true that Law 975 of 2005 (Justice and Peace Law) establishes in article 10.3 the obligation to hand over all the children recruited under pain of not obtaining the judicial benefits that this norm contains, this commitment has not been complied with. From November 1999 to June 2008 around 1,039 children in the AUC severed ties with the organization (500 in the context of collective ceremonies³³). Bearing in mind that by the end of demobilization process almost 40,000 had turned themselves in and it is calculated that between 20% and 30% of the military units were children³⁴, where are the majority of them?³⁵.

587. On this point different hypotheses have arisen³⁶. The first is that they were removed from the collective demobilizations and sent to other parts of the country where paramilitary groups that did not take part in the negotiations with the Government or have rearmed themselves operate. The second is that they were placed at liberty and directly handed over to their families or left in the communities they originally came from, thus preventing them from receiving specialized attention.

588. On this point the Public Defenders' Office pointed out that:

"The illegal armed groups are not complying with their obligation to hand over minors in the demobilization process. This behavior by the illegal armed groups is depriving the minors affected by recruitment of receipt of specialized attention; as in many cases they are just simply returned to their home regions or in the best of cases to their families"³⁷.

589. However, on the 25th of August 2008 the former commander of the Elmer Cardenas Bloc of the United Self Defense Forces of Colombia – AUC, Freddy Rendón Herrera, alias "El Alemán" in a free version hearing stated that the High Commissioner for Peace, Luís Carlos Restrepo had suggested to him and other AUC commanders that in order not to prejudice the demobilization process that they should secretly remove the children. In a public communiqué the High Commissioner denied it and only recognized the failings in relation to carrying out a clear study on the number of minors involved in the AUC³⁸. To date, it is known that the Delegate Procurator for Administrative Control has opened an investigation against the functionary under file number 013-174308-2008 for negligence in relation to the separation of minors in the "demobilization process"³⁹.

3. SITUATION OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF CHILDREN

Right to an adequate standard of living (Article 11 of the ICESCR)

590. Whilst this right includes the right to the widest possible protection and assistance of the family, clothing, housing and food for the purposes of this report we will limit ourselves to the last point⁴⁰ in line with the concerns express by the CRC.

591. A key indicator of the living standards of the population is the nutritional level of minors under the age of five⁴¹. Malnutrition has negative affects on school performance, physical and cognitive development, the possibility of earning an income as an adult and on the mortality rates. In 2005, 12.1% of all minors in the country under the age of five suffered from chronic malnutrition or delayed growth⁴². This fact is related to the situation of poverty and exclusion. So whilst the total malnutrition rate amongst minors belonging to the lowest income group was 19.8% the proportion amongst the highest income group did not even reach 1%⁴³. Amongst minors under the age of five in 2005 1.8% suffered from acute malnutrition or emaciation⁴⁴. The children most affected by chronic or acute malnutrition are those under three years of age, a key period of development. Finally the global rate of nutrition, in which short term and long term effects are combined, rose to 7% in 2005, the departments with the highest rates being, La Guajira with 15%, Boyacá and Córdoba with rates of around 12%.

592. In the results of the last three National Demographic and Health Surveys of 1995, 2000 and 2005 there is no notable improvement in the behavior of the indicators for Acute Malnutrition in under fives, i.e. weight/size (of which the official assistance programs are largely responsible for). Likewise with Global Malnutrition (weight/age) of under fives shows that following a slight decrease from 8.4% to 6.7% it rose to 7%. Chronic malnutrition which has shown a slight decrease is still at the worrying level of 12.4% with clear differences between urban and rural areas (17.1% compared to 9.5%). The nutritional situation of ethnic minorities is critical; in 2007 there were hundreds of deaths in these communities due to malnutrition, which were reported in the press but for which the State did not take responsibility.

593. According to figures from UNICEF 16% of adolescents in the country show signs of delayed growth and 7% are underweight. The nutritional situation of rural, indigenous and displaced children, particularly girls is far below the national average⁴⁵.

40 Article 11.2 of the ICESCR

41 Some of the observations are taken from Observatorio de Seguridad Alimentaria y Nutricional (Observatory on Food and Nutritional Security) (OBSAN), Universidad Nacional De Colombia, Departamento de Nutrición. Dponible en: <http://www.unal.edu.co/obsan/>

42 Social Conpes Document 109. *Política pública Nacional de primera infancia "Colombia por la primera infancia"* (National public policy on early childhood "Colombia for early childhood"). Bogotá, DC., 3rd December 2007. Low size/weight

43 Ibid..

44 Ibid..

45 UNICEF. Country Program Document Colombia. E/ICEF/2007/P/L.44. Op. Cit., para. 7.

46 Plan Internacional – Universidad Nacional de Colombia: “Aproximación a la condición de los derechos de los niños, niñas y adolescentes en situación de desplazamiento forzado en las ciudades de Sincelejo, Cartagena, Quibdó y Tumaco. Junio de 2007” (An approximation of the state of the rights of children and adolescents in a situation of forced displacement in the cities of Sincelejo, Cartagena, Quibdo and Tumaco, June 2007. Report presented by Plan Internacional to the Constitutional Court 28th of June 2007.

47 Constitutional Court. *Court Order 251/08*. Op. Cit., p. 139.

48 Unicef. Country Program for Colombia. *E/ICEF/2007/P/L.44*. Op.Cit., para. 14.

594. Auto 251 of 2008 of the Constitutional Court indicated how hunger and malnutrition in children and adolescents in situations of forced displacement were outstanding factors in their daily lives and therefore one of the deepest and most urgent transversal problem to be solved. The small amount of food they do obtain is unbalanced, with carbohydrates and sugars being predominant and an absence of protein and minerals resulting in extremely high deficiency rates of essential nutrients amongst minors under 18 in a situation of forced displacement.

595. According to the figures mentioned in the Auto 23% of pregnant women in situation of forced displacement are underweight (a proportion four times greater than the proportion for the vulnerable population which is 5.3%). This generally leads to low weight in babies born to these mothers: “The newborn babies of parents in a situation of forced displacement have weights generally below the normal curve. This situation does not level out due to the conditions of poverty that they must face and the impossibility of earning an income to ensure adequate nutrition”⁴⁶

596. All of this means a delay in the psychological development and physical debility of the minors which affects their educational processes and socialization. “At this point in the life cycle the lack of adequate nutrition causes psychomotor retardations, on occasions irreversibly so, which affect the development in all areas. For example, at school they are those children who seem demotivated with difficulty in concentrating and learning i.e. children whose academic performance declines”⁴⁷

Right to work (Articles 6 and 7 of the ICESCR)

597. The National Development Plan 2006-2010 decided that the Ministry for Social Protection should take on the commitment to reduce child labor in the country. However, according to UNICEF, in Colombia “the rate of child labor is 8.9% for children from 5 to 17 years of age. However, amongst adolescents of between 15 and 17 years this rate goes up to 22.9%”⁴⁸. Eighty percent of them work in the informal sector and 323,000 children work as domestic help in other homes.

598. Between 20% and 25% of working children carryout high risk occupations. This percentage goes up to 70% in the agricultural sector. Approximately 50% of working children between the age of 12 and 13 do not receive a direct income, but are give other forms of remuneration. In the cases where the minors receive a remuneration the amount varies between 25% and 80% of the legal minimum salary. Only 23% of child workers have social security, a large part of them as beneficiaries, through the affiliation of some family member.

599. In the case of children and adolescents in a situation of forced displacement the figures are worse still. According to Auto 251/2008 of the Constitutional Court⁴⁹ the economically unstable conditions of the families in a situation of forced displacement cause high levels of early entry of their children and adolescents into the informal labor market, which becomes the only means of subsistence. This occurs because: (i) the families and care groups in situations of forced displacement have a greater number of members whose life needs have to be satisfied along with high levels of economic dependency; (ii) cultural factors that tolerate or favor child labor or (iii) psychological factors in the children themselves who having reached a school going age are already highly conscious of the economic situation of their family which leads to them to take on as their own, responsibilities of material sustenance which do not correspond to them.

600. The court also identified as principle forms of insertion of children and adolescents in a situation of forced displacement, informal sales, garbage recycling and begging as well as car washing, domestic service and the collection of leftovers in market places to take home as food for their families. These questions, in their opinion, affect the health and welfare of the minors, as well as the appropriate development of their educational process.

601. Regarding this situation the CRC expressed its concern at the scale of this problem and the risks that many children face in carrying out dangerous or degrading work.

602. In 2008 the “National Strategy to Prevent and eradicate the Worst Forms of Child Labor and Protect the Young Worker 2008-2015” was drawn up and the Ministry for Social Protection through Resolution 1677 of May 16th 2008 regulated the activities considered as the worst forms of child labor and set up a classification of dangerous activities and harmful working conditions for the health and the physical and psychological integrity of minors under the age of 18. This marked an important step in the process that the country has adopted in terms of taking on the problem in an integral fashion. However, there is a need for even greater efforts at a social level to reduce the economic, social and cultural risk factors that force the children and adolescents to work before the legal working age (15 years according to the Infancy and Adolescents Law).

**The right to enjoy the highest attainable level of mental and physical health
(Article 12 of ICESCR)**

603. There has been a decrease in maternal, neonatal and child mortality in the country. However, dramatic differences between the regions persist: the departments of Guanía and Chocó with 40 and 32.8 per 1000 live births respectively have rates that are more than double the national average. The main causes of

⁴⁹ Constitutional Court Court Order 251/08. Op. Cit.

⁵⁰ Profamilia, 2005

⁵¹ On this point, 5.2% of displaced adolescents between the ages of 12 and 17 years of age were pregnant before the month of February 2008.

mortality continue to be perinatal problems followed by congenital anomalies, acute respiratory infections (ARI) and diarrheic illnesses (ADI). For its part the National Demographic and Health Survey⁵⁰ shows that almost 19% of adolescents between the ages of 10 and 19 years have had a pregnancy, figure which rises to 30% in marginal zones; 16% are mothers and 4% are expecting.

604. In relation to the situation of forcibly displaced children and adolescents the Constitutional Court has stated that this population has high morbidity and mortality rates due to preventable childhood illnesses with higher prevalence rates than the vulnerable populations in the places that receive them. This is mainly due to the conditions of poverty in which they live, which can be seen in their low level of nutrition and in the unhealthy conditions in which they live and the lack of timely and adequate basic health services. These illnesses hit babies under the age of two hardest and are catalogued as follows: (i) gastrointestinal illnesses which frequently progress to acute diarrheic illness (ADI), (ii) respiratory illnesses which frequently progress to acute respiratory infection (ARI), (iii) dermatological illnesses, or (iv) viral infections caused by preventable pathogens.

605. This is due to the circumstances of poverty or misery that the displaced persons and families face alongside the serious deficiencies in the response of the State and center on four principal aspects: (1) the nutritional deficiencies in the minors, (2) the dreadful conditions of their housing in terms of hygiene, basic sanitation, overcrowding, unhealthy surroundings and a lack of access to essential public services, (3) the lack of adequate footwear and clothing, cleaning implements and basic personal hygiene habits; and (4) cultural and educational factors found in the families and care groups.

606. As regards access to a complete course of vaccinations, the Court stated that there was no clarity regarding the figures reported for coverage by various organizations. Although it acknowledged the existence of national and local vaccinations; the Tribunal highlighted the fact that the real impact of these campaigns is not known as there is no careful monitoring of the activities realized nor of the effective population attended to.

607. In relation to the sexual and reproductive health of girls and adolescents there were deficiencies in the attention given to teenage pregnancies⁵¹, maternal-infant health and the prevention of sexually transmitted diseases (STDs). There are no programs or campaigns to prevent or attend to the oral health of the children and adolescents in a situation of forced displacement.

608. The Constitutional Court warned that a significant proportion of displaced minors were not affiliated to the General System of Social Security in Health;

and there is no proactive focus on preventative health measures amongst children and adolescents.

609. According to UNICEF⁵², the HIV figures increased from 0.02% in 1998 to 0.7% in 2004 with more than 55,000 cases reported between 1983 and 2005. There is an estimated prevalence rate of 0.65% amongst pregnant women and rate of transmission from mother to child is 2%. The infection in youths aged 15 to 24 has been increasing: from 62 cases in 1989 to 706 cases in 2005. Between 1990 and 2005 1,343 cases of infection of children under the age of 15 were reported and it is calculated that around 4,000 children live with HIV/AIDS. There is no reliable data on the number of orphans due to HIV/AIDS.

610. The CRC was alarmed by the high percentage of the population that had no access to basic services, potable water supply and sewerage⁵³ which demonstrates the violation of the rights of children and the risk of exposure to unhealthy living conditions, especially in rural zones (according to the 2005 Census 13.3% of homes have no municipal water supply and 23.1% no sewerage system). There is a need for the Government to increase the coverage of basic services, improve access to and the quality of health services both in promotion and prevention and treatment and rehabilitation bearing in mind that there are more than 10,000 deaths per year in minors of less than one year old due to avoidable causes.

611. From the Educational Progress in Colombia Report⁵⁴ it has been calculated that a little over one million children and adolescents are not part of the educational system, mainly the poor and those who live in rural areas. What is more 7 of every 100 people over the age of 15 cannot read or write; and Colombians have an average of 8.3 years of education, which means many have not finished secondary school.

612. Like the failure rate the drop out rate is high; in first grade it is 8% and in sixth grade it is 7%. According to a study carried out by UNICEF and the World Bank⁵⁵ only 8 out of 10 children who start first grade finish 5th grade. Amongst the main causes for non attendance at the educational institutions by the children are (i) lack of money and (ii) the non adaptation of the educational system to children by not responding to their expectations of formation and those of their families and communities.

613. The Procurator General of the Nation revealed the persistence of various factors affecting the universal access of all children of school going age:

“1) The reduction in the effectiveness of educational coverage is seen in that only 77.4% of the population of school going age is enrolled in primary and secondary educational institutions. Of those enrolled 9.1% do not pass the levels

52 UNICEF. *Country Program Document, Colombia*. Op. Cit., para. 9.

53 Committee on the Rights of the Child.

54 Available at: <http://www.mineducacion.gov.co/cvn/1665/article-114383.html> - 38k

55 Cf. Report on the situation of the rights of the child in Colombia presented to the the Human Rights Council for the third session of the periodic universal review to be held in Geneva from 1st to 12th of December 2008 para. 10. Available at: http://bolivia.ohchr.org/docs/EPU/WV_CQL_UPR_S3_2008_WorldVision_Etal_ES_uprsubmission.pdf

56 Procurator General of the Nation. *El derecho a la educación: la educación en la perspectiva de los derechos humanos* (The right to education: education from a human rights perspective). Bogotá D.C., 2006.

57 Social Conpes Document 1 09. *Política pública Nacional de primera infancia "Colombia por la primera infancia"* (National public policy on early childhood "Colombia for early childhood"). Bogotá, DC., 3rd of December 2007

of their respective grades, which means that the effective rate of educational coverage is 68.3%.

- 2) The high cost of education. In 2003, the cost of enrollment, administration fees, uniforms, transport and books and school materials ranged between 392,326 pesos (US \$153) per year for students in Stratum I and 946,793 (US \$369) for students from economic Stratum II in secondary school.
- 3) The high desertion rates, the non-attendance and the older age student, particularly children in a situation of displacement. On this aspect the Committee on the Rights of the Child showed their concern in relation to the insufficient expenditure aimed at education, the inequity between the private and public sector and that the educational system in Colombia is not based on a human rights perspective⁵⁶

614. As far as access to education in early childhood is concerned the progress on this in has been very slow: of the three years of preschool stipulated in the General Law on Education, only transition level is provided, corresponding to children between 5 and 6 years of age with a gross coverage rate of 86%⁵⁷ and a net coverage of 63.2%. Regarding initial education programs and care aimed at children under the age of five these are dealt with by ICBF in programs which, as shown in the Report of the State to Committee on the Rights of the Child, have reduced their coverage in the last few years and their quality has been seriously questioned. Also it is noteworthy the absence of educational policies aimed at eliminating gender discrimination as revealed in 2006 by the Committee on all Forms of Discrimination against Women.

615. As regards the situation of this right in the case of displaced children and youths the Constitutional Court indicated that this is violated because (1) the process of forced displacement, as such, abruptly and violently shatters the preexisting educational process constituting as such a traumatic event which inevitably leads to a temporary suspension of the process and the later insertion of the minor in a new educational setting or the termination of such a process of formation due to the conditions that surround the displacement and the burdens that these place on minors under 18; and (2) the common problems in the educational arena which in practice hinder or make a mockery of the effective enjoyment of the right to education and the continuance and satisfactory culmination of the diverse cycles of integral formation.

616. These common problems identified by the Constitutional Court are found in the areas of (i) access to the educational system, (ii) the permanence in the system and the continuity of the educational process, and (iii) the real adaptability of the system and its pedagogical models to the extraordinary situation

of the minors displaced by the armed conflict, despite the formal and judicial measures adopted by the Government on this point.

Children in the situation of forced displacement⁵⁸

617. The various available sources for measuring agree that more than 50% of the population displaced by the armed conflict in Colombia are under the age of 18. Indeed the National Verification Survey presented by the Monitoring Commission on Public Policy on Forced Displacement to the Court in February 2008 points out that 54.3% of the displaced population included in the RUPD/SIPOD are between 0 and 19 years of age a proportion which is significantly higher than that of the general Colombian population, which is made up of 40.2% under the age of 20 and which does not take into account the wide under reporting in the official measuring system. From that it is valid to infer that the number of minors who are victims of forced displacement is much higher than what has been acknowledged to date. Also UNIFEM calculates that girls represent 23% of the displaced population, whilst boys and adolescents represent another 25%⁵⁹.

618. The magnitude of the figures is explained by various factors: on the one hand the dynamic of the armed conflict and the prevailing patterns of forced displacement (the victims of homicides and forced displacement are mainly men and the survivors are women and children); and on the other hand the exposure of minors to criminal acts with a general impact committed in the context of the armed conflict – such as terrorist acts, combat and cross fire, confinements and blockades of communities, massacres or threats to committ crimes.

619. Also substantially contributing to this phenomenon are the special risks to which the minors are exposed in the context of the armed conflict: being victims of individual crimes deliberately committed against their life and personal integrity by armed actors; forced recruitment by armed groups; frequently being victims of anti-personnel mines and unexploded munitions; being incorporated into an illicit trade that supports the illegal armed groups; being victim of alarming patterns of sexual violence against girls, boys and adolescents and : supporting strategies of social control by the illegal armed groups that operate in wide zones of the country which carry with them implicit standards of control that restrict and place in danger the minors under 18; risks which at the same time are causes of their forced displacement and that of their family and community.

620. The differential affectation of forced displacement on children and adolescents is manifested in three ways: (1) by the rapid passing of time during critical phases of their development as minors in a situation of forced displacement which generates an irremediable loss of fundamental stages in their process of growth with which the perverse impact of displacement projects itself and multiplies

⁵⁸ The general data for this part are taken from the Constitutional Court, Court Order 251 of 2008. Op. Cit.

⁵⁹ Pedraza, Nubia. *Género, Desplazamiento y Refugio en la frontera Colombia y Venezuela, UNIFEM – Colombia, diciembre 2005 (Gender, Displacement an Refuge on the Colombian Venezuelan border)*. Cited by the Fundación Dos Mundos - "Niños, Niñas y Adolescentes. En: Situación De Desplazamiento: Por un presente de oportunidades y un futuro de posibilidades (Children and Adolescents in a situation of displacement: For a present of opportunities and a future of possibilities)." Report presented to the Constitutional Court in June 2008.

towards the future of each one in their individual course of development, (2) by the transversal differential problems common to children and adolescents in a situation of forced displacement which are:

Disprotection in the face of various risks and dangers that directly threaten their rights such as ill-treatment; violence; exploitation; trafficking; begging and living on the streets; the use of illicit trade; social control by the illegal armed actors and the presence of gangs and groups of delinquents in their places of settlement; Hunger and malnutrition; Serious preventable health problems caused by the food problems they suffer and the unhealthy living conditions and the poor response by the State; Serious problems in the area of education, mainly in the areas of coverage and access, permanence, flexibility and adaptability of the system; Serious psycho-social problems; Serious problems in the areas of recreation; Serious problems in the areas of their capacity of participate and organize; and Serious problems in the exercise of their rights as particularly defenseless victims of the armed conflict and crime.

CONCLUSIONS

621. The absence of structural measures to face the problem of poverty alongside the weak intervention of the State in relation to the basic rights of children contribute to the fact that despite the rights of children being considered constitutionally fundamental, in practice they are one of the most vulnerable sectors whose rights are frequently violated.

622. In conformity with the Observations and Recommendations of June 2006 by the UN Committee on the Rights of the Child and particularly in the face of the implementation “ of a coherent and coordinated child policy in the national departmental and municipal development plans, that permit the real guarantee of the rights of children contained in the Convention on the Rights of the Child, its optional protocols and other relevant norms” we ask that in the context of the examination by the Committee on Economic, Social and Cultural Rights the Colombian State is asked for the exact advances it has made to carry out the promotion and protection of the rights of children and adolescents in Colombia; particularly the incorporation of their rights into the legislation and public policies in line with the recommendations of various international organisms that protect the fundamental rights of children and youths.

CHAPTER XI

LGBT POPULATION

Amongst the sexual rights is the right of every person to express their sexual orientation, taking due account of the welfare and rights of others without fear of persecution, privation of liberty or social interference¹.

1. MONITORING OF THE CESRC RECOMMENDATIONS

623. Although the CESRC made no explicit statement on the economic, social and cultural rights of the Lesbian, Gay, Transsexual and Bisexual population in its Concluding Observations of 1995 and 2000 it did express its concern to the Colombian State on the manifestations of violent intolerance towards this community², especially in relation to the phenomenon of “social cleansing”. In recommendation No. 195 of 1995 the Committee stated:

“The Committee is of the opinion that the phenomenon described as ‘social cleansing’ has not been eradicated and recommends greater vigilance in this respect and in particular the punishment of those persons who commit these crimes. The Committee also recommends that the fundamental causes of this phenomenon be studied and that it be solved by all the means at the disposal of the Government.”

624. Colombia has signed the most important human rights treaties that consecrate the prohibition of discrimination, amongst them the International Covenant on Economic, Social and Cultural Rights (ICESCR)³. However, this prohibition is not reflected in the daily experience of the LGBT population. Thus, there has been a recurrent concern expressed by the international community at the situation of the LGBT population in the country.

625. Recently, for the first time ever, the General Assembly of Organization of American States (OAS), approved a resolution that refers to sexual orientation and gender. That is the *Declaration on Human Rights, Sexual Orientation and Gender Identity*⁴ in which the OAS manifested its concern “at the acts of violence and the related human rights violations committed against individuals due to their sexual orientation and gender identity.”

1 Paul, Hunt. Special Rapporteur on the right of every person to enjoy the highest attainable level of physical and mental health. Report to the Human Rights Commission in its 60th session, 16th of February 2004, para. 54.

2 CESRC. Concluding observations of the Human Rights Committee 1995 Op. Cit., “16. The Committee deplores that so called “social cleansing operations continue to be carried out against street children, homosexuals, prostitutes and authors of infractions and as of yet no adequate, efficient, measures have been taken to guarantee the full protection of the rights of these groups, in particular the right to life”

3 This same concern has been expressed by the CESRC which highlighted that the rights to equality and non discrimination should be understood as “not stand-alone provisions, but should be read in conjunction with each specific right guaranteed under part III of the Covenant.” CESCR, General Comment No. 16 para. 2

4 OAS Declaration No. AG/RES-2435(XXXVIII-O/08), approved in the fourth plenary session, Medellín. 3rd June 2008.

5 Colombian Office of the UN High Commissioner on Human Rights. Towards full respect for the human rights of lesbian, gays, bisexuals and transexuals. Intervention of the Colombian Office of the UN High Commissioner on Human Rights at the presentation of the book "Voces Excluidas" [Excluded Voices] 13, September 2005. Available at: <http://www.hchr.org.co/publico/pronunciamientos/ponencias/ponencias.php3?cod=79&cat=24>

6 National Development Plan 2002-2006 "Towards a Communitarian State" and the National Development Plan 2007-2010 "Comunitarian State: Development for all"

626. The statement of the Director of the Colombian Office of the UN High Commissioner for Human Rights made on the 13th of September 2005 at the presentation of the book "Voces Excluidas"[excluded voices] also stands out.

"The High Commissioner of the United Nations and the Office in Colombia have observed for many years the situation faced by LGBT people – lesbians, gays, bisexuals and transsexuals- in the "context of the violence and the armed conflict the country is going through". In successive reports on Colombia presented to the Human Rights Commission, the last three high commissioners, - Mrs. Mary Robinson, Mr. Sergio Vieira de Mello and Dr Louise Arbour – have all made reference to the particular problem of this sector of the population, which, for numerous reasons, is amongst the most vulnerable groups in the face of actions and omissions caused by the abuse of power or by the infringement of the rules and customs of war.

Particularly worthy of concern by the Office are the complaints presented to the Office to denounce behaviors in which LGBT people have seen their fundamental rights to life, personal integrity, individual freedom, equality, non discrimination, free development of their personality, privacy, work, social security, health and education, violated or threatened.

This victimizing behavior has its roots in ideas, feelings and attitudes caused by intolerance (...)

The Office condemns and deplors the acts of physical violence on LGBT people, be they at the hands of state agents, private individuals incited by or with the consent or acquiescence of public servants or people who take a direct part in the hostilities of the internal armed conflict."⁵

2. ON THE V PERIODIC OFFICIAL REPORT.

627. Despite the *V Report* of the State to the CESRC pointing to big advances made in the rights of the LGBT people, reality does not match the results shown. First, it is important to point out that of the 961 paragraphs that make up the official report, only eight make any reference to this population group, thus showing the lack of interest of the Colombian State on the issue.

628. Secondly the V Report places an emphasis on the actions carried out by the Mayor's Office in Bogotá in relation to the elaboration of inclusive policies, without mentioning that these initiatives are by the local Government with various social sectors, but at a national level, with few exceptions, no relevant actions have been implemented aimed at protecting the rights of the LGBT population.

Thirdly in the formulation of the National Development Plans⁶ mention is made of just the intention to guarantee respect for the diversity of identities but no mention is made of the policies, programs and plans and strategies which will make that proposal real.

Invisibilization in the National Development Plan

629. In the National Development Plan 2006-2010 “Communitarian State: Development for All”, the chapter on Special Aspects does not include the LGBT population nor does it cover issues related to sexual orientation or gender identity. Neither does it consider them to be criteria for the development of an inclusive public policy that promotes and materializes human rights. In a similar fashion the formulation of the Development Plan for the period 2002-2006 “Towards a Communitarian State” did not contain any public national policy in favor of the LGBT population. On the contrary, high ranking officials instead of guaranteeing the right to non discrimination made tendentious public statements.

630. The President of the Republic, Álvaro Uribe Vélez in one of his televised speeches during the XXXII Communal Council of the Government of Southern Cesar made homophobic statements humiliating his adversaries and verbally attacking them with adjectives associated with women and gays. On that occasion in reference to supposed terrorists he stated the following:

“I see that the terrorists talk a lot, they have accustomed the country to this. They should talk less and make peace, otherwise we are going to finish them off. Out there, those sweet little effeminate voices that wore the country out every eight days. It was like a melody, they got us used to a serenade. Little voices trying to charm out loud and at the same time, under the table, they sent orders out to hijack planes and commit terrorist acts. We don’t swallow that tall tale. With us, first give over that honeyed voice, speak like women or as men. And we are going to take all the time necessary to finish them off.”
(Extracts from speech)⁷.

631. The position of some state agencies is of equal concern as they deny the historic discrimination against the LGBT and the need for a differentiated policy aimed at overcoming the violations of their rights. Such is the case of the National Planning Department (DNP), which has stated that it “*considers the LGBT population benefits from general public policies through the guarantee of non discrimination in access to basic services of the State and has not commented on nor put to the consideration of the CONPES a particular policy for this population.*”⁸.

⁷ Bertoni, Eduardo. Report for the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.

⁸ Response to a Right of Petition by Colombia Diversa to the National Planning Department (DNP) in November 2007

9 Colombia Diversa has a data base which is fed with press cuttings, denouncements by NGOs and individuals. This information is compared to the responses to the rights of petition presented to Office of Forensic Medicine, The Prosecution Service of the Nation, the Public Defenders' Office, the Police, the Mayoral offices of all the capitals in the country. It is most likely that the number of deaths of this nature is higher if one bears in mind the under calculation of this data in the information retrieval systems, in the media and also in the fact that not all cases are reported as homophobic violence.

10 Colombia Diversa. Report presented to the Inter-American Commission on Human Rights (CIDH) in its 137 session, public hearing on the situation of the rights of the LGBT population. Washington D.C. 5th of November 2009. Available at: http://www.colombiadiversa.org/index.php?option=com_content&task=view&id=738

11 Colombia Diversa. Situación de los derechos humanos de lesbianas, hombres gay, bisexuales y transgeneristas en Colombia, 2006-2007. Informe de Derechos Humanos Colombia Diversa (Situation of the human rights of lesbians, gay men, bisexuals and transexuals in Colombia 2006-2007. Human Rights Report Colombia Diversa. Bogotá D.C. 2008.

12 Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

13 Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

3. SITUATION OF THE HUMAN RIGHTS OF THE LGBT POPULATION

632. In Colombia there continues to be discrimination on the grounds of gender and sexual orientation and worrying cases of physical violence. In the years 2006-2007 alone there were 67 homicides of LGBT people registered and 31 cases of physical and verbal abuse by the Police⁹. Also of concern is the under reporting, the lack of investigation and sanctioning of the authors of these crimes, be they private individuals or members of the security forces (which would merit a more thorough investigation).

633. It is also of concern that the internal control offices of the police charged with the investigations describe these complaints as “rash” or assure that “there is no merit to opening a case”. What is worse is, as some activists and control organisms have pointed out, the functionaries encourage the plaintiffs to conciliate or withdraw the accusation despite this not being possible in disciplinary proceedings¹⁰.

634. Despite the Judicial System of the National Police (SIJUR) having no record of any abuse against the LGBT population, Colombia Diversa is aware of 31 cases. Only in 17 cases was there an investigation and in none of them was anyone sanctioned. Also, various regional Public Defenders' Offices have recorded violent situations faced by the LGBT population, amongst them, Middle Magdalena, Risaralda and Arauca¹¹.

635. For its part, the Procurator General of the Nation and the municipal ombudsmen/women who have the opportunity to exercise their prerogative and with that take over from the internal disciplinary control offices have not produced concrete results in relation to the reports of police abuse against LGBT people. As an example, in response to a right of petition in which the Procurator was asked for the number of investigations in which it had exercised its prerogative there was no report of any cases involving police abuse of LGBT people¹².

636. This not only generates exclusion and discrimination in relation to access to justice but rather it sets the scene for judicial inefficiency with the aggravating circumstance that the victims that report the incidents are exposed to further threats or aggressions: “the police officer accused continues to work in the same zones frequented by the victims which causes them not to make reports or withdraw the report for fear of reprisals”¹³.

637. The situation of discrimination and exclusion has at the same time generated a situation where the violations of the ESCR of the LGBT population go unnoticed and remain in impunity in the majority of cases. The armed conflict

has dominated public attention and positioned itself in the political agenda above all other equally important problems. As the organization Colombia Diversa points out *“in general, the issues of sexuality have been considered trivial and secondary on a political and judicial level as they have traditionally been associated with the private life of people and this concept has been reinforced in situations of armed confrontation and/or economic crisis”*¹⁴.

638. Considered as a secondary issue of little relevance to public opinion a cloud of mystery has been built up around problems related to the LGBT population which contributes to the ways in which rights are violated take place without the slightest reverberation or adequate monitoring by the relevant authorities. On this the Human Rights Report for 2005 elaborated by Colombia Diversa points out that *“this has translated into an absence of data, statistics, information gathering tools and finally of any public or private information that allows one to know the situation of the rights of the LGBT population that lives in the country.”*¹⁵

639. Respect for human dignity cannot be guaranteed unless the conditions that allow people to enjoy their ESCR and their political and civil rights in an integral fashion are put in place as the effective enjoyment of some of these rights is intimately related to the situation of others. In virtue of this principle, the State must make maximum use of the resources at its disposal with the aim of progressively achieving by all appropriate means the full effectiveness of the ESCR, independently of differences of race, color, sex, sexual orientation, religion, political opinion, national or social origin, economic position, birth or *any other social condition* that may cause interference in the enjoyment of them. This means that sexual orientation and gender identity cannot be criteria for negative discrimination in terms of human rights that are coextensive to the human family and are based precisely on their condition of humanity.

640. On the basis of the information reported by Colombia Diversa and Grupo de Apoyo y Estudio de la Diversidad de la Sexualidad de la Universidad Nacional de Colombia (GAEDS UN)¹⁶ [Support and Study Group of the Diversity of Sexuality, National University of Colombia] the following presentation of the reality of the ESRC of the LGBT population is given.

Right to work (articles 6 and 7 of the ICESCR)

641. The LGBT population faces greater obstacles due to discrimination on the grounds of sexual orientation and gender identity. The more the sexual orientation or gender identity differs from heterosexual norms the lower the possibility of attaining or keeping one’s employment as they must face all manner of discriminatory manifestations that are generally not reported¹⁷.

¹⁴ Colombia Diversa. Reflexiones en torno a los Derechos Humanos de personas lesbianas, gays, bisexuales y transgeneristas en Colombia. Documento preparado para la Oficina en Colombia del Alto Comisionado de Naciones Unidas para los Derechos Humanos (Reflections on the Human Rights of lesbian, gay, bisexuals and transsexuals in Colombia. Document prepared for the Colombian Office of the UN High Commissioner on Human Rights). Bogotá D.C. 2004

¹⁵ Colombia Diversa. Situación de los derechos humanos de lesbianas, gays, bisexuales y transgeneristas en Colombia (Human Rights situation of lesbians, gays, bisexuals and transsexuals). Bogotá D.C. 2005, pp: 9-10.

¹⁶ For further information consult the report elaborated by the GAEDS UN in collaboration with the Secretary of the District Government on the Historical Revision of the Evolution of the Human Rights of the Lesbian, Gay, Bisexual and Transsexual – LGBT- population in Bogotá from 1991 to 2006. Printed document.

¹⁷ Report on Colombia- Third Round of the Universal Periodic Exam (December 2008)

¹⁸ Between 2005 -2007 Colombia Diversa documented six cases of work place discrimination against the LGBT population: one transsexual who was not hired on a construction site due to gender identity, two gay men and three lesbians.

¹⁹ Cali, una ciudad poco amigable con los gay (Cali an not very gay friendly city)" Newspaper El País. Cali. 30th of July 2006, p. 6A

642. Not having a partner of the opposite sex often implies the loss of employment opportunities in spaces outside the working environment, conceived as being for heterosexual couples, in which one builds up relationships with one's colleagues or even in negotiations to improve one's working conditions¹⁸.

643. This situation is of even greater concern in institutions with a strong heterosexist and discriminatory component towards LGBT people, such as the armed forces and the police. It would seem to be an indispensable requirement to present oneself as a monogamous, heterosexual family man,. According to the newspaper El País "*In order to encourage marriage and family life amongst the ranks, the Ministry of Defense awards a 25% pay rise to married police officers and later some more for each child born: 5% for the first, 4% for the second, 3% for the third and 2% for fourth. The difference between a married officer with three children and a single one is almost 40%*"¹⁹. There is no need to point out that the fact that same sex marriages are not allowed constitutes a disadvantage in terms of wages for the LGBT people which at the same time is evidence of a violation by the State of the ESCR of this population.

Right to social security (Article 9 of the ICESCR)

Patrimonial rights of same sex couples

644. In 2005 there was no legal recognition of same sex couples, which is why the patrimonial rights, in particular the division of joint assets and the right to inherit, benefits in employment, protection from domestic violence, access to social security, decisions on the health of the partner, access to social subsidies, protection of the family home, right to be considered as a victim in reparations processes, migratory rights and all the other benefits that heterosexual couples enjoy are not applied to LGBT couples. This serious discriminatory fact was not taken up by any Government body; and consequently in 2007 the Constitutional Court had to speak out on the matter through Sentences C-75 of 2007 and C-811 of 2007 in which it recognized patrimonial rights and health rights for same sex couples.

645. What is more, contrary to what one could understand from a reading of paragraphs 153 and 154 of the V Report presented by the Colombian State, the Government's intervention in the matter was not favorable to the outcome. In all of the processes of constitutionality related to the rights of same sex couples the National Government through the Ministries of Finance, Social Protection, Agriculture and Defense intervened negatively on the ESCR of the LGBT people especially in relation to the provisions of Article 10 of the ICESRC which refers to the family. Ministerial declarations on the issue highlight the lack of coherence between the directives of the National Government and the Limburg Principles

on the application of the ICESRC which refers to the need to give special and timely attention to the adoption of measures to improve the quality of life of the disadvantaged groups taking into account the eventual need to adopt special measures to protect the cultural rights of minorities²⁰.

646. For its part the Congress of the Republic has for seven years refused to approve five Bills that sought the recognition for same sex couples even though these Bills only refer to patrimonial rights and social security, leaving aside other issues such as the adoption of children and marriage for same sex couples²¹.

647. In addition to this, even though the last Bill that aimed to recognize such rights²² had passed the legislative procedure without any major problem it was rejected in a conciliation debate, a stage which historically has been procedural and whose aim is to reconcile the texts of the two chambers of the Congress of the Republic²³. On this it is worth pointing out the ex Minister for the Interior and Justice, Carlos Holguín Sardí, who at that time was in charge of pushing the Government's legislative agenda in the Congress did not support the project. In fact, when it was turned down he stated that it "*was an innocuous initiative without any importance for the administration of Álvaro Uribe*"²⁴

Monitoring of decisions of the Constitutional Court

648. The Constitutional Court by way of Sentences C-075 of 2007, C-811 of 2007, C-336 of 2008, C-798 of 2008 and C-029 of 2009 has recognized the rights of same sex couples. Despite the line of jurisprudence developed by the Colombian Constitutional Court on the rights of same sex couples there has been a series of obstacles that have impeded effective compliance with them. Indeed, Colombia Diversa has found disturbing situations in which public functionaries block compliance with these sentences. Amongst the difficulties found are:

- Asking for requirements different to those demanded for heterosexual couples;
- Ignorance on the part of the functionaries of the new sentence by the Constitutional Court (Sentence C-029 of 2009); and
- Lack of knowledge of the rights recognized by the Constitutional Court for same sex couples which translates into an inadequate orientation and advice to people that seek information²⁵

649. In carrying out its work, Colombia Diversa has monitored the implementation of Sentence C-336 of 2008, which recognized the right to a pension for the surviving member of a same sex couple. In this work we have found some

20 Limburg Principles on the application of the International Convention on Economic, Social and Cultural Rights.

21 In recent years the following Bills have been presented in the Senate: Bill 85 of 2001, Bill 43 of 2002, Bill 113 of 2004, Bill 130 of 2005; in the House of Representatives: 152 of 2006. The previously mentioned Bills were archived on a vote or rejected on procedural points.

22 Bill No. 130 of 2005 - Senate and 152 of 2006 - House.

23 This Bill was passed in four debates in the House and the Senate.

24 Declarations made on the "W Radio" June 20th 2007.

25 Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

26 Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

27 P.M. Clara Inés Vargas Hernández. Sentence C-336 of 2008

28 Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

29 The request for a survivor's pension was conditioned to the "understanding that permanent same sex couples whose status is accredited in the terms laid down in Sentence C-521 of 2007 of heterosexual couples are also entitled to a survivor's pension" Sentence C-336 of 2008. Op. Cit. Report of Colombia Diversa to the CIDH.

30 Thus the Constitutional Court reiterated its own jurisprudence, that in the area of the rights of heterosexual couples the Court in Sentence C-521 of 2007 had demanded as evidence just the existence of a declaration of a *de facto* marital union to affiliate the heterosexual partner as a beneficiary in health. Op. Cit. Colombia Diversa report to CIDH.

31 Bear in mind that the nature of the marital union is that it be *de facto* and so the declarations may not exist even though the right exists. Likewise undeclared unions in which a member died before Sentence C-075 of 2007 (which recognized patrimonial rights of *de facto* marital unions of same sex couples) were not recognized. Report presented to the Inter-American Commission Op. Cit.

32 "The Court is of the opinion that the expressions on which the petition of clarification is based are not cause for equivocation, doubt, ambiguity or perplexity in their interpretation, as the text refers to the provisions of Sentence C-521 of 2007 and in this it is not expressly established that the partners of the couple are obliged to simultaneously appear before the public notary" P.M. Clara Inés Vargas, Court Order 163 of 2008. File 6947

33 Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

34 Colombia Diversa accompanied the three tutelas interposed for the recognition of the right to a survivor's pension for partners of the same sex. The fourth case proceeded on a different strategy by other plaintiffs. However, it recently came to the organization's attention and was supported before the Colombian Constitutional Court. The processes referred to are: T-2299859, T-2292035, T-2324790 and T-23869835. Colombia Diversa. Report presented to the Inter-American Commission Op. Cit.

obstacles that have arisen from the interpretation of the ruling of the sentence on whose full implications there continues to be different interpretations that resulted in the non recognition of rights in some cases²⁶.

650. The Constitutional Court recognized the "the lack of a real possibility for a homosexual individual to obtain a survivor's pension from their deceased partner of the same sex represented a deficit in the protection of the social security system in pensions and this affected their fundamental rights"²⁷. In this manner it is evident that the ultimate aim of the Court was the materialization of these rights²⁸.

651. However, in its ruling the Constitutional Court was of the opinion that proving a *de facto* marital union should be done under the same terms and conditions as heterosexual couples, i.e. accrediting the existence of the *de facto* matrimonial bond²⁹. This requirement had as an antecedent Sentence C-811 of 2007 in the area of the affiliation of health beneficiaries³⁰.

652. Nonetheless, the theoretical suppositions on which the sentences for affiliation to a health scheme and a survivor's pension for same sex couples are based are completely different, as when affiliating to a health scheme there is a joint declaration in all cases; on the other hand, with the request for a survivor's pension the death of one of the partners is required and consequently the joint declaration cannot always be made³¹.

653. Later in a petition for clarification from the Constitutional Court in which it was asked to clarify the fact that the declaration of *de facto* marital union must be made together as requirement for the effective awarding of a survivor's pension the Tribunal stated that the declaration did not have to be a joint declaration, it was sufficient that it was made by one person³².

654. In response to the rights of petition remitted to the pension funds in March 2009 in relation to information on the denial of pensions to same sex couples we received replies from all of them assuring that they were complying with Sentence C-336 of 2008 even though their replies referred to requirements of Law 100 of 1993. They said nothing of the differences in proof, which exist in practice between the heterosexual and same sex couples in order to obtain a survivor's pension³³.

655 On the basis of the replies and four cases³⁴ debated before the Constitutional Court for the recognition of rights some problems could be identified where the judgment of the Constitutional Court entered into contradiction with the arguments put forward by the pension funds:

- Survivor's pensions are not recognized in cases of deaths before April 16th 2008 as it is argued that the Sentence is not retroactive. So many partners that

died before the sentence will not have their rights on the grounds of same sex recognized.

- The only requirement demanded for the awarding of a survivor's pension is the joint declaration made by the permanent partners unlike the heterosexual couples that may use other methods in order to request the survivor's pension.
- None of the other mechanisms of proof which heterosexual couples have for the awarding of a survivor's pension are habilitated, with which the effective enjoyment of the rights are violated due to the violation of due process³⁵.
- Inequalities are generated and consequently discriminations are created between those in private pension funds and those affiliated to the Social Security³⁶.

656. These situations, which have arisen internally have even had to be taken before international instances, as was the case with Ángel Alberto Duque whose case is before the Inter-American Commission for Human Rights. The State has also refused to comply with the recommendations made by the United Nations Human Rights Committee through communiqué 1361/2005. Indeed in the said decision the Committee was of the opinion that the Colombian State in the case of Mr X vs Colombia violated article 26 of the International Covenant on Economic Social and Cultural Rights, which prohibits discrimination on the grounds of sexual orientation by “denying the plaintiff the right to the pension of his permanent partner on the basis of his sexual orientation”. However, despite the recommendation made by the Human Rights Committee the Colombian State refused to comply with it³⁷.

Right to enjoy the highest attainable standard of physical and mental health (Article 12 of the ICESCR)

657. The principle of non discrimination in health on grounds of sexual orientation has been ratified by the CESRC and the Committee on the Rights of the Child as well as by the Special Rapporteur on the right of all people to enjoy the highest possible standard of mental health. The problem in relation to the health service in Colombia has to do with this system being conceived of in terms of the basic needs of the heterosexual population, completely ignoring the needs and rights of LGBT people. The lack of public policies aimed at this group has impeded the operationalization of efficient strategies in the fight against, and the prevention of, sexually transmitted diseases. Many specific needs are not included in the basic health plans as they are considered “*sumptuous*” such as the treatments and sex change operations required by the transsexual population.

³⁵ The fund CITI COLFONDOS in its format for applications for pensions only asks for two witness statements from people who had knowledge of the *de facto* marital union between the deceased and the applicant for the survivor's pension as does the pension fund PROTECTION according to its customer service line MARCO AUGUSTO. Reply to a right of petition interposed by Colombia Diversa. Cf. Colombia Diversa. Report presented to the Inter-American Commission Op. Cit.

³⁶ The Department of Social Security in its memorandum 05544 of October 30th 2008 recognizes the individual declaration by the applicant as valid proof for same sex couples in requesting a pension in conformity with Sentence C-336 of 2008. Also it understands the future scope of the sentence is related to the financial effects of the same for which survivors who requested the pension before the issuing of the sentence in question will also receive from the 12th of June 2008 the corresponding monthly allowance.

³⁷ Colombia Diversa. Report presented to the Inter-American Commission, Op. cit.

38 Colombia Diversa. Report presented to the Inter-American Commission Op. Cit.

39 This piece of information was made known due to the work this foundation carried out in promoting the affiliation of transvestites to health system. Information supplied by the Santamaría Foundation LGBT, January 2008.

40 Integrated Form for payment of contributions. This brings together in one monthly payment pensions and health See Chapter II of this report. Right to Work

41 Colombia Diversa. Report presented to the Inter-American Commission Op. Cit. p. 28.

42 Ibid..

43 Colombia Diversa. Report presented to the Inter-American Commission Op. Cit. p. 29

658. According to the human rights report elaborated by Colombia Diversa in 2005 there were three different types of discrimination in the area of the right to health in Colombia: (i) the inexistence of protocols that guarantee adequate and timely provision of health services to LGBT people without any type of discrimination or degrading treatment against them (ii) the lack of adaptation of the health service to the needs of the transsexual population and (iii) the prejudice that confuses LGBT people with HIV/AIDS.

659. In this manner the quality of service provision in health for those affiliated to the subsidized regime or family affiliation is restricted to the basic services covered by the State. In this way, the needs not included in the basic health plans are luxuries and amongst those are the particular needs of the transsexual population³⁸.

660. The Santamaría Foundation in Cali has stated that “approximately 48% of them have no social security in health”³⁹. Some of them have means and make an integral health and pension contribution through the PILA⁴⁰. When they don’t make contributions they are theoretically covered by the subsidized regime or family affiliation; but in practice it is not the case.⁴¹.

661. The injection of oils to mould their bodies is a situation linked to the violations of the right to work and education for this population group. Between 2006 and 2007 on the occasion of elaborating its biannual report on the rights of the LGBT population, Colombia Diversa came across various cases of complications and even the deaths of transvestites from injecting strange substances into their bodies in order to achieve a physical aspect more in line with their identity. This situation has continued with reports of similar cases in 2008 and 2009. Some media have continued to stigmatize the issue relating it to the “innate” vanity of transsexual women. In this way public opinion gets a prejudiced perspective on the problem, far removed from a human rights based focus of the issue⁴².

662. The injection of unhealthy substances in unhygienic conditions in order to mould the body is more than an issue of vanity or a lack of care. It is an issue in which other factors are at play, such as the lack of work due to the discrimination that this population suffers and the eventual entry into prostitution. These implants in many cases respond to an economic imposition: they are means of sustenance. For the transsexual women of scarce economic means it has been a way of building their identity of achieving a coherence between their identity as an individual and their body⁴³.

663. In 2007 organizations such as the Santamaría Foundation reported twelve cases of disorders, abscesses and severe complications due to the applications by non-professionals of oils or liquid silicone for the hair and other strange substances. For her part, the transsexual leader Diana Navarro has been denouncing

for years cases of deaths related to these types of practices. Similarly complications of this nature have been reported by the media and as generally repeated denouncements by different transsexual activists in Colombia. Nevertheless, the governmental health agencies have not carried out any type of research or data collection that includes this problem⁴⁴.

664. In this manner, the deaths and complications caused by the silicone injection, on occasions, are not treated as they are considered to be sumptuous. In the same manner the health authorities have not considered carrying out preventative campaigns to eradicate these types of practices as once again they are considered to be esthetic questions and as complications the individual brought on themselves which is why measure are not taken to overcome this situation not just in the area of health but rather as integral measures to overcome the discrimination that affects the dignity of life of any individual⁴⁵.

Right to education (Articles 13 and 14)

665. The right to education contains obligations with immediate effect consisting in the adoption of concrete measures aimed at their full exercise without any discrimination⁴⁶, which in the case of the LGBT people; implies that this should be developed in an environment of integration and respect for differences which has an adequate acceptable pedagogical model especially in the area of sexual education. Contrary to this ideal situation, in area of education there are grave facts that limit the enjoyment of this right by the LGBT population. Firstly, the existence of school regulations that expressly or tacitly sanction LGBT people; the institutional indifference in the face of the dropping out of LGBT people; and discriminatory expressions by the educational authorities.

666. In educational institutions there are still manuals that sanction “homosexuality” and “lesbianism” and do not condemn the discrimination that the LGBT population is subjected to. At the same time discrimination on the grounds of sexual orientation is promoted by various instances of the educational system and is evident in the absence of public policies geared towards the LGBT population.

A case that was widely reported in the media was the case of two young lesbian students in the public secondary school “Leonardo DaVinci” in the city of Manizales who were not enrolled the following year, supposedly due to indiscipline. However, according to the students and their families what really happened was a case of discrimination on the ground of sexual orientation. This was shown in the judicial sentences on the case brought about by a tutela interposed against the said educational institution.

44 Ibid..

45 Ibid..

46 CESRC, General Comment No. 13. Op. Cit., para.. 43.

667. In short, the sexual orientation and gender identity are elements that give rise to exclusion and discrimination against the LGBT population. The enjoyment of political, economic, civil, cultural and social rights for which there already is a restricted and inequitable access for the general population are even more limited in the case of gays, lesbians, bisexuals and transsexuals.

CONCLUSIONS

668. The exclusion and discrimination of the State towards the LGBT population is seen in the omission, indifference and absence of state public policies in this regard, which is aggravated is one takes into account the fact that there are no procedures in place to guarantee the rights of this population group.

669. The marginalized reference to issues related to the LGBT population in the development plans does not in itself guarantee the respect, protection and compliance with the ESCR. What is needed is the implementation of effective measures that permit the application of the ICESCR to the LGBT population and the design of corrective and preventative measures that result in an improvement in the quality of their life.

670. The state of the ESCR for the LGBT population is unfavorable as there hasn't been the political will to put mechanisms in place to carry out, monitor and follow through on the rights of this population. It is important to highlight the lack of methodologies, instruments, data and registers that permit the evaluation and correction in a precise differentiated manner of the current situation of these rights and identify the actors responsible for the violation of the rights of this population.

CHAPTER XII

POPULATION IN A SITUATION OF FORCED DISPLACEMENT

All internally displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: Essential food and potable water; Basic shelter and housing; Appropriate clothing; and Essential medical services and sanitation. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.¹

1. RECOMMENDATIONS TO THE CESCR

671. In 2001 the CESCR took into account the situation of the population in a situation of forced displacement in stating “The Committee notes with serious concern the increasing number of internally displaced persons (IDPs). The Committee is particularly concerned that the IDPs come from the most disadvantaged and marginalized groups, predominantly women and children, peasants and members of the country’s indigenous and Afro-Colombian communities who have been driven out of their areas by violence and armed conflict. In particular, the Committee notes with concern the negative consequences of the military part of Plan Colombia, which has led to further displacements of population groups affected by the spraying of illegal crops.”²

672. In attending to this situation the CESRC recommended:

32. The Committee urges the State party to undertake effective measures to avoid the displacement of persons, to implement the decisions of the Constitutional Court in this regard and to establish a comprehensive public policy giving priority to this problem.

43. The Committee calls upon the State party to take steps to improve the living conditions of IDPs, in particular women and children, peasants and members of the country’s indigenous and Afro-Colombian communities.³

1 Guiding Principles on Forced Displacement. Principle 18.

2 CESRC. Concluding Observations of the Committee on Economic, Social and Cultural Rights (2001) para. 11

3 Ibid. paras. 32 and 43.

4 Five years after proffering Sentence T025 of 2004, the Constitutional Court concluded that there have been significant partial advances made (mainly in the area of health coverage and education) towards the overcoming the state of matters unconstitutional, but it had not yet been overcome and set July 1st 2010 as the new date by which the Government should show that it has overcome the said state of matters unconstitutional, through showing lasting solutions in the following aspects:

a) Effective enjoyment of rights by a high percentage of the displaced population and show that the conditions exist to maintain this result and to make sustainable progress in achieving the enjoyment by all the displaced of their constitutional rights.

b) Correction of the structural causes of the state of matters unconstitutional in particular, (i) lack of resources and (ii) the poor institutional capacity. These causes must be corrected on a national and territorial level, according to the departmental and local priorities set on the basis of the expulsion and reception of the displaced.

c) Show that the public policies relating to each of the constitutional rights of the displaced effectively lead to achieving the effective enjoyment of the rights by the displaced, which includes two essential points reiterated by the Court in numerous findings (i) the rational orientation of public policies to achieve that end and (ii) the introduction of a differential focus, particularly in relation to women, children, older people, indigenous, Afro-Colombians and people with disabilities.

d) Show that the displaced and the civil society organizations that fight for their rights, participate in a timely, significant and effective manner in the adoption of state decisions that are of interest to them and affect them.

e) Sufficient contribution by the territorial entities in overcoming the state of matters unconstitutional.

See Constitutional Court, Court Order 008 26th of January 2009.

5 Sentence of the Constitutional Court T-327, March 26th 2001.

673. However, the progress in complying with these recommendations has not been sufficient and in terms of certain rights (such as life, housing and the generation of income) there have been setbacks in relation to the what the CESRC stipulated in 2000. Forced displacement of people due to the magnitude of the problem, persistence, affectation of civil and political rights and negative impacts on the economic, social and cultural rights continues a grave, chronic, prolonged expression of a humanitarian and human rights crisis in Colombia.

674. On this situation the Constitutional Court through Sentence T-025 of 2004 declared the existence of a “**State of Matters Unconstitutional**”⁴ (SMU), i.e. a state of emergency in the face of the massive violations of the rights of people affected by the incapacity of the State to prevent the causes of displacement and attend to, protect and restore their rights. This is why the work of the Committee on Economic, Social and Cultural Rights is of such importance and the monitoring of the implementation by the State of its recommendations.

675. The Constitutional Court as well as other organisms of the United Nations and social organizations have insisted that the State has duties to the victims of forced displacement, that follow from the national norms and the commitments made with the international community, found in the Guiding Principles on Internal Displacement, amongst others that form part of the constitutional jurisprudence in Colombian law⁵, and in the International Covenant of Economic, Social and Cultural Rights.

676. However, since 1997 when Law 387 was passed, which recognized forced displacement in the context of the armed conflict and ordered the State to attend to the people forced to flee within the national territory, the response of the governments has been limited and poor and in most cases was pressurized by judicial orders following on from the presentation of tutelas that gave rise to sentences by the Constitutional Court and the Council of State. The main argument of the different governments has been the fiscal deficit i.e. the State does not have the resources to deal with the displaced. From 2002 onwards in addition to insisting on the fiscal deficit the Government has subordinated the issue to the security agenda, under the presumption that the “policy of democratic security” avoids citizens having to forcibly displace themselves throughout the national territory. In these circumstances the efforts of the Government are orientated towards showing that there is no armed conflict and that the paramilitary groups no longer exist and that it has control over 97% of the national territory.

677. The Constitutional Court, various international organisms and civil society organizations do share the Government’s view of the matter. The reality in the regions shows that the armed conflict persists as do the consequences for the civilian population, particularly internal forced displacement.

678. In the governmental administration from 2002-2006 a series of programs to attend to victims of forced displacement were designed, which rather than guarantee the conditions for the effective enjoyment of the Economic, Social and Cultural Rights of the displaced subsumed the realization of these rights within focalized subsidy schemes that seek to “*administer the crisis*” that arises from the exodus, but do not allow them to overcome the violations and exclusion in this population exercising their rights⁶.

680. A short term assistentialist policy is prevalent through attention programs that have created a greater dependency on of these populations humanitarian aid⁷ and on occasions the government pressurizes the return without any security guarantees, dignity or will on part of the population violating the right to the truth, justice and integral reparation⁸.

681. Five years after Sentence T-025 being emitted the Colombian State has not solved the state of matters unconstitutional and the Government itself admits that it has a lot of difficulty in complying with aspects related to land, income generation and housing. The official response continues to be poor in the allocation of resources, chaotic in institutional terms, more formal than real as a response to the court and designed to deny the magnitude and impacts of forced displacement and minimize the rights of the victims⁹.

682. In further developing Sentence T-025 the Constitutional Court has emitted more than 50 Court Orders, ordering the government to give clear precise information on the magnitude of displacement, demanding specific plans and programs and insisting upon differential focuses which makes way for a kind of trial of public policy and reaffirming the commitment of the Court to the rights of displaced people. To understand the activity of the Court one requires a description of the Court Orders that are based on the incapacity of the National Government to overcome the state of matters unconstitutional:

Court Order 185
2004Levels of compliance with the overcoming of SMU

Court Order 176
2005Realization of the budgetary effort and its execution and the sums for each entity.

- Demands giving priority to the displaced population in the implementation of the budget.
- Offer a chronogram which specifies the rhythm and mechanisms through which the resources calculated by the National Planning Department as being necessary to implement public policy in attending to the displaced population will be channeled .

Court Order 177
2005Is based on the evident problem of the poor commitment of the territorial entities in allocating the appropriate resources to attend to the displaced population.

6 On the rights focus contained in the social policy proposed in the National Development Plan 2007-2010 the professor Cesar Giraldo states that “The right to work is replaced by attention to the basic needs of the poor and employability. Attending to needs is seen as a favor for which the poor should be grateful: “Onward President!” The police are sent to the ungrateful poor. Such favors have translated into an explosion in assistentialist programs (which the Plan calls “Social Promotion”). Overcoming the extreme poverty, subsidized health regime, old age, community kitchens, bank of opportunities and many more.” Giraldo, Cesar Política Social Uribe Vélez. Sombras nada más (Social Policy of Uribe Vélez. Nothing more than shadows). Article published in “Le monde Diplomatique”. No. 58. Colombia Edition. Bogotá, July 2007.

7 On this point see, amongst other reports the Informe de la Defensoría del Pueblo sobre desplazamiento forzado por la violencia en Colombia No. 01. (Report of the Public Defenders’ Office on forced displacement by violence in Colombia No. 01.). Defensoría del Pueblo. Bogotá, April 2002Al respecto puede verse entre otros, el Informe de la Defensoría del Pueblo sobre desplazamiento forzado por la violencia en Colombia. No 01. Defensoría del Pueblo. Bogotá, abril de 2002.

8 There are duties on the State to the displaced population which arise from the displacement that go beyond the content of the programs foreseen in Law 387 of 1997. As the Constitutional Court pointed out in Sentence T-327 of 2001, the displaced person, as well as having the right to be attended to by the State, also has the right to know the truth about who caused the displacement; to justice so as the crime of displacement does not remain in impunity and reparations for the harm suffered.

9 In the hearing of the report to the Constitutional Court held on May 2nd 2005 the then Minister for Finance Alberto Carrasquilla told the newspaper “El Tiempo” that in the make up of current expenditure that were no resources available to overcome the state of matters unconstitutional: “We have 40 billion pesos collected. From there we have to pay pensions and debt repayments which total 42 billion. From hereon in the issues of justice, defense and the issue of the displaced must be financed through debts. www.eltiempo.com consulted on June 3rd 2005.

<p>Court Order 178 2005Is aimed at the National Council for the Integral Attention of the Displaced Population that within one month to a year, according to their responsibilities they resolve the various difficulties in cooperation and coordination of the institutions.</p>
<p>Court Order 218 2006Evaluates the reports offered by the Government in relation to Court Orders 176, 177 & 178 de 2005, with the purpose of deciding con (i) Whether those institutions have properly that they have overcome the state of matters unconstitutional in the area of internal displacement or that significant progress has been made in the protection of the rights of the displaced. (ii) Whether the Court has been supplied with serious, precise, refined information in order to establish the level of compliance with the instructions given in the said judicial rulings</p>
<p>Court Order 266 2006Seeks clarification on some of the points of the report.</p>
<p>Court Orders 333, 334, 335, 336 y 337 Remits to the 5th Circuit Civil Court petitions for the opening of contempt proceeding against functionaries of Acción Social in charge of the following areas: (a) Registry and characterization of the displaced population. (b) Protection of the minimum right of subsistence through the provision of humanitarian emergency aid both in general terms as well as with the recent victims of displacement (c) Guaranteeing the right of return and reinstallation (d) General coordination of the national system of attention to the displaced population and (e) Participation of the displaced population in the adoption of decisions of concern to them</p>
<p>Court Order 027 February 2007Covens a session on technical information to consider adopting result indicators of the effective enjoyment of rights by the displaced population.</p>
<p>Court Order 064 March 2007Formulates questions of the National Government</p>
<p>Court Order 101 April 2007Convenes an informative session to verify the measures adopted to overcome the state of matters unconstitutional on displacement from a gender perspective.</p>
<p>Court Order 109 May 2007Adopts result indicators for the effective enjoyment of the rights of the displaced population.</p>
<p>Court Order 177 June 2007Adoption of result indicators</p>
<p>Court Order 200 2007Adoption of protective measures of the rights to life, and personal security of some leaders of the displaced and certain displaced people in at risk.</p>
<p>Court Order 207 August 2007Convenes a technical information session to verify the measures adopted to overcome the state of matters unconstitutional on displacement from the perspective of the indigenous peoples displaced or at risk of displacement..</p>
<p>Court Order 208 August 2007Convenes a session of technical information to verify the measures adopted to overcome the state of matters unconstitutional on displacement from the perspective of the Afro-descendent communities that are displaced or at risk of displacement.</p>

<p>Court Order 218 August 2007Pronouncement on the right of participation and suffrage of the displaced population bearing in mind the proximity of the elections of October 2007.</p>
<p>Court Order 233 September 2007Pronouncement on the result indicators of the effective enjoyment of rights of the displaced population, revising what was supplied previously by the Government.</p>
<p>Court Order 234 September 2007Convenes a complementary hearing on technical information to verify the measures adopted to overcome the state fo matters unconstitutional from the perspective of the displaced indigenous people or those at risk of displacement.</p>
<p>Court Order 236 September 2007Corrects the structure of the technical information session for the displaced indigenous peoples.</p>
<p>Court Order 250 September 2007Covens a complementary session on technical information of the displaced indigenous peoples.</p>
<p>Court Order 251 September 2007The handing in of documentation given by the participants in the technical information session of the indigenous peoples.</p>
<p>Court Order 262 October 2007Sets out the attendance list and the order of interventions of the technical information session to verify the measures adopted to overcome the state of matters unconstitutional on displacement from the perspective of the Afro-descendents perspectives that are displaced or at risk of displacement convened by Court Order 208 of August 2007.</p>
<p>Court Order 278 October 2007Additional time given in order to reply to the documentation given by the participants of the technical information session for the indigenous people.</p>
<p>Court Order 052 February 2008Asks for information from main territorial expulsion and reception entities.</p>
<p>Court Order 092 April 14 2008Protection of the fundamental rights of female victims of forced displacement caused by the armed conflict in the context of overcoming the state of matters unconstitutional declared in Sentence T-025 fo 2004 after the public technical information hearing held on May 10th 2007 by the Second Court of Revision</p>
<p>Court Order 093 April 2008 Protection of the right to live and personal integrity, personal security, freedom of movement and the prevention of circumstances that protect forced displacement of the civilian population of Samaniego (Nariño) affected by the anti-personnel mines located, that are as a result at high risk of displacement or effective forced displacement.</p>
<p>Court Order 116 May 13 2008Adoption of indicators for the effective enjoyment of rights.</p>
<p>Court Order 117 May 2008Reassumes competence of the Constitutional Court to ensure compliance with the orders given to overcome the state of matters unconstitutional in the area of internal forced displacement – prior considerations on the opening of contempt proceedings against functionaries and sub contractors of Acción Social, a functionary of the Ministry of the Interior and Justice and two functionaries of INCODER</p>

Court Order 251	October 2008 Dictates measures to guarantee the protection of the fundamental rights of children and adolescents displaced by the armed conflict.
Court Order 237	September 19 2008 Non compliance of the orders given in Court Order 092 of 2008 to protect the fundamental rights of displaced women, in following up Sentence T-025 of 2004.
Court Order 284	October 2008 Protection of the right to live and personal integrity, personal security, freedom of movement and the prevention of circumstances that protect forced displacement of the civilian population of Samaniego (Nariño) affected by the anti-personnel mines located, that are as a result at high risk of displacement or effective forced displacement.
Court Order 335	November 2008 Technical Session to respond to conditions and information required that must be taken into account by the Constitutional Court in order to declare the State of Matters Unconstitutional resolved.
Court Order 004	January 2009 Measures are issued to guarantee the protection of the fundamental rights of indigenous peoples and individuals displaced by the armed conflict or at risk of forced displacement.
Court Order 005	January 2009 Issues measures to guarantee the protection of the fundamental rights of the Afro-descendent population victim of forced displacement.
Court Order 006	January 2009 Issues measures to guarantee the protection of displaced persons with a disability.
Court Order 007	January 2009 Coordination with the territorial entities of public policy in attending to the displaced population .
Court Order 008	January 2009 Persistence of the state of matters unconstitutional declared in Sentence T-025 of 2004.
Court Order 009	January 2009 Orders as a result of the murder of a displaced leader.
Court Order 011	January 2009 Monitoring of measures adopted to overcome the state of matters unconstitutional on the problem of internal displacement, specifically in relation to failings in the system for registering and characterizing the displaced population..
Court Order 036	January 2009 Monitoring of Sentence T-0025 of 2004, Court Order 092 of 2008. Report by the National Prosecution Service.

Source: taken from CD “Exercising Rights” Promotion of social and institutional capacities in public policy on forced displacement. CODHES 2009.

2. ON THE V PERIODIC OFFICIAL REPORT.

683. The V Report of the Colombian State to the CESRC is not explicit in giving results on access to rights by people in a situation of forced displacement and there is clear intent to present data from regular social policies as part of a response to the requirements of the Constitutional Court which distorts the figures and reaffirms the poverty or lack of specific policies.

684. The report is not clear either on the measures taken to respond to the information and recommendations made by the Public Ministry (Procurator General of the Nation and Public Defenders' Office), the Constitutional Court, the Office of the UN High Commissioner for Refugees (UNHCR) and those made by the CDESCR¹⁰ in relation to solving forced displacement in general and individual cases of violations of rights.

685. Lastly the report does not contain sections that explain the specific results for displaced populations as the results of aid programs for poor people, demobilized members of paramilitary groups, victims of natural disasters are mixed with those for attending to the forcibly displaced.

686. This reaffirms the idea that the National Government has a social assistance focus and not one based on rights considering the "beneficiary" population as passive subjects of "humanitarian aid" without taking into account the participation of the victims in defining the content of the programs, that they adjust to particular situations and cultural differences as well as life plans.

687. The details given show a focus that is limited to conjunctural assistance schemes without establishing the degree of the guarantee of rights and the way in which the state actions unfolded permit the overcoming of the phenomenon of displacement in decent conditions with a guarantee of non repetition.

688. In referring to the circumstances that caused the expulsion of the displaced population there is an attempt to deny the complexity of the conflict and the responsibility of state agents and paramilitary groups¹¹ and limits itself to blaming the guerrillas for the humanitarian crisis. It also leaves out elements such as the anti-narcotics operations, which imply the use of military actions in the eradication zones and of course the participation of economic interest groups that seek to realize the mining or agroindustrial potential of some expulsion zones.

¹⁰ CDESCR, Concluding Observations of the CESRC 2001 Op. Cit.

¹¹ Monitoring Commission on Forced Displacement Policy. National Process of verification of the rights of the displaced population. First report to the Constitutional Court, January 31st 2008.

12 Estado nutricional, de alimentación y condiciones de salud de la población desplazada por la violencia en seis subregiones del país. (Nutritional state of food and the health conditions of the population displaced by violence in six subregions of the country) Panamerican Organization of Health / UN World Food Program Colombia, 2005, p. 5

13 Monitoring Commission on Public Policy. National process of verifying the rights of the displaced population. "La población desplazada: la más vulnerable entre las vulnerables en Colombia" (The displaced population: the most vulnerable of the vulnerable in Colombia). Bogotá. Colombia. September 2008. Report available at: www.codhes.org

14 El Tiempo. "Acabar la Guerra tomará de 15 A 20 años: Frank Pearl" (Ending the war will take 15 to 20 years: Frank Pearl). Archive available at: <http://www.eltiempo.com/archivo/documento/MAM-3426445#>

3. STANDARD OF LIFE AND THE GENERAL SITUATION OF THE DISPLACED POPULATION.

689. According to the report of the Colombian State the country had a growth rate of 7.5% in 2007, which in the official logic is seen as a good thing that ensures a better quality of life for all citizens, including those people in a situation of forced displacement.

690. However this does not match reality. The people in a situation of forced displacement face a particularly hard crisis in conditions of greater vulnerability. According to the Panamerican Organization of Health (OPS) and the UN World Food Program "*the average monthly income in displaced families is \$248,000 pesos, 65% of the minimum salary*"¹².

691. The National Verification Survey, an instrument to measure the effective enjoyment of the rights brought forward by the Monitoring Commission on Public Policy on Forced Displacement by the Constitutional Court shows that upto September 2008 only 11.2% fo the displaced people received income equal to or greater that the legal minimum salary (around 250 US dollars per month) and that 54.5% had an income below that level. That is to say that 98% of displaced families were below the poverty line and 81% below the line of indigence. Where the head of household is female the situation is even graver as only 15% are above the level of indigence¹³.

Prevention of displacement

692. In terms of preventing forced displacement the emphasis has centered on "democratic security" as the setting which would guarantee the deactivation of the expulsion which does not imply a short term solution to the problem of forced displacement (in an interview with the newspaper El Tiempo the High Commissioner for Peace stated that the armed conflict would last another 15 to 20 years more)¹⁴.

693. Contrary to what the Government has repeatedly claimed the policy of democratic security has not managed to eliminate forced displacement, it has only moderated its growth and in certain areas of the country it is an aggravating element of violence given the impacts that it causes on the population.

694. There are critical zones in departments such as Arauca, Norte de Santander, Caquetá, Guaviare, Guainía, Vaupés, Vichada, Nariño, Putumayo, Chocó nad the north west of Antioquia, scenes of an increase in the violations of communities and social leaders, the murder of civilians that are later presented as subversives killed in action, mass and individual displacements, amongst others.

695. The State has not adopted efficient measures to prevent the expulsion of and protect the life and physical integrity of the Colombians at risk or in a situation of forced displacement. Despite the risk reports issued by the Early Warning System –SAT- of the Public Defenders’ Office in many cases the Inter-institutional Committee on Early Warnings – CIAT- organism of the National Government charged with evaluating the said reports and adopting the relevant measures did not act in an efficient manner to guarantee the protection of the human rights of the people and communities at risk of displacement.

696. Also it has not implemented an integral strategy to prevent the structural causes of displacement and comply with the international recommendations related to the fight against impunity, the dismantling of paramilitary groups and the their links with the security forces¹⁵. Neither is there a will to include in state policy reinstallation programs, truth, justice and reparation programs for the victims of forced displacement. Whilst the issue of displacement was included in Decree 1290 of 2008 on administrative reparations the victims of the displacement will only be benefited with compensation for housing, a guarantee that they already had due to the jurisprudence of the Constitutional Court.

697. On the contrary, the impunity enjoyed by those responsible for the crime against humanity that is forced displacement is generalized which maintains the victims in a grave situation of vulnerability, insecurity and stigmatization. This situation affects the national and international organizations that work on the issue, who have also been victims of threats that endanger their presence in the field. According to the UNHCR in only 1% of the cases known to the State has there been any judicial investigation opened¹⁶. In addition the National Government, far from sanctioning and punishing those responsible has promoted various legislative initiatives that seek to legalize the illegal possession of lands and goods held by the paramilitaries and the fomenting of business activities in these territories¹⁷.

698. It is worth noting on this that in 2008 the situation of forced displacement worsened in the areas subjected to fumigations and forced manual eradication of illicit use crops that affected at least 13,450 people who fled in mass displacements alleging a lack of guarantees for their lives as a consequence of the military operations that also seriously affected their food security. The departments most affected by the forced migrations were Antioquia, Córdoba and Vichada¹⁸.

699. Also in the official reports there is no information on the significant under reporting of the displaced population, which is 30%, and occurs for various reasons: the non inclusion in the official register as displacement caused by aerial fumigation of illicit use crops is not accepted; the fear of victims to make statements against the paramilitaries or emerging groups, the difficulties in the

15 See the report of the UN High Commissioner for Human Rights on the human rights situation in Colombia. February 28th 2002 E/CN.4/2002/17, pp. 45-46.

16 See Plataformas de Derechos Humanos y Paz (Peace and Human Rights Platforms). “Informe para el examen periódico universal del Colombia ante el Consejo de Derechos Humanos de Naciones Unidas” (Report for the periodic universal examination of Colombia to the UN Human Rights Council). Bogotá: July 2008, p. 7, Available at: www.plataforma-colombiana.org.

17 Such initiatives are the National Development Plan and the General Law on Forestry (declared unconstitutional by the Court), the Rural Development Statute, the program Secure Agricultural Income, and the law on title clearance of real estate. *Ibid* p.7

18 CODHES. “Boletín Codhes Informa Número 75. Víctimas emergentes” (Emerging Victims). *Op cit.*, p. 5

19 CODHES. "Boletín Codhes Informa Número 75. Víctimas emergentes (Emerging Victims)". Bogotá: April 2009. Available at: http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=61&Itemid=50

20 Data from the National Verification Survey (NVS) elaborated by the Monitoring Commission on Public Policy on Forced Displacement. This study was carried in the urban areas of 50 municipalities of the country, of them 35 have less than 200,000 inhabitants; 6,616 surveys of displaced population included in the Single Register of Displaced Population from 1999 onwards. National Process of verification of the rights of the displaced population. "First Report to the Constitutional Court" Bogotá: February 2008. Available at: www.codhes.org

21 Cf. National Process of verification of the rights of the displaced population. First report to the Constitutional Court. Bogotá, February 5th 2008. Available at: www.codhes.org.

procedures to obtain official registry, the occurrence of displacement modalities that are difficult to trace, such as those that take place within rural areas, within urban areas, confinement, amongst others.

700. According to Codhes – displacement stabilized at an average of 200,000 displaced people between 2003 and 2006 and between 2007 and 2008 there was disturbing increase in the tendency. This was particularly so in 2008 when the number of displaced people was in excess of 380,000. With this the figures are close to those of 2002 i.e. just before the beginning of the policy of democratic security¹⁹.

Sectoral policies and results in relation to the effective enjoyment of the ESCR²⁰

701. The National Government aims to achieve the effective enjoyment of the rights of the populations in situations of forced displacement through a series of sectoral policies which, however, have many weaknesses such as:

- 1 There is no integral specific public offer made to the displaced population but rather a group of unconnected actions, by entities, each with their own criteria and in conformity with the bureaucratic procedures, that offer a series of services. This leads to an incapacity of the State to show that a person or family has ceased to be displaced through the full and constant enjoyment of their ESCR. Unfortunately, in practice a person or family may have access to health but not to housing given that each offer is independent of the other due to the sectoral focus of attention.
- 2 The people are obliged to go round each of the state institutions to obtain access to each program and;
- 3 The entities tend to offer adaptations of regular social programs i.e. schemes designed for people in situations of poverty and not specific programs designed according to differentiated focuses that heal the inherent violations of situations of forced displacement.

4. SITUATION OF THE ESCR OF THE DISPLACED POPULATION

702. In line with the prior statement the panorama of the effective enjoyment of the ESCR for these populations is herewith described²¹.

Right to self determination, cultural integrity and territory (Article 1 of the ICESCR)

703. If hundreds of thousands of peasants abandoned their productive lands as a result of the armed conflict and forced displacement there should be a policy to restitute these lands in order to avoid the theft and assure the rights of the affected population. However, a different reality in public policy is imposed that reflects the Government's disinterest in assuring the rights of the peasants, colonists, indigenous and Afro-descendants whose lands were taken from them through acts of violence.

704. As the Monitoring Commission on Public Policy on Forced Displacement has pointed out, since 2000, at least 385,000 rural families abandoned around 5.5 million hectares, equivalent to 10.8% of agricultural area of the country, generating a loss of income in the order of 49.7 billion pesos, 11.6% of the Gross Domestic Product of the Country²². These lands passed into other hands in a *de facto* expropriation that continues to take place in various regions of the country.

705. The Comptroller General of the Republic calculated the theft of land at 2.6 million hectares and projected the reparations that the State must make to the victims of forced displacement, for the land lost and loss of income, as being in the order of 8.2 to 11.7 billion pesos constant for 2005²³.

706. If the State acknowledges that there are around 3,200,000 displaced persons and that 62.9% of those expelled are from rural areas, one would think that the National Government would have an ambitious strategy for the effective enjoyment of the victims of displacement bearing in mind that the majority of these families are from the countryside. However, only 2.7% of the total number of displaced families registered in 2006 have been included in land restitution programs for the period 2007-2010, i.e. barely 12,850 homes.

707. The official land policy for the displaced is mainly centered on the extinction of domain of the properties of narco-traffickers and the "voluntary" hand over of land by the demobilized paramilitary bosses and beneficiaries of the Justice and Peace Law²⁴ which has been complete failure in terms of restitution of lands to the displaced.

708. The Government itself has admitted the failure of its policy, aggravated by a model of rural development that privileges the legal and illegal large landowners, in the midst of corruption scandals and favoritism in programs such as Secure Rural Income²⁵.

709. So, the guarantee of the right to land is one of the most significant institutional failings in achieving the reinstallation of thousands peasants and Afro-Colombian and indigenous communities and the inefficiency of available schemes to achieve the restitution of this land and democratize access to it. This situation is based

22 These figures on the economic impact of forced displacement in Colombia are included in the report on the theft of land and assets and integral reparations presented by the Monitoring Commission of Public Policy on Forced Displacement, Luis Jorge Garay, director of the National Process of Verification. Monitoring Commission of Public Policy on Forced Displacement. Consultancy on Human Rights and Displacement –CODHES-. Reparar de manera integral el despojo de tierras y bienes, El reto ante la tragedia humanitaria del desplazamiento forzado" (Make integral reparations for the theft of land and assets. The challenge of the humanitarian tragedy and forced displacement). Bogotá: April 2009.

23 See Chapter 6 of this report on the Peasantry.

24 Tapia, Edwin. "Análisis del componente financiero de la política pública de atención al desplazamiento forzado 2007-2010" (Analysis of the financial component in the public policy on attending to forced displacement 2007-2010). Contained in "Tras las huellas del conflicto" (In the footsteps of the conflict). Serie "Documentos Codhes No. 8". Bogotá: December 2007.

25 i. Out of date institutional information needed to individualize the plots and the rights over them; ii. The scant systematization of the relevant cadastre and registry information; iii. The low level of awareness of the norms, procedures and tools, related to patrimonial protection by the functionaries concerned; iv. The paltry knowledge of the rights and the tools the affected population has to enforce them; v. The normative changes (Law 1152 of 2007) and the change in institutional competences which has meant: a. Transfer of the RUP administered by the INCODER to the Superintendency of Notaries and Registrars under the name of RUPTA, with corresponding adjustments b. Transfer to the competence of reception of requests that the INCODER had to the Public Ministry c. Assignment of competences in the area of Route of Ethnic Protection to the Ministry of the Interior and Justice d. This transfer of competences has not been accompanied by an improvement in the administrative capacity to assume new functions vi. The lack of up to date information in cadastre and ethnic territory bodies. vi. The establishment of a large number of displaced as occupiers of state lands which lack any register in the cadastre. viii. The informal land tenure arrangements of the displaced. ix. The imprecise nature of the data provided by the displaced in order to identify the plot.

26 Monitoring Commission on Public Policy on Forced Displacement. National Verification Survey –ENV 2007. National process of the verification of the rights of the displaced population "First Report to the Constitutional Court. ". Bogotá: February 5th 2008.

27 Monitoring Commission of Public Policy on forced displacement. National Process of Verification". "Acceso al mercado laboral" (Access to the labor market). In "El reto ante la tragedia humanitaria del desplazamiento forzado. Garantizar la observancia de los derechos de la población desplazada" (The challenge of the humanitarian crisis of forced displacement. Guaranteeing compliance with the rights of the displaced population. Volume 2. Bogotá: April 2009. p. 185.

28 Monitoring Commission of Public Policy on Forced Displacement. National Process of Verification. "Acceso al mercado laboral". Op cit., p. 185

on the non resolution of displacement as the weakness of the State in this area is an element that encourages the continuance of the expulsions.

Right to work (Articles 6 & 7 of the ICESCR)

710. According to the ICESCR the right to work "includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". In practice and from the information from the Government and the Monitoring Commission there are no public policies to generate income amongst the displaced population for the socio-economic stabilization.

711. In this context the right to work has developed by promoting individual entrepreneurship which requires a series of capacitations in arts and trades, seed capital, microcredits in urban areas and productive initiatives in rural areas. However, given that the programs are modifications of regular initiatives of social policy the access requirements tend not to consider the rights violations, limiting thus their access.

712. Indeed, according to the first National Verification Survey (ENV) only 15.7% of people of working age included in the RUPD have had access to work training programs, 2% have been beneficiaries of income generating programs and in only 14.4% of the population benefited by one or other these programs was the program of use in obtaining an employment post or starting a business in which they currently work. The survey also shows that only 19.8% of the capacitations were of use in obtaining employment at all and the remaining 65.8% never found them of use in obtaining employment or starting their own business. This data reaffirms the low levels of access and inefficiency of these programs in permitting the enjoyment of the right to work²⁶.

713. On the other hand according to the data of the second National Survey of Verification barely 46.6% of those surveyed had worked in the week prior to the survey, 4.8% said they were unemployed and 48.6% inactive, whilst in July 2008 according to the Household Survey of the DANE, the Colombian population over the age of 12 that lived in the towns, 53.5% said they were working, 7.25% not working and 39.2% were inactive²⁷.

714. These results reaffirm that official programs to assure the generation of income for displaced people have failed. The situation is even more critical in the case of the generation of income with a gender focus: the proportion of displaced women at work is almost half that of men and the proportion of women unemployed is near 13% compared to a little over 7% for men²⁸.

The Right to Social Security (Article 9 of the ICESCR)

715. As regards the right to social security there are various programs of health, professional hazards (this applies to those formally engaged in the labor market) and pensions (through a system of contributions, individual savings and another pension subsidized by the State). Also there are regulations in the area of the formalization of work.

716. The results are not encouraging. If we deal with just the first ENV, only 11.1% of the victims of displacement that are salaried workers are affiliated to the Administrators of Professional Hazards –ARP, 12.4% to Health Promotion Companies – EPS- (administrators of the health regime) and only 9.3% are affiliated to a pension fund. Thus, only 7.5% of this group is affiliated to all three services and affiliations to health and pension are around 1% in the case of self-employed workers.

717. As regards the working conditions, 25.4% of the displaced population at work, have part-time shifts (less than 40 hours/week), 23.9% in legal shifts (40 to 48 hours/week) and 50.7% exceed the legal maximum with 28.1% working shifts of over 60 hours per week. It is worth pointing out that barely 9.2% of those hired as workers, employees, day laborers have a written work contract (56% of these being indefinite contracts)²⁹.

Right to an adequate standard of life (Article 11 of the ICESCR)

718. This right to enjoy an adequate standard of life includes the rights to the widest protection and possible assistance to the family, food, clothing and housing.

Right to adequate food (Article 11.2 of ICESCR)

719. Whilst there are a series of programs managed by the Colombian Institute of Family Welfare (ICBF), and others under the aegis of Acción Social at the stage of Emergency Humanitarian Aid, there is no general food security program. According to the ENV 59.1% of those surveyed were in a situation of food insufficiency: “amongst the population that failed to eat a meal in the week prior to the survey, 68.1% missed between 4 and 7 meals and 15.3% missed 8 to 14 meals.”

Right to housing (Article 11.1 of the ICESCR)

720. There are various national programs of subsidies for Social Interest Housing (SIH) in urban and rural areas, as well as complementary subsidies from

29 Monitoring Commission of Public Policy on Forced Displacement. National Process of Verification of the rights of the displaced population. National Survey of Verification –ENV – 2007. "Primer informe a la Corte Constitucional" (First report to the Constitutional Court). Bogotá. February 5th 2008.

30 Constitutional Court . "III. 4. Replanteamiento de la política de vivienda para la población desplazada" (III. 4. Reconsideration of the housing policy for the displaced population). In : "Court Order 008 of 2009". Bogotá: 26th of January 2009, pp. 25 - 29

certain territorial entities (for example, Medellín, Bogotá, Bucaramanga and the Regional Government of Antioquia). However, the coverage targets set by the national program and access to the subsidies depends on points scored by the displaced applicants in each competition, a measure which acts as a filter where such benefits are only awarded to a small proportion of those who apply. This means that there is not a universal offer for all those included in the Single Register for Displaced Population – RUPD. According to the ENV only 66.1% of families included in this have asked for a family subsidy for housing and only 33.7% of those were actually awarded on. In addition to this, 90% of those subsidies were allocated but only 44% were used by beneficiaries.

721. On the other hand, the SIH programs are all standard and do not have differential focuses, according to cultural or regional differences and, worse still, only 7.5% of the homes surveyed meet all the criteria that the Constitutional Court established to decide whether the homes of these populations could be considered to be decent homes.

722. On this point the Court Established in Court Order 08 of January 2009 that the allocation of subsidies is a long way from covering real demand, that the proportion of subsidies adjudicated is less than half and that more than 50% of the resources allocated did not guarantee the right to housing.

723. This is due to the complex legal and organizational framework of housing policy, the deficiencies in information on the process, the inadequate subsidy to acquire a new or second hand home and the incapacity of the displaced to obtain resources to supplement the loan. That is why the subsidy is not attractive to the displaced. In 2001 the demand for subsidies was 64% of those registered as displaced, whilst in 2006 it was 53% and the tendency continues downwards.

724. As a result of this, housing is one of the rights that more resources are assigned to and fewer results are shown in the effective enjoyment of rights. Given this conclusion the Constitutional Court stipulated that *“current housing policy constitutes an inefficient mechanism in terms of the adequate allocation of resources to help the displaced population and at the same time flawed in protecting the effective enjoyment of the rights of those victims of violence”*³⁰

**The right to the highest attainable standard of physical and mental health
(Article 12 of the ICESCR)**

725. As regards the right of the displaced population to health; although advances have been made in coverage (90% in the public system known as Subsidized Health Regime), access to specific programs are reduced and the differential focuses are poor given that supply is concentrated in the standard package of

procedures and medicines contained in the Subsidized Obligatory Health Plan (POS-S), which corresponds to 70% of the package that the private system's POS or Contributive Regime contains.

726. A detailed analysis of the effective enjoyment of this right should not be constrained to the figures of affiliation to the Subsidized Health Regime but rather should also include aspects that show timely access and quality of the health services provided to the population in a situation of displacement, such as efficiency in the promotion, prevention and solution to epidemic and endemic illnesses and sexually transmitted diseases.

727. In the case of people in a situation of displacement registered with the Single Registry for Displaced Population –RUPD, affiliated to a health regime, 90% are affiliated to the Subsidized Regime and 9.5% to the Contributive Regime and family affiliation, whilst for the Colombian population the distribution in 2005 was as follows: 54% in the Subsidized Health Regime and 45.5% in the Contributive Regime.

728. As years pass from the time of displacement the people tend to be favored with a greater coverage by the SGSSS through the subsidized regime whilst the affiliation to the contributive regime remains at a low and relatively stable level, which is an indicator of the limits they have in obtaining sufficient income that allows them to pay for the health service of private operators.

729. On this, given the almost 90,000 annual tutelas that are interposed to ask for access to health, once again the Constitutional Court exposes the failings in the area of the effective enjoyment of the political and social rights ordering in Sentence T-760 of 2008 that the Health Promotion Companies (EPS) supply the medicines, treatments and procedures contemplated in the five Obligatory Health Plans (POS) in existence depending on whether the person is affiliated to the subsidized or contributive health regime.

730. Sentence T-760 of 2008 orders that they slowly the different POS should be unified into one because the differences in them violates the right to equality. It also stipulates that they take steps for all Colombians to have health coverage and to define a chronogram to eliminate the differences between the contributive (made up of those who make monthly payments) and the subsidized or state POS.

Right to education (Articles 13 & 14 of the ICESCR)

731. Given that the educational infrastructure is not uniform in all of Colombia (as it is depends on the inter-governmental transfers of the General System of

31 See, exposition of motives for the popular initiative law which convenes the holding of a referendum to derogate the said reforms promoted by the Colombian Federation of Educators (FECODE), the Liberal Party, the Democratic Alternative Pole, the PCDHDD, amongst other social actors. Available at: www.fecode.edu.co consulted on May 8th of 2008.

32 Quality consists of the right of the student to achieve the aims and objectives legally and constitutionally recognized independently of their conditions. Public Defenders' Office "El derecho a la educación en la Constitución, la jurisprudencia y los instrumentos internacionales" (The right to education in the Constitution, jurisprudence and international instruments). Program for monitoring Public Policy on Human Rights PROSEDHER- Serie DESC. Bogotá. Colombia. Imprenta Nacional. 2003. p. 35.

Allocations – administered by each municipality or decentralized body) the demand for school places is only met in the big cities, but in the small municipalities the population in a situation of displacement is limited in terms of places and quality of the educational system. Additionally, the constitutional reforms introduced, in virtue of the legislative acts 01 of 2001 and 04 of 2007, which reduced the central transfers to the regions have limited the guarantee of this right in Colombia³¹.

732. In the area of access to the educational system the levels of coverage per grade is determined by the infrastructure that public sector has managed to built over decades, but not by the current administration of the National Government in the area of specific programs to attend to the population in a situation of forced displacement.

733. However, even so, there continue to be high drop out levels: Inter-annual rate of 3.4% for children between the ages of 5 and 11 years of age, 5% for those between 12 and 15 and 18.5% for the group between the ages of 15 and 16 years of age.

734. As regards the quality³² of education that children in a situation of forced displacement receive the first ENV showed that students have limited possibilities of taking maximum advantage of the study plans, given that no state scheme guarantees access to certain necessary tools to process of formation such as: books (of those surveyed, 95% in preschool, 98.1% in primary and 98.2% in secondary), library infrastructure, laboratories or computer rooms (27.7% of those surveyed) as these complementary offers depend on the fiscal efforts of the municipalities.

735. In conclusion there is no effective right to education: The percentage of children in a situation of displacement between, the ages of 5 and 17, included in the RUPD that attend an educational establishment is 80.3% of those surveyed; 30.9% of the children included in the RUPD are beneficiaries of accompaniment and permanence measures and : the indicator of the Effective Enjoyment of Rights as defined by the Constitutional Court is not met. It says "All children and youths at home between the ages of 5 and 17 years of age regularly attend a level of formal education."

CONCLUSIONS

736. With Sentence T-025 the State, and in particular the national and territorial governments (mayoral offices, regional governments and districts), were obliged to take explicit measures to permit the effective enjoyment of the rights of the

victims of forced displacement, given that structure of services set in 1997 with Law 387 has had poor results. In this context, since 2004 the National Government has had to respond rapidly to this judicial ruling so the first thing it did was to adapt the social programs designed for the vulnerable poor population as well as programming extra resources to expand the coverage of the adjusted programs with the aim of broadening the targets set for the quadrennial 2002-2006.

737. However, this exercise and particularly the limitations of the State to design and apply policies with a rights based focus has in practice produced disappointing results:

1 A budgetary program, without precedent, was drawn up and carried out in an irregular fashion: in some sectors such as education and health there have been important advances, but in those components related to economic reestablishment such as work, social security and the possibility of returning with guarantees of security, dignity and above all the no repetition of the violation of their rights, the progress made has been zero (the security forces, despite their spectacular growth and territorial coverage, does not commit itself to giving permanent security to any community that wishes to return.

2 The adjusted programs do not allow the superation of the vulnerabilities of these communities given that they are not based on considerations of the particularities of the ethnic group, gender, generation, or discapacity of the populations in a situation of displacement that they aim to intervene in;

3 There is a zero or merely formal participation of the victims of displacement in spaces for the discussion and design of programs and projects to attend to them. They are only informative in nature as the programs are adjustments of regular social policies their formulation and implementation does not take place in the areas that Law 387 of 1997 provides for congregating the displaced and the relevant authorities, which are: municipal and departmental committees for integral attention to the displaced population and the National Council for Integral Attention to the Displaced Population.

738. All of these facts lead to the actions reported in the V Report to the CESCR being ineffective with a tendency towards rhetoric in the official in discourse on the attention given to the displaced, with the aim of invisibilizing the failings of their programs. However, the Constitutional Court has not ceased to defend the rights of these victims of the Colombian armed conflict, as between 2004 and 2009 it has kept the file on Sentence T025 open and through around 40 monitoring Court Orders it has defined the manner in which the situation of exclusion of their rights may be overcome (the State of Matters Unconstitutional).

739. Recently between August 2008 and January 2009, the Constitutional Court issued a series of monitoring Court Orders of a populational and institutional nature that place the absence of differential focuses at the center of the debate and orders the structuring of protection and integral attention plans and visibilizes that despite the measures taken these do not overcome the failings in the policies, budgets and administrative capacities, stating that the State of Matters Unconstitutional has still not been overcome, for which it demands a chronogram of population policy answers (women, children, indigenous, Afro-Colombians, people with disabilities and the protection of displaced leaders) and a complete restructuring of the sectoral policies on housing, land, income generation, participation, truth, justice and reparation for these population groups. These should put into practice in 2009 and the first semester of 2010 by the national and territorial governments and the disciplinary, control and judicial investigation organs.

740. Alongside this process, the forced displacement has not ceased: after a reduction of 50% in 2003(207,607) compared to 2002 (412,553) in the following years the magnitude of the expulsions has kept at an average of 200,000 people between 2003 and 2006 and from 2007 onwards there has been a disturbing rise with 2008 giving us the figure of 380,863 people (76, 172 families) which is a figure close to that of 2002 (just prior to the beginning of Uribe's administration).

741. According to CODHES the figure for displacement in the years in which the policy of democratic security has been applied, 2002-2008, stands at 1,713,564 people and according to the Single Registry for Displaced Population – RUPD -, 1,537,541 people. The consolidated figures for forced displacement between 1985 and 2008 (24 years) according to CODHES, give an approximate total of 4,628,882 people which form an average of 925,776 families. For its part the State officially registers in its information system 2,935,832 displaced persons for the period between 1997 and 2009, a partial figure which nonetheless represents a real social and humanitarian drama for Colombia.

742. In short, one can say that the advances pointed to in the area of forced displacement have been mainly formal with poor differential content.

743. Even when the CESRC in its last recommendations to the Colombian State (2001) called upon it to “ take steps to improve the living conditions of IDPs, in particular women and children, peasants and members of the country's indigenous and Afro-Colombian communities”, it is true that the situation of forced displacement and the manner in which it is dealt with as the Constitutional Court stated in Court Order 08 of 2009 does not permit the superation of State of Matters Unconstitutional, which has not been overcome almost five years after Sentence T-025 was issued, for which the Court has yet to suspend its ruling.

744. It is to be hoped that in the orders of the Constitutional Court contained in Court Orders 004, 005, 006, 007, 008, 009 and 011 of January 20029 at last an integral reform of the attention programs will be structured with the aim of these new policies allowing the reestablishment of the rights incorporated in the recommendations of various international organisms such as the CDESCR and Office of the UN High Commissioner for Human Rights (UNHCR)



**III THIRD PARALLEL REPORT OF CIVIL SOCIETY TO THE COMMITTEE ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS**

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

- 1 The level of guarantees for the Economic, Social and Cultural Rights in Colombia is far from the parameters of effective enjoyment. The persistence of malnutrition and food insecurity, the qualitative and quantitative deficits in the area of housing, the high rate of the young outside the educational system, the casualization of working conditions for workers, especially women, the institutionalized inequalities in the health system and the persistence of discriminatory practices against women, indigenous, Afro-descendants and the LGBT population are signs of the high degree of violation of the economic, social and cultural rights of the population in its entirety.
- 2 Colombia is going through a grave humanitarian crisis, particularly seen in the internal forced displacement, the gravity of which is recognized as the second highest in the world and the most serious in the hemisphere. According to Sentence T-025 of 2005 the situation that the displaced suffer is a reflection of a “state of matters unconstitutional” consisting of the systematic violation of the rights of this population group. Compared to the rest of the citizenry the displaced people have low income levels, low rate of housing subsidies awarded, high levels of food insecurity, high drop out rate from school and are highly dependent on humanitarian aid.
- 3 The concentration of wealth is one of the greatest in the region, a situation which has tended to worsen with the adoption of regressive measures that hinder income redistribution and facilitate an even greater concentration of wealth. The modifications of the tributary regime have prioritized taxing the poor sectors with corresponding tax exemptions for the higher income sectors. On the other hand the reform of the transfer regime has led to a substantial reduction in health expenditure, education and potable water, which increases the barriers to an effective enjoyment of these rights.
- 4 The design of the health system creates systematic barriers to getting medical care and the guarantee of social security. The contributive health regime is conceived of for application in situations of formal employment, which hinders its effectiveness in the context of a casualization of working relations; in that way it is usual for the burden of payment of affiliations to fall exclusively on the shoulders of the workers, which leads to the loss of insurance due to an inability to make the payments. The subsidized regime shows a complete

lack of a progressive dimension by functioning as a dumping ground of the market and operating under assistentialist parameters instead of developing a public policy based on rights. The difference in the obligatory health plans and the between the two regimes constitutes discrimination on socio-economic grounds by offering less benefits with less scope to the poor population affiliated to the subsidized regime.

- 5 A deterioration in the area of public health can be seen. The majority of the public network is being closed down or restructured for financial reasons, whilst at the same time there are signs of setbacks in the fight against tuberculosis or in indicators associated with maternal mortality or below weight newborn babies. On the other hand the primacy of commercial logic as the basis of the health system has created a reduction in costs which has resulted in a disimprovement in the quality of healthcare, seen in the inadequate treatments for patients, a lower expenditure on medicines and a reduction in the medical consultation times, amongst others.
- 6 The lack of a consistent public employment policy has been a constant in the last decade, a situation complemented by the approval of regressive norms against workers in recent years. These norms include provisions that mean an effective decrease in salaries for many working people, the increase in the number of contributions for a pension and the prolonging of the instability of temporary workers, amongst others. The Associated Work Cooperatives have become a customary way of denying workers rights and institutionalizing casualization of labor, which is complemented by an increase in temporary contracts in various branches of the economy. In the area of social security the difficulty of young people being able to hope for a pension can be seen, given that the individual payment is a burden on these people instead of being a labor guarantee.
- 7 The persistence of crimes against trade unionists keeps Colombia in the position of most dangerous country in the world for trade union activity. Unionized workers have been the victims of murders, forced disappearances, individual and collective threats, attacks with firearms, kidnapping, impunity and forced displacement. The impunity of these crimes remains at extremely high levels without any substantial changes on the matter. This grave situation is complemented by other difficulties for the effective freedom of association, such as the low capacity for collective negotiation and the continual denial of legal recognition of unions by the National Government.
- 8 The lack of a public policy in the area of food and nutrition is an evident lack of compliance with the obligations of the Covenant. This situation is very serious given the high levels of deaths associated with hunger and the dis-

turbing indicators in the area of nutrition and hidden hunger, defined as an acute lack of micronutrients. This problem has tended to get worse with the tendency of the decline in the production of food promoted by the National Government. The production of agrofuels constitutes a serious threat to national food production, which would seriously reduce the availability of food in the medium term. In this area the persistent food blockades carried out by the armed actors in the conflict as weapon of war, banned by international law is also disturbing.

- 9 The establishment of free education continues to unjustifiably postponed by the Colombian State. The progress made in this area has been the result of regional policies and not of a general policy applied throughout the national territory. In education one can see discriminatory and unequal practices on socio-economic and ethnic grounds which block the effective enjoyment of the right to education; the educational system has difficulty including groups from lower income strata, as well as the indigenous, Afro peoples and the displaced population.
- 10 The indicators on the effective rate of schooling in the last few years shows that there has been no progressive advance towards the full guarantee of this right, as the incorporation and permanence of children and youths in the educational system has fluctuated rather than being progressive. In this sense, the reduction in expenditure on education as a result of the fiscal reforms constitutes a possible source of a reduction in the number of children in the educational system and a violation on the prohibition of regression in social rights.
- 11 The quantitative housing deficit, that is the lack of sufficient homes to house the families and the qualitative deficit of them i.e. the lack of public household services or the poor construction materials used continues at a significant level; to which is added the poor legal security of tenure. Colombia is one of the countries with the highest number of people in rental accommodation, which shows the poor progress in this area. Despite the explicit prohibition in international law on forced evictions this practice continues to be repeated particularly against families that have acquired loans with the banking system. Faced with this situation public housing policy has shown itself to be wanting as it operates under parameters of focalization linked to the logic of the market. In addition a decrease in subsidies and credits paid out over the last few years has been seen which is a sign of problems with the policy.
- 12 Colombia has a high concentration of land, which has deepened over the last few years through a combination of legal and illegal mechanisms consolidated an agrarian counter-reform, which flagrantly ignores the recommendations of

the Covenant's Committee. This grave situation is sharpened by the dismantling of the State's institutions related to land and agricultural activity. The recent legislative projects to install a new agrarian legality especially Law 1152 of 2007 are seen to be highly regressive in facilitating the dispossession of indigenous and Afro communities and peasant families. By not complying with the prior consultation of the indigenous and Afro communities the Constitutional Court declared that design of agrarian policy to be unconstitutional, but its profile underlies the National Government's intentions.

- 13 As far as indigenous peoples are concerned, in recent years various norms have been approved which these communities describe as "legislation for plunder", as through various means the collective property of their communities is endangered. The approval of norms that prohibited the titling of lands and expansion of reservations in the pacific and those that demanded the settling of nomads or semi-nomads as a requirement for the titling of their land is of concern. Another worrying tendency lies in the reduction in the budget allocations for the acquisition of land for indigenous peoples, which has become an obstacle to the effective enjoyment of the territorial rights of these communities and represents a clear sign of regressiveness on the part of the Colombian State.
- 14 The Afro-descendent people have tended to be more vulnerable to problems such as extreme poverty and forced displacement. In the same manner the Afro peoples have greater difficulties in accessing the health system, to obtain housing subsidies and have greater barriers to effectively enjoying the right to education.
- 15 A particularly disturbing aspect is the persistence of sexual violence against women as a weapon of war practiced by the actors of the armed conflict, which continues to show high levels of impunity. Colombian society continues to suffer a growing feminization of poverty, which is seen in various indicators, amongst them the high levels of anemia in significant portions of the female population and the low weight for gestational age in pregnant women. The continuing wage differences between men and women, the lower levels of schooling, the few work opportunities and the tendency towards greater realization of domestic chores are elements that tend to make this difficult situations worse. Another worrying factor is the increase in breast cancer mortality, which has not been duly tackled with public health programs.
- 16 The LGBT population (lesbians, gays, bisexuals and transsexuals) has been a victim of constant acts of violence in many regions of the country due to homophobia. Despite the demands, these sectors have encountered permanent frustration in their aspiration to obtain substantial equality in the area of social

security for same sex couples: this frustration is caused by the governmental blocking of this legislative initiative on many occasions.

17 The recommendations of the CDESCR on the laboralization of the community mothers has not been complied with. The community mothers and gardeners are still hired through precarious forms of contracts. The situation of these women has tended to deteriorate with the governmental proposal to reduce the coverage of the community homes which would mean less children attended to and less women hired to do this work.

RECOMMENDATIONS

- 1 The Colombian Platform for Human Rights Democracy and Development recommends strict compliance with Sentence T-025 of 2005, which prescribes various measures of public policy to alleviate the situation of the displaced and overcome the “state of matters unconstitutional” and the systematic violation of the rights of the displaced population.
- 2 The Platform recommends adopting a tributary regime based on progressive taxes on citizen according to their means as well as the dismantling of the unjustified tax exemptions with the aim of setting up a tributary system that facilitates the redistribution of social responsibilities and permits a greater tax take for social purposes.
- 3 The Platform recommends adopting a transfer regime for the regions that allows greater investments in health, education and potable water in conformity with the obligation for progress and the correlating obligation of non regressiveness contained in international human rights law.
- 4 The Platform recommends a reform of the health regime that sets up a system based on the norms that protect human rights. This system should be orientated towards the permanence of the beneficiaries in health, as well as removing the discriminations based on socio-economic grounds that block access to healthcare; discriminations which are currently exemplified in the unjustified differences in the obligatory health plans between those affiliated to the contributive and subsidized regime.
- 5 As the same time the Platform urges the Colombian State to promote a reform of the health system that redistributes the social burdens in such a way that the contributions do not fall exclusively on the workers.
- 6 The Platform recommends allocating greater resources to sustaining the public hospital network as part of an integral program that places an emphasis on the promotion of public health.
- 7 The Platform recommends promoting programs aimed at averting grave public health problems which afflict the Colombian population, amongst them tuberculosis, maternal mortality, low weight for gestational age of pregnant

women, the high levels of anemia in the female population and the low weight of new born babies.

- 8 The Platform recommends formulating an employment policy that consists of rights contained in the International Covenant on Economic, Social and Cultural Rights and the conventions of the International Labor Organization. In this sense, the Platform urges the Colombian State to repeal the regressive norms related to the working population approved in recent years and to prohibit practices that aim to violate the right to work and in the workplace, amongst them the so called Associated Work Cooperatives.
- 9 The Platform recommends the adoption of a strategy that consists of trial and investigation that will allow the effective persecution of the authors of the crimes committed against union affiliates which reduces the levels of impunity in this area. Likewise, the Platform urges the State to reinforce the protective measures aimed at protecting the lives of the trade unionists under threat and to purge the intelligence archives that may place the lives of trade unionists in danger.
- 10 The Platform recommends formulating a food and nutrition policy consisting of the rights consecrated in the International Covenant of Economic, Social and Cultural Rights. In this sense the Platform urges the Colombian State to counter through public policy instruments the high levels of death associated with hunger as well as malnutrition and hidden hunger.
- 11 The Platform urges the legal and illegal armed actors to refrain from the practice of using food blockades as a weapon of war.
- 12 The Platform recommends reorientating agrarian public policy with the aim of orientating agricultural production towards the production of food and a greater use of arable lands. In this sense it reaffirms the need to comply with the recommendation of the Covenant Committee aimed at the realization of an agrarian reform that facilitates a just distribution of land.
- 13 The Platform recommends adopting a public policy aimed at complying with the obligation to set up free primary education.
- 14 The Platform recommends reversing all those practices that facilitate or encourage discrimination or inequality on socio-economic and ethnic grounds which impede the effective enjoyment of the right to education, especially those that affect the displaced population, the indigenous and Afro and lower income families.

- 15 The Platform recommends adopting a reform of educational policy that allows progress towards reaching higher schooling levels, with accessibility, adaptability, availability and acceptability. At the same time the Platform urges the State to comply with the recommendations formulated by the UN Special Rapporteur on the Right to Education.
- 16 The Platform recommends formulating a public policy orientated towards a reduction in the quantitative and qualitative housing deficit as well as facilitating the conditions for judicial security of tenure of housing. At the same time the Platform urges the State to adopt a public housing policy that works according to the logic of rights and not under the exclusive parameters of the market.
- 17 The Platform recommends the cessation of forced evictions, a practices prohibited under international law and frequently carried out in Colombia.
- 18 The Platform recommends that the State refrain from approving norms that facilitate the theft of the collective property of the indigenous and Afro communities and the individually held rural property in the hands of peasants. At the same time the Platform urges the State to allocate greater resources for purchasing collective and individual lands.
- 19 The Platform recommends that the State guarantee the collective territory of the indigenous and Afro peoples in the terms formulated by the International Covenant of Economic, Social and Cultural Rights and the Convention 169 of the International Labor Organization as well as refraining from approving norms that prohibit the titling or expansion of reservations in any part of the national territory.
- 20 The Platform recommends that the State reverses the difficulties faced by the Afro-descendent communities to access the health system, obtaining housing subsidies and effectively enjoying the right to education. At the same time the Platform urges the State to pay special attention to the displaced Afro population, as well as adopting a policy that reduces the high levels of poverty of this population.
- 21 The Platform urges the legal and illegal armed actors to stop the practice of sexual violence, as a weapon of war, against women. The Platform urges the Colombian State to counter the high levels of impunity that this practice continues to show.

- 22 The Platform urges the State to adopt measures that effectively combat the scourges that particularly afflict women such as anemia and low weight for the gestational age of pregnant women as well as mortality from breast cancer.
- 23 The Platform urges the State to adopt measures that effectively reduces the wage differences between men and women as well as the lower schooling levels and the fewer work opportunities that women have.
- 24 The Platform urges the State to adopt measures that prevent homophobic practices and the attacks on the LGBT population as well as reducing the levels of impunity that these crimes show.
- 25 The Platform urges the State to comply with the recommendation of the Covenant's Committee on the laboralization of community mothers and gardeners and facilitate all guarantees and benefits in the areas of social security including health, pensions and professional hazard insurance.



REPORT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF THE INDIGENOUS AND BLACK COMMUNITIES OF THE COLOMBIAN PACIFIC COAST

Presented upon consideration of the Committee on Economic, Social and Cultural Rights of the United Nations by the organizations of the Indigenous and Afro-Colombian communities of the Colombian Pacific Coast, with the support of the Dioceses of the Catholic Church of Quibdó, Istmina, Buenaventura, Tumaco and Guapi

And the support of MISEREOR and Asesoría of FIAN



Oscar Darío Cardona Alvarez. *El cartel de la coca*. Escuela Nacional Sindical

INTRODUCTION

Because of the report that was supposed to be presented before the Committee on Economic, Social, and Cultural Rights which the Colombian State should have presented on June 30, 2006, the indigenous and black communities who live in the Colombian Pacific coast, through their legitimate organizations and the support and assistance of the Dioceses of the Catholic Church that is in charge of this region (Dioceses of Quibdó, Istmina, Buenaventura, Tumaco and the Apostolic Vicar of Guapi), have considered important to present before the Committee on Economic, Social, and Cultural Rights of the United Nations an alternative report containing true and compared information about the situation on Economic, Social and Cultural Rights – in legal and practical terms – in such a way that this office can count on more objective and complete information.

This alternative report is presented in relation to the rights of the black and indigenous communities who inhabit in this region. The main geographic characteristic of this area is to be a tropical jungle and humid forest area, with low lands, high levels of rain, and a great bio-diversity.

The report makes a historical, political, and economic contextualization of the Colombian Pacific region, specifying its geographic location in the Republic of Colombia. The report puts emphasis on the great biodiversity of the region, as well as on its great hydric potential. The Population of the Colombian Pacific coast is mainly characterized by the ethnic diversity: the 90% of the population is made up of Afro-Colombian people, the 6% by the Embera Dóbida, Embera Chamí, Embera Katío, Eperara Siapidara, Wounaan, Awa and Tule indigenous ethnic groups, and the 4% that is left, is composed by the mixed race communities.

This study puts emphasis on **the situation of the territory and the right to adequate feeding**. The analysis has been in charge of an interdisciplinary group, under the coordination of the Social Pastoral of the Dioceses of Quibdó, and the Social Pastorals of the Dioceses of Buenaventura, Guapi, Tumaco and Istmina, as well as of different organizations of the Black and Indigenous Communities. The Colombian Pacific area is the target of the capitalistic and strategic interests related to the development of economic mega-projects; therefore, it has become a land of confrontation between the armed groups that are in the conflict.

The report explains that the effective control that the native inhabitants should exercise over these territories has weakened, especially because of the deepening, the enlargement and the degradation of the armed conflict. It has provoked a massive and continuous displacement throughout this region, as well as the illegal siege of the property, carried out by the **private companies that impose their agro-industrial mega-projects related to the extraction of the natural**

resources and the construction of road, energetic, military and touristic infrastructure. Likewise, the current imposition of illegal cultivation changes in the traditional ownership over the territory, which violate the exercise of the collective property. These circumstances affect the rights of the Black and the Indigenous Communities.

It is important to notice and call the attention of the Committee in relation to the historical fact that the region was never occupied by the Spanish, but by the indigenous, the Africans, and their descendant. The indigenous towns of the Pacific have an origin that is previous to the formation of the Colombian National State.

This report makes its main emphasis on the feeding rights and their diverse components. Likewise, this report approaches the free right to self determination, the right to equality and against discrimination, free and dignifying work, and the right to health. The report always puts emphasis on the relation that exists between these rights and the right to be adequately fed.

For the indigenous towns and the black communities the evaluation made in relation to the implementation of the International Agreement on Economic, Social and Cultural Rights has to be made according to an integral perspective that includes the independence and indivisibility of the Human Rights. Thus, on the basis of the liabilities that are ordered by the International Agreement on Economic, Social and Cultural Rights, different proposals shall be formulated in order to integrate and include other legal elements of which Colombia make part and that are related to the Economic, Social and Cultural Rights.

It is important to call the attention of the Committee on Economic, Social and Cultural Rights of the United Nations **about the fact that the direct and the indirect participation of the public institutions that are in charge of guaranteeing the security of the society has been identified during this process of destabilization against the right to own the land, as well as against the joint effectiveness of the Economic, Social, Cultural, Civil and Political Rights.**

There exists responsibility of the State due to the actions of some of its offices whether for action or omission. The responsibility due to the actions carried out by the offices of the State is specially related to the participation of the Public Forces in activities that are against the communities and their individuals. It includes the promotion of “development projects” without previous consultation, agreement and accord with the communities, affecting the ownership rights of the black and indigenous communities of the Colombian Pacific Coast, and against their cultural traditions. Also the omission which includes administrative and judicial authorities and which can be found in the lack of policies related to

the recognition, the protection, and the guarantee of the individual and collective rights of the black people and the indigenous, particularly in relation to the Economic, Social, and Cultural Rights, and the impunity that is kept before the violation of these rights.

This alternative report that the black and indigenous communities of the Colombian Pacific present to be considered by the Committee, denounces that the Colombian government has not applied the recommendations made by the Committee in former reports.

The report approaches the general juridical frame of the rights of the Indigenous and the Black Communities, composed by the Agreement on International Economic, Social and Cultural Rights, the Additional Protocol of the American Convention on Human Rights, in relation to Economic, Social and Cultural Rights (Protocol of San Salvador), the Convention number 169 of the International Labor Organization, the International Treaties of which Colombia makes part, and the laws and regulations that are related to the matter and that make part of the Colombian Political Constitution.

The article number 53 of the National Constitution orders “The goods that are of public domain, the national natural parks, the communal lands of the ethnic groups, the reservation lands, the archaeological patrimony of the nation, and all other goods that are determined by the law, which are inalienable, with non extinctive prescription and not subject to any embargo”. The Article number 13 of the National Constitution also recognizes and guarantees the right to equality and to not to be discriminated.

The Colombian Political Constitution that was promulgated in 1991, in its article number 63 recognizes and guarantees the right of the ethnic groups to the lands and the reservation lands. It also declares that all these lands are inalienable, imprescriptibles and not subject to any embargo. The same Constitution determines in its article number 329 that the reservations are of collective ownership and that they are not exchangeable. In the paragraph of article number 330 the duties of the Government related to the promotion of the warranties of “the representatives” of the indigenous communities during the decision making processes shall be listened in relation to the exploitation of the natural resources that make part of the indigenous lands. According to the National Constitution., in Colombia all Health, Housing, Education, and Work Rights, and in general all Economic, Social and Cultural Rights are recognized in favor of all the Colombian population.

The region of the Pacific Coast is characterized by its great wealth in natural resources. According to the official information, the region contributes to the national economy with the 69% of the sea fishing, the 42.2% of the wood

1 DNP, PDH, GTZ (2006), The Colombian Municipalities towards the objectives of development of the millennium: Health, education and decrease of poverty.

2 ICBF, PROFAMILIA, MINISTRY OF SOCIAL PROTECTION, UNFPA (2005) National Survey on Demography and Health.

3 ICBF, PROFAMILIA, MINISTRY OF SOCIAL PROTECTION, UNFPA (2005) National Survey on Demography and Health.

4 Flórez and Millán, op. Cit.

exploitation, the 82.17% of the platinum, 18% of gold, and 13.8% of silver. Besides, there are many sources of minerals of strategic importance such as bauxite, manganese, radioactive cobalt, tin, chromium, nickel and petroleum, which are used in the iron and steel industry, the electronic metallurgy, the aerospace industry, and the production of nuclear energy. (DANE, 1993)

Even though a great biological wealth is found in the Pacific region, the populations who live there suffer from a great feeding crisis. The departments of Nariño and Cauca possess the highest rates of chronic malnutrition, near to the 24%, while the national average is equal to 13.6%.¹ In respect of the country the Pacific region presents the highest rate of malnutrition due to low size of the people in relation to their age and height from 10 to 17 years.² The probability that pregnant women have to eat nutritious food such as folic acid and other vitamins during the pregnancy is of only 38.7, while the national average is 51.3. Finally, in respect of the possibilities of eating calcium, this same period of time shows an average of 36.9, while the national average is equal to 49.3.³

THE FORCED DISPLACEMENT

The natural wealth of the Pacific Coast has called the attention of very powerful economic interests from national and foreign investors. The National Government and some Departmental Governments have concentrated their efforts on the region in order generate the adequate infrastructure according to their economic interests, without making any special consideration in relation to the needs of the inhabitants of the Pacific Coast. On the other hand the Government considers necessary to carry promote the port development in the Pacific Coast, in order to facilitate the incorporation of the country to the group of countries from Pacific Basin and stimulate the international commerce with other countries from the East. In that context some of the mega-projects that now have place in the Pacific coast can be understood.

Thus, the Colombian Pacific Coast, even though being the owner of a great biodiversity and a great wealth from the ground, it has become the scenario of great mega-projects of infrastructure. It has to be kept in mind that many of the black and indigenous communities “are established in places with strategic military, political, and economic importance.”⁴

Even though the great contribution of the region towards the national economy, the benefits of the projects of exploitation, extraction of resources and infrastructure, **it does not imply an advance in the warranty of the living conditions of life for the indigenous and black communities who inhabit. On the contrary, this region has articulated itself to the country from its marginal situation before the development of the national centers.**

In some cases, the paramilitary groups have forced the displacement of the black and indigenous communities in order to facilitate the implementation of a project; and other groups have forced the cooperation of the inhabitants in the projects by the use of the arms.

In order to have a more accurate contextualization regarding the omissions that the Colombian State has committed against the Economic, Social and Cultural Rights, the Alternative Report approaches the most important conclusions and recommendations made by the Committee. These recommendations were made upon the evaluation of the Periodic Reports that were presented by the Republic of Colombia in 1990, 1995 and 2001, related to the Indigenous Towns, the displaced populations, and the effectiveness of the real access to potable water for all the population. We particularly call attention in relation to the concerns that the Committee expressed about the document that contains the conclusions and the observations made after the evaluation of the Report of 2001, which textually states as follows:

“The Committee is especially concerned because the victims of this displacement are the poorest people, most of them women and children, **the peasants and the members of the indigenous communities and the Afro-Colombian people** (sic) from the country, who are expelled from their zones of origin because of the violence and the armed conflicts” (paragraph number 11). The concern is also because “the life conditions of the internal displaced people, specially women and children, and the **peasants and the members of the indigenous communities and the Afro-Colombian people** (sic)” (The words in bold have been added to put emphasis) “The Committee observes that the traditional territories of the indigenous people have been reduced or occupied without their acceptance by wood exploitation companies, and mining and petroleum companies, all acting against the welfare and the normal practice of the cultural indigenous traditions, and against the equilibrium of the ecosystem” (paragraph number 12)

Regarding the economic context of Colombia, and the Region of the Pacific, the alternative report explains that Colombia implements an economy of free trade in which the State is in charge of regulating and designing the policies of distribution of the wealth. The National Constitution recognizes the right to the private property, but it warns about its social function⁵, and the collective property⁶ and the associative or solidarity property rights⁷

Nevertheless, the report states that the Colombian model of development does not benefit the inhabitants of the region. It **produces a great inequality, exclusion and violence that have affected the warranty, the protection, and the respect of the feeding rights of which the indigenous and black communities are entitled. The communities cannot enjoy of feeding security. It means that**

5 Article 58 of the National Constitution, paragraph 2 “The property is a social function that implies liabilities”

6 Article 329 of the National Constitution, paragraph 2 “The reservations are the collective property and is not exchangeable”; article T-55, paragraph 1”, it recognizes in favor of the Black Communities “the right to the collective property over the areas that the law determines”, and the paragraph 3 orders that “The property, when recognized as such shall be exchangeable only in accordance to the terms that are ordered by the law”

7 Paragraph number 3 of article number 58 of the National Constitution.

8 National Harvest Department, PDH, GTZ (2006), "The Colombian municipalities aim their objectives in accordance with the objectives of the millennium: health, education, and reduction of the levels of poverty".

they do not have access to the basic food that is due and necessary for an active and healthy life, because it is not possible to act and manage their own processes of production and feeding, and nor even to administrate the production processes and land in accordance with their cultural preferences.

QUALITY OF LIFE OF THE INDIGENOUS TOWNS AND THE BLACK COMMUNITIES OF THE PACIFIC

The Report that the Black Communities and the Indigenous Towns have presented before the Committee approaches the last study that was made in relation to the Quality of Life in Colombia (2006)⁸ "The Pacific regions possesses one of the worse levels of quality of life in the country, because it is 15 point below the national average (62 before 77). During the last six years, the region has had a negative growth rate in relation to the level in the quality of life (- 4.7%). Between 1997 and 2003 all the factors that measure the quality of life fell down, thus, the 63% of the family houses do not have access to a bathroom with connection to the sewerage system or the lowlands. The 30% of the population lack of supply of water of public source, tank, or aqueduct. The 41% still cook with coal, wood, and waste. The 60% do not have access to the service of waste collection. The 46% of the family houses live in accumulation. In the region, the municipalities with the lowest levels of quality of life are, Carmen of the Darién (47.8), Alto Baudó (49.4), Piamonte (49.4), Medio Atrato (49.8) and The Vega (50.1)"(...). At the departmental levels, Choco presents the lowest indicators in Levels of Quality of Live in the region and the country (58 points). (Report on Quality of Life 2006: 23).

On the basis of certain official sources of information and field investigations, some of the situations that affect the Economic, Social and Cultural Rights of the Indigenous Towns and the Black Communities, or that may imply the violation of such rights, are presented in the report.

FREE SELF DETERMINATION, THE RIGHT TO BE CONSULTED, AND THE MEGA-PROJECTS

The Committee is warned about the absence of consultation during the definition of the economic projects that affect the way of life of the towns and the communities of the Pacific Colombian Coast. The Colombian Government, in association of economic private interests, has promoted a series of projects **without asking** the affected Population. This report also approaches the serious incidents that happen against the economic, cultural and social life of the population who live in the Pacific Coast. Such projects currently affect the territory, the traditions and the customs of these Towns and Communities.

The Government promotes since the administration of Andrés Pastrana (1998-2002) different projects that affect the ownership over the land, and the lack of knowledge about the territories that have been constitutionally assigned in collective ownership. The collective ownership of the black and the indigenous communities is inalienable and not subject to any embargo. These projects being implemented affect the traditional production of food in these communities, as well as their cultivation of oil palm.

Even though the great contribution that the region makes in favor of the national economy, **the benefits of the projects of exploitation, extraction of resources and infrastructure have not returned or guaranteed any conditions of good quality of life in favor of the indigenous and black communities who live there. On the contrary, this region has been articulated to the country because of its marginal situation in comparison with other economic centers of the country.** In the following paragraphs we present the main mega-projects that are proposed without making any previous consultation with the Indigenous and the Black Communities:

The Colombian Pacific is located in the middle of a series of mega-projects and continental investments that make part of the Plan Puebla Panama (PPP), the project of building a Canal on the Atrato River - Truandó and the Proposal of Integration of the Regional Infrastructure of South America (IIRSA). This set of projects aims to joint Latin America with the USA by the construction of roads, river ways, and electric networks. Therefore, certain resources such as petroleum, gas, electricity, and some other genetic resources and the tropical species shall be sent in an easier way abroad.

Another interest that is foreseen in the zone is related to the construction of roads and infrastructure. It brings commercial surplus for the investors. An example of this is the Acuapista project, which is thought to be a system of communication and transport that joins the Bays of Buenaventura and Tumaco in the South Coast of the Colombian Pacific⁹. Since some time ago it has been mentioned that the navigability of the Atrato River and its connection with the land in Quibdó-Hitmina-Condoto-Chiquichoque; as well as the navigability of the San Juan River to Buenaventura, and in direction to Quibdó – Pereira – and the center of the country, is other of the mega projects.

Since the Agreement achieved by the middle years of the 1990's, a mega project has been designed. This project is known as "North-west Colombian, the best corner in America". It aims the construction of a series of ways in order to facilitate the arrival to the ports that are planned to be built (Tribugá Nuqui) or to enlarge (Buenaventura and Tumaco)¹⁰. This project was designed in 1997 by the Department of Antioquia – during the administration of whom today is

⁹ "That proposal pretends, on the basis of the Multi-institutional administration, generate integral processes of economic and social development, in a region that has been traditionally left aside in the country. Likewise, it proposes the opportunity to vindicate the area that is today under the threat of the drug traffic and the armed groups, as a model for the rest of Colombia and for the world". In synthesis, the Acuapista project of the south Colombian Pacific. Ministry of transport. Integral Program of the Pacific, Project Arquímedes, 2005.

¹⁰ Please refer to "Strategic Projects of connectivity for the north west Colombian". This document was prepared by the Bank of Regional Initiatives for the Development of Antioquia (BIRD), the Local Government of Antioquia and the School of Engineering of Antioquia. December, 2006. It was published on <http://birdantioquia.Eia.edu.co/projects>

11 Revista Cambio 16 - Bogotá, Edition N° 235 – December 15 – 22, 1997. The magazine quotes the word of Carlos Castaño, who was by the maximum chief of the paramilitary forces: "(...) The paramilitaries have professionalized, I already count on regions where the economy has reactivated, where the war finished and people have come back. (...) I always go with the rifles ahead (sic) and the trucks behind"

our President, Álvaro Uribe Vélez – and by the National Institute of Ways of the Republic of Colombia. This project is thought as a necessity in order to achieve the economic development of the Department of Antioquia.

On the other hand, some economic and geographic and strategic factors have to be kept in mind in relation to the following projects: Port of Buenaventura (Project Water Dulce) / Road to the Sea through Choco / Project Port in Tribugá / Project Port in Málaga (Alternative) / Port of Tumaco / Train Uraba-Panama / Port Systems Uraba – Atrato.

Even though the great contribution that the region makes in favor of the national economy, the benefits of the projects of exploitation, extraction of resources and infrastructure have not returned or guaranteed any conditions of good quality of life in favor of the indigenous and black communities who live there. On the contrary, this region has been articulated to the country because of its marginal situation in comparison with other economic centers of the country.

The armed conflict and its impact over the rights of the Indigenous and the Black Communities that inhabit the Colombian Pacific coast.

The Republic of Colombia undergoes a complex armed conflict since a long time ago. Without approaching the analysis of the antecedents in the civil wars and the times of violence that have influenced the republican history of the country since the middle of the XIX century, it is necessary to state that during the last 50 years Colombia suffers from the existence of guerrilla armed groups that act against the State. The panorama of the conflict became more complex when, at the end of the decade of 1980 the right handed paramilitary groups began to act in the country. They acted under the economic protection of drug dealers and the protection of some authorities of the State. The beginning of the paramilitary phenomenon is characterized by a bloody fight for the military control over the territory, against the guerrillas. The military actions because of the internal armed conflict began to produce the destruction of the society, and left the indigenous and black population without lands and territories. The guerrilla and the paramilitary groups have committed serious violations to the International Humanitarian Law.

In some cases, the paramilitary groups have forced the displacement of the black and indigenous communities in order to facilitate the implementation of a project; and other groups have forced the cooperation of the inhabitants in the projects by the use of the arms. The actions of the paramilitary groups leaving people without their lands and their territories have mainly happened in the zones that are planned to be the places for the “developmental mega-projects”¹¹, which are mentioned in other part of this report.

The files kept by the Commission of Life, Justice and Peace of the Dioceses of Quibdo, keep the demands and the communications that witness **the terrorist actions that were carried out by the paramilitary. Sometimes under the open protection of the Military Forces of the Republic.**¹² The demands also inform that all **these paramilitary actions have been characterized “by the burning of towns, the commission of massacres, tortures, and cut into pieces with power saw”**¹³. Since 1998 the social organizations have denounced that in the Middle Atrato the control of the public order is exercised by the paramilitary groups. It is in charge of a group called as “Autodefensas Campesinas de Córdoba y Uraba”, and that it happens under the “approval of State offices such as the National Police and the municipal administrators¹⁴”

The purpose of the paramilitary incursion with actions of terror is to eliminate the practice of any kind of opposition against the consolidation of their political and social project, which is very convenient to their interests in economic power and their mega-projects. The indigenous communities and the black communities have been subjected to a new form of colonialism under the direct oppression of the weapons. “The presence of the guerrillas and the presence of the public forces and its allies the paramilitary groups have become ‘occupation armies’ on the ethnic territories”¹⁵

The armed conflict and the implementation of the mega-projects has forced the displacement of great parts of the indigenous and black communities. In September, 2006, the CODHES¹⁶ explained that: “in twelve departments (**Nariño, Choco, Meta, Bolívar, Cauca, Guajira, Putumayo, Tolima, Valle del Cauca, Antioquia, Guaviare and Sucre**) massive displacements appeared, and that in three different limit areas (limits with Ecuador, Venezuela and Panama) different migrations happened affecting the territories of other countries” (The words in bold put emphasis on the departments of the Pacific region). It means that the departments of the Pacific Coast represent the 33 % of the departments in which the forced displacement grew.

The forced displacement is an action against the right to the integrity of the black and indigenous communities, and it acts against the stability of the families. It eradicates the children from their natural environment and deprives their access to education. A significant number of cases show that the displacement is produced after the killing of the Chief of the family. This fact makes women become the chiefs of the family and besides, the direct target of the threats. The usurpers take possession of the houses of the displaced people, as well as of the territories of the communities. According to CODHES, “Even though it is true that this forced displacement happens because of the armed conflict, **it is also evident that powerful economic interests that are related to these collective and traditional territories look for the exploitation of their natural**

12 In page number 133 of the above quoted book (Flórez and Millán), the following case is approached, which shows a pattern of behavior in the paramilitary groups: “In the basins of Jiguamiandó and Curvaradó, for example, there has been a continuous paramilitary pressure which has been openly accepted by the Brigade XVII, according to different witnesses who are the victims of their aggressions”

13 Different denounces about these facts are kept in the records of the Commission of Life, Justice and Peace of the Dioceses of Quibdo

14 Orewa, ACIA, OIA. A communication made to the national public opinion. Quibdo August 30, 1998.

15 Flórez and Millán, op. Cit.

16 CODHES, Bulletin number 69, September 12, 2006. It can be consulted at WWW.Codhes.org

17 ICBF, PROFAMILIA, MINISTRY OF SOCIAL PROTECTION, UNFPA (2005) National Survey on Demography and Health.

18 DNP, PDH, GTZ (2006), The Colombian Municipalities towards the objectives of development of the millennium: Health, education and decrease of poverty.

19 ICBF, PROFAMILIA, MINISTRY OF SOCIAL PROTECTION, UNFPA (2005) National Survey on Demography and Health.

20 ICBF, PROFAMILIA, MINISTRY OF SOCIAL PROTECTION, UNFPA (2005) National Survey on Demography and Health

21 Please refer to Pacific Territory, N° 3, May 25, 2006

resources and their biodiversity. It happens by means of the implementation of mega-projects and through the illegal imposition of oil palm and rubber cultivations". (The words in bold have been added to put emphasis)

THE RIGHT TO THE HEALTH

The rate of infantile mortality in the Region of the Pacific coast is the highest in the country (54 for every thousand), in comparison with 19 for every thousand for the five years between 2000 and 2005. In comparison with other departments highest rate is that one of Choco, (36 for every thousand)¹⁷

Particularly, the departments of Nariño and Cauca possess the highest rates of chronic malnutrition, near to the 24%, while the national average is equal to 13.6%.¹⁸ In respect of the country the Pacific region presents the highest rate of malnutrition due to low size of the people in relation to their age and height from 10 to 17 years.¹⁹

The probability that pregnant women have to eat nutritious food such as folic acid and other vitamins during the pregnancy is of only 38.7, while the national average is 51.3. Finally, in respect of the possibilities of eating calcium, this same period of time shows an average of 36.9, while the national average is equal to 49.3.²⁰

In terms of health, the epidemiologic pattern of the population is characterized, as well as in all the Afro-Colombian territories, by a high incidence of morbidity and mortality and a prevalence of diseases such as acute diarrhea – EDA, acute respiratory infection – IRA, and tuberculosis. It is calculated that the rate of infantile mortality is between the 10% and the 50% above the national average" (The words in bold do not belong to the text)

"The 70% of the inhabitants of the department of Choco do not have access to the provision of medicines. In Quibdo there are 45 general physicians, 8 dentists, 5 bacteriologists, 3 physiotherapists and 13 specialists (3 specialists in pediatrics, 1 surgeon, 1 anesthesiologist, 3 gynecologists, 1 orthopedist, 1 internal doctor, 1 oculist, and 2 radiologists. In the rest of the department there are 75 general physicians, of which 62 are undergoing their rural internship. Meanwhile in the rest of Colombia there is one physician for every 863 inhabitants, in Choco there is one general physician for every 3.750 inhabitants, and in Quibdo, the capital of the department, there is one for every 2.888 inhabitants. Nevertheless, in Choco there are approximately 3000 soldiers and policemen. This fact shows a relation of one military for every 150 inhabitants²¹". This information shows the lack of interest of the State in the rights of the population.

The antiophidic serum situation ²² has promoted certain public and national debates²³, because, even though the country has a great diversity of poisonous snakes, there is not enough provision of antiofídico serum – most of the serum is imported – and the little that we have is mainly distributed in areas and regions of highest risk. That is the situation of the Pacific Coast.

THE RIGHT TO AN ADEQUATE FEEDING, TO FEEDING SECURITY, AND TO POTABLE WATER

The right to an adequate feeding has been violated by diverse factors. Four of them can be punctually mentioned to be considered by the Committee, namely, the implementation of mega-projects, particularly the cultivation of oil palm; the actions carried out by the groups that are in conflict, and the consequent forced displacement of the population; the feeding restraints that are carried out by the diverse armed actors, including the forces of the State; and, the air indiscriminate fumigation that is ordered by the central government to fight against the illegal cultivation of coca plant in the region.

Since the Government of Andrés Pastrana (1998-2002) different projects have been promoted in relation to intensive and extensive cultivation in the region of the Pacific. These projects include oil palm, also known as African palm. For the implementation of the project different territories of black and indigenous communities have been usurped. Since 1996 a process of forced displacement has been implemented in what are considered to be areas of good quality for the development of infrastructure, agricultural and industrial projects. Particularly, the implantation of intensive cultivation of oil palm, accompanied with the military and paramilitary actions.

The report of INCODER shows that the companies have applied the bought of improvements in favor of particular people, who belong to the collective territories, or to the individual members of the community councils. These companies have also acquired the lands and the improvements to certain individuals who possess individual titles that are excluded from the collective territories.

In all these cases, the obtaining that the companies make of the lands is always illegal. This is true because such obtaining happens under armed threats and under the pressure of the paramilitary groups, because the lands that belong to the black communities are not in the commerce. In other words, these lands cannot be sold, nor be transferred from one person to another, because they make part of the forest reserve.

Even though the International Right of the Human rights, the International Humanitarian Law, and the International Penal Right prohibit the use of hunger as

²² In a survey carried out by *Patricia Salcedo Vélez, MD. Coordinator of Internal Medicine from the Department of Emergencies of the Fundación Cardioinfantil, Institute of Cardiology* it is evident that: "In Colombia the biophidic accident is a public health problem. Every year 2.000-3.000 accidents are reported. The rate of mortality is 7,5/100.0000 inhabitants.

Because this is not an entity obliged to report, no data is available in relation to botropics accidents of 89-99%. The people who are at risk are all those who live in rural areas of tropical countries, especially all those who work in the field during rainy time and the evenings. The children follow in frequency of risk.

Most of the cases that are reported in Colombia happen in Antioquia, Choco, Meta, Norte de Santander, Casanare, Caldas and Cauca. (The words in bold enumerate the departments from the Pacific Coast). More recent information tells about 6000 annual cases in Colombia. An article that was published by the newspaper "El Heraldo" of Barranquilla, on April 15, 2006, states: "In Colombia there are 6 thousand cases per year, of which (2006) the Atlantic region presents 300. The most serious information is that more than the half of those accidents are not officially registered because they happen in the rural areas that are very far from the places where the family of the victim lives, and they prefer to use primitive medicines, or the services of *teguas* or *curanderos*".

To attend the number of accidents that happens world wide every day, 16 million doses of antiofídico serum are necessary. There are not enough in the international market, and many times the doses does not arrive on time to the place where the victims are, due to diverse difficulties".

²³ The following was one of the events that began the public debate about this matter related to the stock available and the localization of the antiofídico serum in Colombia. Due to lack of serum, a baby died in Pereira. The new was spread by *Colprensa* on Saturday, November 19, 2005: "Laura Valentina Goldzco, eight months of age, died on Saturday the morning, at the San Jorge Hospital of Pereira, because of a snake (*Coral Rabo of Aji*), in the municipality of Ulloa, Valle del Cauca. From there, she was transferred to the capital [Pereira]. The child suffered from paralysis in the most of her body and then she had a respiratory attack for which she died. The antiofídico serum was not injected on time. (...) This fact shows the problem that exists in relation to the lack of this medicine in the rural areas of the municipalities. Most of the cases happen there. (...) It is necessary to keep in mind that the department of Valle del Cauca makes part of the Colombian Pacific Coast.

a political weapon, the Colombian armed conflict applies it as a way of economic restraint in the areas of conflict. This kind of restraint is characterized by the limitation of the access to food and to medicines. The practice of this kind of restraint is linked to the armed conflict as well as to the processes of implantation of the cultivation projects. Particularly the projects related to oil or African palm. Likewise, the exploitation companies have imposed the cultivation of the palm that they have implemented in the Region, and the payment of salaries by using “vouchers” that can only be change in certain stores. People say that such stores belong to the paramilitary or to some of their allies. The truth is that these “vouchers” can only be changed for goods of first need at prices that are above the prices of the market.

In the zones of the Pacific region that are affected by the armed conflict, it is not possible to enter complementary food for the towns and municipalities. In various occasions the Public Forces and the paramilitaries have imposed restrictions in relation to the quantity of food that is allowed to each family. These groups have arbitrarily imposed an average limit of US\$ 20 per family for each month. The consequence of this is the decrease of the quantities of food that are available.

The traditional practices of the black and indigenous communities, such as hunt, fishing, fruit collection, and mining decreased because the armed actors imposed different schedules with entry and exit times, thus prohibiting the night mobilization of people. The armed actors, whether State or illegal, go to the places of crop and steal serf feeding cultivation or the domestic animals. These actions have reduced the access to food, specially the access to animal proteins (hunt and fishing), leaving the communities in a clear situation of scarcity of food.

The food and medicine restrains have been denounced not only by the Communities that are affected. The Bishops from the Dioceses of the Pacific region have also denounced it. In fact, the attention of the Committee is called relation to the Communication that was made on April 24, 2004, by the Bishop Fidel León Cadavid. He personally gave to the President of the Republic of Colombia, Álvaro Uribe Vélez, an open letter about the legitimacy crisis of the State, which was signed by the Dioceses of Quibdo, and the Regional Embrea Wounaan Organization (OREWA).

The actions of the armed actors of the region of the Colombian Pacific have make of the inhabitants, especially the black and the indigenous people, be the object of the food restrictions. Because of this, these people suffer from generalized hunger, and they are not allowed to keep the feeding security to which all the citizens are entitled. **The authors of this report consider that these communities are the object of a cruel, inhumane, and degrading treatment that has to**

be denounced and be known by the Committee in its Final Observations. All the violations against the feeding right that have been presented in this Alternative Report are known by the public authorities. It can be found in the denounces that have been made by the Bishops and that are directed to the President, and to the public opinion; as well as in the warning made by OCHA – United Nations. Even though, the State has not implemented any measure at all in order to guarantee the access to food.

According to the General Attorney of The Nation, the aqueduct coverage in Choco is only 31%, and only the 25% of the population count on sewerage system. The dramatic situation is more evident if we keep in mind that according to a survey carried out by the Superintendence of Public Utilities **the 24 municipalities of the department of Choco receive water that is not apt of human consumption.**

Even though the great hydric wealth of the region of the Colombian Pacific, and according to certain official studies, **the 87% of the municipalities of the region (118) are below the 50% of coverage and 33 of them only have 10% of coverage.**

The affectation of the right to food due to the existence of the illegal cultivation and the actions of the State in relation to the indiscriminate air fumigation, should be analyzed at the same time, because the illegal cultivation has been the excuse to continue with the air fumigation. The arrival of the illegal cultivation to the Pacific Coast has not only affected the right to food, but also the health and the cultural traditions of the black and indigenous towns of the region. The illegal cultivation of coca is **“against the historical practices of the department, which, even being under an economy of subsistence, never had any thing to do with this dynamics of the armed conflict”**²⁴. The social and cultural change that derived from the implementation of the illegal economy has brought great prejudices for the population, because of the increase in the prices of the products at the level of the regional economy, as well as because the destruction of their traditions and their lands.

In the Coast Pacific, the illegal cultivation of coca has begun because of external agents. Whether being directly exploited by the drug cartels that move their cultivation, and their processing “laboratories” according to the actions of the State, or by the illegal armed forces, the cultivation happens and produces colonization. Many people come to work with this illegal business. The direct employees called as “raspachines”, who are the members of the population and who do not have any land or work, and who have found in this “job” a way to survive. On the other hand the illegal cultivation has been imposed by the paramilitary and guerrilla groups, which have found in this coca market one of their sources of financing.

²⁴ Interdisciplinary Program of Support to the PRIAC Community. National University of Colombia. “Del Socavón a la Vida”. 2003. Page 72.

25 Law 387 of 1997 "Through which different measures are adopted to prevent the forced displacement, and promote the social and economic attention, protection, consolidation, and stabilization of the internal people displaced by violence in the Republic of Colombia". The third article of this law says: "A displaced person is anybody who has been forced to migrate within the national territory, and withdraw their place of residence and/or habitual economic activities, because their life, their physical integrity, their personal security or liberties have been violated or are directly threaten. This is because of any of the following situations: internal armed conflict, interior disturbances and tensions, generalized violence, massive violations to the human rights, violations to the International Humanitarian Law, and any other circumstances that happen because of any of these situations and that may alter public order"

The implantation of the illegal cultivation of has brought a considerable increase of violence against the civil population. It has also brought the usurpation of lands and the direct violation that the State makes against the rights of the population. This happens because the State tries to attack the illegal cultivation. An agreement has been agreed by the governments of Colombia and the United States, in order to carry out a **plan of air fumigation with terrible consequences over the human health, the sources of water, and the environment in general, but, especially, over the cultivation of food. The fumigation is made with glifosato, a highly toxic substance.** This report makes emphasis on this situation related to the violation of the rights of the black and indigenous population due to the air fumigation. This is because the department of Nariño, among the departments from the Pacific region, the one that has suffered the biggest negative impacts resulting from all those actions.

In the Department of Nariño the most affected population because of the air fumigation has been the inhabitants of the Afro-Colombian and Indigenous towns. In the ten municipalities of the Coast of Nariño the fumigation has been carried out repeatedly since the year 2001. It has caused serious damages to the health of the people, as well as over the crops of food, the fishing activities, and, in general, great damages to the environment. Because of the fumigation a violation of the Economic, Social and Cultural Rights of this people is happening. Particularly the right to food is being violated by the agents of the State.

The first reason is that the fumigation has become an important factor that explains the displacement of the black and indigenous communities. These people displace themselves and have to face the additional difficulties that are usual the displaced people due to the direct action of the armed groups, or the difficulties that are typical when a disaster happens. This is because the literal interpretation of the Law 387, of 1997²⁵, dos not include the people who are at risk or who suffer because of the action of the State against the drug traffic. This is the main problem that happens because of the fumigation.

Besides from the damages on human health, and the environment, **the self feeding cultivation** was affected in a 100%, and the peasants lost entire crops in the different communities. Their food was also exposed to the components of the chemicals, thus producing an absence of food. Likewise, the fumigation **produced direct and indirect impacts over the water, the animals, and the forest, in this region from the south Colombian Pacific that is so diverse.**

RIGHT TO THE LAND AND THE TERRITORY

The regional, zonal and local indigenous organizations of the Colombian Pacific have worked since the decade of the 70's in relation to the demand for the recog-

dition of their Rights and their ownership over their territories. This is how the communities have actively worked by the making of proposals and the making of national debates related to the legal conditions in relation to the Agricultural Reformation. Likewise, a complete work has been developed in relation to the permanent diagnosis of the administration of the territories and the respect of the National Constitution, besides from the sanitation and the enlargement of Indigenous Reservations.

The recognition of the ownership of the territories is based on the effective respect of the rights of the communities, but as time passes the economic extractive processes advance in the indigenous territories, and they are obliged to take actions in relation to the Territorial Control. This is because of the fact that the right over the reservation has not been sufficient to stop the processes of colonization and exploitation of the natural resources.

Because of the particular conditions of the ground and the places that were assigned, the indigenous have had to move to survive from most of the territories that were assigned by the Government as reservation, because they are not apt for agriculture. The result of this is that their conditions of life are very difficult because the agricultural and feeding problems, but, at the same time, these territories are under the threat of the extractive processes that are going to take advantage of their forest and biological wealth. These processes are going to make it more difficult for the indigenous to keep their territory and the existence of their culture²⁶. Likewise the territories have been negatively affected diverse factors such as: the processes of colonization and violence, the plans and programs of the Government, including roads, and the exploitation of the natural resources, etc.

The entering of the emerging economies into the region, by means of the expansion of the illegal cultivation of coca, has seriously affected the communities. This is a serious threat against the administration of the territory, and the conservation of the natural resources, as well as against as a generator of very difficult conflict processes, that express through the so high levels of violence, the social decomposition, and the fumigation campaign, which have affected various indigenous reservations, producing damages over human and animal health²⁷.

The territories that are recognized as reservations are of a very little extension, are fragmented, and show a very high percentage of presence of families from the black communities, as well as various areas that are occupied by the indigenous²⁸. The situation of ownership over the lands is very complex because there are many families from the black community who live in the reservations. They have also sold and bought to and from other families inside the reservation. There also are people from Valle, Antioquia, and Putumayo, who arrived to the region because of the illegal cultivation of the coca²⁹.

26 OREWA. Plan of Life. 1.995
 27 UNIPA. Plan of Life. 2.004:
 28 ACIESNA. Plan of Life. 2.005
 29 ACIESNA. Plan of Life. 2.005

The elaboration of the Plans of Territorial Order and the Plans of Development of the Municipalities did not count on the effective participation of the indigenous authorities. Nor they respond to the social, cultural, political and environmental reality of the indigenous towns. In that sense, there are not enough levels of institutional or community coordination, because the processes of the government are different from the ones of the communities³⁰.

NO DISCRIMINATION

Another one of the rights that is violated in a systematic way in the Pacific region is the right to not to be discriminated. The discriminatory practices usually combine a range of criteria that are prohibited, by using certain criteria that still is not. The educational Colombian strategy is not based on the international regulations about human rights and there exist no statistics about the access to education according to race, ethnic origin, or religion. In consequence, it is impossible observe progress by using the human rights as a parameter. **Excepting gender, the discrimination continues without being registered, thus producing a vicious circle. When the discrimination is not officially registered, it can be ignored.** Because of there is no quantitative information, there is no possibility to try to prove the discriminatory situation, and any attempt against it is condemned to fail. **It is impossible to face discrimination without being able to keep records on it.**³¹

The black population has been the victim of the discriminatory relations that have been created around the negative idea that has been assigned to the word “**black**”, among the hegemonic society which refers in very bad terms to the African population that was slaved in the American lands. This is true if we keep in mind that this hegemonic society rejects, whether consciously or unconsciously the black and the indigenous heritage. The result of the poor value that is given to the “black” and the Afro-Colombian people are the few work sources to which these citizens from black communities have access. Most of their jobs are not qualified.

Likewise, the ethnic condition of the indigenous has been so poorly valued by the society as a whole, to the point that in some social sectors and in some regions of the country the word “indio” has become a bad word.

The Colombian Pacific is the region of the country where the conditions of inequality and exclusion meet in the most dramatic way, in the middle of a territory that is recognized because of its immense natural wealth.

THE RIGHT TO HAVE A DIGNIFYING WORK AND AN ADEQUATE REMUNERATION

The right to have a dignifying work and an adequate remuneration is not fully guaranteed in the Region. According to the National Department of Statistics (**DANE**) in 2003, in the port of Buenaventura, which moves more than the 50% of the international commerce of the country every year, the rate unemployment was equal to 29%, the sub employment was equal to 35%, and the lowest salary levels showed that the 63% of the employed people earned less than a minimum wage. These circumstances impede the families get the resources that are necessary to cover their expenses and their necessities for food and consumption of other basic goods and services.

In October, 2005, the Senator Juan Carlos Martínez denounced that the “unemployment rate in Buenaventura, was between the 75 and the 80%”. Likewise, the Senator denounced that “the port worker receives their final payment on the basis of the number of days that he has worked, and that the social security is paid equal”

RIGHT TO EDUCATION

In respect of the educational situation we know that Colombia has levels of functional illiteracy - less than three basic grades³²- that are equal to 15.5%, while in the Pacific region this indicator is over this national average, being equal to 18%. The municipality of Medio Baudó, located in Choco, presents the highest level of illiteracy in the country: 66% in front of the 7% which the national average.

In the Pacific region, whose black population is over the 92% of the total, only 2 out of 100 young Afro-Colombians people from any of both genders finish secondary school, and only 2 enter university. The 95% of the families cannot send their sons to university because the resources are not enough. The quality of the secondary education is a 40% less than in other zones of the country. The Pacific Colombian, with more than 1.300 kilometers of coast, and 1.264.000 inhabitants, count only on two Public Universities, located in Quibdo and Buenaventura, and these universities do not have enough budgets to run, as neither enough number of staff and teachers for the technological education.

The rates of illiteracy in 1997 were of 43% in the rural areas, and 20% in the urban areas, while the national rates were 23.4% in the rural areas, and 7.3% in the urban areas. The primary and basic educational coverage during the same year as 60% in the urban areas, and 41% in the rural areas, when the national average was 87% and 73% respectively. The level of secondary educational coverage was 38% compared with 88%, the national average. The entering to university was 2% and the quality of the education was 40% less than in the rest

33 Idem.

of the country. There are 148 secondary schools, but only 54 of them count on a complete educational program”³³.

This report calls the attention of the Committee in relation to the Report made by the Special Narrator of the United Nations during her visit to Colombia, which is about the right to Education. The Document was issued by the United Nations as AND/C N.4/2004/45/Add, February 2, 2004.

Finally, this Report that is presented by the Indigenous and Black Communities of the Pacific upon the Consideration of the Committee, offers 22 conclusions, which can be summarized as a very critical situation of violation of and lack of knowledge about the Economic, Social and Cultural Rights of these towns and communities. Particularly racial discrimination, and deprivation from the rights to land and territory, adequate feeding, feeding security, work, health and education.

The conclusions mention the absence of a Colombian State policy State related to the protection of the black and indigenous communities, and the absence of a warranty to protect the Economic, Social and Cultural Rights of which they are entitled.

PARALLEL REPORT TO THE FIFTH REPORT OF THE COLOMBIAN STATE TO COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E./C.12/COL/5)



Con el apoyo de:

