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**REPORT ON VIOLATIONS OF THE CONVENTION AGAINST TORTURE IN**  
**COLOMBIA**

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## ACRONYMS

ACR - The High Council for Reintegration

CAT - Convention against Torture

CEDAW - Committee on the Elimination of Discrimination against Women

CIDT - Cruel, Inhuman, or Degrading Treatment

CRC - Convention on the Rights of the Child

CUNY - City University of New York School of Law

DDR - Disarmament, Demobilization and Reintegration

ELN - National Liberation Army

FARC - Revolutionary Armed Forces of Colombia

GAHD - Colombian Ministry of Defense: Humanitarian Care Group for the Demobilized

HRC - Human Rights Council

HRW - Human Rights Watch

IACHR - Inter-American Commission on Human Rights

ICBF - Colombian Institute for Family Welfare

ICCPR - International Covenant on Civil and Political Rights

ICTY - International Criminal Tribunal for the former Yugoslavia

IUD - Intrauterine device

IMP – Alianza Iniciativa Mujeres Colombianas por la Paz

NRC - Norwegian Refugee Council

PCN - Proceso de Comunidades Negras

PDAG – Post- Demobilization Armed Group

SAT – Early Warning System

UNHCR - United Nations High Commissioner on Refugees

UNP- National Protection Unit

WHO - World Health Organization

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## I. INTRODUCTION

For over 50 years Colombians have endured a violent internal armed conflict between government forces, paramilitary armed groups and guerrilla rebel armed groups. This internal armed conflict is rooted in the post-colonial split of the country based on economic, social and racial inequalities. Today, each group continues to fight and deliberately commits human rights violations in order to increase its influence over Colombian territory. These human rights violations include the recruitment of children as soldiers, and sexual and gender-based violence against women and girls.

The most significant actors in the armed conflict include: the Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo (FARC); the Ejército de Liberación Nacional (ELN); paramilitary armed groups; the national armed forces; and the police. Both guerrilla and paramilitary groups are known to target children to serve in the armed conflict. There are an estimated 14,000 child soldiers in Colombia,<sup>1</sup> with approximately 7,000, or half, associated with the paramilitaries and 7,000 with the guerrillas.<sup>2</sup> At least 1,480—at a minimum one-third—of ELN fighters are children and approximately 2,200 children under age 18 are in the Autodefensas Unidas de Colombia (AUC).<sup>3</sup> Human Rights Watch calculates that up to twenty percent of paramilitary forces are child soldiers.<sup>4</sup> The style of recruitment varies: the AUC has been known to recruit children through the promise of earning a salary<sup>5</sup> while other paramilitaries often take children in lieu of the taxes they impose upon families. Any refusal most likely will result in an attack against the family.<sup>6</sup>

In the late 1990s, the Colombian government passed legislation for the protection of children in the government armed forces. Law 418 (1997) raised the minimum age for conscription to 18 and Law 548 (1999) raised the minimum age for voluntary enlistment to 18. Thus, the government no longer recruits children as soldiers. However, the armed forces continue to use children as informants, by threat or by enticing them with promises of a better life. It has been reported that the Colombian National Army uses children for intelligence purposes after the children demobilize from non-State armed groups.<sup>7</sup>

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<sup>1</sup> Nicolas Toro, *Child Soldiers: The Colombian Case* (April 15, 2008), available at <https://www.suffolk.edu/documents/CAS%20Departments/nicolas.toro.colombian.child.soldiers.pdf>.

<sup>2</sup> UN Security Council, Children in Armed Conflict, S/2003/1053, (November 10, 2003), available at <http://unispal.un.org/UNISPAL.NSF/0/269C3E3B5D3ABF4B85256DDC006D829D>.

<sup>3</sup> Watchlist, *Colombia's War on Children*, (February 2004), available at <http://www.watchlist.org/reports/files/colombia.report.php>.

<sup>4</sup> Human Rights Watch, *You'll Learn Not to Cry: Child Combatants in Colombia*, (September 18, 2003) 1564322882, available at <http://www.refworld.org/docid/3fe479ac4.html>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> UN Security Council, Children in Armed Conflict, S/2012/261 (April 26, 2012), available at <http://refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4fd706472&skip=0&query=Children&coi=COL&searchin=title&sort=relevance>.

Women and girls in the armed conflict are especially vulnerable to violence. They are often victims of gender-based crimes such as rape, forced abortions, forced contraception, and sexual slavery. The FARC recruits girls for missions that require sex with government soldiers in order to obtain information. Other reports of sexual violence have involved members of Los Rastrojos, a group that emerged after the demobilization of the ELN, and members of the Colombian security forces. Although acts of sexual violence are underreported, there are still numerous reports of young girls being forced to have sexual relations with adult soldiers and then later to endure forced abortions.<sup>8</sup>

The armed conflict in Colombia also disproportionately affects the Afro-Colombian population. Afro-Colombian communities are often located in rural and resource-rich areas. Many people live in poverty and this makes the communities easy targets, especially for child recruitment into armed groups such as the FARC and ELN. While violence has diminished, these impoverished communities continue to face human rights violations at the hands of the guerrilla and paramilitary groups including murder, rape, forced pregnancy, forced abortion, recruitment of child soldiers and family separation.

Colombia has international and constitutional obligations to protect the rights of women, girls and Afro-Colombian communities under numerous United Nations treaties and under Articles 93, 44, and 214 of the Constitution of Colombia (1991). The State has ratified: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and an Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR) and two Optional Protocols; the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the UN Convention on the Rights of the Child (CRC); and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 93 of the Constitution of Colombia provides that its enumerated rights and duties must be interpreted “in accordance with international treaties on human rights ratified by Colombia.” Despite such international and constitutional protections, gender-based human rights violations continue with a lack of accountability, justice, and reparations for victims.

The Colombian government has recently taken initiatives to reduce violence and human rights violations caused by the armed conflict, but these initiatives are lacking in effectiveness and implementation. In 2005, the Justice and Peace Law (JPL) was adopted to encourage paramilitary armed groups and others to demobilize and confess their crimes in exchange for reduced sentences. This law has correlated with a recent decrease in counter-insurgency activities of the paramilitaries. However, some demobilized soldiers have allegedly reconfigured into smaller and more autonomous units, such as Los Rastrojos.<sup>9</sup> In addition to the JPL, peace talks began between the Colombian government and the FARC in October 2012 to discuss numerous points necessary for

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<sup>8</sup> Refworld, *Child Soldiers Global Report 2001- Colombia* (2001), available at <http://www.refworld.org/docid/498806061e.html>.

<sup>9</sup> Immigration and Refugee Board of Canada, *Response to Information Request*, (March 22, 2012), available at [http://www.justice.gov/eoir/vll/country/canada\\_coi/colombia/COL104030.E.pdf](http://www.justice.gov/eoir/vll/country/canada_coi/colombia/COL104030.E.pdf).

ending the armed conflict and bringing about reconciliation, including rural development and agrarian reform; political participation; disarmament and demobilization; drug trafficking; victims of human rights violations; truth-telling; and implementation and verification mechanisms. In June 2014, the government of Colombia and the FARC issued a joint Statement of principles for the discussion on victims of human rights violations, which includes: principles of, *inter alia*, recognition of victims; recognition of responsibility; elucidation of the truth; and satisfaction of victim's rights. However, the discussion remains on-going and police often continue to fail to adequately investigate crimes.<sup>10</sup>

In 1999, the Colombian government launched the Programa de Atención a Niños, Niñas y Adolescentes Desvinculados de los Grupos Armados Irregulares (Program of Care for Boys, Girls and Adolescents Demobilized from Irregular Armed Groups) at the Colombian Institute for Family Welfare (ICBF). The ICBF works to help demobilized child soldiers reintegrate into society by placing them in institutional homes or foster care. The Program is largely administered in urban centers like Bogotá and Cali. Most of the child soldiers are recruited from rural areas and experience particular difficulties adapting to life in the cities where the centers are located. They are separated from family, friends and community support systems and face the additional challenge of stigmatization by the community.

This shadow report highlights five main areas of concern regarding Colombia's compliance with its obligations under CAT. Part II addresses Colombia's obligation to act with due diligence in preventing violations of the Convention, especially acts of torture and CIDT committed against girl child soldiers. Colombia has an international obligation to prevent, protect, and punish all acts of torture and CIDT through proper legislation and administrative actions. Part III confronts reproductive rights violations, sexual violence, and other forms of torture perpetrated against vulnerable Afro-Colombian communities. These violations often rise to the level of torture or CIDT and the Colombian government fails to prevent such acts. Part IV addresses Colombia's obligation to educate and train law enforcement personnel, medical personnel, and all other public officials responding to allegations of torture or CIDT. Part V discusses the use and availability of complaint mechanisms. Lastly, Part VI discusses the importance of holistic redress, which includes access to adequate housing, healthcare, and education post-demobilization. Names of victims featured in this report have been changed to protect identities.

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<sup>10</sup> Human Rights Watch, *Colombia: New Killings, Disappearances in Pacific Port*, (March 4, 2015), available at <http://www.hrw.org/news/2015/03/04/colombia-new-killings-disappearances-pacific-port>.

## **II. ARTICLE 2: COLOMBIA MUST ACT WITH DUE DILIGENCE IN PREVENTING VIOLATIONS OF THE CONVENTION AND ENACT PROPER LEGISLATION**

### **A. Colombia Must, Through Legislative and Administrative Actions, Abide by and Enforce the Convention against Torture**

Article 2, paragraph 1 provides that each State shall take effective legislative, administrative, and judicial measures to prevent torture within its borders.<sup>11</sup> This includes both constant review of current laws to ensure they are sufficient in creating compliance with the convention and replacement of any law that is not effectively eradicating torture and CIDT.<sup>12</sup> The State has a responsibility to prevent, eliminate, and punish acts of torture including those acts committed by private, non-State actors, such as recruitment and detention of child soldiers and sexual violence. Proper responses should be initiated wherever and whenever the State believes or has reason to believe that acts of CIDT are being committed. Failure to provide proper protection to those who have been in communication with authorities, such as complaining victims or others reporting on their behalf, will also violate the convention.<sup>13</sup>

#### **1. Child Soldiers**

Article 2, paragraph 2 states that there is no justification for the use of torture or CIDT in any territory within a State's jurisdiction.<sup>14</sup> "Territory" under the State's jurisdiction, refers to any person inside State borders, regardless of citizenship and absent of any discrimination. In order for a State response to be effective, it must criminalize all elements of torture as defined in the convention and make them punishable by law. It is crucial that there is application of such legislation, as has been urged by this Committee before regarding child soldiers.<sup>15</sup> In ensuring the prevention of torture, the State also has a duty to remove any obstacle, legal or otherwise, which inhibits compliance under the convention. Prohibition of torture is non-derogable and a State that demonstrates any resistance or unwillingness to prosecute those who have committed acts of torture or CIDT will be in violation of Article 2.<sup>16</sup> Currently, the implementation of laws in Colombia, particularly referring to violence against women, is inconsistent and leaves room for impunity on the part of the perpetrator, leaving victims vulnerable to acts of

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<sup>11</sup> Convention against Torture, Article 2, U.N. Doc. A/39/46, (Dec. 10, 1984).

<sup>12</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 4, (2008).

<sup>13</sup> Committee against Torture, *Decision*, U.N. Doc. CAT/C/51/D/376/2009, ¶ 6.4, (2009).

<sup>14</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 5, (2008).

<sup>15</sup> Committee against Torture, *Concluding Observation: Chad*, U.N. Doc. CAT/C/TCD/CO/1, (2009).

<sup>16</sup> *Id.* at ¶ 5.

retaliation.<sup>17</sup> Article 2 has become *jus cogens*. Compliance with this article is tantamount to a universal international law under which every country, regardless of treaty affiliation, must adhere.

The Colombian Constitution establishes and gives special attention to the rights of children. In accordance with the human rights treaties that Colombia has ratified, including the Convention against Torture and the Convention on the Rights of the Child, the Constitution provides for the protection of children from family separation, physical and sexual violence, exploitation, and all forms of abandonment. It also protects certain rights, including the rights to life, health, integrity, education, and social security. Colombian national law provides that children under the age of 18 may not be recruited into armed groups, yet this law is consistently violated.<sup>18</sup> Traditionally, children between the ages of 10 -14 have had the highest risk of being targeted, but armed groups have begun to target children of an even younger age bracket.<sup>19</sup> Reports as recent as September of 2014 reveal that children as young as six years old were being recruited.<sup>20</sup> Between 2009 – 2011, recruitment of child soldiers was reported in 23 regions of Colombia. The FARC is present in 121 municipalities within 22 reported recruiting areas for child soldiers. In Antioquia alone, the FARC recruited at least 15 children and the ELN recruited 13 children during this time.<sup>21</sup> Recruitment rates are not decreasing and children continue to be targeted by armed groups.

Recruitment is often accomplished by enticing children who are already considered at-risk, such as those who often reside in rural and impoverished areas. Children who live in poor conditions are beckoned with promises of a better life, of money, shelter, and battle training. Many of the children who are targeted for recruitment lack any formal education, including the ability to read and write, and they often suffer from domestic abuse.<sup>22</sup> One young girl from the Granta municipality joined an armed group after watching its opposition murder her father for failure to provide money.<sup>23</sup> Armed groups often take advantage of children's poor living conditions in order to exploit them and use them as child soldiers.

The issue of recruitment starts well before an armed group first approaches a child. The FARC advertises stories of a better life on its website. They argue that they do not recruit

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<sup>17</sup> Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined 7th and 8th periodic reports of Colombia*, U.N. Doc. CEDAW/C/COL/CO/7-8 (2013).

<sup>18</sup> *No One to Trust: Children and Armed Conflict in Colombia*, Watch List on Children and Armed Conflict 16, (April 2012).

<sup>19</sup> United Nations Human Rights Committee, *Report on Violations of Women's Human Rights*, (2009), available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MADRE\\_Colombia99.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MADRE_Colombia99.pdf).

<sup>20</sup> Richard McColl, *Despite dialogues, recruitment of child soldiers continues in Colombia*, Latin Correspondent, (Sept. 24, 2014), available at <http://latin correspondent.com/Colombia/despite-dialogues-child-recruitment-continues-colombia/>.

<sup>21</sup> Report of the Secretary-General on children and armed conflict in Colombia, (S/2012/171), ¶¶ 14-16, 21 March 2012.

<sup>22</sup> Charlie de Rivas, Colombia Reports, *FARC Systematically Recruits Child Soldiers: Study*, (Sept. 17, 2013), available at <http://colombiareports.co/farc-systematically-recruits-child-soldiers-study/>.

<sup>23</sup> UNHCR, *Former Colombian child soldier overcomes adversity to build a new life*, ¶ 5, (Apr. 20, 2012), available at <http://www.unhcr.org/print/4f912a426.html>.

children but instead, that children come to them seeking to join based on the promise of a prosperous future. The website lists stories of children struggling at home, with abusive parents or with limited means and a lack of access to education and healthcare. The FARC paints a picture of itself as a place of rescue, an opportunity to escape the struggles at home.<sup>24</sup> On February 12, 2015 the FARC peace delegation issued a press release that the FARC would unilaterally cease recruiting children under the age of 17.<sup>25</sup> They have also argued that any child within their groups that is under the age of 15 is not a recruit but an orphan who did not have any other place to go.<sup>26</sup> The FARC's representation of children's home life is not entirely inaccurate. Cali, one of Colombia's largest cities, hosts over 1,000 homeless children and 60,000 who work on the street. Medellin, another large city, has roughly 11,000 homeless children.<sup>27</sup> In rural areas poverty is even more present.

*Growing up I experienced a lot of violence in my home. My family often beat me. I learned of FARC at an early age because there was a consistent presence in my town in Meta. I saw FARC as an option to escape the violence in my family so I joined the group. I thought that this would make my life better.*

Josefina, former girl child soldier.

While most groups use enticement as a recruitment tactic, the FARC and the ELN also utilize certain tactics that are associated with their respective groups. The FARC tends to recruit from more rural areas, whereas the ELN and other groups that have reemerged after demobilization focus more on urban areas. Both groups have also been known to send attractive women to recruit young boys, regardless of geographical location.<sup>28</sup> The FARC has put children on notice of future recruitment by holding meetings in targeted regions informing children as young as eight of their intent to recruit. They have surveyed families to find out how many children live in a home and have kept track for future recruitment.<sup>29</sup> The FARC recruits far more children than any other armed group in

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<sup>24</sup> Fuerzas Armadas Revolucionarias de Colombia, available at <http://farc-ep.co/>.

<sup>25</sup> Rosa Tania Valdes, *Colombia's FARC rebels raise minimum recruitment age to 17* (Feb. 12, 2015), available at <http://www.reuters.com/article/2015/02/12/us-colombia-farc-minors-idUSKBN0LG31G20150212>

<sup>26</sup> Richard McColl, *Despite dialogues, recruitment of child soldiers continues in Colombia* 4, Latin Correspondent, (Sept. 24, 2014), available at <http://latin correspondent.com/Colombia/despite-dialogues-child-recruitment-continues-colombia>

<sup>27</sup> United States Department of Labor, Bureau of International Labor Affairs: Colombia, 2013 Findings on the Worst Forms of Child Labor (2013), available at <http://www.dol.gov/ilab/reports/chld-labor/colombia.htm>.

<sup>28</sup> Watch List on Children and Armed Conflict, *No one to trust: Children and Armed Conflict in Colombia* 17 (April 2012).

<sup>29</sup> Report of the Secretary-General on children and armed conflict in Colombia, (S/2012/171), ¶ 17.,21 March 2012.

Colombia.<sup>30</sup> The ELN has used new groups that have emerged after the demobilization of the paramilitary to assist them in their recruitment process.<sup>31</sup> The ELN has essentially outsourced their recruiting methods to groups like Los Rastrojos who capture children and sell them to the ELN. In 2011 such groups captured at least thirteen indigenous children.<sup>32</sup> That same year, the ELN was also reported to have recruited children in fifty-five municipalities. Child recruits make up 42 percent of the FARC, 44 percent of the ELN, and 40 percent of newly emerged groups.<sup>33</sup> Target areas are systematic and widespread.<sup>34</sup>

Child soldiers are relied on heavily to assist armed groups. They are used for dangerous missions, including the planting and clearing of land mines, carrying explosives, combat, and information gathering.<sup>35</sup> In 2010 a child carrying explosives was killed when the FARC remotely detonated explosives the child was carrying as he neared a targeted police station.<sup>36</sup> Girl child soldiers are recruited for sex and domestic work and are often used as couriers or informants since they are perceived to be less suspicious than boy soldiers. In Antioquia, a girl was recruited at the age of 11 and sexually abused for the following decade.<sup>37</sup> Between 1992 - 2012, of the 3,000 child soldiers who escaped or were freed by government forces, thirty-one percent were girls. The total percentage is likely higher, as the 30% only captures those who were escaped and came forward and contacted a government agency or those who were physically freed by government forces.<sup>38</sup>

Once children become part of an armed group, their freedoms are extremely limited. Their basic human rights are violated and the possibility for escape is almost non-existent. While many child soldiers are deemed “voluntary” recruits, once they join an armed

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<sup>30</sup> Richard McColl, *Despite dialogues, recruitment of child soldiers continues in Colombia* 3, Latin Correspondent, (Sept. 24, 2014), available at <http://latincorrespondent.com/Colombia/despite-dialogues-child-recruitment-continues-colombia>.

<sup>31</sup> Human Rights Watch, *World Report 2012: Colombia* 1 (2012), available at <http://www.hrw.org/world-report--2012/colombia>; Watch List on Children and Armed Conflict, *No one to trust: Children and Armed Conflict in Colombia* 17 (April 2012).

<sup>32</sup> Report of the Secretary-General on children and armed conflict in Colombia, (S/2012/171), ¶¶ 18-19, 21 March 2012.

<sup>33</sup> Richard McColl, *Despite dialogues, recruitment of child soldiers continues in Colombia* 4, Latin Correspondent (Sept. 24, 2014), available at <http://latincorrespondent.com/Colombia/despite-dialogues-child-recruitment-continues-colombia>.

<sup>34</sup> Miguel Angel Villamizar Contreras, captured in September 2014, is responsible for eighty percent of FARC recruitment in Antioquia, Bolívar and Santander. Contreras used all of the above-mentioned tactics and would also convince parents themselves to release their children in return for financial contributions. Despite the capture of FARC recruitment leader Contreras, recruitment of minors continues.

<sup>35</sup> Pass Blue, UN Security Council to Study Child Soldier Use in Colombia (June 28, 2012), available at <http://passblue.com/2012/06/28/un-security-council-to-study-child-soldier-use-in-colombia/>

<sup>36</sup> Report of the Secretary-General on children and armed conflict in Colombia, (S/2012/171), ¶ 17, Dist.: General 21 March 2012.

<sup>37</sup> Charlie de Rivas, Colombia Reports, *FARC Systematically Recruits Child Soldiers: Study*, (Sept.17, 2013), available at <http://colombiareports.co/farc-systematically-recruits-child-soldiers-study/>.

<sup>38</sup> Richard McColl, *Despite dialogues, recruitment of child soldiers continues in Colombia* 4, Latin Correspondent, (Sept. 24, 2014), available at <http://latincorrespondent.com/Colombia/despite-dialogues-child-recruitment-continues-colombia>.

group, they may not leave and there is little chance of escape due to the risk of retaliation.<sup>39</sup> The punishment for trying to escape is often torture and death. Those who try to escape and are subsequently caught are often used as an example and a deterrent to those still in captivity. For example, two girl soldiers aged 14 and 15 were killed as punishment for refusing to assassinate a government official in Antioquia.<sup>40</sup> The fear of torture or death is used to enforce orders and deter escape.

Girls have also been killed for refusing to engage in sexual activity with members of armed groups.<sup>41</sup> Those who refuse or who fend off sexual contact run the risk of torture, including mutilation, such as the cutting off of the girls' breasts.<sup>42</sup> In one instance, Los Rastrojos deterred attempts to seek government help by making an example of a seventeen-year-old young woman by publicly raping her and forcing her to strip naked and clean in the center of the town. Torture of the girl continued, including forcing her to consume feces before eventually killing her.<sup>43</sup> These gruesome examples continue to take place and keep children from seeking help from authorities.

## 2. Afro-Colombian Populations

In relation to Article 2, the Committee has emphasized the importance of ensuring prevention and protection to the populations that are more vulnerable to torture within the State Parties' jurisdictional territories. In its General Comment on Article 2, the Committee asserts that: "The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment."<sup>44</sup> It further states that effective prevention against torture is utterly dependent on the principle of non-discrimination: "Non-discrimination is included within the definition of torture itself in article 1, paragraph 1, of the Convention, which explicitly prohibits specified acts when carried out for *"any reason based on discrimination of any kind"*".<sup>45</sup>

Afro-descendants have long suffered a dramatic situation of exclusion, marginalization and structural discrimination.<sup>46</sup> Colombia has signed the ILO convention 169 on the right to prior, free and informed consultation and consent. Under the Colombian Constitution, article 1 recognizes the State's pluralistic character, and article 7 recognizes and protects ethnic and cultural diversity. Through Law 70 of 1993 the State recognizes Afro-

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<sup>39</sup> Mercy Corps, *The War on Child Soldier Recruitment Begins at School* (June 22, 2012), available at <http://www.mercycorps.org/articles/colombia/war-child-soldier-recruitment-begins-school>.

<sup>40</sup> *Id.*

<sup>41</sup> United Nations Security Council: *Report of the Secretary-General on children and armed conflict in Colombia S/2012/171*, ¶ 28, 21 March 2012.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at ¶¶ 35-36.

<sup>44</sup> Committee Against Torture, General Comment 2, Implementation of article 2 by State Parties, U.N. Doc CAT/C/GC/2/CRP.1/Rev.4 ¶ 21 (2007).

<sup>45</sup> *Id.* at ¶20.

<sup>46</sup> Inter-American Commission on Human Rights. Truth, Justice and Redress: Fourth report on the human rights situation in Colombia. OEA/Ser.L/V/II Doc. 49/13, 257 ¶ 621. Available at: <http://www.oas.org/es/cidh/docs/pdfs/justicia-verdad-reparacion-es.pdf>

Colombians as an ethnic group, guarantees their right to self-determination and protects their right to collective ownership. Moreover, Law 1482 of 2011 penalizes all forms of discrimination and segregation. However, continued abuses and violence produced by the armed conflict, the massive incursion of mega-projects and the transformed dynamics of illegal trafficking within their territories have severely aggravated the enjoyment of their rights. The impacts of both, social conflicts and the armed conflict have disproportionately affected their communities, and even jeopardized their very cultural existence.<sup>47</sup>

*i. Afro-Colombians are being violently forced out of their territories*

Despite the existence of an extensive normative framework, Afro-descendant populations are still being violently forced out of their territories. According to CODHES, as of December 2013 at least 5,9 million people had been forcibly displaced in Colombia.<sup>48</sup> By the same date, more than 6,5 million hectares had been taken away from civilians through violent actions that still persist throughout the country.<sup>49</sup> Order 005 of 2009 of the Constitutional Court recognizes that internal displacement violates individual and collective rights, reinforces racial discrimination and perpetuates the grave poverty and humanitarian crisis faced by Afro-Colombians.<sup>50</sup> However, they continue to be the most affected population, registering disproportionate and alarming rates of displacement. In Colombia, 4,316,592 people identify themselves as Afro-Colombians.<sup>51</sup> They are mainly concentrated along the Pacific Coast (44,71%) and the Atlantic Coast (26,97%).<sup>52</sup> CODHES estimates that in 2012 at least 51.938 (20.26%) of the 256,590 people who were forced to leave their territories because of violence were Afro-Colombians;<sup>53</sup> in 2013, 55.481 (25,3%) out of the 219,398 internally displaced people were Afro-Colombians.<sup>54</sup>

During the last years, there have been complex transformations in the dynamics and patterns of forced displacement. The UNHCR reports that while 75% of the

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<sup>47</sup> Id, 258 ¶ 625

<sup>48</sup> CODHES, Post-demobilization groups and forced displacement in Colombia. A quantitative approach, p. 2 (2013) *Available at:*

[http://www.codhes.org/~codhes/images/Articulos/GPD\\_y\\_desplazamiento\\_forzado\\_en\\_Colombia.pdf](http://www.codhes.org/~codhes/images/Articulos/GPD_y_desplazamiento_forzado_en_Colombia.pdf)

<sup>49</sup> CODHES, The humanitarian crisis in the Pacific Coast persists. The Pacific Coast disputed, p. 5 (2013) *Available at:*

[http://www.abcolombia.org.uk/downloads/Informe\\_Desplazamiento\\_2012\\_La\\_Crisis\\_Humanitaria\\_.pdf](http://www.abcolombia.org.uk/downloads/Informe_Desplazamiento_2012_La_Crisis_Humanitaria_.pdf)

<sup>50</sup> Afro-Descendant Women Human Rights Defenders Project, PCN, Defeating Invisibility: A Challenge for Afro-Descendant Women in Colombia, p.13 (2012) *Available at:*

<http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf>

<sup>51</sup> Inter-American Commission on Human Rights. Truth, Justice and Redress: Fourth Report on the Human Rights situation in Colombia. OEA/Ser.L/V/II Doc. 49/13, 258 ¶ 622. *Available at:*

<http://www.oas.org/es/cidh/docs/pdfs/justicia-verdad-reparacion-es.pdf>

<sup>52</sup> *Id.*

<sup>53</sup> CODHES, The humanitarian crisis in the Pacific Coast persists. The Pacific Coast disputed, p. 24 (2013), *Available at:*

[http://www.abcolombia.org.uk/downloads/Informe\\_Desplazamiento\\_2012\\_La\\_Crisis\\_Humanitaria\\_.pdf](http://www.abcolombia.org.uk/downloads/Informe_Desplazamiento_2012_La_Crisis_Humanitaria_.pdf)

<sup>54</sup> CODHES, Forced displacement and the imperious need for peace, p.16 (2013) *Available at:*

[http://media.gestorsutil.com/OBSERVATORIO\\_web/392/documentos/docs/0948563001415672255.pdf](http://media.gestorsutil.com/OBSERVATORIO_web/392/documentos/docs/0948563001415672255.pdf)

displacements that happened along the country up to 2007 were scattered throughout 125 municipalities, 60% of the displacements that happened in 2013 were concentrated in only 13 municipalities.<sup>55</sup> In the context of the armed conflict, internal displacement from rural areas to urban centers has been predominant. FARC and ELN guerrillas have been responsible for at least two-thirds of all displacements. Similarly, the intensified confrontation between the public forces and illegal actors –particularly the FARC -- was responsible for at least 58% of the total displacements in 2012.<sup>56</sup> The increase in the State's military capacity and the aggressive counter-insurgency operations have boosted offensives by the ELN and the FARC guerrillas,<sup>57</sup> harshly impacting ethnic communities who are either caught between crossed fires or stigmatized and targeted as supporters of illegal groups. Accordingly, instead of receiving effective protection and security measures through the State's actions, the PCN reports that the excessive militarization has deeply hindered Afro-Colombians' rights to territory, self-determination and autonomous development. Furthermore, it has deeply affected women's physical and cultural integrity; rates of women's homicides have increased, as well as sexual violence in both, the private and the public sphere.<sup>58</sup>

On the other hand, the urbanization of the armed conflict has contributed to the proliferation of intra-urban displacement, which has posed new challenges to the government in terms of comprehension of the issue, preventive measures and attention to victims.<sup>59</sup> Intra-urban displacements caused between 2012 and 2013 were predominantly associated to the armed groups that emerged following the demobilization of the paramilitaries (PDAGs). CODHES estimates that these groups were responsible for at least 43% of the multiple and massive displacements which occurred in 2012.<sup>60</sup> During this year, around 20,490 persons were victims of intra-urban displacement.<sup>61</sup> According to CODHES, intra-urban displacement begins when individuals and/ or groups who are being threatened or persecuted seek protection inside their territories. Usually, people activate family and friends networks to search for protection. However, these resources are insufficient. Often times, the lack of institutional support and the constant persecution that exhausts personal networks, leads to inter-urban and sometimes even transnational migrations.

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<sup>55</sup> NRC, Forced displacement and gender-based sexual violence. Buenaventura, Colombia: Brutal realities p. 3 (2014). *Available at:*

<http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9760>

<sup>56</sup> IDMC, Overview. Displacement Continues Despite Hopes For Peace (14 Jan 2014). *Available at:*

<http://www.internal-displacement.org/americas/colombia/2014/displacement-continues-despite-hopes-for-peace>

<sup>57</sup> *Id.*

<sup>58</sup> Afro-Descendant Women Human Rights Defenders Project, PCN, Defeating Invisibility: A Challenge for Afro-Descendant Women in Colombia, p.13 (2012) *Available at:*

<http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf>

<sup>59</sup> CODHES Intra-urban forced displacement and lasting solutions. Vol II, Bogotá, Cúcuta and Quibdó (2014) *Available at:* <http://nacionesunidas.org.co/ferialibro/desplazamiento-forzado-intraurbano-y-soluciones-duraderas-una-aproximacion-desde-los-casos-de-buenaventura-tumaco-y-soacha/>

<sup>60</sup> *Id.*, p.87

<sup>61</sup> *Id.*, p.15

Through Order 119 of 2013 the Constitutional Court ordered the Integral Reparation and Assistance for Victims Unit (UARIV) to include the victims of PDAGs within the official registry. Before the Court's ruling, victims of PDAGs were blatantly excluded from the right to receive equal treatment from the government in terms of prompt attention and redress. Despite the persistence as well as the rise in the phenomenon of intra-urban displacement, the Victim's Registry has neither monitoring nor measuring mechanisms that can contribute to the full identification of the contexts of expulsion and reception of these displacements.<sup>62</sup> Without this information, policy that targets and attends the needs of displaced Afro-Colombians will not be effective.

The PDGAs have expanded their presence throughout 409 municipalities along the country, compared to 259 in 2008.<sup>63</sup> They often operate in areas that are geographically strategic for illegal activities, especially those linked to the drug trade and illegal mining.<sup>64</sup> Along with the violence that has resulted from the armed conflict, large-scale natural resource extraction and infrastructure mega projects have had particularly devastating effects on Afro-Colombian communities<sup>65</sup>. In areas where Afro-Colombian communities have resisted the entrance of mining companies in violation of free, prior and informed consultation, PDAG threats have frequently declared Afro-Colombian leaders as military targets. Threats that are received through pamphlets or through cell phones have explicitly accused them of impeding the entrance of multinational companies and opposing development in their communities<sup>66</sup>. The government has been complicit in various cases by its prolonged omission. An emblematic case of this situation has been registered in La Toma district in Cauca.

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<sup>62</sup> CODHES, Post-demobilization groups and forced displacement in Colombia. A quantitative approach, p. 14 (2013) *Available at*:

[http://www.codhes.org/~codhes/images/Articulos/GPD\\_y\\_desplazamiento\\_forzado\\_en\\_Colombia.pdf](http://www.codhes.org/~codhes/images/Articulos/GPD_y_desplazamiento_forzado_en_Colombia.pdf)

<sup>63</sup> IDMC, Overview. Displacement Continues Despite Hopes For Peace (14 Jan 2014), *available at*: <http://www.internal-displacement.org/americas/colombia/2014/displacement-continues-despite-hopes-for-peace>

<sup>64</sup> *Id.*

<sup>65</sup> Inter-American Commission on Human Rights. Truth, Justice and Redress: Fourth report on the human rights situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, 227 ¶ 554. *Available at*: <http://www.oas.org/es/cidh/docs/pdfs/justicia-verdad-reparacion-es.pdf>

<sup>66</sup> Information provided by PCN (March 12 of 2015).

## La Toma, Cauca

Afro-Colombian communities have inhabited the territories of the Community council of La Toma, in Cauca, since the 17<sup>th</sup> century. Since then, more than 1,300 families have practiced artisanal mining –along with agriculture and fishing-- as their main subsistence income. However, in 2009 the National Mining Agency<sup>1</sup> granted mining concessions to the businessman Héctor Sarria and to multinational corporations, including *Anglo Gold Ashanti* and *Cosigo Resources* within Afro-Colombian collective territories. These concessions were granted without previous consultation and prior, free and informed consent.

On May 2010, members of the military and police forces entered into the municipality in an attempt to carry out an eviction ordered by the Mayor of Suarez in April of the same year. Despite the failure of the eviction, violence against Afro-Colombian communities increased within the territory. Artisanal miners and community leaders received multiple text messages containing death threats signed by the Black Eagles. In July, 5 people were massacred within the territory, adding up to a total of 13 people killed between April and July of 2010. Later on, in March 2013, paramilitary groups blocked the roads and threatened the inhabitants of the community. In May 2014, the presence of more than 15 backhoes was denounced. Between August and September of 2014, the community denounced the presence of 12 backhoes operating illegally within the territory.

Through Act 1045- A of December 2010, the Constitutional Court recognized La Toma as an ancestral territory. It also declared the mining activities in La Toma to be illegal, for they were granted in violation of the right to previous consultation and previous, free and informed consent. It finally ordered that the illegal concessions and titles granted within the ancestral territories of the Community Council be suspended. To date, the Constitutional Court's ruling has not been implemented. Illegal mining activity and the presence of armed groups protecting it have increased. In November 17, 2014, eighty women from the region mobilized to Bogotá in order to demand attention from the national government. The agreements reached upon are still to be complied by the government, while death threats and community harassment vertiginously increase; one of the main leaders was forcedly displaced due to this situation.

Information provided by PCN

Indeed, fear of retaliation produced by systematic threats and violent actions directed against Afro-Colombian communities has perpetuated the already high levels of under-reporting. Under-reporting has also been related to the lack of information that victims have regarding the processes and paperwork required to report the incident, as well as the lack of operational resources allocated to public officials within some of the most marginalized regions of the country.<sup>67</sup> For example, according to the National Federation of Ombudsmen of Colombia, 15% of the public officials in charge of registering victims do not have access to computer equipment, so they have to manually enter the data. Similarly, 25% of them do not have Internet access.<sup>68</sup> This situation causes delays in articulated protection responses. In this sense, Constitutional Court's Order 005 of 2009 and Order 092 of 2008, which urged the State to address the grave situation faced by Afro-Colombian communities and women –respectively– in relation to forced displacement, have not been effectively applied.

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<sup>67</sup> CODHES, Intra-urban forced displacement and lasting solutions. Vol II, Bogotá, Cúcuta and Quibdó, p.80 (2014), available at: <http://nacionesunidas.org.co/blog/2014/07/03/ii-informe-desplazamiento-forzado-intraurbano-y-soluciones-duraderas-bogota-cucuta-y-quirido/>

<sup>68</sup> *Id.*, p. 83

***ii. Forced disappearances, dismemberments and homicides are prevalent within Afro-Colombian territories***

The prohibition of forced disappearance and the effective investigation and punishment of its perpetrators has been granted the status of *jus cogens*.<sup>69</sup> In accordance, the State has taken important steps to decrease the prevalence of forced disappearance, to prevent and to assist the victims. In 2012, Colombia ratified the Convention for the Protection of All Persons from Enforced Disappearance. Similarly, with Law 1408 of 2010 the notion of victim of forced disappearance was broadened by including the immediate relatives of the direct victim, spouse, next of kin, and other family members who suffered any kind of damage as a result of the forced disappearance. Additionally, the Law included measures that seek to pay homage to the victims of forced disappearance, locate and identify them, and provide psychosocial assistance to their families.

However, to the date, there have been serious obstacles for the effective implementation of Law 1408. The main difficulty is related to the lack of a clear normative framework. Article 15 of the Law established that the Government, in coordination with the Commission for the Search of Disappeared Persons (CBPD), would issue a decree outlining its implementation procedures six months after the Law took effect. Nevertheless, President Juan Manuel Santos signed the regulatory decree until this year.<sup>70</sup> The Decree orders the creation of maps of sites where mass graves or corpses of disappeared people are presumed to be located. For the process of identification, the decree establishes the creation of a bank of genetic profiles. Accordingly, it states that the immediate relatives of the victims will be provided with economic and psychosocial support in the moment of receiving the corpses.<sup>71</sup> Although the regulatory decree constitutes an important advance, the delay in its emission can have serious repercussions for many victims.

In the framework of the National Search Plan, the Colombian government implemented the platform for the National Registry of Disappeared Persons, which started its operations in 2007. According to the figures provided in it, 87,837 disappearances had been registered as of October 2013, of which 65,975 continued to be missing.<sup>72</sup>

The IACHR underscores that the entry of the total information available since its inception has not been finalized.<sup>73</sup> Despite the alarming figures, civil society has expressed that the National Search Plan has not been effective given the high levels of

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<sup>69</sup> Inter-American Court of Human Rights, Case of Goiburú et al. v. Paraguay Judgment of September 22, 2006. Available at: <http://observatoriovihcarceles.org/es/vih-carceles/legislacion-sistema-penitenciario-carceles-menu.raw?task=download&fid=509>

<sup>70</sup> Report from the Government of Colombia. Regulation of Law 1408 of 2014 on victims of forced disappearance is regulated. (20 February 2015) Available at: <http://www.unidadvictimas.gov.co/index.php/en/sala-de-prensa/79-noticias/3509-se-reglamenta-ley-1408-de-2010-sobre-victimas-de-desaparicion-forzada>

<sup>71</sup> *Id*

<sup>72</sup> Inter-American Commission on Human Rights. Truth, Justice and Redress: Fourth report on the human rights situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, 71 ¶ 104, available at: <http://www.oas.org/es/cidh/docs/pdfs/justicia-verdad-reparacion-es.pdf>

<sup>73</sup> *Id*, 71 ¶ 105

loss and destruction of information, as well as the fact that the number of disappeared persons who have been identified is substantially low in comparison with the quantity of remains exhumed.<sup>74</sup> Similarly, the lack of disaggregated data that includes the intersections of gender and ethnic information is problematic for an adequate comprehension of the phenomenon and the specific effects that it has had upon different communities.

Afro-Colombian communities acknowledge that forced disappearance continues to be a systematic practice that has particular effects upon their territories. The case of the port-city of Buenaventura, in which more than 80% of the inhabitants identify as Afro-descendants, reflects the disproportionate effects that ethnic communities have been subjected to along the country. The HRW 2015 report states that between January 2010 and December 2013 more than 150 people have been presumably abducted and disappeared in Buenaventura. This number doubles that of any other municipality within the country.<sup>75</sup> Similarly, the report states that in 2013 more than 13,000 inhabitants were forced to leave their homes due to the unbearable increase of violence.<sup>76</sup> Threats of “chopping- up” people who violate the “Law of Silence” imposed by PDAGs in the urban zones of Buenaventura have become usual. People know where the so-called chop-up houses are located, but due to fear of reprisals they have remained silent.<sup>77</sup> The residents of the zone report having heard members from their communities being dismembered and crying out for help, but absolute fear paralyzed them and they could not do anything to prevent their neighbors from suffering that fate.<sup>78</sup>

The increase in the number of disappearances in Buenaventura might be concealing the number of dismemberments and homicides within the area. According to Max Schoening (HRW): “Forced disappearance cases are not registered as homicides, except when a corpse is recovered. However, we all know that in the great majority of cases, if not all the cases, of forced disappearance that occur in Buenaventura, the people are brutally assassinated and many times they are dismembered”<sup>79</sup> Additionally, communities have reported that dismembered bodies have been often thrown into the sea.<sup>80</sup> In this sense, the IACHR has raised awareness about the fact that in cases in which the bodies of disappeared persons have been thrown into rivers or seas, or have been incinerated in

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<sup>74</sup> *Id.*, 76 ¶ 116

<sup>75</sup> Human Rights Watch. *The Crisis in Buenaventura. Disappearances, Dismemberment, and Displacement in Colombia’s Main Pacific Port* (2014), 2, *available at*: [http://www.hrw.org/sites/default/files/reports/colombia0314webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/colombia0314webwcover_1.pdf)

<sup>76</sup> *Id.*, 1

<sup>77</sup> *Id.*, 23

<sup>78</sup> *Id.*

<sup>79</sup> See: *Dismemberments persist in Buenaventura*, Human Rights Watch (4 March 2015), *available at*: <http://www.elespectador.com/noticias/judicial/descuartzamientos-persisten-buenaventura-human-rights-articulo-547518>

<sup>80</sup> Human Rights Watch, *New killings and disappearances in Buenaventura* (4 March 2015), *available at*: <http://www.hrw.org/es/news/2015/03/04/colombia-nuevos-asesinatos-y-desapariciones-en-buenaventura>

order to avoid any trace evidence, corpses are extremely hard to recover.<sup>81</sup> This is also true in cases in which infrastructure projects block access to sites where mass graves are presumed to be located.<sup>82</sup> In terms of the prevention of these cases, due diligence implies immediate responses by the State.

In this sense, the government must ensure that the national strategies regarding the prevention of forced disappearance, which are frequently absent in the guiding procedures of local authorities, are adequately included and executed. The director of the SAT has argued that this is closely related to their negative interpretation of the SAT's preventive measures and alerts, which are perceived to have a negative effect on tourism and commercial activity.<sup>83</sup> In order to comply with the Convention, the State must ensure that risk reports emitted by the SAT are effectively and promptly addressed at all levels: local, regional and national.

According to the IDMC, during the last years, PDAGs have been responsible for more abuses against civilian populations than other armed groups within the country.<sup>84</sup> Paramilitary techniques of torture have been used by PDAGs as a way to induce terror upon entire communities.<sup>85</sup> Forced disappearances, dismemberments, homicides and rape have constituted some of the grave actions that PDAGs have sought to exert territorial control and ensure their sovereignty over territories.<sup>86</sup> However, as of January 2014, none of the 840 cases investigated by the Attorney General for suspicion of disappearances committed throughout the last 20 years has been convicted. According to HRW, by March 2014 one case had been charged.<sup>87</sup>

Afro-Colombian leaders have denounced the possible relationship between PDAGs actions with the construction of mega-projects. In the case of Buenaventura, communities fear that the construction of a touristic boardwalk might cause massive displacements. The government must ensure that disappearances, dismemberments, forced displacement, rape and other gross human rights violations are prevented and that those responsible for them are effectively prosecuted. As a starting point, the government must ensure that infra-structural mega projects in Afro-Colombian areas are taking into account the inclusive perspectives that Afro-Colombians are advocating for, in accordance with their right to territorial sovereignty as well as the previous, free and informed consent.

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<sup>81</sup> Inter-American Commission on Human Rights. . Truth, Justice and Redress: Fourth report on the human rights situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, 76 ¶ 115, *available at*: <http://www.oas.org/es/cidh/docs/pdfs/justicia-verdad-reparacion-es.pdf>

<sup>82</sup> *Id*

<sup>83</sup> National Center of Historic Memory (CMH) Report. Assesment of the Colombian State's action on forced disappearance. *Volume IV*, 39 (2014) *Available at*: <http://www.centrodememoriahistorica.gov.co/descargas/informes2014/desaparicion-forzada/Tomo-IV.pdf>

<sup>84</sup> IDMC, Overview. Displacement Continues Despite Hopes For Peace (14 Jan 2014). *Available at*: <http://www.internal-displacement.org/americas/colombia/2014/displacement-continues-despite-hopes-for-peace>

<sup>85</sup> *Id*

<sup>86</sup> Human Rights Watch. The Crisis in Buenaventura. Disappearances, Dismemberment, and Displacement in Colombia's Main Pacific Port (2014), *available at*: [http://www.hrw.org/sites/default/files/reports/colombia0314webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/colombia0314webwcover_1.pdf)

<sup>87</sup> *Id*, 23.

*“The tourist Bahía de la Cruz boardwalk, in its current design, would result in the forced displacement or the ‘relocation’ of all the Afro-Colombian people who inhabit the ancestral territories gained from the sea. Moreover, it would result in cultural death since the culture is born out of a direct relationship with the sea which stems from the artisanal fishing activities that women, men, boys and girls engage in daily. The construction of the boardwalk would result in the community having to take on another cultural model of life entirely.”*

\* Interview with community leader from Buenaventura. Available at: <http://justiciapazcolombia.com/Colombia-Buenaventura-Genocidio>

## **B. Colombia has an Obligation to Exercise Due Diligence in Preventing, Protecting Against, and Punishing Acts of Torture and Ill-treatment**

To ensure the prevention of torture and CIDT, conflict zones must be constantly monitored and investigated. The State must raise awareness of preventative measures as well as potential remedies in areas likely to see violations. Due diligence requires not only educating State officials on the definitions of torture and CIDT and preventative measures, but the general public as well.<sup>88</sup> In terms of sexual violence, a State acts with due diligence if it recognizes the severity of sexual violence against women and children and creates laws that properly punish individuals instead of ignoring the issue as a domestic dispute.

Due diligence includes raising awareness throughout the country, investigating areas where acts of torture and CIDT are likely being committed, setting up rehabilitation and protection programs for victims and ensuring that adequate remedial measures are enforced.<sup>89</sup> In Colombia, there is a lack of data regarding all groups involved in armed conflict. Most criminal acts go unreported especially sexual violence. This is particularly because victims fear coming forward due to an inadequate State response to complaints.

## **III. ARTICLES 1 AND 16: COLOMBIA HAS AN OBLIGATION TO PREVENT THE TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT PERPETRATED AGAINST GIRL CHILD SOLDIERS AND AFRO- COLOMBIAM WOMEN BY ILLEGAL ARMED GROUPS**

<sup>88</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 25 (2008).

<sup>89</sup> Committee against Torture, *Concluding Observation: Chad*, CAT/C/TCD/CO/1 (2009).

Colombia shall prevent torture and other acts of CIDT under its jurisdiction when such acts are committed by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.<sup>90</sup> In Colombia's armed conflict, the perpetrators of torture and other forms of CIDT include paramilitary forces, guerilla forces, and all other opposition forces. The Concluding Observations in the Committee's 2004 report for Colombia discussed the allegations of tolerance, support or acquiescence by the State party's agents concerning the activities of the paramilitary groups known as "self-defense groups," which are responsible for a great deal of torture or CIDT.<sup>91</sup>

General Comment No. 2 explains that in practice the difference between CIDT and torture is not always clear and that the situations that give rise to CIDT frequently facilitate torture. Torture and CIDT often overlap and past examples have shown that the same measures that are required to prevent torture must also be applied to prevent CIDT.<sup>92</sup> Accordingly, the Committee has considered the prohibition of CIDT to be likewise non-derogable under the Convention and its prevention to be an effective measure.<sup>93</sup> Thus, all acts of cruel, inhuman or degrading treatment or punishment should still be investigated by Colombia and the victims of CIDT should be regarded as victims of torture.

### **A. Reproductive Rights Violations Perpetrated Against Girl Child Soldiers in Colombia Rise to the Level of Torture or CIDT**

Girl child soldiers that have suffered reproductive rights violations at the hands of illegal armed groups are victims of torture and other cruel, inhuman, and degrading treatment.<sup>94</sup> Human rights bodies recognize that reproductive abuse and mistreatment can cause severe and lasting physical and emotional suffering.<sup>95</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has asserted that policies that inhibit reproductive rights, including the lack of sexual and reproductive health

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<sup>90</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 16, U.N. Doc. A/39/46 (Dec. 10, 1984).

<sup>91</sup> Committee Against Torture, *Concluding Observation: Colombia* ¶ D, U.N. Doc. CAT/C/CR/31/1 (2004).

<sup>92</sup> Committee against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 14 (2008).

<sup>93</sup> Committee against Torture, *General Comment No.2, Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 3 (2012).

<sup>94</sup> The Convention defines torture as:

(A)ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

CAT Article 1, ¶ 1.

<sup>95</sup> Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez, Twenty-second session, Agenda item 3*, U.N. Doc. A/HRC/22/53, ¶ 46 (2013).

services for women, may rise to the level of CIDT.<sup>96</sup> In General Comment No. 2, the Committee recognized that discriminatory treatment satisfies the specific intent requirement for torture when women are deprived of medical treatment, “particularly involving reproductive decisions.”<sup>97</sup> Furthermore, the promotion of reproductive rights is part of the State’s affirmative obligation to prevent acts of torture and CIDT.<sup>98</sup>

Girls that are recruited as child soldiers in Colombia face grave reproductive rights violations, which result in severe physical and mental pain. These violations are intentionally inflicted on girls and are discriminatory in nature. Both guerrilla and paramilitary groups, including the FARC and the ELN, subject girl combatants to forced contraception, sexually transmitted infections, and forced abortions.<sup>99</sup> Girls as young as twelve years of age are required to use inadequate and often harmful methods of contraception, and they are often forced to undergo unsafe abortions if they become pregnant.<sup>100</sup>

### 1. Forced Abortions

Forced abortion rises to the level of torture. Girl soldiers suffer severe psychological stress and mental anguish due to forced abortion, and the denial of post-procedure medical care further jeopardizes their physical and mental health. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that reproductive rights violations “can cause tremendous and lasting physical and emotional suffering” and specifically identified forced abortion as an example.<sup>101</sup> The Human Rights Committee has explicitly stated that forced abortion is a form of torture and in violation of Article 7 of the International Covenant on Civil and Political Rights.<sup>102</sup> In the context of post-abortion care, this Committee has recognized the need to “ensure immediate and unconditional treatment of persons seeking emergency medical care, in line with World Health Organization guidelines.”<sup>103</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> Committee against Torture, *General Comment No.2, Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 22.

<sup>98</sup> Committee against Torture, *Concluding Observations: Peru*, CAT/C/PER/CO/5-6, ¶ 15, (2013); Committee against Torture, *Concluding Observations: Poland*, CAT/C/POL/CO/5-6, ¶ 23 (2013); Committee against Torture, *Concluding Observations: Sierra Leone*, CAT/C/SLE/CO/1, ¶ 17, (2014).

<sup>99</sup> Amnesty International, Colombia, *Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict* 27, AMR 23/040/2004, (October 13, 2004).

<sup>100</sup> U.N. SCOR, Rep. of the Secretary-General on Children and Armed Conflict in Colombia, ¶ 39, UN Doc. S/2009/434 (2009).

<sup>101</sup> Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez, Twenty-second session, Agenda item 3*, A/HRC/22/53, ¶ 46 (2013).

<sup>102</sup> International Convention for Civil and Political Rights (ICCPR), *General Comment No. 28*, HRI/GEN/1/Rev.9 (Vol. 10), ¶ 11 (2000); *see also* International Covenant on Civil and Political Rights (ICCPR), Article 7, CCPR/CO.70/ARG, ¶ 14 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”)

<sup>103</sup> Committee Against Torture, *Concluding Observation: Paraguay*, U.N. Doc. CAT/C/PRY/CO/4-6, ¶ 22 (2011).

Repeated forced abortions are a regular practice within illegal armed groups. There are numerous reports from women and girls that have demobilized from both paramilitary and guerrilla groups of being forced to undergo repeated abortions.<sup>104</sup> Absent the rare occasion when a commander grants permission, pregnancy is strictly prohibited among the girl soldiers.<sup>105</sup> Most women and girls who have demobilized from the FARC reported between one and seven forced abortions.<sup>106</sup> In a study by the Colombian Ministry of Defense's Humanitarian Care Group for the Demobilized (GAHD), 31.2% of former girl child soldiers asserted that they had become pregnant and were forced to abort during their time as part of an illegal armed group. Of those same girls, 40% were between 11 -14 years of age when they became pregnant.<sup>107</sup> The guerilla groups usually fault the girl for becoming pregnant and girls who become pregnant are often forced to end the pregnancy by having an abortion.<sup>108</sup>

Abortions are performed against the will of girl combatants and sometimes without their knowledge. Girl combatants that demobilized from guerrilla groups are forced to have abortions, even when they oppose such an action.<sup>109</sup> The testimony of a former guerrilla recruit recalled a forced abortion where she was not told in advance that it would be performed. Instead, she was informed that the nurses were checking in on the pregnancy, and subsequently an abortion was performed without her consent.<sup>110</sup> A former FARC recruit reported that once her commander realized she was pregnant, she was forced to undergo an abortion. She had "a very strong reaction" and cried incessantly. She said that she would have rather been killed than have an abortion, yet the fetus was still ultimately aborted against her will.<sup>111</sup> Another former guerrilla recruit stated that repeated forced abortions caused many psychological problems for the girls within the movement.<sup>112</sup> Her fifteen year-old friend became pregnant by her boyfriend, a commander, and despite her wishes was forced to have an abortion. Forced abortions are both physically and psychologically very painful for girls forced to undergo them, yet commanders often deem pregnant women and girls useless, at times even killing them.<sup>113</sup>

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<sup>104</sup> Child Soldiers International, *Child Soldiers Global Report 2008 - Colombia*5, (May 20, 2008), available at <http://www.refworld.org/docid/486cb0f4c.html>.

<sup>105</sup> Amnesty International, Colombia, *Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict* 27, AMR 23/040/2004 (October 13, 2004).

<sup>106</sup> United States Department of State, *2013 Country Reports on Human Rights Practices – Colombia* 25 (February 27, 2014), available at <http://www.refworld.org/docid/53284b4014.html>.

<sup>107</sup> *Colombia: Former FARC members report cruel, forced abortions* (October 19, 2013), available at [http://dialogo-americas.com/en\\_GB/articles/saii/features/main/2013/10/18/feature-01](http://dialogo-americas.com/en_GB/articles/saii/features/main/2013/10/18/feature-01).

<sup>108</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia*, 12 (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>109</sup> *Id.* at 3.

<sup>110</sup> Human Rights Watch, *You'll Learn Not to Cry: Child Combatants in Colombia*, ¶ 7 (September 18, 2003), available at <http://www.refworld.org/docid/3fe479ac4.html>.

<sup>111</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia*, 16 (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>112</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia* 52-53 (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>113</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia* 15 (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

Forced abortions are inhumanely performed and dangerous to the health and life of girl combatants. They are most often performed in the third trimester.<sup>114</sup> Pregnant women's bellies have been torn open in order to rip out the fetus.<sup>115</sup> A woman enslaved by the FARC was forced to work as a nurse in a camp and testified that she witnessed pregnant girls being hit in the stomach until they aborted. Another woman who demobilized after two decades with the FARC "saw forced abortions carried out on girls without anything for the pain" and that FARC members would inhumanely "remove the babies, piece by piece."<sup>116</sup> One woman's first pregnancy occurred at age fifteen and even though her son was born alive, she only held him a short time before FARC members took him from her and drowned the newborn. Her second abortion was then induced through drugs mixed into a beverage.<sup>117</sup>

Girl combatants suffer extreme psychological stress from repeated forced abortions and many ultimately flee their movements due to the threat of a forced abortion. Captain Ronal Romero, who leads the strategic planning office of the GAHD, stated that the frequent abortions are the main reason girl combatants flee their illegal armed group.<sup>118</sup> The forced abortions often conflict with the religious beliefs and personal values of girl combatants.<sup>119</sup> A girl recruited by the FARC when she was fourteen years old reported two forced abortions. She was lured in with the false promise that she would be able to study and ultimately remained with the FARC for ten years out of fear. She described her time as "one tragedy after another" and "often close to death." Finally, the pain of losing her second child to a forced abortion led her to flee.<sup>120</sup> However, deciding to escape comes at tremendous risk and girl combatants place their lives in danger. There is an imminent threat of being caught and murdered or not surviving after escaping due to lack of resources. Running away is seen as a betrayal of the movement, and if caught, women and girls are often killed.<sup>121</sup> In the case of a pregnant girl who tried to escape, she was subsequently murdered. Her fetus was then removed and displayed in order to prevent other girls from attempting to flee.<sup>122</sup> The Special Rapporteur on violence against women reports that many women in Colombia have died attempting to flee the armed conflict because of lack of assistance that would aid them in their escape.<sup>123</sup> These women abandoned the armed groups to protect their fetus, yet they often died trying to access

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<sup>114</sup> *Id.*

<sup>115</sup> Amnesty International, Colombia, *Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict* 3, AMR 23/040/2004 (October 13, 2004).

<sup>116</sup> *Colombia: Former FARC members report cruel, forced abortions* (October 19, 2013), available at [http://dialogo-americas.com/en\\_GB/articles/saii/features/main/2013/10/18/feature-01](http://dialogo-americas.com/en_GB/articles/saii/features/main/2013/10/18/feature-01).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia*, 64, (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>120</sup> *Id.*

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

<sup>122</sup> Inter-Am. Comm'n H.R., *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/VII, doc. 67, ¶ 92 (2006).

<sup>123</sup> Economic and Social Council, *Report of the Special Rapporteur on Violence against Women, Radhika Coomaraswamy, Fifty-eight session, Agenda item 12(a)*, U.N. Doc. E/CN.4/2002/83/Add.3, ¶ 56 (2001).

help after walking for 15 -20 days.<sup>124</sup>

## 2. Forced Contraception

The Committee has consistently found that forms of forced contraception may constitute torture or CIDT, particularly when marginalized groups, such as women from ethnic groups, are targeted.<sup>125</sup> The practice can be inadequate and harmful to the health of girls, resulting in severe physical pain. Birth control is frequently administered against a girl's will and without informing her about the form of birth control she is taking and its potential side effects.<sup>126</sup> As a result, girl child soldiers may not be aware of the cause of subsequent changes to their bodies. In addition to the physical suffering, the practice often conflicts with girls' religious and personal values, causing great psychological stress.

Testimonies from women and girls who have demobilized from guerilla and paramilitary groups show that illegal armed groups in Colombia use forced contraception as a standard practice. It is typical for girl child soldiers to receive some form of contraception almost immediately upon their entry into the armed group,<sup>127</sup> and the practice is compulsory regardless of age, consent, or whether the girl recruit has a partner.<sup>128</sup> The most commonly reported forms of forced contraception include the insertion of intrauterine devices (IUDs), arm implants and the use of birth control injections.<sup>129</sup>

Six girl child soldiers, all who served with guerilla groups before reaching the age of 18, explained that birth control injections were compulsory.<sup>130</sup> They disclosed that they were required to use contraception to avoid pregnancy even when they opposed the action.<sup>131</sup> A former guerrilla recruit specified that her commander gave her an injection every six months even though she strongly objected, and she was told that it was for her own good because if she got pregnant she would be forced to have an abortion.<sup>132</sup> Another demobilized recruit was forced to have an injection about 20 days after she arrived at the camp despite her refusal. She was simply told that it was mandatory and given the

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<sup>124</sup> Colombia: Former FARC members report cruel, forced abortions (October 19, 2013), *available at* [http://dialogo-americas.com/en\\_GB/articles/saii/features/main/2013/10/18/feature-01](http://dialogo-americas.com/en_GB/articles/saii/features/main/2013/10/18/feature-01).

<sup>125</sup> Committee Against Torture, *Concluding Observation: Slovakia*, U.N. Doc. CAT/C/SVK/CO/2, ¶ 14 (2009); Committee Against Torture, *Concluding Observation: Peru*, U.N. Doc. CAT/C/PER/CO/5-6, ¶¶ 15, 19 (2013); Committee Against Torture, *Concluding Observation: Kenya*, U.N. Doc. CAT/C/KEN/CO/2, ¶¶ 23, 27 (2013).

<sup>126</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia* 15 (January 2003), *available at* <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>

<sup>127</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia*, 15, 59 (January 2003), *available at* <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>128</sup> Human Rights Watch, *You'll Learn Not to Cry: Child Combatants in Colombia*, ¶ 7 (September 18, 2003), *available at* <http://www.refworld.org/docid/3fe479ac4.html>.

<sup>129</sup> Child Soldiers International, *Child Soldiers Global Report 2001 - Colombia*, ¶ 6, (2001), *available at* <http://www.refworld.org/docid/498806061e.html>.

<sup>130</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia* 12 (January 2003), *available at* <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>131</sup> *Id.* at 3, 8.

<sup>132</sup> *Id.* at 16.

injection each month.<sup>133</sup>

Forced contraception is often inadequate, harmful to the health of girl combatants, and can have life threatening consequences<sup>134</sup> because of improper use and administration.<sup>135</sup> In some cases it is administered absent the care of a medical professional or properly trained individual, and commanders or untrained nurses within the illegal armed groups commonly oversee the practice. Those who administer the practice often do not receive formal education and are usually just other girl combatants. Complications often arise because of the lack of care and expertise in the administration of birth control. A girl that had demobilized from a guerrilla group was near death after the insertion of an arm implant because of uncontrolled bleeding.<sup>136</sup> She still has a scar from where a knife was later used to cut the implant out of her arm.<sup>137</sup> Another girl that had abandoned a guerilla movement had been fitted with an IUD, but after she became very ill it was taken out.<sup>138</sup> A former girlfriend of a commander disclosed that when they became partners he sent her to have the IUD taken out because it “looked bad.” She said the IUD was very painful and she was then given the injection instead.<sup>139</sup>

Birth control methods, including IUDs and injections, are dispersed without providing women and girls with adequate information about the contraception’s use and effects.<sup>140</sup> For example, eight days after her recruitment, a former child soldier had an IUD inserted by another girl recruit at the camp. She was given no information about the device, despite it being a very invasive procedure, and was only checked on eight days later.<sup>141</sup> Another girl was first given the injection, which made her lose weight and gave her “spots all over [her] face.”<sup>142</sup> She was given no information about the contraception other than that it was an injection to prevent pregnancy. When she inquired about it, her concerns were ignored and she was then administered the injection. After experiencing adverse side effects for three months from the injection, she was later fitted with an IUD.<sup>143</sup>

The practice of forced contraception is a clear form of discrimination against women and girls. In the guerrilla movements, women and girls are told to be “careful not to start a family,” and the burden is clearly placed on them to prevent their own pregnancy.<sup>144</sup>

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<sup>133</sup> *Id.* at 64.

<sup>134</sup> Amnesty International, Colombia, *Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict* 27, AMR 23/040/2004 (October 13, 2004).

<sup>135</sup> UN Security Council, *Report of the Secretary-General on children and armed conflict in Colombia* 8 (August 28, 2009), S/2009/434, available at <http://www.refworld.org/docid/4aae07b20.html>.

<sup>136</sup> *Id.*

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

<sup>138</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia* 47 (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>139</sup> Yvonne E. Keairns, PhD, Quaker United Nations Office, *The Voices of Girl Child Soldiers: Colombia* 72 (January 2003), available at <http://www.iiav.nl/epublications/2003/voicesgirlsoldierscolombia.pdf>.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 52.

Former girl child soldiers were told that they would be held completely responsible for any pregnancy.<sup>145</sup> Male combatants rarely assume responsibility for contraceptive use such as condoms, nor are they required to. Furthermore, girl combatants and child soldiers have been told by commanders that it is their responsibility to both receive the contraception and cope with any potential side effects it may have.<sup>146</sup>

## **B. Sexual Violence Within the Framework of Colombia's Armed Conflict Rises to the Level of Torture**

Sexual violence gives rise to the pain and suffering that is inherent in the definition of torture. The systemic use of sexual violence as a form of control in Colombia supports the recognition of sexual violence as a form of torture. While it is difficult to measure the exact extent of sexual violence related to the conflict, human rights organizations have found that sexual violence, as a tool of conflict, is prevalent and continuing. Between 2001 and 2009, 489,687 women were victims of some form of sexual violence in the context of Colombia's armed conflict.<sup>147</sup> In 2011, the U.N. High Commissioner for Human Rights found significant underreporting of the prevalence of sexual violence committed by guerilla groups, paramilitary groups, and by members of the military.<sup>148</sup>

Severe mental and physical suffering is inflicted by sexual violence. The International Criminal Tribunal for the former Yugoslavia (ICTY) first recognized rape as a possible category of torture in 2002 because rape necessarily implies pain and suffering.<sup>149</sup> The European Court of Human Rights found that the rape of a detained person was torture under the European Convention on Human Rights.<sup>150</sup> The Inter-American Commission on Human Rights found that the repeated sexual abuse of an individual by a member of security forces was torture.<sup>151</sup> The Committee has also repeatedly noted with concern situations of widespread rape and other sexual violence in armed conflict and in detention.<sup>152</sup>

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<sup>145</sup> *Id.* at 15.

<sup>146</sup> *Id.* at 16.

<sup>147</sup> Campaign Rape and Other Violence: Leave My Body Out of War, OXFAM, First Survey of Prevalence, Sexual Violence Against Women in the Contest of the Colombian Conflict [hereinafter First Survey] 7, 13 (2009), available at

[http://www.peacewomen.org/assets/file/Resources/NGO/vaw\\_violenceagainstwomenincolombiaarmedconflict\\_2011.pdf](http://www.peacewomen.org/assets/file/Resources/NGO/vaw_violenceagainstwomenincolombiaarmedconflict_2011.pdf). Some form of sexual violence includes rape, forced prostitution, forced pregnancy, forced abortion, forced sterilization, sexual harassment, forced domestic labor, and regulation of social life.

<sup>148</sup> Human Rights Council (HRC), *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia* [hereinafter *Situation of Human Rights in Colombia*], ¶¶ 56 – 64, U.N. Doc. A/HRC/16/22 (Feb. 3, 2011).

<sup>149</sup> *Prosecutor v. Kunarac, Kovac & Vukovic*, Case No. IT-96-23 & IT-96-23/1-A, Judgment, ¶¶ 150-51 (Int'l Crim. Trib. For the Former Yugoslavia June 12, 2002).

<sup>150</sup> *Aydin v. Turkey*, 57/1996/676/866, Eur. Ct. H.R., ¶ 86 (1997) (“Against this background the Court is satisfied that the accumulation of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention.”).

<sup>151</sup> *Raquel Martí de Mejía v. Perú*, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, OEA/Ser.L/V/II.91 doc. 7 (1996).

<sup>152</sup> Committee Against Torture (CAT), *Concluding Observations of the Committee Against Torture: Burundi*, 37th sess., ¶ 11, U.N. Doc. CAT/C/BDI/CO/1 (Feb. 15, 2007); CAT, *Concluding Observations of*

*My mother left my siblings and me on the street at a young age. This is when I was recruited by the FARC. At age eight I had already experienced several instances of sexual violence. I was so depressed that I tried to take my life several times by drinking poison. I then went to stay at a State-run home for sexually abused children where I also experienced sexual violence, including by government officials.*

Carmen, former girl child soldier recruited at age eight.

The stories told by women in Colombia to human rights organizations illustrate the intense physical and mental suffering they experience as a result of sexual violence. The use of sexual violence as a tool of armed conflict constitutes intentionally inflicted harm for coercive and intimidating purposes. Sexual violence is a “systematic, habitual, and widespread practice within the framework of Colombia’s armed conflict.”<sup>153</sup> The Norwegian Refugee Council (NRC) found that “deliberate acts of sexual violence form part of war strategies focused on breaking down populations, which in some cases have resulted in forced displacement.”<sup>154</sup> Sexual violence is used to ensure control over a territory or intimidate as a method of social control.<sup>155</sup> Sexual violence in Colombia is not the result of a few individual actors, but rather is part of an intentional strategy by illegal armed groups to gain control, intimidate and coerce victims and the population at large.

*I noticed that the commander looked at me a lot, but I was never interested in him. One day he told me that he needed to talk to me and led me to a house. The houses were all spread apart because it was in the country. He raped me inside the house. I have always felt bad about this because it wasn't my choice. Sometimes I blame myself but I was only 13 years old.*

Maria, former girl child soldier recruited at age 13 and displaced to Bogotá.

### **C. Afro- Colombian Populations are Particularly Vulnerable to Forms of Torture in the Armed Conflict**

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*the Committee Against Torture: Chad*, 42nd sess., ¶ 20, U.N. Doc. CAT/C/TCD/CO/1 (June 4, 2009); *CAT, Concluding Observations of the Committee Against Torture: Mexico*, 37th sess., ¶ 19, U.N. Doc. CAT/C/MEX/CO/4 (Feb. 6, 2007).

<sup>153</sup> *Id.* at 5.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 8.

The presence of illegal armed groups, particularly in rural areas, has resulted in a severe humanitarian crisis, where groups often inflict torture and cruel and inhuman treatment on Afro-Colombian populations. Forms of torture committed against Afro-descendant communities include massacres, selective executions, disappearances, sexual violence, forced displacement, and acts of "social cleansing." Community representatives and human rights defenders have provided testimony on attacks against leaders who defend the land rights of Afro-descendant communities and denounce violence.<sup>156</sup> In some instances, community members have alleged that certain acts of violence have been carried out with the acquiescence or collaboration of members of the security forces, or as a result of their failure to protect.<sup>157</sup>

Afro-Colombian communities and women are particularly vulnerable to sexual violence<sup>158</sup> and forced displacement.<sup>159</sup> Gender inequality within Afro-Colombian communities is exacerbated by a history of slavery, years of condoned violence and racial stereotypes, including racial stereotypes of black women's bodies.<sup>160</sup> Sexual violence as a tool of armed conflict continues to occur, that it is committed by both State and non-State actors, and that Afro-Colombian and indigenous women are most susceptible to violence.<sup>161</sup> Afro-Colombian communities are more vulnerable to forced displacement because of the geo-economic nature of the war.<sup>162</sup> The violence is concentrated in territories that are predominately Afro-Colombian because these are territories appealing to the armed groups.<sup>163</sup> The geographic element is reinforced by the existing discrimination, marginalization, and socio-economic exclusion of Afro-Colombian communities.<sup>164</sup> For instance, Buenaventura and Tumaco, both largely Afro-Colombian,<sup>165</sup> are two of the cities with the highest military presence.<sup>166</sup> Discrimination

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<sup>156</sup> Meeting with human rights defender Carlos Rosero of Black Communities Process (PCN). IACHR, hearing on the "Human rights situation of displaced Afro-Colombians," 131st regular session of the IACHR, March 12, 2008.

<sup>157</sup> Human Rights Watch, *Colombia: FARC Battering Afro-Colombian Areas*, available at <http://www.hrw.org/news/2014/07/30/colombia-farc-battering-afro-colombian-areas> (July 30, 2014).

<sup>158</sup> ABColombia, Sisma Mujer, & USOC, *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process*, 7, (2013), available at [http://www.abcolombia.org.uk/downloads/ABColombia\\_Conflict\\_related\\_sexual\\_violence\\_report.pdf](http://www.abcolombia.org.uk/downloads/ABColombia_Conflict_related_sexual_violence_report.pdf).

<sup>159</sup> Minority Rights Group International, *State of The World's Minority and Indigenous Peoples*, 2014 101-02 (2014), available at <http://www.minorityrights.org/download.php?id=1391>.

<sup>160</sup> Global Rights Partners for Justice & Afrodes, *Life in the Face of Adversity: The Human Rights Situation of Internally Displaced Afro-Colombian Women* 7 (2008), available at [http://www.globalrights.org/sites/default/files/docs/Life\\_in\\_the\\_Face\\_of\\_Adversity\\_-\\_English.pdf](http://www.globalrights.org/sites/default/files/docs/Life_in_the_Face_of_Adversity_-_English.pdf).

<sup>161</sup> ABColombia, Sisma Mujer, & USOC, *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process* (2013), available at [http://www.abcolombia.org.uk/downloads/ABColombia\\_Conflict\\_related\\_sexual\\_violence\\_report.pdf](http://www.abcolombia.org.uk/downloads/ABColombia_Conflict_related_sexual_violence_report.pdf).

<sup>162</sup> Afro-Descendant Women Human Rights Defenders Project, PCN, *Defeating Invisibility: A Challenge for Afro-Descendant Women in Colombia* 2 (2012) available at <http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf>.

<sup>163</sup> *Id.* at 7.

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

<sup>165</sup> Human Rights Watch, *Crisis in Buenaventura* 10 (2014), available at [http://www.hrw.org/sites/default/files/reports/colombia0314webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/colombia0314webwcover_1.pdf) (stating that Afro-Colombians make up approximately 84% of Buenaventura's population); Human Rights Watch, *Colombia: FARC Battering Afro-Colombian Areas* (July 30, 2014), <http://www.hrw.org/news/2014/07/30/colombia-farc-battering-afro-colombian-areas>.

is exacerbated on displaced Afro-Colombian women because of their gender, race, and status as displaced persons. Forced displacement affects Afro-Colombian communities in distinct ways and can often mean the loss of ethnic, cultural and territorial identity, community, and spiritual life.<sup>167</sup>

## 1. Afro-Colombian Women Human Rights Defenders

In response to the alarming levels of violence faced by human rights defenders and social leaders, the Colombian government has demonstrated its will to implement institutional reforms that address the immediate needs of those who seek protection. With this purpose, Decree 4912 of 2011 and 1225 of 2012 organized the *Prevention and Protection Program for the Right to Life, Freedom, Integrity and the Security of Individuals, Groups and Communities* under the responsibility of the Ministry of the Interior and the National Protection Unit (UNP), the latter being created through Decree 4065 of 2011.

The UNP's objective is to coordinate, articulate and provide appropriate protection services to people at risk, specifically, to populations that face serious threats on their life, integrity and liberty.<sup>168</sup> Accordingly, once someone requests protection measures within this program, the denunciation must be verified and evaluated by the Technical Unit for the compilation and Analysis of Information (CTRAI) and the Previous Evaluation Group (GVP). On this basis, the Committee for Risk Evaluation and Recommendations (CERREM) will qualify each request in relation to its risk level (extreme, extraordinary or ordinary) and will decide whether a protection request will be granted or dismissed.<sup>169</sup> In case it is granted, it will also recommend what the protection measures will entail. Requests are dismissed if they do not comply with the legal requirements.

Despite the multiple decrees that have been issued in order to structure a cohesive protection strategy, the UNP has been slow in responding to the provision of measures required by human rights defenders and social leaders. Since its inception in 2012, the UNP has prioritized public officials with high ranks and underestimated the most disadvantaged populations, such as land claimants, displaced population, victims of the armed conflict, ethnic populations and women. Between January 2012 and September 2013, the UNP registered 20,537 submitted requests, of which only 7,487 were approved. Among these, human rights leaders from diverse social sectors submitted 4140, out of which only 1542 (36.8%) were granted protection measures.<sup>170</sup> Consequently, there is

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<sup>166</sup> Afro-Descendant Women Human Rights Defenders Project, PCN, *Defeating Invisibility: A Challenge for Afro-Descendant Women in Colombia* 13 (2012) available at <http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf>.

<sup>167</sup> Afro-Descendant Women Human Rights Defenders Project, PCN, *Defeating Invisibility: A Challenge for Afro-Descendant Women in Colombia* 12 (2012) available at <http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf>.

<sup>168</sup> Decree No. 4065 of 2011, Article 3.

<sup>169</sup> National Protection Unit. See: <http://www.unp.gov.co/como-lo-hacemos>

<sup>170</sup> *Somos defensores*, Special Report: Taking Protection to the Blackboard (2014), 27 Available at: <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/88-informe-especial-proteccion-al-tablero>

still a generalized climate of fear due to the grave dangers that are continuously faced by human rights leaders. From January 2009 to September 2013, *Somos Defensores* reported that 703 human rights defenders received threats, 143 suffered murder attempts, 93 were arbitrarily detained and 234 were killed along the country.<sup>171</sup> In the past year, 55 human rights defenders were killed and suffered 626 aggressions, which included 488 death threats.

One of the greatest concerns regarding the UNP's lack of effective responses has to do with its limited personnel, which is comprised of only 739 public officers. For this reason, the UNP contracted 2430 bodyguards from private security companies.<sup>172</sup> This means that more than 76% of the employees in charge of providing protection to people at risk are private actors. Similarly, between 2012 and 2014, the Unit received approximately \$465 million USD<sup>173</sup>, from which around 70% (\$326 million USD) was destined to third private parties in charge of the protection program. Furthermore, in 2014 the director of the UNP reported budget shortfalls and declared a financial crisis. At the same time, bodyguards protested and denounced the violation of their labor rights.<sup>174</sup> This situation has deeply aggravated the continuous violations of human rights defender's integrity, freedom and security.

On the other hand, decree 4065 of 2011 clearly states that the UNP must carry out evaluations on the collective risks faced by the most vulnerable groups, communities and territories in order to define effective collective protection measures in coordination with other entities.<sup>175</sup> However, in 2012 and 2013 the Unit did not comply with the elaboration of these evaluations<sup>176</sup>. The situation has been particularly harmful for Afro-descendant organizations and communities inhabiting conflictive territories. In its 2013 report, the UNP recognized that during that year, the number of people facing extraordinary risk duplicated in comparison to 2012.<sup>177</sup> Paradoxically, it has consistently failed to provide Afro-Colombian communities with adequate individual and collective protection schemes that effectively respond to the imminent risks that they are being subjected to<sup>178</sup>.

Afro-Colombian leaders have been often targets of egregious acts of violence. The effects that the infusion of collective fear produced by repeated threats are deeply aggravated due to the historic and systematic pattern of racial discrimination that they have been

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<sup>171</sup> *Id.*, 17

<sup>172</sup> *Id.*, 29

<sup>173</sup> *Id.*, 29

<sup>174</sup> Center For International Policy. Letter to the Director of the National Protection Unit 2015.

Available at: <http://www.ciponline.org/research/entry/letter-to-the-director-of-the-national-protection-unit-of-colombias-interio>

<sup>175</sup> Decree No. 4065 of 2011 Article 4 ¶ 7.

<sup>176</sup> *Somos defensores*, Special Report: Taking Protection to the Blackboard (2014), 28 Available at: <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/88-informe-especial-proteccion-al-tablero>

<sup>177</sup> UNP Accountability Report, Bogotá, 21 (30 April 2013) Available at: <http://www.unp.gov.co/la-unp/Documents/INFORME%20DE%20RENDICIÓN%20DE%20CUENTAS%20UNP%202013.pdf>

<sup>178</sup> Information provided by PCN

subjected to.<sup>179</sup> A case that illustrates the grave risk that Afro-Descendant women human rights defenders, members of community councils and IDPs are systematically exposed to, is the case of La Toma, Cauca. Along with other communities at risk, La Toma was recognized as an emblematic case in terms of protection, prevention and attention in the Constitutional Court Order 005 of 2009, which gave it priority status before the UNP and CERREM.

### **Afro-descendant leaders from La Toma, Cauca.**

On November 17, a group of 80 Afro-descendant artisanal miner women marched to the capital city in order to demand a response from the Colombian Government to the long-standing gross human rights violations and impunity within their territory, caused by the illegal presence and activities of foreign miners. They arrived to the Bogotá on November 25 and stayed until they established a series of agreements with national authorities (Ministry of Interior, Ministry of Defense, Ministry of Mining and Energy, Office of the Attorney General) on December 12 of 2014.

One of the main agreements was the integral protection of the women and the members of the Maroon Guard (*Guardia Cimarrona*) who were accompanying women during the mobilization. The Direction for Human Rights of the Ministry of Interior agreed to work with the women and Community Councils in the design and implementation of an integral collective plan of prevention, and the UNP committed to provide urgent protection for the women, due to the imminent risk they faced once they returned to their territories where illegal miners were still present.

Nevertheless, three months after the agreements, only three women have received bulletproof vests and cell phones that often times don't work properly. All of them were subject to long and deficient protocols of evaluation carried out by the UNP in order to determine the levels of individual risk. The continuous promises that have not been complied have increased feelings of helplessness. At the same time, death threats and harassment have increased, and illegal mining is continuously extending along the territory. Since the women's mobilization, there have been more than 7 threats that include lists of members of Community Councils, women who assisted the mobilization, their relatives and other leaders. Some women and members of the Maroon Guard have been forced to intermittent displacement.

\*Information provided by PCN

In its 2013 concluding observations, the CEDAW recommended the State to “establish a protection programme for women rights defenders and leaders which takes into consideration their needs and realities from a gender differentiated perspective; and allocate adequate financial and human resources for its implementation.”<sup>180</sup> It also urged

<sup>179</sup> Inter-American Commission on Human Rights. . Truth, Justice and Redress: Fourth report on the human rights situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, 257 ¶ 621, available at: <http://www.oas.org/es/cidh/docs/pdfs/justicia-verdad-reparacion-es.pdf>

<sup>180</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations on the combined 7th and 8th periodic reports of Colombia*, U.N. Doc. CEDAW/C/COL/CO/7-8, ¶ 32(c) (2013)

the state to “Take effective protection measures for women who are victims of threats and violence by armed groups, including post-demobilized armed groups, in relation to land restitution”.<sup>181</sup> However, these recommendations have not been taken into account to the date of this report. According to PCN, the individual measures that have been provided to Afro-Colombian women by the UNP are inadequate. Bulletproof vests result extremely uncomfortable and inappropriate for the daily activities performed by women in their territories. Furthermore, due of the material value of the bullet proof vests, women feel vulnerable because regular buglers and robbers could see them as easy target. Women are aware of the fact that reprisals such as rape, abduction and forced disappearance have been used to intimidate women from the communities and to ensure their silence. They fear that the cellphones that have been given to leaders might not be effective in preventing cases of sexual violence.

The UNP has failed in providing Afro-descendants with the minimum requirements in order to comply with their responsibility under the Convention. Because the individual protection measures provided by the Unit are insufficient and do not counteract the real risks that Afro-Colombian communities are exposed to, Afro-Colombians urge the Ministry of the Interior and the UNP to outline and implement collective protection measures that comply with the obligation of preventing and protecting their life, integrity, security, and freedom.

*Somos Defensores* states that impunity has persisted in relation to the deaths of 95% of human rights defenders between 2009 and 2013.<sup>182</sup> In the first half of 2013, 15 women’s organizations in Chocó and Barrancabermeja –predominantly Afro-Colombian territories-- were declared military targets by armed groups. In the port city of Buenaventura, the PDAG “Los Urabeños” was said to have a list of 50 women to be murdered by the end of 2012. Since *Somos Defensores*’ report was released, at least 7 women have been murdered in this city and a number of them have gone unreported. So far, the authorities have made no advances in the investigations of the murders of these women.<sup>183</sup> A real preoccupation is the fact that authorities have not promptly or adequately investigated who is behind the multiple threats signed by PDGAs through pamphlets, telephone calls, emails and text messages<sup>184</sup>, and other times even through physical harassment or persecution.<sup>185</sup>

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<sup>181</sup> Id, ¶ 24 (b)

<sup>182</sup> *Somos defensores*, Special Report: Taking Protection to the Blackboard (2014), 28 Available at: <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/88-informe-especial-proteccion-al-tablero>

<sup>183</sup> Information provided by PCN (30 March 2015)

<sup>184</sup> *Somos Defensores* Report. Devine Comedy. Information on aggressions against human rights defenders in Colombia, 59 (2014) Available at: <http://somosdefensores.org/attachments/article/132/la-divina-comedia-web-final.pdf>

<sup>185</sup> For example, on January 28 of 2015, illegal miners in La Toma approached three young women. They insisted on getting information about the Community Councils. After the women denied providing them information, the miners warned them that they knew about their participation in the women’s mobilization from la Toma to Bogotá. Before this, in December 17 of 2014, two armed men in a motorcycle went to a leader’s house and warned her that “all of these women who participated in the mobilization are going to end up with their mouths full of flies”.

#### **IV. ARTICLE 10: THE STATE'S FAILURE TO EDUCATE AND TRAIN LAW ENFORCEMENT PERSONNEL, MEDICAL PERSONNEL, AND OTHER PUBLIC OFFICIALS VIOLATES THE CONVENTION**

Public officials, law enforcement and medical personnel must receive the appropriate education and training on the prohibition of torture and other acts of CIDT. When such acts are committed by or with the consent or acquiescence of a public official or other person acting in an official capacity, they are in violation of the Convention.<sup>186</sup> The State has an obligation to protect against acts of torture and other CIDT perpetrated against girl child soldiers, Afro-descendant communities, Indigenous women, and LGBT communities by providing training to the appropriate personnel. State Parties “shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, and public officials.”<sup>187</sup> This can be achieved through a variety of outreach groups that provide information on the prohibition against torture and other abuses at all levels of government. The categories of listed personnel are not exhaustive and other public officials, where appropriate, must be included in training courses.<sup>188</sup> It is vital that the prohibition of these practices is not simply embodied in general customs that may be unfamiliar to many of the persons concerned, but rather must be included in the specific rules and instructions provided to law enforcement personnel, medical personnel, and public officials.<sup>189</sup> Thus, “[e]ach State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.”<sup>190</sup>

Human rights education and training regarding the prohibition of torture should be reinforced for law enforcement officials and medical personnel, and training should be implemented in official education programs, particularly for the benefit of younger generations.<sup>191</sup> In order to create high esteem for the prohibition of torture and other acts of CIDT, this provision should not be treated as a mere formality.<sup>192</sup> Past recommendations of the Committee have included the development of training programs on the prohibition of torture and CIDT for judges and prosecutors as well as other law enforcement officials, including military officials, police, and any other personnel involved in the treatment of persons at risk of torture.<sup>193</sup> The training for police,

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<sup>186</sup> J. Hermann Burgers, *The United Nations Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment* 141 (1988).

<sup>187</sup> CAT, Article 10, ¶1.

<sup>188</sup> J. Hermann Burgers, *The United Nations Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment* 142 (1988).

<sup>189</sup> *Id.*

<sup>190</sup> CAT, Article 10, ¶ 2.

<sup>191</sup> Committee Against Torture, *Concluding Observation: Brazil*, U.N. Doc. A/56/44, ¶ 120 (2001); Committee Against Torture, *Concluding Observation: Republic of Moldova*, U.N. Doc. A/58/44, ¶ 139 (2003).

<sup>192</sup> J. Hermann Burgers, *The United Nations Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment* 142 (1988).

<sup>193</sup> Committee Against Torture, *Concluding Observation: Chile*, U.N. Doc. A/59/44, 28, ¶ 56 (2004).

prosecutors and judges should be intensive and technical.<sup>194</sup> The Committee has also recommended that training programs for medical specialists specifically deal with the identification and documentation of torture.<sup>195</sup> State parties should intensify training of medical personnel in the detection of signs of torture or CIDT and the preparation of forensic reports.<sup>196</sup> Educational programs are expected for law enforcement and medical personnel, focusing on the obligations laid out in the Convention and how evidence of torture may be recognized. In the case of medical personnel, such educational programs should include methods for the rehabilitation of victims of torture.<sup>197</sup> The efforts to educate medical and law enforcement personnel, civil and military, should address the full rehabilitation of victims.<sup>198</sup>

*I have talked to a psychologist but it is not very helpful. They rotate shifts and I end up retelling my story each time.*

\* Testimony of a former child soldier.

### **A. The State Has an Obligation to Educate Medical Professionals on Torture and CIDT Resulting from Sexual Violence and Reproductive Rights Violations**

The promotion of reproductive rights and healthcare is part of the State's affirmative obligation to prevent acts of torture and CIDT.<sup>199</sup> The Committee has recommended that the State provide "better access to information and reproductive health services, including for adolescents" and strengthen family planning programs as a means of combating "acts that put women's health at grave risk."<sup>200</sup> Education and information regarding the prohibition against torture and CIDT must be included in the training of all medical personnel. Any failure to implement the requirements and widely accepted ethical standards of professional behavior applicable in the context of healthcare violates the State's obligation under Articles 10.

The State must ensure that medical professionals, including psychologists and counselors, understand the needs of victims of sexual violence. Sexual violence results in severe psychological and emotional stress, including anxiety, intense fear of a repeated attack, low self-esteem, self-blame, guilt, suicidal thoughts, and other symptoms of trauma such

<sup>194</sup> Committee Against Torture, *Concluding Observation: Guatemala*, U.N. Doc. A/51/44, 10, ¶ 57 (1996).

<sup>195</sup> Committee Against Torture, *Concluding Observation: Chile*, U.N. Doc. A/59/44, 28, ¶ 57 (2004).

<sup>196</sup> Committee Against Torture, *Concluding Observation: Turkey*, U.N. Doc. A/58/44, 46, ¶ 123 (2003).

<sup>197</sup> Committee Against Torture, *Concluding Observation: Jordan*, U.N. Doc. A/50/44, 23, ¶ 179 (1995).

<sup>198</sup> Committee Against Torture, *Concluding Observation: Peru*, U.N. Doc. A/50/44, 11, ¶ 73 (1995).

<sup>199</sup> Committee Against Torture, *Concluding Observation: Peru*, CAT/C/PER/CO/5-6, ¶ 15 (2013);

Committee Against Torture, *Concluding Observation: Poland*, CAT/C/POL/CO/5-6, ¶ 23 (2013);

Committee Against Torture, *Concluding Observation: Sierra Leone*, CAT/C/SLE/CO/1, ¶ 17 (2014).

<sup>200</sup> Committee Against Torture, *Concluding Observation: Peru*, U.N. Doc. CAT/C/PER/CO/4, ¶ 23 (2006).

as post-traumatic stress disorder (PTSD).<sup>201</sup> Depression, sleep disturbances, mood or anxiety disorders, and avoidant behaviors are also common symptoms for victims of sexual violence and rape.<sup>202</sup> The medical professional's aim should be to minimize the overall negative impact of sexual violence and maximize the victim's overall quality of life.<sup>203</sup> The training of medical professionals in the awareness of and the response to a victim's psychological needs is paramount to the victim's wellbeing. Furthermore, it is important that all medical personnel understand how their services may negatively affect and further traumatize those seeking help.<sup>204</sup> Regular training of medical personnel on victim-centered care should be implemented at all facilities to minimize further trauma of victims of sexual violence.<sup>205</sup>

State parties should intensify training of medical personnel on the care of women and girls subjected to forced abortions. Forced abortions within the context of Colombia's armed conflict are often unsafely performed. Women's Link Worldwide reported that between 10% and 50% of unsafe abortions require medical attention.<sup>206</sup> Medical personnel must ensure the appropriate treatment of women seeking post-abortion care and emergency obstetric care related to forced abortion. Negative psychological responses are also seen when women and girls are opposed the termination of a pregnancy.<sup>207</sup> Training manuals and documentation should be provided to personnel in great detail on the physical and psychological consequences of forced abortion as well as information on other reproductive rights violations.

## **B. The State has an Obligation to Provide Education and Training for Prosecutors, Judges and Law Enforcement Personnel**

General Comment No. 2 emphasizes that parties are obligated under CAT to identify, prevent, and punish torture and CIDT through eliminating legal barriers that impede the eradication of torture and CIDT, and through continually monitoring national laws and performance under the Convention to ensure that laws are not in violation of the Convention. Law enforcement should be trained with a particular focus on the

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<sup>201</sup> Australian Institute of Family Studies, *The Impacts of Sexual Assault on Women*, available at <http://www.aifs.gov.au/acssa/pubs/sheets/rs2/> (April 2011).

<sup>202</sup> Dr. Jenny Petrak and Dr. Barbara Hedge, *The Trauma of Sexual Assault*, John Wiley & Sons, 221 (July 7, 2003).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> Women's Link Worldwide, *Abortion: A Public Health Issue in Latin America and Throughout the World*, available at

[http://www.womenslinkworldwide.org/pdf\\_programs/prog\\_rr\\_col\\_factsheets\\_pubhealth.pdf](http://www.womenslinkworldwide.org/pdf_programs/prog_rr_col_factsheets_pubhealth.pdf) (*Unsafe abortion*: Characterized by the provider's lack of training, the use of dangerous techniques and/or performed somewhere that does not meet hygienic standards.)

<sup>207</sup> Dr. Jenny Petrak and Dr. Barbara Hedge, *The Trauma of Sexual Assault*, John Wiley & Sons, 221 (July 7, 2003).

elimination of the human rights violations perpetrated against child soldiers and ethnic communities. Prosecutors and judges must be trained and be knowledgeable on the issues that face these marginalized groups in order to address grievances accordingly. In order to be more effective, such training should be included in the curriculum for prosecutors, judges, and law enforcement so that all personnel understands and can recognize violence against child soldiers and ethnic communities with the gravity it deserves. Training on the proper method for investigating allegations of violations of the Convention and education must be developed to include the absolute prohibition on torture; the requirement to investigate allegations of torture; the use of evidence obtained by torture; and universal jurisdiction to prosecute torture.

While the State has made some progress in articulating policies concerning gender-based violence, they have not taken significant steps to protect women and girls from such violence in practice. In June 2014 Colombian President Juan Manuel Santos approved legislation on access to justice for victims of sexual violence in the armed conflict. The Colombian Penal Code now eliminates any statutes of limitation for sexual crimes, including crimes of forced abortion, forced sterilization, and forced nudity.<sup>208</sup> Reporting for such crimes remains extremely low, however, despite widespread knowledge of the continuation of gender-based violence in the context of the armed conflict.<sup>209</sup> This can be attributed to near impunity and a lack of trust in the justice system.

A separate must ensure the continuous monitoring of the performance of the State Security Forces. According to the Office of the Prosecutor in the International Criminal Court (ICC), ‘there is a reasonable basis’ to believe that acts of sexual violence constituting war crimes and crimes against humanity have been committed in Colombia by all armed actors, state and non-state.<sup>210</sup> The State Security Forces’ systematic and generalized involvement in sexual violence is a violation of the Convention and “has a particularly devastating effect, since the populations they are mandated to protect “are left with no authority to whom they can turn for justice.”<sup>211</sup> The Security Forces involvement in sexual violence acts a major legal barrier for women and girls to report such crimes. It is reported that at best a mere 18 percent of sexual violence cases are documented and investigated by the police.<sup>212</sup>

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<sup>208</sup> International Criminal Court, The Office of the Prosecutor, Report on Preliminary Examination Activities, Colombia, ¶ 125 (2014).

<sup>209</sup> ABColombia, Sisma Mujer, & USOC, *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process, I*, (2013), available at [http://www.abcolombia.org.uk/downloads/ABColombia\\_Conflict\\_related\\_sexual\\_violence\\_report.pdf](http://www.abcolombia.org.uk/downloads/ABColombia_Conflict_related_sexual_violence_report.pdf).

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at 2.

<sup>212</sup> *Id.*

*I am very upset at the lack of reparations for victims. There is total impunity (for combatants accused of committing acts of violence). . . . It is not safe (to report such crimes) because even the cops are members of the paramilitary.*

Lourdes, former child soldier.

## **V. ARTICLES 6, 12 & 13: VICTIMS AND SURVIVORS OF TORTURE AND CIDT IN COLOMBIA LACK ACCESS TO FULL AND ADEQUATE REDRESS, INCLUDING PROPER COMPLAINT MECHANISMS AND A PROMPT AND IMPARTIAL INVESTIGATION INTO VIOLATIONS**

Girl child soldiers that have been subject to torture or CIDT must have appropriate opportunities to bring complaints to authorities and to have their claims investigated in a timely and just manner without fear of retaliation. Perpetrators must also be properly punished for these acts. Article 13 requires State parties to have competent authorities “promptly and impartially” examine complaints by “any individual who alleges [s]he has been subjected to torture in any territory under its jurisdiction.” Furthermore, “[s]teps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of [her] complaint or any evidence given.”<sup>213</sup> The complaint serves as a vital part in the prevention of repeated torture and mistreatment, public acknowledgement of the harm, and the victim’s reparation.<sup>214</sup> Article 6 States that any person accused of a violation under the convention must be taken into custody and there must be an investigation into the facts of each case. Article 12 provides that the State shall make a prompt inquiry where there is reason to believe that acts of torture or CIDT are being committed within its territory.<sup>215</sup> The Committee has concluded that rape, trafficking, forced contraceptives, forced abortions, and lack of complete redress for demobilized child soldiers can amount to torture or CIDT and the State’s failure to take adequate measures to prevent such crimes may violate the Convention.<sup>216</sup>

### **A. The State has an Obligation to Make Available Complaint Mechanisms to Victims of Torture and CIDT**

Complaint mechanisms must be accessible to all individuals. Delays, incompetence, and failure to act on complaints of torture violate the requirement to conduct an impartial

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<sup>213</sup> CAT, art. 13.

<sup>214</sup> Committee Against Torture, *Dragan Dimitrijevic v. Serbia and Montenegro*, Communication No 207/2002, U.N. Doc. CAT/C/33/D/207/2002, ¶ 3.3 (2004).

<sup>215</sup> CAT, art. 12.

<sup>216</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 18 (2008).

investigation under Article 13.<sup>217</sup> In the case of *Blanco Abad v. Spain*, the Committee addressed the issue of when the State's duty to investigate an Article 13 complaint arises, stating:

Article 13 does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express Statement of intent to institute and sustain a criminal action arising from the offence . . . it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated . . .<sup>218</sup>

The Committee concluded that “[c]omplaint mechanisms shall be made known and accessible to the public, including to persons deprived of their liberty . . . and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.”<sup>219</sup> The State violates the Convention when its agencies fail to fully investigate reports of torture or CIDT or forward reports to agencies that have the capacity and the will to punish perpetrators. This includes, where relevant, notification of an international body.<sup>220</sup> Girl child soldiers are denied the opportunity to make complaints and to have competent authorities investigate acts of torture in when no complaint mechanism exists. In related situations, the Committee has stated that national efforts must be extended and mandated in order to enable victims of all forms of torture, including victims of sexual violence, to file complaints. The definition of torture should be clarified on the victim's complaint forms by including a non-exhaustive list specifying various forms of torture, including sexual violence. Procedures must be initiated to better publicize these efforts including among media outlets.<sup>221</sup>

*I still worry about my children and grandchildren because recruiting continues to happen, even in Bogotá. I don't trust anyone I meet. People misrepresent themselves all the time. I want to come forward but I don't trust the government, they pretend that conflict no longer exists and they alienate anyone who says otherwise.*

Juana, mother of former child soldiers who is currently living in Bogotá.

<sup>217</sup> Committee against Torture, *Baraket v. Tunisia*, U.N. Doc. CAT/C/23/D/60/1996, ¶ 11.9 (1999).

<sup>218</sup> Committee against Torture, *Blanco Abad v. Spain*, U.N. Doc. CAT/C/20/D/59/1996, ¶ 8.2 (1998).

<sup>219</sup> CAT *General Comment No. 3, Implementation of Article 14 by State Parties*, U.N. Doc. CAT/C/GC/3, ¶ 23 (2012).

<sup>220</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 18, (2008); Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention*, U.N. Doc. CAT/C/COL/CO//4, ¶ 12 (2010).

<sup>221</sup> Committee against Torture, *Concluding Observation: Chile, A/59/44*, ¶¶ 56, 57 (2004).

## **B. The State Must Conduct a Prompt and Impartial Investigation When a Complaint is Made and Where it is Reasonable to Believe that a Violation has Taken Place**

A prompt criminal investigation into an alleged act of torture is both the obligation of the State and the right of the victim under Articles 12 and 13.<sup>222</sup> Article 13 acknowledges that victims of torture have legitimate interests in the criminal investigation and subsequent proceedings for any alleged act of torture, and the Committee has acknowledged criminal procedures are encompassed in the provision. Failure to thoroughly investigate a claim and to update the complainant or their family of the status will violate the Convention. The Committee has found violations of Article 12 when a State neglects to evaluate allegations of torture within State borders.<sup>223</sup> This neglect can deny a complainant's ability to bring criminal charges against an offender.<sup>224</sup> A mere investigation alone will not satisfy Article 12 or 13, which call for a prompt and impartial investigation. This entails sending complaints to proper authorities that can and will prosecute and appropriately sentence those in violation of the Convention.<sup>225</sup> Even if no claim is made, investigations must occur when the State has reason to believe a violation may be occurring. For example, child recruitment in armed conflict is frequently accompanied by sexual violence and other forms of torture and CIDT.<sup>226</sup> Sexual violence and all related offenses should be investigated when the State knows that child soldiers are being recruited in a particular area.<sup>227</sup>

The fact that girl child soldiers lack direct access to lodge complaints of torture and CIDT impedes the opportunity for an impartial and adequate criminal investigation. The Committee addressed the absence of State transparency in the criminal justice system, the lack of publicly available statistics on complaints about torture, and the deficiency of investigations into such complaints in prior Concluding Observations. In Colombia statistical analysis is severely lacking, crimes are underreported, and analyses often do not account for all areas of conflict or do not differentiate between race or gender of targeted victims.<sup>228</sup> These shortcomings inhibit prompt and impartial investigations into acts of torture or CIDT.

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<sup>222</sup> Committee against Torture, *Dimitrov v. Serbia and Montenegro*, Communication No. 171/2000, ¶ 7.2 (May 3, 2005); See also Committee Against Torture, *Dragan Dimitrijevic v. Serbia and Montenegro*, Communication No 207/2002, U.N. Doc. CAT/C/33/D/207/2002, ¶ 5.4. (2004).

<sup>223</sup> Committee against Torture, *Slyusar v. Ukraine*, U.N. Doc. CAT/C/47/D/353/2008, (2008).

<sup>224</sup> Committee against Torture, *Bendib v. Algeria*, U.N. Doc. CAT/C/51?D/376/2009, ¶ 6.6 (2009).

<sup>225</sup> Committee against Torture, *Bairamov v. Kazakhstan*, U.N. Doc. CAT/C/52/D/497/2012, ¶ 6.6 (2012).

<sup>226</sup> Committee against Torture, *Concluding observations of the Committee against Torture : Chad*, U.N. Doc. CAT/C/TCD/CO/1, (2009); United Nations, *Impact of Armed Conflict on Children: Report of Graça Machel, Expert of the Secretary-General of the United Nations*, available at <http://www.un.org/rights/concerns.htm>

<sup>227</sup> Committee against Torture, *Concluding observations of the Committee against Torture : Chad*, U.N. Doc. CAT/C/TCD/CO/1, (2009).

<sup>228</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations on the combined 7th and 8th periodic reports of Colombia*, U.N. Doc. CEDAW/C/COL/CO/7-8, 13, 2013.

The Colombian villages that suffer the most brutal attacks and recruitment measures are often so remote that there is no local authority in which to make a complaint and the locals are unaware of any measure that they can take to secure their safety including how to contact the proper authorities. For those areas that have local authorities present, children are often an afterthought.<sup>229</sup> Access to information on how to protect oneself or seek reparations from the government can be very limited. This information is desperately needed in many areas that armed groups target.<sup>230</sup>

*My brother disappeared when I was 12. I searched for him but was threatened by the armed groups when I inquired. After many years of searching I was contacted to come down to the morgue and identify the body of my brother. I could tell that it was not him because the man was too old and had no tattoos. My brother was younger and had tattoos. The dental records also did not match.*

*I took this case to a prosecutor in 2008. He took my fingerprints and said that they would investigate my claim. When I followed up with him, he told me to stop asking questions and to stop pursuing the case or the paramilitary would kill me. The only person who had my phone number was the prosecutor and after the last conversation I began to get calls on my phone threatening that if I didn't stop asking questions, then I would end up like my brother. I received these threats over and over again as I continued to search for my brother. It is 2015, ten years later, and still no investigation has happened.*

Carmen, former child soldier whose family was displaced as a result of the conflict.

### **C. The State Must Hold those who Commit Torture and CIDT Accountable and Enforce Adequate Punishment**

Acts of torture and CIDT must be criminalized and laws against such acts must be enforced. Failure to pass, implement and enforce legislation and penal codes outlawing torture violates the Convention. For example, the Committee found that the Philippines violated the Convention for failure to take adequate remedies to punish perpetrators of torture and CIDT and for offering sentences that were too lenient, essentially providing impunity for perpetrators.<sup>231</sup> Also in the Philippines, the Committee criticized failure to protect human rights workers monitoring State actions, failure to investigate an abundance of complaints regarding violence against women, and a lack of statistical

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<sup>229</sup> Watch List on Children and Armed Conflict, “No one to trust: Children and Armed Conflict in Colombia”, P. 37, (April 2012).

<sup>230</sup> Watch List on Children and Armed Conflict, “No one to trust: Children and Armed Conflict in Colombia”, P. 18. (April 2012)

<sup>231</sup> Convention against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations of the Committee against Torture*, U.N. Doc. CAT/C/PHL/CO/2 (2009).

accuracy, all of which violate Article 12 of the Convention.<sup>232</sup> Similar violations occur in most countries where armed groups are used, including Chad and Belarus.<sup>233</sup> In Chad, laws were implemented in ways that left room for impunity for certain individuals, namely those in positions of authority.<sup>234</sup> Under no circumstances may there be impunity for persons guilty of torture or CIDT, regardless of stature. The Colombian government must ensure that proper punishments are given to those who violate the Convention.

Where violations occur, the Committee recommends that urgent and effective steps be taken to establish a fully independent complaint mechanism that ensures prompt, impartial and full investigations into the many allegations of torture reported to the authorities as well as the prosecution and punishment, as appropriate, of perpetrators.<sup>235</sup> In addition, the Committee has recommended that legislation be amended where necessary to give full effect to the rights recognized in the Convention and to ensure in particular that proceedings take place within a reasonable time after the submission of complaints.<sup>236</sup>

This Committee has confirmed that the State party should fully guarantee the right of victims of torture and other CIDT of redress and ensure that this right is established without discrimination in national legislation and enforced by the proper authorities.<sup>237</sup> Under Article 2 paragraph 2, the definitions incorporated in domestic law must afford, at a minimum, the same requirements provided by the Convention's definition.<sup>238</sup> Similarly, Resolution 1612 (2005) adopted by the United Nations Security Council stresses the primary role of national governments in providing effective protection and relief to all children affected by armed conflicts.<sup>239</sup> Demobilized child soldiers are an exceptionally vulnerable population that the State must protect from further exploitation.

When child soldiers in Colombia disarm they often have no protection available to them. Not only do gruesome acts committed by armed groups deter child soldiers from attempting to escape, but girls in particular fear returning to their homes because of how their communities will receive them. Girls are often stigmatized and rejected if they return. Often communities believe girl child soldiers are possessed or "evil" after associating with armed groups and they are cut off from the community. Girls that are treated as prostitutes often end up fulfilling this prophecy as a result of lack of

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<sup>232</sup> Convention against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations of the Committee against Torture*, U.N. Doc. CAT/C/PHL/CO/2 (2009).

<sup>233</sup> Committee against Torture, *Concluding observations of the Committee against Torture:*

*Belarus*, CAT/C/BLR/CO/4, 7 (2011) available at <http://www.refworld.org/docid/4f1d51c82.html>.

<sup>234</sup> Committee against Torture, *Concluding observations of the Committee against Torture : Chad*, U.N. Doc. CAT/C/TCD/CO/1, (2009).

<sup>235</sup> Committee against Torture, *Concluding Observation: Uzbekistan*, U.N. Doc. A/57/44, 54 at ¶ 113-116 (2002).

<sup>236</sup> Committee against Torture, *Concluding Observation: Egypt*, A/58/44, 22 at ¶ 39-42 (2002).

<sup>237</sup> Committee against Torture, *Concluding Observations: Colombia*, U.N. Doc. CAT/C/COL/CO/4, ¶ 29 (2010).

<sup>238</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 8 (2008).

<sup>239</sup> UN Security Council, *Resolution 1612*, U.N. Doc. S/RES/1612 (2005).

opportunity and stigmatization.<sup>240</sup> Girls in positions of servitude to armed groups find themselves trapped—even if they feel they can escape, they often have nowhere to go.

Child soldiers fear seeking help because perpetrators often act with impunity. The Colombian government does not properly punish those who violate the laws against child recruitment. While there have been positive steps to create programs and laws that address recruitment, such as the Justice and Peace Laws and the Early Warning System, which is intended to alert local authorities of a nearby raid on a locality, implementation is severely lacking. The Legal Framework for Peace, enacted under the current Santos administration, creates freedom from liability for those responsible for child recruitment and provides Congress the ability to give minimal, non-judicial punishment and to suspend prison time for members of guerilla and paramilitary groups. The Justice and Peace Laws also provide severe reduction in sentences to those from armed groups who come forward and confess voluntarily.<sup>241</sup> For example, in 2013 the government opened 144 investigations into child recruitment but only convicted six individuals for such crimes.<sup>242</sup>

## **VI. ARTICLES 14: COLOMBIA MUST PROVIDE COMPLETE AND HOLISTIC REDRESS WHICH INCLUDES COMPENSATION, REHABILITATION AND GUARANTEE OF NON-REPETITION OF RECRUITMENT**

### **A. Demobilized Child Soldiers**

Article 14 requires States to ensure that the country's legal system will provide an avenue for the victims of torture to obtain redress. The redress must include restitution, adequate compensation, and full rehabilitation. This should consist of access to physical and mental health services, adequate housing and comprehensive education after demobilization. The Committee advises that States set up a judicial process for victims of torture in order to access benefits that are necessary for the victims' on-going rehabilitation and for protection against the repetition of human rights violations they have suffered. Demobilized child soldiers must receive comprehensive rehabilitation services to assist them in overcoming the trauma associated with their mobilization. The lack of access to health and psychological services, adequate housing and comprehensive education often leads to severe physical or mental harm, emotional suffering and economic loss. The continued suffering of demobilized child soldiers due to inadequate

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<sup>240</sup> Aurora E. Bewicke, *Realizing the Right to Reparations for Girl Soldiers: A Child-Sensitive and Gendered Approach*, 26 Colum. J. Gender & L. 182 (2014).

<sup>241</sup> Human Rights Watch, *World Report 2012: Colombia*, (2012), available at <http://www.hrw.org/world-report--2012/colombia>.

<sup>242</sup> United States Department of Labor, Bureau of International Labor Affairs: Colombia, *2013 Findings on the Worst Forms of Child Labor*, (2013), available at <http://www.dol.gov/ilab/reports/chld-labor/colombia.htm>.

redress may constitute a violation of the State's obligation to prevent torture and CIDT through acts or omissions as provided under the convention.

### **1. The State Must Ensure via its Legal System that Victims of Torture Obtain Full Redress**

Under Article 14, the State's obligations to provide redress are two-fold and are both procedural and substantive. The procedural responsibilities include passing and enforcing legislation that adequately addresses comprehensive redress for victims of torture. This must include the State enacting legislation and establishing complaint mechanisms, investigation bodies and institutions, including independent judicial bodies capable of determining the right to redress and awarding it when appropriate for victims of torture and CIDT. The State should also ensure that such mechanisms and bodies are accessible to all victims. At the substantive level, States parties must ensure that victims of torture or CIDT obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. The Committee has emphasized holistic redress, which begins at demobilization and continues as the needs of demobilized children evolve.

The Colombian government has established a multi-step process for the disarmament, demobilization and reintegration (DDR) of child soldiers. The Colombian DDR process is unique because it is taking place during an on-going conflict instead of post-conflict.<sup>243</sup> In 1999 the Government created the Programa de Atención a Niños, Niñas y Adolescentes Desvinculados de los Grupos Armados Irregulares (Program of Care for Boys, Girls and Adolescents Demobilized from Irregular Armed Groups) [hereinafter "the Programa"] within the Colombian Institute for Family Welfare (ICBF) to specifically assist demobilized child soldiers.<sup>244</sup> Ninety percent of demobilized soldiers are between the ages of 18 - 22 and most of the children who joined an armed group did so while still a minor.<sup>245</sup> The Program is divided into stages: initially demobilized children are moved to an entry home, then transferred to care centers and finally either to a supervised "youth house" or back to his or her family. Family reunification is rare, often because the child or the family do not express interest in reuniting.<sup>246</sup> This may be because the parents remain connected or involved with an armed group or because the children fear reprisals or re-recruitment should they return home. The only option for some demobilized child soldiers are state-run youth homes. Because returning home is

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<sup>243</sup> Y Care International, *LESSONS LEARNED FROM THE REHABILITATION AND REINTEGRATION OF FORMER CHILD SOLDIERS IN COLOMBIA*, 23 (2007).

<sup>244</sup> ICBF provides care services for children, adolescents and families, especially those under threat, insolvency or violation of their rights, *available at* <http://www.icbf.gov.co/portal/page/portal/ICBFEn/AboutUs>.

<sup>245</sup> *See* Watch List on Children and Armed Conflict, *COLOMBIA'S WAR ON CHILDREN* (2004), *available at* <http://watchlist.org/reports/files/colombia.report.php>

<sup>246</sup> Y Care International, *LESSONS LEARNED FROM THE REHABILITATION AND REINTEGRATION OF FORMER CHILD SOLDIERS IN COLOMBIA*, 21 (2007).

complicated and potentially dangerous for many youth, they often continue to remain in the care and custody of the government.<sup>247</sup>

The divisive nature of the armed conflict has meant that not all demobilized children are accorded the same benefits and protection of the demobilization process, which may be contingent upon the identity of the group that they were affiliated with or recruited by. The 12th Annual Report of the Secretary-General to the Security Council on the situation of Children and Armed Conflict stated that the Colombian Family Welfare Institute provided protection to 264 children (67 girls and 197 boys) who had been separated from non-state armed groups. There were inconsistencies with the referral process and children who separated from armed groups formed after the demobilization of paramilitary organizations were not systematically referred to the ICBF. Some children were referred to the Attorney General for prosecution.<sup>248</sup> The report also noted that even with efforts by the Colombian government, demobilized children continue to have trouble in gaining access to justice and redress. Thus a functional and accessible legal system is essential for complete redress of demobilized child soldiers.

*I had been with the FARC since I was 13 years old and was finally able to escape four years later. I left the camp with two other girls and we hid in a sympathetic family's house. The next day the family laid us in the bottom of their truck and drove us out of town. I finally made it to Bogotá and was able to register with the ICBF program. Even though they enrolled me, the youth housing was full. Instead, they put me in a juvenile detention facility and a month later they moved me again. I was treated like a criminal.*

Maria, former girl child soldier.

## 2. Demobilized Child Soldiers are Victims of Torture and CIDT

This Committee has defined victims of torture and CIDT as persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the convention.<sup>249</sup> The process of demobilizing child soldiers is unique under international and domestic law since children under the age of eighteen are not considered combatants, but rather victims of conflict.<sup>250</sup>

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<sup>247</sup> Watch List on Children and Armed Conflict, COLOMBIA'S WAR ON CHILDREN, 19 (2004), available at <http://watchlist.org/reports/files/colombia.report.php>

<sup>248</sup> UNSG, *12th Annual Report on Children and Armed Conflict*, A/67/845-S/2013/245, ¶ 181 (2013).

<sup>249</sup> CAT, *General Comment No. 3., Implementation of article 14 by States Parties*, ¶ 3 U.N. Doc. CAT/C/GC/3 (2012).

<sup>250</sup> CRC, *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, U.N. DOC. A/RES/54/263 p.236 (2000) and LEY DE JUSTICIA Y PAZ, COLOMBIA: THE JUSTICE AND PEACE LAW (the Colombian government passed Law 782 in 2002, which defined children involved in armed groups as victims of the armed conflict rather than as combatants).

General Comment No. 3 discusses the accessibility of available redress for victims of torture, including children, and advises that particular procedures addressing children’s needs should focus on the child’s best interests. States should ensure the availability of child-sensitive measures for reparations, which must foster the health and dignity of the child.<sup>251</sup> For example, the child retains a right to express his or her views freely in all matters affecting him or her, including judicial and administrative proceedings during the demobilization process.

In the 2010 report on Colombia, the Committee urged the State to not only strengthen measures to prevent the recruitment of children, but to also provide support for their physical and mental rehabilitation after demobilization.<sup>252</sup> The Office of the High Commissioner for Human Rights has developed the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also known as the Istanbul Protocol, hereinafter “Protocol”).<sup>253</sup> The Protocol suggests a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services, re-integrative and social services, community and family-oriented assistance and services, and vocational training and education. Redress for demobilized child soldiers should include the services listed under Article 14 as well as take into account the special care needed in working with child victims of torture or CIDT.

General Comment No. 3 affirms that the State must provide full rehabilitation for anyone who has suffered harm as a result of torture or CIDT, including physical and psychological care. The Committee has further defined the term “holistic” as making the victim “as whole as possible”. Rehabilitation should aim to restore a victim’s independence – including their physical, mental, social and vocational ability so that they are able to participate fully in society and rebuild their lives.

*Five friends out of thirty in the transitory homes went back to the armed groups because they lost so many of their freedoms and were treated like criminals.*

Jose, demobilized child soldier.

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<sup>251</sup> CAT, *General Comment No. 3., Implementation of article 14 by States Parties*, U.N. Doc. CAT/C/GC/3, ¶ 36 (2012).

<sup>252</sup> CAT, *General Comment No. 3., Implementation of article 14 by States Parties*, U.N. Doc. CAT/C/GC/3, ¶ 29 (2012).

<sup>253</sup> OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. HR/P/PT/8/Rev.1, 57-58 (2004) (contains internationally recognized standards and procedures on how to recognize and document symptoms of torture so the documentation may serve as valid evidence in court).

### **3. Redress for Victims must be Holistic and Include Access to Housing, Health Care and Education**

General Comment No. 3 endorses and adopts the five-part understanding of the scope of the right to redress, which includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These are also articulated in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which were adopted by the UN General Assembly in 2005.<sup>254</sup>

The General Assembly recommended that victims be treated with humanity and respect, which necessitates that appropriate measures must be taken to ensure their safety, physical and psychological wellbeing and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma be able to benefit from special consideration and care to avoid his or her re-traumatization.<sup>255</sup> While the Colombian government has made some strides in meeting these obligations, holistic redress for demobilized child soldiers remains elusive.

*In 2012, my aunt forcibly dropped me off at the ICBF center in the village. I did not want to leave the armed group because I had lived in the camp since I had left my abusive home. They ICBF officials held me at a military hospital because there was no secure place for them to keep me. They moved me around a lot and I lived at two different foster homes after the youth home. The funds that ICBF allotted me went directly to the foster family and I never got to handle any of it. I had no life skills or knowledge of how to handle money. Three years after joining the ICBF program I aged out and had nowhere to go. My foster mother let me stay on but I now have to pay rent. After aging out of the program that I never wanted to join in the first place, I don't have any financial help, housing or healthcare since I turned 18 this year.*

Melissa, former girl child soldier.

#### ***i. Displacement and Lack of Adequate Housing Prevents Rehabilitation of Demobilized Child Soldiers***

<sup>254</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, ¶ IX (2005).

<sup>255</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, ¶ IX (2005).

The Committee recommended in the 2014 Country Report for Chad that the State must ensure that refugee camps and sites for displaced persons are of a civilian and humanitarian nature, meaning only civilian populations should benefit from the grant of asylum.<sup>256</sup> International humanitarian law, through its “principle of distinction,” provides for the protection of civilian populations and civilian objects from military attacks, by distinguishing them from members of the armed forces.<sup>257</sup> There is a need for increased security and protection of civilian populations both within and around them. These measures help in protecting vulnerable populations, such as children and women. This also further prevents the re-recruitment of children by paramilitary and guerilla groups.<sup>258</sup> The State must ensure that demobilized child soldiers have access to housing and do not merely end up permanently placed in displacement camps.

Similarly, the Committee on the Rights of the Child has noted that under Article 27 of the CRC, State parties must recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>259</sup> Lack of adequate housing has detrimental effects on the emotional and physical health of children, especially those that have been through the trauma of mobilization and being involved in armed conflict.

Displacement may occur before, during or after a child is recruited, and at any stage of armed conflict. Recruitment affects all types of displaced children—refugees, asylum seekers, the internally displaced, and those separated from their families or caregivers. These categories are far from exclusive; children often become trapped in a cycle of vulnerability to both recruitment and displacement. Children leaving armed groups also leave the homes and community they have been living in.<sup>260</sup> Some of these children may no longer have homes to return to. Families are often afraid of repercussions from armed groups living in or near their community and they may not have the resources to help these children reconnect with civilian life. Even after demobilized children have been through the DDR process, some do not have anywhere to turn to for long-term housing options. ICBF provides youth with either group homes or foster care, yet only till they reach the age of eighteen. Often youth do not wish to return to their villages because they are afraid of forcibly being re-recruited, resulting in demobilized children and young adults remaining homeless and displaced.

According to the UNHCR, in 2013 over 4.7 million people were internally displaced in Colombia.<sup>261</sup> Homelessness and displacement are extremely dilapidating and derail any recovery children make post conflict. Moreover, internally displaced children often lack

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<sup>256</sup> CAT, *Concluding Observations: Chad*, U.N. Doc. CAT/C/TCD/CO/1, ¶ 20 (2010).

<sup>257</sup> UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum* 9 (September 2006), available at <http://www.refworld.org/docid/452b9bca2.html>.

<sup>258</sup> CAT, *Concluding Observations: Chad*, U.N. Doc. CAT/C/TCD/CO/1, ¶ 34 (2010).

<sup>259</sup> CRC, Art. 2, U.N. Doc. GA/44/25 (1989).

<sup>260</sup> List of Questions that Need to be Addressed in Respect of the Fourth Periodic Report on Colombia (CAT/C/COL/4), ¶ 428, available at [http://www.bayefsky.com/issuesresp/colombia\\_cat\\_2009.pdf](http://www.bayefsky.com/issuesresp/colombia_cat_2009.pdf)

<sup>261</sup> 2014 UNHCR country operations profile – Colombia, available at <http://www.unhcr.org/pages/49e492ad6.html>; Watch List on Children and Armed Conflict, *Colombian's War On Children* (Feb. 2004), available at <http://watchlist.org/reports/pdf/colombia.report.pdf>.

access to education and health services.<sup>262</sup> As a result of homelessness and lack of adequate housing, internally displaced children regularly confront a wide range of difficulties, including poverty, lack of access to education and healthcare, psychological stress and child labor. Research indicates that up to eighty-five percent of children who were in school prior to displacement do not return to school after becoming displaced.<sup>263</sup> Without the security of a place to live, demobilized child soldiers are exposed to violations by predatory armed groups and do not get a chance to recover from the trauma of recruitment and mobilization.

***ii. Demobilized Child Soldiers Need Continued Access to Health Care to Continue their Rehabilitation***

Healthcare must encompass holistic rehabilitation that treats physical, mental and emotional trauma that victims of torture need to reintegrate into society.<sup>264</sup> In its last review, this Committee urged Colombia to allocate resources to provide psychological and social care in order to provide victims with the fullest rehabilitation possible. Other U.N. bodies have also addressed the mental and physical needs of demobilized soldiers. Article 39 of the CRC provides that child victims of “any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts” should be provided with physical and psychological recovery and social reintegration.<sup>265</sup>

Denying demobilized children long-term health care causes extensive mental and physical harm, which may amount to torture or CIDT. In one typical use of children in hostilities, a child was used by the FARC to carry out an attack against a police station using explosives. The explosives were attached to the child and activated as he approached the police station, killing him instantly.<sup>266</sup> Exposure to these practices and even witnessing such incidents is extremely traumatic for children and can require extensive mental health care as a result.

The State does not prioritize continuous psychological and health services for demobilized child soldiers, which is essential to complete rehabilitation.<sup>267</sup> Children who have been part of the conflict have witnessed and have taken part in extremely traumatic events. These experiences can generate psychological problems for children that include depression, hyperactivity, aggression, insomnia, paranoia, and feelings of guilt and can

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<sup>262</sup> 2014 UNHCR country operations profile – Colombia, *available at* <http://www.unhcr.org/pages/49e492ad6.html>.

<sup>263</sup> See Watch List on Children and Armed Conflict, *Colombian’s War On Children* (Feb. 2004), *available at* <http://watchlist.org/reports/pdf/colombia.report.pdf>.

<sup>264</sup> CAT, *Concluding Observations Philippines*, ¶ 14, U.N. Doc. CAT/C/PHL/CO), (2009).

<sup>265</sup> CRC, Art. 39, U.N. Doc.GA/44/25 (1989).

<sup>266</sup> UNSG, *Report on Children and Armed Conflict*, A/67/845–S/2013/245, ¶ 154 (2011)

<sup>267</sup> Watchlist, *No one to trust: Children and Armed Conflict in Colombia*, April 2013, 32-35, *available at:* <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>

lead to learning difficulties.<sup>268</sup> These experiences also make it difficult for children to adapt to their new environment, including school and home, after they have been reintegrated into society.

#### *A. Survivors of Gender-Based Violence Require Extensive Medical Intervention*

Many girl child soldiers suffer sexual violence during recruitment and mobilization. Sexual violence can have varied and longer-term impact on younger victims and children targeted by sexual violence suffer enduring consequences. Female child soldiers may suffer from violation of their reproductive rights, particularly if they are forced to have abortions or are sterilized against their will. These violations are not only dangerous to the health of the girl, but can have life-altering effects. Female child soldiers can become infertile; they can suffer from a loss of sexual and reproductive function; as well as suffering extensive psychological harm as a result of the above practices. Survivors of repetitive gender-based violence require both extensive physical and psychological care.<sup>269</sup>

Comprehensive sexual and reproductive health education and services should be an important part of healthcare provided to children, especially girls, subsequent to demobilization. These services enable youth to make fundamental choices about their bodies and their futures, which they were denied as members of armed groups. Many youth in the ICBF program quickly form partnerships with each other, producing a high rate of pregnancy, most of which are not accidental or unplanned. Psychologists and youth workers note that the motivation and intent of former child soldiers in starting a family is quite distinct and include a need to assert control over their own bodies and sexuality. Demobilized youth may want to reclaim their lost childhoods and families by procreating and having their own children. Hence, sexual education and reproductive health should be part of health care services for demobilized youth as they begin reintegration into society.<sup>270</sup>

#### *B. Injuries Suffered During Mobilization Require Both Immediate and Continued Medical Care*

Injuries sustained during mobilization may cause extensive physical and psychological trauma and require long-term care. Child soldiers often suffer severe injuries during outbreaks of violence that can lead to hearing loss, maiming and other physical harm. Lack of rehabilitative care is contrary to Article 23 of the Convention on the Rights of the Child, which outlines the responsibilities of State parties for ensuring effective access to disabled children to education, health and rehabilitation services.<sup>271</sup>

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<sup>268</sup> Elisabeth Schauer and Thomas Elbert, *The Psychological Impact of Child Soldiering*, 321-322 (Erin Martz ed.) (2010).

<sup>269</sup> Impact of armed conflict on children, ¶ 34, U.N. Doc. A/51/306 (51<sup>st</sup> sess. 26 Aug. 1996).

<sup>270</sup> Y Care International, *LESSONS LEARNED FROM THE REHABILITATION AND REINTEGRATION OF FORMER CHILD SOLDIERS IN COLOMBIA* 23 (2007).

<sup>271</sup> Impact of armed conflict on children, U.N. Doc. A/51/306, ¶ 34 (51<sup>st</sup> sess. 26 Aug. 1996).

The government must ensure that demobilized child soldiers who have been injured and have resulting disabilities receive continued treatment and therapy. Injuries such as blunt instrument trauma, stabbing and gunshot wounds are common during violent conflicts. Demobilized children often have unhealed scars and missing limbs from untreated injuries. Often children have received no treatment for common diseases during mobilization – like malaria, cholera and yellow fever. This often results in uncured prolonged illness and weakened health. Hence, demobilized child soldiers require consistent health care access that is based on the needs of the children and the harm they have suffered so that they may reclaim their dignity and autonomy.

***iii. Access to Adequate and Comprehensive Education and Training is Necessary to ensure that Demobilized Child Soldier's Redress is Complete***

As noted by this Committee in General Comment No. 3, redress must encompass holistic rehabilitation that restores the demobilized child soldier and makes them “whole”.<sup>272</sup> Without comprehensive education and professional training, demobilized children will not be able to reclaim their lives post-conflict. During mobilization, children receive no education or training. They are often bereft of skills and tools necessary for taking care of themselves and developing professionally.<sup>273</sup> Education and training must help children heal from their past and be confident in their abilities for the future.

Civil society groups have advocated for adequate education, either formal or vocational training, that teaches skills for specific trades to demobilized children. Most demobilized child soldiers either have never received formal education or were forced to drop out of school. By the time they are ready for reintegration, these children have spent a number of years without formal learning education. They are likely to be deeply scarred and highly traumatized.<sup>274</sup> In Colombia, most vocational teaching has consisted of computer skills for boys and nursing for girls.<sup>275</sup> This is a good initiative, but the State must develop education strategies that give demobilized children the same opportunities as other children in Colombia. Often, child soldiers have suffered extensive physical and mental injuries, which change their learning abilities. Reports show that in order to reach child soldiers with educational intervention, it must be specifically targeted and tailored to their experiences and needs.<sup>276</sup>

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<sup>272</sup> CAT General Comment No. 3, *Implementation of Article 14 by State Parties*, U.N. Doc. CAT/C/GC/3, ¶ 23 (2012).

<sup>273</sup> Cécile Aptel and Virginie Ladisch, *THROUGH A NEW LENS: A CHILD-SENSITIVE APPROACH TO TRANSITIONAL JUSTICE*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE 10 (2011).

<sup>274</sup> See Beth Verhey, *Save the Children, Going Home: Demobilizing and Reintegrating Child Soldiers in the Democratic Republic of Congo* (2003).

<sup>275</sup> See Report of the Secretary-General to the Security Council, A/68/878–S/2014/339 (2014), available at <https://childrenandarmedconflict.un.org/countries/colombia/>.

<sup>276</sup> See World Bank, *Child Soldiers: Prevention, Demobilization and Reintegration*, available at [http://lnweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/ChildSoldiersPreventionDemobilizationandReintegration/\\$FILE/ChildsoldiersNote3.pdf](http://lnweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/ChildSoldiersPreventionDemobilizationandReintegration/$FILE/ChildsoldiersNote3.pdf).

*The government of Colombia needs to support and invest in more programs like the ones that Taller de Vida provides to demobilized youth because it has helped me express myself and deal with my past through theatre and music.*

Roberto, demobilized child soldier turned educator and youth activist.

*I am concerned about education and how impossible it is to get an education as a demobilized youth. Without education I can't change my life, I would to find a dignified job that can support me and my family. There is a lot of discrimination and lack of understanding against demobilized youth. People don't understand we are victims and need help.*

Anna, demobilized child soldier turned educator and youth activist.

## **B. Redress for Victims of Sexual Violence**

*Alianza Iniciativa Mujeres Colombianas por la Paz (IMP)*, has been committed to working in collaboration with the Attorney General's Office in order to identify the obstacles and tear down the barriers that victims of sexual violence face and ensure that they can access the judicial route of the Justice and Peace process. IMP represents 36 cases of victims of sexual violence within the context of the armed conflict and who have accessed the procedural steps of the Justice and Peace process. 16 of these cases will be sentenced in 2015.

Despite huge efforts carried out by women's organizations, the introduction of Law 1592 of 2012, which modified the Justice and Peace Law (Law 975 of 2005) has caused severe limitations for victims of sexual violence's access to full redress. One of the main amendments introduced by the Law is the replacement of the incident of reparation by the incident of identification of damages caused to victims.<sup>277</sup> This purports serious obstacles for women victims of sexual violence, for it merely allows them to describe and denounce the damages inflicted upon them without providing any adequate and concrete redress through the Justice and Peace process.<sup>278</sup> Similarly, the Law establishes that the Land Restitution Unit and the Integral Reparation and Assistance for Victims Unit will be the entities in charge of guaranteeing that victims have full access to redress and land restitution through the programs created by Law 1448 of 2011. However, IMP argues that because these programs are based upon standardized redress mechanisms, they do not

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<sup>277</sup> IMP Report, Guidelines for a criminal policy – Health and culture: a local perspective. Public document no. 7. Bogotá, Colombia, 115 (2013).

<sup>278</sup> *Id*, 115

provide adequate rehabilitation to victims of sexual violence.<sup>279</sup> Beneficiaries of the Justice and Peace Process are therefore cannot be guaranteed of appropriate redress.

The Victims Unit has initiated individual redress processes. Although women receive compensation, redress is not articulated to health, psychological or housing programs. Administrative reparations are not articulated to productive projects. Additionally, the Victims Unit has no monitoring mechanisms, which have been assumed by the IMP in various cases. On the other hand, collective redress is not officially recognized, for only individual damages are taken into consideration.<sup>280</sup>

More recently, the government issued Law 1719 of 2014, which provides comprehensive routes of access to redress for victims of sexual violence. Among them, the law presumes the credibility and the vulnerability of the victims of sexual violence. For this reason, it considers risk investigations that might include constant inquiries and can violate the victim's intimacy as unnecessary. In turn, the law does take into account contextual elements such as systematic patterns of violent acts. The law establishes that psychosocial and rehabilitation services for the victim should be permanent and available free of charge. In this sense, the law promotes integral reparation for the victims.<sup>281</sup>

Often times, victims of sexual violence are forced to believe that sexual violence is their fault. In this sense, holistic redress for victims of sexual violence is deeply related to the dissemination of educational campaigns and other forms of public awareness that clarify that sexual violence is systematic and it is used as a weapon of war. Considering the fact that in Colombia only 18% of the women who have suffered from sexual violence report it,<sup>282</sup> collective measures become necessary in order to address misconceptions that re-victimize women. In this sense, for the application of Law 1719 of 2014 to be effective, it must establish efficient measures of diffusion and education directed to civil society, as well as public entities. Moreover, there should be a commitment on the part of national, regional and local officials to develop articulated processes around its application.<sup>283</sup>

### **C. Redress for Afro-Colombian Communities**

In its 2010 Concluding Observations for Colombia, the Committee urged the State party to “adopt effective measures to ensure the return of land to victims of displacement and to respect the land ownership of peasants, Afro-Colombians and indigenous people.”<sup>284</sup>

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<sup>279</sup> *Id.*, 115

<sup>280</sup> *Id.*, 116.

<sup>281</sup> Women and Armed Conflict Working Group. XII Report on sociopolitical violence against women, youth and girls in Colombia. Sexual violence in the context of the armed conflict: a differential perspective. Bogotá, Colombia, 44 (15 February 2015)

<sup>282</sup> NRC, Forced displacement and gender-based sexual violence. Buenaventura, Colombia: Brutal realities p. 5 (2014). Available at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9760>

<sup>283</sup> Women and Armed Conflict Working Group. XII Report on sociopolitical violence against women, youth and girls in Colombia. Sexual violence in the context of the armed conflict: a differential perspective. Bogotá, Colombia, 44 (15 February 2015)

<sup>284</sup> Committee against Torture, *Concluding Observation: Colombia*, CAT/C/COL/CO/4, ¶ 26, (2010)

However, to the date, the Colombian government has consistently failed in creating participatory spaces and effective mechanisms to ensure previous consultation and free, prior and informed consent. Furthermore, Afro-descendent communities have not been taken into account in the construction of fundamental policies regarding attention and effective redress measures for victims of the armed conflict. Decree 4635 of 2011, which outlines measures of assistance, attention, integral reparation and restitution of territorial rights for Afro-descendent communities in the context of Law 1448 of 2011, was not previously consulted with the directly affected victims.<sup>285</sup> This lack of participation and consultation was repeated in the construction of the National Development Plan.<sup>286</sup> In order to comply with the Convention, the State must ensure that victims participate within the redress process, so that their dignity is not only restored, but also enshrined.<sup>287</sup>

Moreover, Afro-Colombian's right to self-determination as an ethnic population has been severely restrained by the devastating effects of both, the armed conflict and the megaprojects that have violently prevented them from freely pursuing their economic, social and cultural development, as established by the ICCPR and Law 70 of 1993. The disproportionate effects suffered by Afro-Colombian communities in relation to forced displacement, demonstrate that the state has failed in its procedural obligations in terms of redress. Despite the existence of Order 005 of 2009 regarding differential attention for Afro-Colombian victims of forced displacement and Order 092 of 2009 regarding the severe and disadvantaged consequences that forced displacement has had upon Afro-Colombian women victims of forced displacement, their application has not been effectively complied. The State must ensure that the root causes of forced displacement are effectively addressed, and prioritize the prevention of Afro-Colombian communities, for they are more vulnerable. Applying Order 005 of 2009 and Order 092 of 2009, would be the first step to demonstrate the government's respect of Afro-Colombians' right to collective ownership of ancestral territories.

Restitution is one of the main mechanisms of redress that the State has the obligation to provide under Article 14 of the Convention. In General Comment No. 3, the Committee states that: "For restitution to be effective, efforts should be made to address structural causes to the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination"<sup>288</sup> Forced displacements, as well as forced evictions, violate the right to adequate housing, food, health, education, work, security of the person, security of home, freedom from CIDT and freedom of movement.<sup>289</sup> Furthermore, they intensify inequality and perpetuate segregation.<sup>290</sup> In

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<sup>285</sup> National Conference of Afro-Colombian Organizations (CNOA), Human rights violations of ethnic Afro-Colombian populations (2013), available at:

<http://www.ddhhcolombia.org.co/sites/default/files/files/pdf/Afrocolombianos%20CNOA.pdf>

<sup>286</sup> *Id.*

<sup>287</sup> CAT, *General Comment No. 3., Implementation of article 14 by States Parties*, ¶ 4 U.N. Doc. CAT/C/GC/3 (2012).

<sup>288</sup> CAT, *General Comment No. 3., Implementation of article 14 by States Parties*, ¶ 8 U.N. Doc. CAT/C/GC/3 (2012).

<sup>289</sup> Basic Principles And Guidelines On Development- Based. Evictions And Displacement. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard

relation to forced displacement, the State needs to support solutions that are durable, that guarantee Afro-Colombian's conditions of safety, ensure non-repetition, and enshrine their cultural dignity. Similarly, restitution for Afro-Colombian women needs to take into account both, their condition as part of an ethnic group, and their condition as women. Because of their historic and systematic discrimination, redress must imply the official recognition that harm has been inflicted upon both, individual persons and entire communities. In doing so, redress for Afro-Colombian communities will be holistic, and thus, appropriate according to the obligations that the State party has under the Convention.

In relation to forced disappearance, the government must ensure that disaggregated data that includes ethnic and gender variables is promptly and clearly entered into the National Register. Without this information, redress will be severely affected. A comprehensive and differential diagnostic is crucial for the creation of programs that provide effective attention to Afro-Colombian victims of forced disappearance and their families. Similarly, these programs must consider and respect Afro-Colombian's own conceptions and spiritual cosmologies in relation of life and death. Adequate compensation and rehabilitation for Afro-Colombian victims of enforced disappearance must therefore take into account collective needs as much as individual needs.

Article 17 of the International Covenant on Civil and Political Rights provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondance”. It further states that “everyone has the right to the protection of the law against such interference or attacks”. Continuous threats, intimidations and killings of Afro-Colombian human rights defenders and leaders have instilled profound psychosocial damages within their communities; they have deeply impacted their traditional social, economic and cultural practices, as well as their spiritual well-being. These damages have been aggravated by the continuous failed promises that have been made by the government, for they have amplified feelings of helplessness and insecurity within their communities. In this respect, public recognition of the grave human rights violations that have been inflicted upon Afro-Colombian communities as well as public apologies for the government's prolonged omissions constitute a form of redress that is urgently needed in the context of the ongoing peace negotiations.

## VII. CONCLUSION

The overall goal of the shadow report is to achieve greater government accountability for human rights violations under the Convention and to attain better protection for victims. The Colombian government fails in its obligation under the Convention to adequately address and prevent the torture and cruel, inhuman or degrading treatment of individuals, particularly child soldiers and former child soldiers. Victims of torture and CIDT also

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of living. A/HRC/4/18 ¶ 6. Available at:  
[http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

<sup>290</sup> *Id* ¶ 6

lack access to proper complaint mechanisms and investigations. Furthermore, Colombia's failure to educate and train law enforcement personnel, medical personnel, and other public officials on torture and CIDT serves as an additional barrier to address retribution for victims. In relation to Afro-Colombian communities, the government has the obligation to ensure their right to previous consultation and to prior, free and informed consent. Additionally, it must generate conditions that guarantee Afro-Colombians' rights to a life of dignity and free of violence. The Government has a duty to ensure that demobilized child soldiers receive restitution, compensation, and rehabilitation. Holistic redress for demobilized child soldiers must include access to physical and mental health services, adequate housing and comprehensive education. The lack of complete and holistic redress leads to severe physical or mental harm, emotional suffering and economic loss. The Government's failure to address these acts of torture and CIDT violate both domestic and international laws.

## **VIII. RECOMMENDATIONS**

Considering Colombia's obligations under the Convention and related international law, as well as the amply supported allegations of violations and findings of violations noted in this report, it is our opinion that Colombia must:

### **Preventing Recruitment**

- Develop educational campaigns on human rights violations and support programs that target high-risk youth;
- Provide services to ensure the safety of children especially in rural areas since many children are vulnerable to recruitment due to abusive domestic life and economic instability;
- Develop public education campaigns that focus on raising awareness about children's rights and their vulnerability to recruitment;
- Enforce mandatory education requirements so children are not forced into labor and are able to stay in school;
- Provide more services in rural areas and economic opportunities so that armed groups do not exploit families.

### **Protecting Afro-Colombian Human Rights Defenders and Leaders**

- Create conditions that guarantee the compliance of the principle of non-discrimination against Afro-Colombians at all, local, regional and national levels;
- Develop public education campaigns that promote non-discrimination and respect for Afro-Colombian's ancestral territories;
- Ensure that adequate individual and collective protection measures are provided to the Afro-Colombian leaders and communities, and that their demands are fully taken into account;
- Ensure that protection measures are designed with a differential and intersectional perspective that is sensitive to race, gender, disabilities, among others;
- Comply with the right to free, informed and previous consent and consultation in relation to mega-projects within Afro-Colombian ancestral territories.

### **Accountability for Perpetrators**

- Ensure access to appropriate remedies for the serious breaches of international law that child soldiers have suffered;
- Carry out and prioritize investigations of the persons most responsible for and in the involvement of the reproductive rights violations and the sexual violence perpetrated against child soldiers;
- Ensure that the investigation accords with the principles of effective investigation articulated by the Colombian Constitutional Courts;
- Ensure prosecutions of the suspects identified by the investigation;
- Raise awareness of current complaint mechanisms and ensure availability in rural areas;
- Prioritize investigations of forced disappearances in Afro-Colombian territories;
- Ensure that complaints regarding threats and killings committed by PDAG are adequately processed, investigated and effectively prosecuted.

### **Training State and Medical Officials**

- Develop and deliver to law enforcement personnel, civil servants, lawyers, judges and others who may be involved in the treatment of child soldiers or in the investigation of allegations of torture or CIDT education regarding the Convention including: the absolute prohibition on torture; the requirement for investigation of allegations of torture; the use of evidence obtained by torture; and universal jurisdiction to prosecute torture;
- Develop and deliver to law enforcement personnel official technical guidelines for addressing complaints of sexual violence;
- Strive to strengthen investigations of sexual violence and set national uniform standards and guidelines for case documentation and evidence;
- Develop effective law enforcement techniques for victim and perpetrator interviews;
- Develop and implement official policy appropriate to Colombia's obligations under the Convention with respect to the treatment of child soldiers;
- Provide education and training to all medical personnel at public and private facilities on the prohibition against torture and CIDT, especially regarding reproductive rights violations and sexual violence;
- Provide education and training to all medical personnel at public and private facilities on the detection of reproductive rights violations and sexual violence perpetrated against child soldiers;
- Require additional qualifications and provide ongoing support to medical professionals with a focus on capacity to respond to cases of sexual assault in a sensitive and comprehensive manner;
- Provide adequate education and training to local, regional and national officials in relation to Order 119 of 2013 so that declarations of all IDPs are equally treated and effectively registered.

### **Redress and Service after Demobilization**

- Ensure complaint mechanisms are safe and confidential, eliminating the risk of retaliation for those who come forward;
- Include demobilized youth in the peace process;
- Develop and maintain a national system which tracks the rehabilitative services provided by the various agencies involved in demobilization;
- Support organizations that work with demobilized child soldiers through funding and other resources;
- Include organizations that provide therapy and psychological services from the beginning of the demobilization process;
- Make mental health a priority in the demobilization process;
- Set up benefit programs that support demobilized child soldiers even after they turn 18 years old and age out of the ICBF program;
- Protect the socio-economic rights of demobilized child soldiers such as healthcare, housing and education beyond the age of 18 years old.

### **Redress and Services for Afro-Colombian communities**

- Ensure that full effect is given to the legislation regarding Afro Colombian territories through its implementation;
- Develop and effectively implement participatory processes that ensure the full compliance of previous consultation and free, prior and informed consent of Afro-Colombian communities;
- Develop and maintain disaggregated data that includes ethno-racial and gender variables in all national registers, especially in the national register for victims of enforced disappearance;
- Ensure that information about the sites of expulsion and sites of reception of intra-urban displacement are adequately registered and conveyed by the UARIV, so that it effectively serves as an input for public policy;
- Publicly recognize that Afro-Colombians have and are still being subjected to a systematic and historic discrimination.