

The Committee on the Elimination of Discrimination Against Women (CEDAW)

Office of the United Nations High Commissioner for Human Rights

CEDAW Secretariat

OHCHR - Palais Wilson

52, rue des Pâquis

CH-1201 Geneva

Switzerland.

January 28, 2013

Re: Information on Colombia regarding three women's human rights issues: (1) the impact of guardianship laws on forced sterilization; (2) sexual violence in the context of the armed conflict; and (3) discrimination against transgendered persons.

Dear Committee Members:

Programa de Acción por la Igualdad y la Inclusión Social at Universidad de Los Andes Facultad de Derecho (PAIS), Profamilia, Asdown, Fundamental Colombia, Taller de Vida, Entre Tránsitos, Grupo de Apoyo Transgenerista (GAT), Transrevolucionando Géneros, Procrear, MADRE, and the International Women's Human Rights Clinic at the City University of New York School of Law (IWHR Clinic) have prepared this letter to assist the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Country Report Task Force for Colombia, which is scheduled to meet in October 2013, in its review of the State Party's compliance with the CEDAW treaty and formulation of the list of issues for the review. This letter focuses specifically on Colombia's guardianship laws as used to sterilize women with disabilities without informed consent, the Government's treatment of sexual violence in the context of the armed conflict, discrimination against internally displaced women and girls, as well as the multiple obstacles that transgender persons face when attempting to fully exercise their rights.

We first request that the Committee examine Colombia's guardianship laws, particularly in the context of the forced sterilization of women with disabilities. The rights to bodily integrity and the rights of women and girls with disabilities to make their own reproductive choices are enshrined in a number of international human rights treaties and instruments. The Committee has found that forced sterilization of women and girls, including those with disabilities, violates the Convention.¹ The Convention on the Rights of Persons with Disabilities (CRPD) also prohibits forced sterilization, and its Committee has called on States Parties to "recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."² The

¹ Committee on the Elimination of Discrimination Against Women Committee, *Concluding Observations: Australia*, ¶ 42, U.N. Doc. CEDAW/C/AUS/CO/7 (46th Sess. 2010) [hereinafter CEDAW Comm.].

² Convention on the Rights of Persons with Disabilities, art. 12, May 3, 2008, U.N. Doc. A/RES/61/106 [hereinafter CRPD].

Committee on Economic, Social and Cultural Rights has determined that forced sterilization of girls and women with disabilities violates Article 10, which details the protection and assistance accorded to the family.³ Similarly, the Committee on the Rights of the Child has also found that forced sterilization of girls with disabilities is a form of violence,⁴ and that States Parties must take affirmative measures to safeguard against it by law.⁵

Despite these guarantees, an alarming number of women and girls with disabilities are denied these rights through the practice of surgical sterilization without informed consent.⁶ Widespread and persistent discrimination against women and girls with disabilities results in the systematic denial of their right to experience their sexuality, to have sexual relationships, to marry, and to start and maintain families. For women and girls, sterilization is irreversible, and when forced it is considered an act of gender-based violence,⁷ a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.⁸

Next, we request that the Committee inquire into the issue of sexual violence in the context of Colombia's armed conflict. Since the Government of Colombia entered into formal peace talks with rebel armed-groups in October of 2012, many in the international community consider Colombia to be in post-conflict transition. This distinction means very little to the women and girls of Colombia who remain vulnerable to sexual violence and who continue to seek justice for these crimes amid a climate of impunity. In its Concluding Observations following Colombia's last review in 2007, the CEDAW Committee acknowledged the grave situation of women in Colombia and urged the Government to "address the root causes of violence against women and to enhance victims' access to justice and to protection programmes."⁹ It further requested that Colombia "put in place effective monitoring mechanisms and to assess regularly the impact of all its strategies and measures."¹⁰ Despite the urgings of the CEDAW Committee, sexual violence remains rampant in communities where armed conflict

³ Committee on Economic, Social, and Cultural Rights, *General Comment No. 5: Persons with disabilities*, ¶ 31, U.N. Doc. E/1995/22 (1994) [hereinafter CESCR Comm.].

⁴ Committee on the Rights of the Child, *General comment No. 13: The right of the child to freedom from all forms of violence*, ¶¶ 22-23, U.N. Doc. CRC/C/GC/13 (57th Sess. 2011) [hereinafter CRC Comm.].

⁵ CRC Comm., *General comment No. 9: The rights of children with disabilities*, ¶ 60, U.N. Doc. CRC/C/GC/9 (43rd Sess. 2007).

⁶ See Open Society Foundation, *Sterilization of Women and Girls with Disabilities* (2011), available at <http://www.opensocietyfoundations.org/sites/default/files/sterilization-women-disabilities-20111101.pdf>.

⁷ CEDAW Comm., *General Recommendation No. 19: Violence Against Women*, ¶ 22, U.N. Doc. A/47/38 (11th Sess. 1992)

⁸ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶¶ 38-39, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak); Convention Against Torture Comm., *General Comment No. 2: Implementation of Article 2 by State Parties*, ¶ 22, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (39th Sess. 2007).

⁹ CEDAW Comm., *Concluding Observations: Colombia*, ¶ 11, U.N. Doc. CEDAW/C/COL/CO/6 (2007).

¹⁰ *Id.*

persists in Colombia, and those seeking justice and access to rehabilitative services continue to face obstacles.

Finally, we request that the Committee examine Colombia's progress regarding their obligations towards transgendered women. Transgender grassroots organizations report that transgendered persons in Colombia face discrimination both by state and private actors when accessing health, education and government services, including such severe forms of discrimination that result in violence and sometimes death. Additionally, the Government of Colombia has not compiled any statistics regarding the human rights situation of transgendered persons in Colombia, preventing human rights organizations from gaining a clear picture of the obstacles faced by transgender people in exercising their rights.

The three issues detailed above have resulted in numerous grave violations under CEDAW. Through this submission, PAIIS, Profamilia, Asdown, Fundamental Colombia, Entre Tránsitos, GAT, Procrear, Tranrevolucionando Géneros, Taller de Vida, MADRE, and the IWHR Clinic respectfully request that the negative impact of Colombia's guardianship laws, the persistence of sexual violence and gender-based discrimination in the context of the armed conflict, and the treatment of transgendered persons be included in the list of issues the Task Force adopts for the Committee's review of Colombia's compliance with CEDAW at its 56th session in October 2013.

I. THE FORCED STERILIZATION OF WOMEN WITH DISABILITIES **(Arts. 1-3, 5, 10, 12, 15, and 16)**

Colombia's legal capacity jurisprudence allows for plenary guardianship over a person with a disability through a judicial process called "interdiction." This substitute decision-making mechanism was introduced to Colombian law in the nineteenth century and was reformed in 2009 through Law 1306.¹¹ Law 1306 permits full guardianship over persons with "absolute mental disabilities" and allows for partial guardianship over persons with "relative mental disabilities."¹² Despite an obligation to incorporate the principles of the CRPD, which prohibits unequal treatment of persons with disabilities, in their domestic laws,¹³ Colombia maintains a legal framework that allows for full or partial removal of a person's legal capacity in violation of the Convention.

People under interdiction are unable to perform any legally relevant acts and must act through a guardian. Even though Law 1306 describes interdiction as a "protective measure," it is routinely used to subject women with disabilities to surgical sterilization without their informed

¹¹ L. 1306, June 5, 2009, DIARIO OFICIAL [D.O.].

¹² *Id.*

¹³ Colombia ratified the CRPD on May 10, 2011.

consent. Once a guardian has obtained an interdiction order, s/he then has the power to petition the court for an order permitting the sterilization of the person with disabilities. However, some doctors perform sterilizations when guardians have only the interdiction order and not the additional order explicitly permitting sterilization.¹⁴

Sterilization, or tubal ligation has been deemed irreversible.¹⁵ This procedure is regulated by Law 1412 of 2010, which permits judges to grant orders to sterilize only if the guardian, not the woman with disabilities, makes a written request and gives free and fully-informed consent about the procedure.¹⁶ The same law establishes that minors cannot be permanently sterilized. Nevertheless, prior to 2010 children with disabilities could be, and were, sterilized if they were placed under guardianship.¹⁷

Forced sterilization of women and girls with disabilities violates Articles 1-3, 5, 10, 12, 15, and 16 of the Convention. The CEDAW Committee has stated that sterilization of women and girls, including those with disabilities, without their full and informed consent, is a violation of the Convention.¹⁸ For example, in Concluding Observations issued in 2010, the Committee called on Australia to “enact national legislation prohibiting, except where there is a serious threat to life or health, the sterilization of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their full informed and free consent.”¹⁹ Furthermore, Article 12 of the CRPD, which Colombia has ratified, prohibits the forced sterilization of women with disabilities and affirms the right of persons with disabilities to enjoy legal capacity on an equal basis with others, including access to the support they may need in order to exercise their legal capacity.²⁰

The CEDAW Committee has expressed concern about the double discrimination women with disabilities face and recommended that States Parties report on measures taken to deal with their situation.²¹ As women, they face discriminatory treatment when they are forced to undergo painful and irreversible surgeries that later prevent them from conceiving and/or carrying a child, procedures that are more painful, permanent, and common than those performed on similarly-situated men. As persons with disabilities, they face discrimination because forced sterilizations

¹⁴ Testimony of service providers provided through PAIIS, Asdown, and Fundamental Colombia, Bogotá (2012).

¹⁵ World Health Organization, *Female Sterilization: What Health Workers Need to Know* (1999), <https://apps.who.int/rht/documents/FPP94-2/FPP94-2.htm> (last accessed Jan. 25, 2013).

¹⁶ L. 1412, Oct. 19, 2010, arts. 4, 5, DIARIO OFICIAL [D.O.].

¹⁷ *Id.* at art. 7.

¹⁸ See CRPD Comm., *Concluding Observations: Argentina*, ¶¶ 19-22 U.N. Doc. CRPD/C/ARG/CO/1 (6th Sess. 2011); CRPD Comm., *Concluding Observations: Peru*, § B, U.N. Doc. CRPD/C/PER/CO/1 (6th Sess. 2011); CRPD Comm., *Concluding Observations: Spain*, ¶¶ 33-34, U.N. Doc. CRPD/C/ESP/CO/1 (6th Sess. 2011); CRPD Comm., *Concluding Observations: Tunisia*, ¶¶ 22-23, U.N. Doc. CRPD/C/TUN/CO/1 (6th Sess. 2011).

¹⁹ CEDAW Comm., *Concluding Observations: Australia*, *supra* note 1, at ¶ 42.

²⁰ CRPD, *supra* note 2, at art. 12.

²¹ CEDAW Comm., *General Recommendation No. 18: Disabled women*, U.N. Doc. HRI/GEN/1/Rev.6 (10th Sess. 1991).

are generally only performed on persons with disabilities and justified by stereotypes about disabled people and their fitness as parents. As a result, women with disabilities face a type of double discrimination where they are penalized for being both women and persons with disabilities. As an instance of double discrimination, this practice that should be monitored and addressed.²²

In light of the Committee's expressed concern about the forced sterilization of women with disabilities, shared by the CRPD's prohibition of forced sterilization, we respectfully request that the Committee find that Colombia's practice of forcibly sterilizing women with disabilities is a violation of the Convention.

a. *The Right of Women with Disabilities to Exercise Legal Capacity in Health and Family Matters (Arts. 10, 12, 15, and 16)*

The CEDAW Committee has determined that forced sterilization is a violation of a woman's right to informed consent and that it infringes upon the right to human dignity and physical and mental integrity.²³ The Committee has clarified that except where there is a serious threat to life or health, the practice of sterilization of girls regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent, should be prohibited by law.²⁴ Medically or lawfully determined mental incapacity, as the primary justification for sterilization, should not abrogate this right.

Moreover, Article 12 of CEDAW codifies the right to adequate and discrimination-free health care, including family planning and pregnancy services. Paragraph 1 obliges States Parties to take all appropriate measures to eliminate discrimination against women in health care and access to health and family planning services.²⁵ Addressing women with disabilities specifically, the CEDAW Committee recommends that States should "take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity."²⁶ Article 16(e) codifies women's right to "have access to the necessary information, education, and means" to determine the number and spacing of their

²² See also Human Rights Comm., *General Comment No. 28: Equality of rights between men and women (article 3)*, ¶ 30, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (68th Sess. 2000).

²³ CEDAW Comm., *Report of the Comm. on the Elimination of Discrimination Against Women: Twentieth Session*, ¶ 22, U.N. Doc. A/54/38/Rev.1 (21st Sess. 1999).

²⁴ CEDAW Comm., *Concluding Observations: Australia*, *supra* note 1, at ¶ 43.

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women, art. 12(1), Dec. 18, 1979, U.N. Doc. A/RES/34/180 [hereinafter CEDAW].

²⁶ CEDAW Comm., *General Comment No. 24: Women and health*, ¶ 25, U.N. Doc. HRI/GEN/1/Rev.6 (20th Sess. 1999).

children.²⁷ Further, Article 10(h) states that women have a right to information and advice on family planning to ensure the health and well being of their families.²⁸

With regard to medical treatment, procedures, and research, the CEDAW Committee has found that women have the right to be fully informed of all of their options by properly trained personnel,²⁹ which means “States parties should not permit forms of coercion, such as non-consensual sterilization.”³⁰ To prevent non-consensual sterilization, the Committee recommends that States Parties “enact national legislation prohibiting, except where there is a serious threat to life or health, the sterilization of girls, *regardless of whether they have a disability*, and of adult women with disabilities in the absence of their full informed and free consent.”³¹ Similarly, the CRPD has called on States Parties to abolish surgery and treatment without the full and informed consent of the patient.³² The CEDAW Committee has further found that “[c]ompulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes upon the right of women to decide on the number and spacing of their children.”³³ Neither spouses, parents, partners, nor government officials may limit that right.³⁴

Additionally, the Committee has found that States Parties may be in compliance with Article 16(e) when they ensure that women have information about contraceptive measures and guaranteed access to sex education and family planning services.³⁵ This right applies to Colombian women with disabilities, many of whom do not receive family planning information or sexual education in public schools or public health institutions.³⁶ In keeping with the affirmative obligations imposed on States Parties under Article 2 of the Convention, States Parties must provide reasonable accommodations and/or specialized services to women with physical, sensory, and cognitive disabilities to ensure that their right to access family planning information and education is not violated.³⁷ The Standard Rules on Equalization of Opportunities for Persons with Disabilities (SREOPD), which the UN General Assembly adopted with the purpose of creating customary international law norms around the equal treatment of persons with disabilities,³⁸ supports this interpretation of States Parties’ obligations. It proclaims that persons with disabilities “must have the same access as others to family-planning methods, as

²⁷ CEDAW, *supra* note 25, at art.16(e).

²⁸ *Id.* at art. 10(h).

²⁹ Gen. Rec. No. 19, *supra* note 7, at ¶ 20.

³⁰ Gen. Rec. No. 24, *supra* note 26, at ¶ 22.

³¹ CEDAW Comm., *Concluding Observations: Australia*, *supra* note 1, at ¶ 42.

³² CRPD Comm., *Concluding Observations: Tunisia*, *supra* note 18, at ¶¶ 22-23.

³³ Gen. Rec. No. 19, *supra* note 7, at ¶ 22.

³⁴ CEDAW Comm., *General Recommendation No. 21: Equality in marriage and family relations*, U.N. Doc. A/49/38 ¶ 22 (13th Sess. 1992).

³⁵ *Id.*

³⁶ Testimony of service providers provided through PAIIS, Asdown, and Fundamental Colombia, Bogotá (2012).

³⁷ CEDAW, *supra* note 25 at art. 2.

³⁸ G.A. Res. 48/96, Rule 9(2), U.N. GAOR, 48th Sess., ¶¶ 13-14, U.N. Doc. A/RES/48/96 (Dec. 20, 1993).

well as to information in accessible form on the sexual functioning of their bodies.”³⁹ Article 23 of the CRPD also establishes that State Parties shall adopt measures to ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.⁴⁰ In 2012, the Special Rapporteur on violence against women, its causes and consequences, affirmed the importance of providing accessible family planning and sexual education to women with disabilities, finding that the absence of such information results in their inability to distinguish abusive or inappropriate behavior, making them more vulnerable to sexual violence.⁴¹

As detailed above, Colombian law permits legal guardians to submit the disabled woman in their care to an irreversible, invasive medical procedure that renders her incapable of conceiving again. Colombian Law 1412, states that, “In the case of the mentally disabled, the request and informed consent will be signed by the respective legal representative and with judicial authorization.”⁴² Article 5 of the law outlines an obligation for all medical institutions to make “reasonable accommodations” for people who cannot read or give informed consent.⁴³ These provisions demonstrate that Colombian laws allows for substituted consent in the case of permanent sterilization of women with disabilities. Because the laws do not require the free and fully informed consent of the woman with a disability prior to the sterilization procedure, it is a compulsory medical procedure in violation of the woman’s right to freely and responsibly decide on the number and spacing of her children.⁴⁴

Additionally, schools and special segregated institutions for persons with disabilities generally do not include regular sexual and reproductive education. Sexuality and reproduction are issues usually avoided in the institutions that work with this population. Persons with disabilities have been historically stigmatized, and there are pervasive stereotypes about the sexuality of people with disabilities that label them as either asexual or hypersexual. The failure to provide sexual education and family planning information to women with disabilities violates their rights under Articles 10(h) and 16(e).

b. *Forced Sterilization of Women with Disabilities violates the Right to Nondiscrimination (Arts. 1-3, 5, 12, and 15)*

Article 5 of CEDAW requires States Parties to “take all appropriate measures...[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and

³⁹ *Id.* at Rule 9(2).

⁴⁰ CRPD, *supra* note 2, at art. 23.

⁴¹ Special Rapporteur on Violence Against Women, *Thematic study on the issue of violence against women and girls with disability*, ¶ 19, U.N. Doc. A/HRC/20/5 (Mar. 30, 2012).

⁴² L. 1412, Oct. 19, 2010, art. 6, Diario Oficial [D.O.].

⁴³ *Id.* at art. 5.

⁴⁴ CEDAW, *supra* note 25, at art. 16(e)

women.”⁴⁵ By allowing for surgical sterilization of women with disabilities, Colombia’s legal framework perpetuates multiple prejudicial stereotypes, including the presumption of lack of autonomy or self-determination in women with disabilities, an inability to parent, and a nonexistent or child-like sexuality.⁴⁶ PAIIS, Asdown, and Fundamental Colombia have determined that in many cases parents seek sterilization on the advice of a doctor, a legal professional, or a segregated institution that provides services to people with disabilities.⁴⁷ Women with intellectual disabilities are disproportionately impacted by this practice.⁴⁸

Article 15 addresses women’s right to legal capacity by requiring States Parties to accord to women “equality with men before the law”⁴⁹ and, in civil matters, “a legal capacity identical to that of men and the same opportunities to exercise that capacity.”⁵⁰ The Office of the High Commissioner for Human Rights (OHCHR) explains that legal capacity as it is used in the Convention refers to women’s capacity and power to exercise their rights themselves.⁵¹ Similar to Article 15 of CEDAW, Article 12 of the Convention on the Rights of Persons with Disabilities, codifies the right of persons with disabilities to “enjoy legal capacity on an equal basis with others in all aspects of life.”⁵² In its Reporting Guidelines, the CRPD Committee explains that States Parties should report on actions taken to ensure:

“the equal right of persons with disabilities to *maintain their physical and mental integrity*, full participation as citizens, own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and their right not to be arbitrarily deprived of their property.”⁵³

Thus, the CRPD Committee finds that the legal capacity of persons with disabilities may be violated when actors infringe on their right to maintain their physical and mental integrity. The CRPD Committee’s findings may provide guidance for the CEDAW Committee as it interprets whether the Article 15 right to legal capacity for women and girls with disabilities may be

⁴⁵ *Id.* at art. 5(a).

⁴⁶ See Open Society Foundations, *Sterilization of Women and Girls with Disabilities* (November 2011), available at <http://www.opensocietyfoundations.org/publications/sterilization-women-and-girls-disabilities-0>.

⁴⁷ Testimony of service providers provided through PAIIS, Asdown, and Fundamental Colombia, Bogotá (2012).

⁴⁸ *Id.*

⁴⁹ CEDAW, *supra* note 25, at art. 15(1).

⁵⁰ *Id.* at art. 15(2).

⁵¹ United Nations, Office of the High Commissioner for Human Rights, *Background Conference Document Prepared for the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, ¶ 24 (2005), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&ved=0CDUQFjAD&url=http%3A%2F%2Fwww.un.org%2Fesa%2Fsocdev%2Fenable%2Frights%2Fahc7docs%2Fahc7unedchrmonitor.doc&ei=55hwUJvDNJSA0AG62oDwCA&usq=AFQjCNFQGVLRy281muQJ6apOeKc9viv_7A&sig2=ZuGkkGbvz9TSgQY9N4nPg.

⁵² CRPD, *supra* note 2, at art. 12(2).

⁵³ CRPD Comm., *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities*, ¶ 9, U.N. Doc. CRPD/C/2/3 (Nov. 18, 2009) (emphasis added).

violated by policies and actions that prevent women and girls with disabilities from maintaining their physical and mental integrity.

Moreover, Article 12 of CEDAW highlights the right to discrimination-free healthcare, guaranteeing these rights to all women, including those with disabilities.⁵⁴ In particular, health care for women must be ensured on an equal basis with men,⁵⁵ meaning that women should not be singled out for unequal access to adequate medical treatment because they are women. This is especially true for women with disabilities, who are “particularly vulnerable” to discrimination “as a result of [their] gender... violence, poverty, armed conflict, dislocation, and other forms of social deprivation.”⁵⁶ Consequently, when women with disabilities are forced to undergo non-consensual sterilizations at a higher rate than males or women without disabilities, they are being discriminated against in violation of Article 12’s right to discrimination-free healthcare.

Read together, Articles 1-3 of the Convention also require that State Parties take affirmative steps to eliminate discrimination against women, as defined in Article 1, and ensure enjoyment of their civil, political, social, and economic rights on a basis of equality with men. States Parties' obligations are such that they must “ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination - committed by public authorities, the judiciary, organizations, enterprises or private individuals - in the public as well as the private spheres.”⁵⁷ Thus, the Government of Colombia has an obligation to address the discriminatory practice of forced sterilization of women and girls with disabilities.

The Committee has also recognized that women with disabilities are especially vulnerable to gender-based violence. The Committee has found that gender-based violence constitutes discrimination against women when it impairs or nullifies women’s enjoyment of the rights to liberty and security of person, equality in the family, freedom from torture or cruel, inhuman, or degrading treatment and punishment, and the highest attainable standards of physical and mental health.⁵⁸ In General Recommendation No. 18, the Committee affirms that women and girls with disabilities may “suffer from a double discrimination linked to their special living conditions” and recommended that State Parties “provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation . . . and ensure that they can participate in all areas of social and cultural life.”⁵⁹ In its 2012 thematic study on the issue of violence against women and girls and disability, the OHCHR echoes this concern, noting that,

⁵⁴ CEDAW, *supra* note 25, at art. 12(1).

⁵⁵ *Id.*

⁵⁶ Gen. Rec. No. 24, *supra* note 26, at ¶ 25.

⁵⁷ CEDAW Comm., *General Recommendation No. 25: Temporary Special Measures*, ¶ 7, U.N. Doc. A/59/38 at 78 (2004).

⁵⁸ Gen. Rec. No. 19, *supra* note 7, at ¶ 7.

⁵⁹ Gen. Rec. No. 18, *supra* note 21.

[G]ender-specific neglect may compound discrimination against girl children with disabilities who are particularly vulnerable to violence and harmful practices, including . . . forced sterilization perpetrated by family members, members of the community and by those with specific responsibilities towards them, including teachers and employees of children institutions.⁶⁰

In Colombia, the practice of forcibly sterilizing women with disabilities is justified by discriminatory stereotypes about the sexuality of women with disabilities. These stereotypes are reflected in the media and social attitudes that sexualize and infantilize women with disabilities, portraying them as immersed in situations involving sexuality.⁶¹ Parents and guardians often argue that sterilization is necessary for persons with disabilities because they are more vulnerable to sexual violence. While it is true that women with disabilities are at a greater risk of sexual violence than women without disabilities,⁶² sterilizing a woman does not lessen her vulnerability to rape, sexual harassment, or other forms of sexual violence. Forced sterilization serves only to ensure that if women with disabilities are raped, they do not become pregnant. Other rationales offered by guardians and parents is that women with disabilities are unfit parents, and that parents and guardians of women with disabilities are unable to provide for another child who will likely have a disability.⁶³

By way of background, the Colombian Constitutional Court's jurisprudence on sterilizations of women and girls with disabilities reflects similar stereotypes about their sexuality. For example, in Decision T-243 of 2003, the Court concluded that it was in the best interests of a girl with disabilities to be sterilized.⁶⁴ Also, in Decision T-492 of 2006, the Court decided a similar case, where the mother of a pregnant woman with a mental disability asked for her daughter to be sterilized.⁶⁵ The mother argued that even though the daughter's pregnancy was a result of consensual relations, she should still be sterilized after she gave birth. The Court established that this type of authorization would have to be analyzed case by case, and that it

⁶⁰ Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 24, U.N. Doc. A/HRC/20/5 (March 30, 2012).

⁶¹ Testimony of service providers provided through PAIIS, Asdown, and Fundamental Colombia, Bogotá (2012).

⁶² World Health Organization, *Violence Against Adults and Children with Disabilities*, <http://www.who.int/disabilities/violence/en/index.html> (last visited Jan. 27, 2013).

⁶³ See, e.g., Corte Constitucional, Oct. 10, 2002, Sentencia T-850/02, § II.2, where a mother of a 19-year old woman with epilepsy and mental disabilities petitioned the court for an order permitting the sterilization of her daughter who was not under her legal guardianship. The mother argued that the denial of sterilization constituted a violation of her right to a dignified life and her right to social security, as she does not have the means to care for another person. The mother also invoked the right to special protection for people with disabilities and the right to health, both of which she argued were violated when the State would not sterilize her daughter.

⁶⁴ Corte Constitucional, Mar. 20, 2003, Sentencia T-243/03.

⁶⁵ Corte Constitucional, June 29, 2006, Sentencia T-492/06.

depended on factors such as the person with disabilities' level of autonomy and social environment. There have been no additional cases since.

Suggested Questions and Recommendations

We respectfully request that this Committee pose the following questions to the delegation representing the Government of Colombia during its 56th Session.

1. Why has the Government of Colombia, through the Minister of Health, expressly exempted public health providers from recording the number of procedures performed on persons with disabilities in Registro Individual de Prestación de Servicios de Salud (RIPS)?
2. What steps has the Government of Colombia taken to protect and promote the rights of women and girls with disabilities to exercise legal capacity in matters affecting their sexual health and reproductive rights?
3. What steps has the Government of Colombia taken to ensure that women and girls with disabilities can decide freely and responsibly on the number and spacing of their children?
4. What steps has the Government of Colombia taken to ensure that women and girls with disabilities have access to the information, means, and specific educational information necessary to engage in healthy family planning and sexual relations?
5. What steps has the Government of Colombia taken to ensure that women and girls with disabilities maintain their physical and mental integrity with respect to decisions about their sexual and reproductive health?
6. What steps has the Government of Colombia taken to ensure that women and girls with disabilities receive adequate and discrimination-free access to healthcare services, including sexual and reproductive health care services?
7. What steps has the Government of Colombia taken to ensure that women and girls with disabilities give their fully informed and free consent before being subjected to any non-therapeutic medical procedure?
8. What steps has the Government of Colombia taken to address the harmful social and cultural practices rooted in stereotypes about women with disabilities that lead to their discrimination?

9. How does the Government plan to meet the reporting requirement in their periodic report regarding information on women with disabilities and measures taken to deal with their particular situations?
10. What steps has the Government of Colombia taken to include women with disabilities in the legal literacy program “Women: Builders of Peace and Development” and to provide reasonable accommodations for their participation?
11. What steps has the Government of Colombia taken to ensure the effective enjoyment of rights, decision-making, empowerment and access to justice for women with disabilities under Law 1257 of 2008, especially that of women under interdiction?
12. What steps has the Government of Colombia taken to implement counseling services, legal advice, and legal assistance for women with disabilities as established by Law 1257 of 2008?
13. What steps has the Government of Colombia taken to support the individual autonomy of and decision making by women with disabilities, in accordance with international human rights law?

II. SEXUAL VIOLENCE AND DISCRIMINATION AGAINST WOMEN IN THE CONTEXT OF THE ARMED CONFLICT **(Arts. 1, 6, 12, 14, 16)**

The internal armed conflict has persisted in Colombia for decades and continues to place women and girls at grave risk of sexual violence. In October 2012, the Government and the largest guerrilla organization, the Fuerzas Armadas Revolucionarias de Colombia (FARC), began peace talks. Despite this, heavy armed fighting is ongoing, and as a result sexual violence persists. The Constitutional Court of Colombia found that sexual violence is “habitual, extensive, systematic and invisible in the context of the Colombian armed conflict, [and] perpetrated by all of the illegal armed groups and in isolated cases, by individual agents of the national armed forces.”⁶⁶ The Human Rights Ombudsman of Colombia reported that,

[E]ven if cases of sexual violence against women perpetrated by the security forces do not correspond to a war strategy [...], they constitute a generalized practice that takes advantage of the conditions of subordination of women, their precarious economic conditions resulting from lack of protection by the State, and the acceptance of existing ideas in the local culture, such as that a woman’s body is an object that belongs to men.⁶⁷

Additionally, the conflict remains the reason why millions of Colombian women were forcibly displaced from their homes and now face discrimination and harsh conditions resulting from their status as internally displaced persons (IDPs). Poverty, homelessness, lack of access to basic services, and increased vulnerability to gender-based violence are prevalent among IDPs and hinder women’s development in Colombia. While the Colombian government has put in place some programs to provide displaced families with basic assistance such as food, water and shelter, access to vital services and justice for those IDPs who are victims of sexual violence remains elusive.

Despite legislation and reform policies, Colombia is not fulfilling its obligations under the Convention to eliminate *de facto* and *de jure* discrimination against women and is in violation of Articles 1-3, 4, 5, 12, and 14 of the Convention.

⁶⁶ Corte Constitucional, Apr. 14, 2008, Auto 092/08, §III.1.1.1, available at <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>.

⁶⁷ U.N. Secretary-General, *Conflict-related Sexual Violence: Report of the Secretary-General*, ¶19, U.N. Doc. A/66/657–S/2012/33 (Jan. 13, 2012).

a. *Sexual Violence (Arts. 1-3 and 14)*

The Convention prohibits discrimination against women, including gender-based violence committed against women and girls as a result of the armed conflict.⁶⁸ Articles 1-3 require States Parties to report on the measures taken to protect women from gender-based violence during times of armed conflict.⁶⁹ Further, Article 14 requires States Parties to take appropriate measures to ensure that the Convention's provisions apply to women in rural areas. The CEDAW Committee has observed that “[r]ural women are at risk of gender-based violence because of traditional attitudes regarding the subordinate role of women that persist in many rural communities.”⁷⁰ Indeed, the Office of The Prosecutor of the International Criminal Court (OPT-ICC) found that armed groups specifically target indigenous and Afro-Colombian women in the context of the armed conflict,⁷¹ and the Inter-American Commission on Human Rights reported that all parties to the armed conflict inflict sexual violence upon indigenous Colombian women as a method of warfare.⁷²

The armed conflict places women and girls at grave risk of sexual violence, including rape, sexual abuse, forced recruitment, trafficking, and unwanted pregnancies by illegal armed groups. Girls are especially vulnerable to sexual violence because of the prevalence of forced recruitment of girls by armed groups. In its November 2012 *Interim Report on the Situation in Colombia*, the OTP-ICC found that girls continue to be forcibly recruited to armed groups where they are often coerced into having sexual relationships with officers, required to use contraceptives that are often ineffective and whose proper use is rarely explained, and forced to have unsafe abortions.⁷³ Additionally, in its 2010 review of Colombia under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Committee condemned the “the continued extensive recruitment and use of children by illegal armed groups”⁷⁴ such as the FARC, the Ejército de Liberación Nacional (ELN), paramilitary groups,⁷⁵ and new illegal armed groups that have emerged in the wake of paramilitary demobilization efforts.⁷⁶

⁶⁸ Gen. Rec. No. 19, *supra* note 7, at ¶ 1.

⁶⁹ CEDAW, *supra* note 25, at art. (1-3).

⁷⁰ *Id.* at ¶ 21.

⁷¹ Office of the Prosecutor *Situation in Colombia: Interim Report*, INTERNATIONAL CRIMINAL COURT, ¶ 39 (Nov. 2012), available at <http://www2.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285102/OTPCOLOMBIAPublicInterimReportNovember2012.pdf>.

⁷² Inter-Am. Comm'n H. R., *Annual Report 2010*, OEA/Ser.L/V/II, doc. 5, ch. 4 (Colombia) ¶ 152 (Mar. 2011).

⁷³ *Situation in Colombia: Interim Report*, *supra* note 71, at ¶ 143.

⁷⁴ CRC Comm. on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, *Concluding Observations: Colombia*, ¶26 U.N. Doc. CRC/ C/OPAC/COL/CO/1 (54th Sess. 2010).

⁷⁵ The FARC and the ELN are Colombian Marxist-Leninist revolutionary organizations that formed in the 1960s. Currently, they are the two guerilla groups active in the internal armed conflict. Armed paramilitary groups, the most prominent of which are the Autodefensas Unidas de Colombia (AUC) and the Águilas Negras, formed in the 1980s and 1990s mainly as a response to the threat that guerilla groups posed to wealthy landowners. As part of their strategy to assert control over territory, especially in strategically located areas rich with natural resources or roadways, all of these armed groups routinely and deliberately commit grave human rights violations. These include

Girls recruited into illegal armed groups often suffer sexual violence including being forced into sexual relationships with male soldiers and commanding officers.⁷⁷ In 2009, one girl who served with an armed group described being raped by members of the armed group recounting,

One day the commanding officer came and rounded up all the girls in the camp. He told the virgins to step forward. There were six of us. We were then taken away and forced to have sex with the commanding officers. A commander says to you ‘you’re my partner from now on’ and that’s the way it is until he decides he is done with you.⁷⁸

The physical and psychological harm resulting from these experiences has grave effects of their self-esteem and impedes their ability to engage in healthy sexual relationships. Additionally these experiences are often compounded by the lack of accessible, effective, and gender-specific health services for victims of sexual violence, as well as the continuing impunity in the judicial system.⁷⁹

These debilitating effects of sexual violence against women and girls are not limited to those recruited into armed groups. Women and girls who live in rural areas, where there is an increased presence of armed forces, often experience high rates of sexual violence when there is an increased presence of armed forces in the area.⁸⁰ A 2009 nationwide survey on violence against women conducted in municipalities with a heavy presence of armed forces, found that the presence of armed groups correlated with an increase in sexual violence in both public and private spaces. Women surveyed also reported that they were afraid to report such violence.⁸¹ The ratio of residents to armed actors in these areas can be staggering. For example, as of 2012, a town in the Department of Cauca had a population of only 4,000 residents, but 7,000 members of armed groups resided in the town.⁸² Making matters worse, women and girls in rural areas face a

forced displacement, the recruitment of children as soldiers, and harassment and sexual violence towards women and girls.

⁷⁶ The Colombian government maintains that paramilitaries no longer exist, and that it is criminal gangs (*bandas criminales* or *Bacrim*) who carry out any violence attributed to the paramilitaries. Reports from the ground say otherwise. While the unified and centralized structure of the AUC was dismantled, many paramilitary groups never dismantled. Further, where paramilitaries did dismantle, a looser network of counter-insurgency groups who use violence and threats of violence to take control of territory has emerged instead.

⁷⁷ Testimony of former girl child soldiers provided through Taller de Vida, Bogotá, Colombia (2012); *see also*, Coalición contra la vinculación de niños, niñas y jóvenes al conflicto (COALICO), *Boletín: Observatorio Niñez y Conflicto Armado*, No. 7 y 8, 5 (July 2012), available at http://www.coalico.org/Bonca_coalico_7y8.pdf.

⁷⁸ Testimony of a former girl child soldier provided through Taller de Vida, Bogotá, Colombia (2010).

⁷⁹ Testimony of a service provider at Taller de Vida, Bogotá, Colombia (2012).

⁸⁰ Oxfam, *First Survey on the Prevalence of Violence Against Women in the Context of the Colombian Armed Conflict 2001-2009*, 8 (July 2010), available at http://www.peacewomen.org/assets/file/Resources/NGO/vaw_violenceagainstwomenincolombiaarmedconflict_2011.pdf.

⁸¹ *Id.* at 15.

⁸² Testimony of a service provider from COALICO, Bogotá, Colombia (2012).

weak institutional response to sexual violence, as they are underserved by law enforcement, social service providers, and gender-sensitive medical personnel.

Suggested Questions and Recommendations

We respectfully request that this Committee pose the following questions to the delegation representing the Government of Colombia during its 56th Session.

1. What steps have the Government of Colombia taken to address the increased vulnerability of rural women to sexual violence?
2. What steps have the Government of Colombia taken to combat the culture of impunity surrounding sexual violence?
3. What steps have the Government of Colombia taken to timely investigate sexual violence perpetrated by guerrillas, paramilitaries, demobilized non-State actors, and State actors?
4. What steps have the Government of Colombia taken to ensure that law enforcement authorities are properly trained to investigate and respond to reports of sexual violence in a gender-sensitive manner?
5. What steps have the Government of Colombia taken to ensure that victims of who report sexual violence to law enforcement are protected from further violence?
6. What steps have the Government of Colombia taken to collect data on crimes of sexual violence in order to use it to adjust current laws and policies to ensure successful implementation.

b. Forced Abortion and Contraceptive Use (Arts. 12 and 16)

Article 12 requires State Parties to take all appropriate measures to eliminate discrimination against women in the field of healthcare, assuring men and women equal access to health care services, including those related to family planning.⁸³ Moreover, States Parties should take the appropriate measures to ensure that women are not subject to coercion in regard to fertility and reproduction, meaning that they must guarantee that women give their full and informed consent to medical procedures after receiving appropriate information and services related to family planning and pregnancy.⁸⁴ States Parties must also ensure that women are not into unsafe medical procedures, including abortions performed by unlicensed and improperly trained medical personnel.⁸⁵

⁸³ CEDAW, *supra* note 25, at art. (1).

⁸⁴ CEDAW, Communication No. 4/2004 (A.S. v. Hungary), Doc. CEDAW/C/36/D/4/2004 (August 29, 2006).

⁸⁵ Gen. Rec. No. 19, *supra* note 7, at ¶¶ 20, 24.

The CEDAW Committee also recognizes the protections codified under Article 12 and 16 including women’s right “to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights.”⁸⁶ Additionally, Article 14 extends this provision to rural women codifying the right of access to “adequate health care facilities, including information, counseling and services in family planning.”⁸⁷

Women and girls serving in illegal armed groups have reported being forced into sexual slavery, raped by members of the armed groups, forced to use harmful methods of contraception and forced to have abortions. The most commonly used contraceptive is Norplant, which is implanted into the upper arm of the girl, generally by an untrained medic who, despite having little to no medical education or training, has been recruited by the armed group to administer health services. Demobilized women and girl soldiers have reported that they were never given instructions about what the contraceptive does, what its side effects might be, or what they could or could not do while on it, an oversight that can lead to, among other things, illness and contraceptive failure.⁸⁸

When the contraceptives do fail, women and girls in armed groups have been forced to undergo abortions performed by the untrained medics as late as the sixth month of pregnancy. In undergoing such late term abortions, women and girls’ lives are put at increased risk, and they may suffer from more severe emotional trauma if the abortions are unwanted.⁸⁹ Many girls who are recruited by the armed groups reported being forced to have abortions at very young ages, sometimes as young as fourteen.⁹⁰ In some cases, the armed group leaves them behind and they are forced to survive and care for their child on their own.

Demobilized girl child soldiers have also recounted cruel and inhuman treatment during the practice of forced abortion and contraceptive use in illegal armed groups. One girl recounted that after she was forced to undergo an abortion performed by the medics of the armed group, the medics placed the fetus in a river, where it floated away.⁹¹ She explained that this was a common practice.

Additionally, demobilized girls have reported suffering sterilization as a result of forced abortions during the fifth and six months of their pregnancies.⁹² After being forced to have abortions by the armed groups to which they belong, they contracted infections in their sexual organs that ultimately resulted in sterilization. In one account, the girl began to suffer an

⁸⁶ CEDAW, *supra* note 25, at arts. 12, 16.

⁸⁷ Gen. Rec. No. 24, *supra* note 26, at ¶ 28.

⁸⁸ Testimony of former girl child soldiers provided through Taller de Vida, Bogotá, Colombia (2012).

⁸⁹ *Id.*

⁹⁰ Testimony of former girl child soldiers provided through Taller de Vida, Bogotá, Colombia (2012).

⁹¹ Testimony of former girl child soldier provided through Taller de Vida, Bogotá, Colombia (2012).

⁹² *Id.*

extremely high fever and, realizing that she was ill, escaped from the armed group with a friend. When she arrived at the nearest hospital, the medical staff reported that they could smell the infection. Upon investigation, they discovered that her sexual organs had been “completely destroyed” by the infection.⁹³

Suggested Questions and Recommendations

We respectfully request that this Committee pose the following questions to the delegation representing the Government of Colombia during its 56th Session.

1. What steps is the Government of Colombia taking to set up early detection systems in hospitals to adequately treat victims of forced abortions and forced contraceptive use?
2. What steps is the Government of Colombia taking to address the increased vulnerability of rural women to forced abortions and forced contraceptive use?
3. What steps is the Government of Colombia taking to broaden public education campaigns on family planning?

c. Discrimination in Housing and Access to Services against Internally Displaced Woman and Girls

Read together, Articles 1-3 of the Convention require that State Parties take affirmative steps to eliminate discrimination against women and ensure enjoyment of their civil, political, social, and economic rights on a basis of equality with men. The CEDAW Committee has recognized that discrimination against women is “inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.”⁹⁴ Displaced persons nearly always suffer severe discrimination, and the CEDAW committee has previously highlighted the heightened vulnerability of Colombia's internally displaced persons to increased discrimination.⁹⁵ The CEDAW Committee has also interpreted Article 4 on Special Temporary Measures to require States Parties to implement concrete policies and programs that improve women’s *de facto*

⁹³ *Id.*

⁹⁴ CEDAW Comm., *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, ¶18, U.N. Doc. CEDAW/C/GC/28 (47th Sess. 2010); see also Human Rights Comm., *General Comment No. 28: Equality of rights between men and women (article 3)*, ¶ 30, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (68th Sess. 2000) (“discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status”).

⁹⁵ CEDAW Comm., *Concluding Observations: Colombia*, *supra* note 9, at ¶¶ 13-14.

(the Committee noted its concern that the IDP population, especially female heads of household, “continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence” and urged Colombia to “increase its efforts to meet the specific needs of internally displaced women and children.”).

equality.⁹⁶ Article 5 requires State Parties to combat gender-based stereotypes that hinder women's equality on the individual, legal, structural, and institutional level.

Furthermore, Article 14's mandate that States Parties "take into account the particular problems faced by rural women" includes the obligation to ensure that rural women can realize their right to adequate living conditions, including adequate and accessible housing, sanitation, electricity, water, transportation, and communications.⁹⁷ This mandate is particularly salient in Colombia, where IDPs generally migrate from rural to urban areas.

An estimated four million Colombians have been forced from their homes as a result of the armed conflict, making Colombia home to one of the largest populations of IDPs in the world.⁹⁸ Roughly ten percent of Colombia's population is internally displaced.⁹⁹ Women and girls living in areas inhabited by armed groups flee their homes to avoid becoming victims of sexual violence committed by members of these groups. Women and girls represent more than 50 percent of the total population of registered IDPs, and approximately half of all displaced families are headed by women.¹⁰⁰ In 2010, 97.5 percent of registered displaced families lived below the poverty line, and approximately 79 percent lived below the extreme poverty line.¹⁰¹ Approximately 86 percent of those households are headed by female caretakers.¹⁰² As of 2009, only 5.5 percent of displaced families in Colombia had acquired decent housing.¹⁰³

Because of the disparate impact of poverty, some rural women and families often flee to urban areas with families that are larger and less traditional than urban families, increasing their need for housing that accommodates children and the elderly.¹⁰⁴ Upon settling in Colombia's large urban areas, the internally displaced often face continued hardships as a result of being unwelcome by the local populations and government. A 2011 study by the Brookings Institution-London School of Economics Project on Internal Displacement found that families made up of many children or many relatives are discriminated against because they house several family members in one small dwelling, straining public services and causing tension with their host communities.¹⁰⁵ Despite government promises of increased services, rural families that have migrated to urban centers report being denied the opportunity to register for housing and other

⁹⁶ Gen. Rec. No. 25, *supra* note 57, at ¶ 4.

⁹⁷ CEDAW, *supra* note 25, at art. 14(2)(h).

⁹⁸ Human Rights Watch, *Rights Out of Reach: Obstacles to Health, Justice, and Protection for Displaced Victims of Gender-Based Violence in Colombia*, 1 (Nov. 2012), available at <http://www.hrw.org/sites/default/files/reports/colombia1112forUpload.pdf>.

⁹⁹ *Id.* at 21 ("Both the Government of Colombia and UNHCR have estimates close to 3.9 million displaced as of late 2011."); see also U.N. High Commissioner for Refugees, *2013 High UNHCR Country Operations Profile – Colombia*, <http://www.unhcr.org/pages/49e492ad6.html> (last visited Jan. 26, 2013).

¹⁰⁰ *Rights Out of Reach*, *supra* note 98, at 24.

¹⁰¹ *Id.* at 23.

¹⁰² *Id.*

¹⁰³ *Id.* at 24.

basic services when their ex-husbands or father of their children has also registered for services. Other women report being denied employment opportunities for menial jobs they are more than qualified for.

For those who reside in displacement communities, obstacles to social and economic well-being are often compounded by the prevalence of gender-based violence experienced within displaced communities. Colombia's Constitutional Court has recognized that displaced women and girls are increasingly vulnerable to patterns of violence and discrimination that are "exacerbated and worsened by [displacement]", and that impact displaced women "most acutely."¹⁰⁶ In a 2011 study conducted by Profamilia¹⁰⁷ and the United States Agency for International Development (USAID), it was estimated that one in two displaced women had experienced gender-based violence. Almost half of the women surveyed reported experiencing violence from intimate partners, with nine percent reporting being raped by someone other than a partner.¹⁰⁸ Similarly, a 2011 Oxfam report estimated that between 2001 and 2009, almost half a million women living in municipalities where armed groups were present were victims of sexual violence.¹⁰⁹ According to the National Institute for Legal Medicine and Forensic Sciences, reports of sexual violence increased by eleven percent in 2011.¹¹⁰

In 2011, the Government instituted a series of reforms known as the "referral pathway" to assist service providers in guiding victims of gender-based violence to the appropriate services in the health, justice, and psychosocial sectors.¹¹¹ Human Rights Watch conducted a study in 2012 to assess the success of the program and found that for the majority of respondents the program had not been effectively implemented and did not result in the victims receiving proper services or the perpetrators being brought to justice.¹¹² In addition to reports that accessing services can at times be impossible, there are also reports of women being harassed by the police and other government officials because of their displaced status. There have also been several incidents reported to local NGO's where the children of displaced single-mothers have been removed from their mother's custody after being placed with caretakers while they were at work. Those within the displaced community believe their children are being targeted as a means to intimidate them into leaving Bogota where they are seen as a drain on society.

¹⁰⁶ Corte Constitucional [C.C.], Apr. 14, 2008, Auto 092/08, §§ II.1-II.2, available at <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm> (last visited Jan. 26, 2013).

¹⁰⁷ The Association of the Colombian Family Probienestar, Profamilia, is a private nonprofit organization specializing in sexual and reproductive health that provides medical services, education and products to the Colombian population.

¹⁰⁸ *Rights Out of Reach*, supra note 98, at 25-26.

¹⁰⁹ Oxfam, supra note 80, at 7.

¹¹⁰ Instituto Nacional de Medicina Legal y Ciencias Forenses, *Forensis 2011: Datos oficiales sobre la violencia en Colombia en el 2011*, 211(2012), available at <http://www.medicinalegal.gov.co/images/stories/root/FORENSIS/2011/5-F-11-Sexologicos.pdf>.

¹¹¹ *Rights Out of Reach*, supra note 98, at 37.

¹¹² *Id.* at 37-38.

The Colombian government, in response to domestic and international outrage over the climate of impunity surrounding gender-based violence in Colombia, enacted sweeping reforms and comprehensive legislation to ensure accountability of these crimes. The Victims and Land Restitution Act of 2011 addresses gender-based violence and provides for specific protective measures and even reparations.¹¹³ Similarly, under directive No. 06, also issued in 2011, the Attorney General reiterated its pledge to fight impunity for sexual violence. However, these reforms appear to exist on paper only and have provided almost no practical relief to the women who have been victimized, nor have they prevented new instances of sexual violence. For example, in 2008, the Constitutional Court ordered the Attorney General's office to implement programs to prevent sexual violence against IDPs, but the office still has not developed or implemented such programs.¹¹⁴

Suggested Questions and Recommendations

We respectfully request that this Committee pose the following questions to the delegation representing the Government of Colombia during its 56th Session.

1. What steps is the Government of Colombia taking to address the lack of safe and adequate housing and living conditions, accessible social and medical services, and equal education opportunities for internally displaced women?
2. What steps is the Government of Colombia taking to address discrimination in housing against female heads-of-household?
3. What steps is the Government of Colombia taking to address discrimination in housing against displaced women from rural areas whose families tend to be larger and less traditional than women from urban areas?
4. What steps is the Government of Colombia taking to address harmful stereotypes that fuel discrimination against internally displaced persons by local populations and government authorities?
5. What steps is the Government of Colombia taking to provide educational and training opportunities for former child combatants and displaced women?

¹¹³ See Human Rights Watch, *Colombia: Victims Law a Historic Opportunity*, <http://www.hrw.org/news/2011/06/10/colombia-victims-law-historic-opportunity> (June 10 2011).

¹¹⁴ Amnesty International, *Colombia: Hidden From Justice – Impunity for Conflict-Related Sexual Violence, a Follow-Up Report*, 15 (Oct. 2012), available at http://www.amnestyusa.org/sites/default/files/colombia_vaw_report_oct._4_embargoed.pdf.

III. DISCRIMINATION AGAINST TRANSGENDER PERSONS **(Arts. 1-3 and 5)**

The Convention protects transgender women from discrimination and gender-based violence. The preamble of the Convention acknowledges the importance of changing traditional gender roles in order to achieve full equality between men and women.¹¹⁵ Article 5 addresses gender role stereotyping and prejudice by mandating that States Parties “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs, and all other practices which are based on stereotyped roles for men and women.”¹¹⁶ Additionally, the Committee has repeatedly expressed their concern that full realization of the goals of the Convention cannot be achieved where violence against women goes unaddressed. In its 2007 Concluding Observations to Colombia, the Committee called on the Government to “intensify its efforts to reduce and eliminate the persistent climate of violence and insecurity in the country in order to create an environment that is conducive to the full implementation of the Convention and women's enjoyment of their human rights.”¹¹⁷

States Parties have an obligation to prevent and address discrimination and gender-based violence committed against transgender persons because of their real or perceived sexual orientation or gender identity. Discrimination against biological women whose gender identity differs from their biological sex, along with persons who identify as female, constitutes the type of gender-based discrimination the Convention seeks to eliminate. Violence perpetrated against transgender individuals is also the result of harmful stereotypes about gender roles. Transgender persons are exposed to discrimination and violence based on harmful stereotypes of women and therefore require the protection of the Convention to ensure their advancement in society along with their ability to exercise their rights on an equal basis with others. To achieve this end, Article 4 on Special Temporary Measures requires States Parties to implement concrete policies and programs that improve women’s de facto equality.

The international human rights community has increasingly affirmed that transgender persons are protected by human rights law. The United Nations General Assembly recently issued a statement and adopted a resolution expressing concern about discriminatory and violent acts against persons based on their sexual orientation or gender identity. Both the *Resolution on Sexual Orientation and Gender Identity* and the *Statement on Human rights, Sexual Orientation and Gender Identity* affirm that human rights should be equally applicable to everyone,

¹¹⁵CEDAW, *supra* note 25, at preamble.

¹¹⁶ *Id.* at art. 5.

¹¹⁷ CEDAW Comm., *Concluding Observations: Colombia*, *supra* note 9, at ¶ 11.

independent of sexual orientation and gender identity.¹¹⁸ Several reports by UN Special Rapporteurs have also called on an end to discrimination based on sexual orientation.¹¹⁹ Moreover, the Yogyakarta Principles affirm binding international legal standards for States Parties to apply international human rights law in relation to sexual orientation and gender identity.¹²⁰

American regional human rights systems have also recognized the need for States Parties to guarantee the rights of persons based on gender identity. Since 2008, the General Assembly of the Organization of American States has approved five resolutions requiring protection from discriminatory treatment based on sexual orientation or gender identity and ordering the adoption of concrete measures to effectively protect people from discrimination.¹²¹ Furthermore, the Inter-American Court of Human Rights recently established, in the case of *Karen Atala Riffo and Daughters v. Chile*, that the American Convention on Human Rights prohibits discrimination based on sexual orientation or gender identity. The Court also stated that any act or practice of discrimination based on sexual orientation or gender identity is prohibited by the Convention, and that any domestic rule, decision, or practice of law, either by state or by individuals, that can reduce or restrict, in any way, the rights of a person based on their sexual orientation or gender identity is considered contrary to the Convention.¹²²

The Government of Colombia does not have published data or statistics on the human rights situation of transgender Colombians. The lack of data hides the human rights concerns of transgender persons, and places obstacles in the way of civil society organizations seeking to

¹¹⁸ Human rights, sexual orientation, and gender identity, G.A. Res. 17/L.9, U.N. Doc. A/HRC/17/L.9 (June 9, 2011); U.N. General Assembly, *Statement on Human Rights, Sexual Orientation and Gender Identity* (Dec. 18, 2008), available at <http://www.unhcr.org/refworld/docid/49997ae312.html>.

¹¹⁹ See e.g., Special Rapporteur on violence against women, its causes and consequences, *Report on violence against women, its causes and consequences*, Human Rights Comm'n, ¶ 84, U.N. Doc. E/CN.4/2005/72 (Jan. 17 2005) (by Yakin Ertürk); Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶¶ 17-25, U.N. Doc. A/56/156 (July 3, 2001) (by Sir Nigel Rodley).

¹²⁰ These principles include the rights to: universal enjoyment of human rights; equality and nondiscrimination; recognition before the law; security of the person; privacy; freedom from arbitrary deprivation of liberty; a fair trial; humane treatment while in detention; freedom from torture and cruel, inhuman, or degrading treatment or punishment; protection from all forms of exploitation, sale and trafficking of human beings; work; social security and other social protection measures; an adequate standard of living; adequate housing; education; the highest attainable standard of health; protection from medical abuses; freedom of opinion and expression; freedom of peaceful assembly and association; freedom of thought, conscience and religion; freedom of movement; to seek asylum; to found a family; to participate in public life; to participate in cultural life; to promote human rights; and to effective remedies and redress.

¹²¹ OAS, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2721 XLII-O/12 (June 4, 2011); OAS, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2435 XXXVIII-O/08 (June 7, 2011); OAS, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2600 XL-O/10 (June 4, 2010); OAS, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2504, XXXIX-O/09 (June 4, 2009); OAS, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2435, XXXVIII-O/08 (June 3, 2008).

¹²² *Atala Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶¶ 167-78 (Feb. 24, 2012).

change policies and prove violations before the relevant authorities. Transgender grassroots organizations assert that the most pressing issue faced by transgender individuals are: the requirement that transgender persons be diagnosed with gender dysphoria in order to change their names and sexual identities on official documents; the obtention of military clearance; reduced access to health services and hormone procedures; lack of education and labor rights; inhumane detention conditions in prisons; and police brutality and violence by private actors, all of which may result in their deaths or forced displacements.

Transgender persons in Colombia face multiple obstacles as a result of systematic sexual orientation and gender identity discrimination by public and private actors. Interactions between law enforcement and transgender persons often results in arbitrary arrests and detentions as a result of their non-normative gender identities. Transgender persons report that they are arrested for crimes they did not commit, often of which they are actually the victim, and detained without cause.¹²³ Moreover, they often face cruel, inhuman, and degrading treatment while in detention, with reports of physical and sexual violence, often at the prompting of prison guards.¹²⁴

Transgender persons face discrimination in part because they cannot change the gender identity on their official documents. Women in Colombia are exempt from military service, but men carry an additional identification document pertaining to their military status. Employers often require a copy of this document, which persons born as biological females do not have. Consequently, transgender men must unwillingly reveal that they were born biological women to explain the absence of the military identification document.¹²⁵ This often results in transgender men's inability to secure a job in the private sector, and prompts many to seek out illegal documentation.¹²⁶ Discrimination in schools and workplaces includes supervisors and teachers telling transgender women to remove their make up, wear their hair up, cut their nails, and dress more masculine.¹²⁷ Some transgender students even report being told not to form relationships with or show any signs of affection to the rest of their classmates.¹²⁸

Similarly, transgender persons are often discriminated against when seeking access to health care services, and some report that they have even been turned away from hospitals as a result of their transgender status.¹²⁹ Moreover, even when they are treated, transgender persons report that it is very difficult for them to receive services tailored to their needs for multiple reasons, including a lack of appropriate legal identification, discrimination on the part of medical

¹²³ Testimony of transgender persons provided through Entre Tránsitos, Grupo de Apoyo Transgenerista, and Procrear, Bogotá (2012).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Testimony of transgender persons provided through Entre Tránsitos, Grupo de Apoyo Transgenerista, and Procrear, Bogotá (2012).

staff, and inadequate access to hormone therapy and related drugs.¹³⁰ In order for transgender persons to gain access to hormones, surgical treatment, and the accompanying services of a doctor during their transitions, they first need a psychiatric endorsement that “certifies” that they suffer “Gender Identity Disorder.”¹³¹ In order to obtain this certificate, the transgender person must state that the individual does not have any doubts about undertaking every type of surgical intervention so that the individual’s body “corresponds” to the desired gender. Psychiatrists prefer that this experience take at least two years. If the transgender person complies with these requirements, the individual will receive a certification from the psychiatrist giving him/her access to hormone treatment, examinations to evaluate the side effects and risks of treatment, and finally, surgical procedures.¹³²

Suggested Questions and Recommendations

We respectfully request that this Committee pose the following questions to the delegation representing the Government of Colombia during its 56th Session.

1. What steps has the Government of Colombia taken to eliminate harmful stereotypes and cultural patterns that discriminate against transgender persons?
2. What steps has the Government of Colombia taken to train law enforcement and public servants about the rights of transgender people?
3. What steps has the Government of Colombia taken to promote and protect transgender persons’ right to work?
4. What steps has the Government of Colombia taken to protect the rights of transgender persons to be free from arbitrary arrests and detention?
5. What steps has the Government of Colombia taken to allow transgender persons to change their sex on their identity documents?
6. What steps has the Government of Colombia taken to provide transgender men with a military identification documents or its equivalent?
7. What steps has the Government of Colombia taken to promote and protect transgender persons’ right to health?

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Testimony of service providers at Entre Tránsitos, Bogotá (2012).

8. What steps has the Government of Colombia taken to increase availability to medically-supervised transitions without the need to be diagnosed as suffering from gender identity disorder?