

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

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/COL/CO/4)

COLOMBIA

(...)

C. Principal subjects of concern and recommendations

(...)

Complaints of torture and impunity

(...)

12. Despite the initiatives of the State party to counter impunity, the Committee finds it to be prevalent in the State party. The Committee expresses serious concern at the lack of reliable information on cases of torture and the stage of proceedings they have reached. It is also concerned at the absence of criminal investigations by the Office of the Public Prosecutor of the Nation, the fact that few cases have come to trial and that not all the cases concerned have been referred to the Human Rights and International Humanitarian Law Unit. It is a matter of concern to the Committee that cases of torture continue to be investigated only by administrative, disciplinary or military, rather than criminal jurisdictions. The Committee is concerned at the discrepancies between the figures provided by the different entities of the State party concerning the number of cases of torture and that the lack of a centralized system for compiling data on cases of torture makes it difficult to be certain how many cases are reported, investigated and punished (articles 2, 4 and 12 of the Convention).

The Committee calls on the State party to comply with its obligations under the Convention and to investigate and punish acts of torture with appropriate penalties which take into account their grave nature. The Committee underlines the responsibility of the State party for ensuring that investigations are undertaken by the competent authorities, that the investigation is carried out promptly and impartially and that these crimes are punished with appropriate penalties which take into account their grave nature. The Committee urges the State party to allocate additional resources to the Human Rights and International Humanitarian Law Unit in order to speed up its work and underlines the importance of the cases concerned being assigned to that Unit. The Committee recommends that the State party establish a centralized system making it possible to identify all cases of torture and the stage reached in investigating them.

(...)

Independence of the Office of the Public Prosecutor

13. The Committee expresses its desire to see the independence of the Public Prosecutor of the Nation strengthened and respected. It is also concerned that prosecutors attached to the Office of the Public Prosecutor are placed within military facilities, since this could compromise their independent functioning (articles 2 and 12 of the Convention).

The Committee urges the State party to ensure that the Public Prosecutor is appointed on the basis of criteria that guarantee the selection of a professional capable of acting in total and full independence. The Committee also recommends that the practice of placing prosecutors within military facilities be discontinued.

Demobilization and de facto amnesty

14. The Committee is seriously concerned at the lack of an appropriate legal framework for establishing the criminal liability of demobilized members of illegal armed groups, including approximately 30,000 paramilitaries. The legal rights granted by Act No. 975 of 2005 (Justice and Peace Act) and Decree 128 of 2003 do not conform to the principle of the proportionality of the sentence and the lack of convictions points to a de facto amnesty in contravention of international human rights obligations. The Committee is seriously concerned that, despite the systematic violence highlighted in *versión libre* accounts and the statement in Act No. 975 of 2005 that “the provisions of this Act shall be applied in accordance with constitutional norms and the international treaties ratified by Colombia”, there has to date been no conviction for serious human rights violations. The Committee points out that the adoption of Act No. 1312 of July 2009 on the application of the principle of opportuneness leads to impunity if the waiver of prosecution is applied without regard to human rights standards, and represents a violation of the victim’s right to full redress (articles 2, 4, 12 and 13 of the Convention).

The Committee urges the State party to comply with its obligations under the Convention and other international instruments, including the Rome Statute of the International Criminal Court, and investigate and punish crimes of torture with appropriate penalties which take into account their grave nature. In this regard, it points out to the State party, with reference to its general comment No. 2, adopted in 2007 (CAT/C/GC/2), that the Committee considers that amnesties or other impediments which preclude or indicate unwillingness to ensure prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability.

Acquiescence and complicity with illegal armed groups

15. The Committee is concerned at the widespread complicity of public servants and elected representatives with illegal armed groups, as evidenced by the high number of prosecutions for collusion with these crimes. It expresses great concern that Supreme Court judges have been threatened and have had to have recourse to the Inter-American Human Rights System for interim measures of protection. The Committee

also expresses its dismay that Supreme Court judges have been harassed, placed under surveillance and have had their telephone calls tapped by intelligence agents of the Administrative Department of Security (DAS) (art. 2 of the Convention).

The Committee notes the efforts of the State party to prosecute public servants and elected representatives for complicity with illegal armed groups and urges the State party to guarantee fully the integrity and security of persons working in agencies concerned with the administration of justice. The Committee urges the State party to take immediate steps to discontinue the harassment and surveillance of judges by intelligence agents (the DAS) and to punish those responsible for threatening the independence of the judiciary.

Military justice and extrajudicial executions

16. The Committee is seriously concerned at the widespread pattern of extrajudicial executions of civilians, subsequently described by the security forces as deaths in combat (“false positives”). The Committee reiterates its concern that the military justice system continues to assume jurisdiction in cases of gross human rights violations, including extrajudicial executions carried out by the security forces, thereby undermining the impartiality of those investigations (articles 2, 12 and 13 of Convention).

The State party should put an immediate stop to these crimes and comply fully with its obligation to ensure that gross human rights violations are investigated impartially under the ordinary court system, and that the perpetrators are punished. The gravity and nature of the crimes clearly show that they fall outside military jurisdiction. The Committee underlines the responsibility of the High Council of the Judiciary for resolving conflicts of jurisdiction. The Committee also emphasizes the importance of ensuring that initial investigations, the collection of evidence and the recovery of corpses are the responsibility of the civil authorities.

Forced disappearances

17. The Committee expresses its serious concern at the widespread practice of forced disappearances (28,000 officially recognized in the National Registry of Disappeared Persons) and the number of corpses recovered from mass graves – 2,778 to date according to the State party’s figures. The Committee notes that the graves have been discovered mainly on the basis of statements by demobilized paramilitaries and that the vast majority of victims were tortured before being executed, as evidenced by the corpses found bound and dismembered. The Committee regards as positive the adoption in 2007 of the National Plan for the Search for Disappeared Persons, but is concerned at the slow pace of implementation and the lack of institutional coordination with the Office of the Public Prosecutor. The Committee regrets that the Executive has opposed a bill aimed at clarifying forced disappearances and identifying corpses in mass graves (art. 2 of the Convention).

The Committee urges the State party to take effective steps and allocate sufficient resources to implement the National Plan for the Search for Disappeared Persons, ensuring that victims’ families and organizations

are suitably involved and that there is proper institutional coordination among all the competent authorities. The Committee recommends that support be given to legislative initiatives to promote clarification of forced disappearances, the rights of victims and early identification of corpses in mass graves. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(...)

33. The Committee requests that the State party provide information, within one year, on the measures taken in pursuance of the Committee's recommendations as set forth in paragraphs 12 to 17 above.

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