



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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

Conclusions and recommendations of the Committee against Torture

COLOMBIA

1. The Committee considered the third periodic report of Colombia (CAT/C/39/Add.4) at its 575th and 578th meetings, held on 11 and 12 November 2003 (CAT/C/SR.575 and 578), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Colombia, but regrets that it was submitted on 17 January 2002, five years late. It notes that the report contains little information on the practical application of the Convention over the reporting period. The Committee is, however, grateful for the exhaustive oral replies that the State party's delegation gave to most of its members' questions and for the statistics provided during the consideration of the report.

B. Positive aspects

3. The Committee notes with satisfaction the State party's adoption of a number of domestic laws of relevance to the prevention and suppression of torture and ill-treatment, in particular:

(a) The new Penal Code (Act No. 599/2000), which defines the offences of torture, genocide, forced disappearance and forced displacement and states that due obedience will not be considered as justifying those offences;

(b) The new Military Penal Code (Act No. 522/1999), which excludes the offences of torture, genocide and forced disappearance from the jurisdiction of the military criminal courts and regulates the principle of due obedience;

(c) Act No. 548/1999, which prohibits the conscription of persons under 18 years of age;

(d) The new Code of Penal Procedure (Act No. 600/2000), title VI whereof provides that illegally obtained evidence will be inadmissible.

4. The Committee also welcomes:

(a) Act No. 742/2000 approving the ratification of the Rome Statute of the International Criminal Court, the instrument whereof was deposited on 5 August 2002;

(b) Act No. 707/2001 approving the ratification of the Inter-American Convention on Forced Disappearance of Persons.

5. Similarly, the Committee expresses its satisfaction at:

(a) The statement by the State party's representative that there neither has been nor will be any amnesty or clemency in the State party for acts of torture;

(b) The positive role of the Constitutional Court in the defence of the rule of law in the State party;

(c) The ongoing cooperation between the office in Colombia of the United Nations High Commissioner for Human Rights and the Government of Colombia.

C. Factors and difficulties impeding the application of the Convention

6. The Committee is aware of the difficulties with respect to human rights and international humanitarian law arising from the current complex situation in the country, especially in a context characterized by the activities of illegal armed groups. The Committee nonetheless reiterates that, as stated in article 2 of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

7. The Committee reiterates its concern at the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside armed operations. It also expresses its concern at the high number of forced disappearances and arbitrary executions.

8. The Committee expresses its concern that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture. In this regard the Committee expresses its concern, in particular, at:

(a) The recruitment of part-time “peasant soldiers”, who continue to live in their communities but participate in armed action against guerrillas, so that they and their communities may be the target of action by the illegal armed groups, including acts of torture and ill-treatment;

(b) Constitutional reform bill No. 223/2003, which, if adopted, would seem to confer judicial powers on the armed forces and enable persons to be detained and questioned for up to 36 hours without being brought before a judge.

9. The Committee also expresses its concern at:

(a) The climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims;

(b) The allegations of tolerance, support or acquiescence by the State party’s agents concerning the activities of the paramilitary groups known as “self-defence groups”, which are responsible for a great deal of torture or ill-treatment;

(c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the “alternative penalties” bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;

(d) The allegations and information indicating:

(i) That some prosecutors in the Human Rights Unit of the Public Prosecutor’s Office have been forced to resign and that members of the Unit have been threatened in connection with their investigation of cases of human rights violations;

- (ii) Inadequate protection against rape and other forms of sexual violence, which are allegedly frequently used as forms of torture or ill-treatment. The Committee further expresses its concern at the fact that the new Military Penal Code does not expressly exclude sexual offences from the jurisdiction of the military courts;
 - (iii) The fact that the military courts are allegedly still, despite the promulgation of the new Military Penal Code and the Constitutional Court's decision of 1997 that crimes against humanity did not fall within the jurisdiction of the military courts, investigating offences that are totally excluded from their competence, such as torture, genocide and forced disappearance in which members of the police or armed forces are suspected of having been involved;
 - (iv) The widespread, serious attacks on human rights defenders, who are playing an essential role in reporting torture and ill-treatment; in addition, the repeated attacks on members of the judiciary, threatening their independence and physical integrity;
- (e) The numerous forced internal displacements of population groups as a result of the armed conflict and insecurity in the areas in which they live, taking into account the continuing absence in those areas of State structures that observe and ensure compliance with the law;
- (f) The overcrowding and poor conditions in penal establishments, which could be considered inhuman or degrading treatment;
- (g) The absence of information on the application of article 11 of the Convention as regards the State party's arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment, and the reports received by the Committee to the effect that the State party is failing to discharge its obligations in this respect;
- (h) The lack of satisfactory information concerning the rules in the State party's law for ensuring the application of article 3 of the Convention to cases of refoulement or expulsion of aliens in danger of being tortured in the country of destination.

E. Recommendations

10. The Committee recommends that the State party take all necessary measures to prevent the acts of torture and ill-treatment that are being committed in its territory, and in particular that it:

- (a) Take firm steps to end impunity for persons thought to be responsible for acts of torture or ill-treatment; carry out prompt, impartial and thorough investigations; bring the perpetrators of torture and inhuman treatment to justice; and provide adequate compensation for the victims. It recommends in particular that the State party reconsider in the light of its obligations under the Convention the adoption of the "alternative penalties" bill;

(b) Reconsider also, in the light of its obligation to prevent torture and ill-treatment under the Convention:

- (i) The use of “peasant soldiers”;
- (ii) The adoption of measures that appear to give military forces powers of criminal investigation under which suspects can be detained for long periods without judicial control;
- (iii) The judicial reform bill, so as to provide full protection for *amparo* proceedings and respect and promote the role of the Constitutional Court in defending the rule of law;

(c) Ensure that anyone, especially any public servant, who backs, plans, foments, finances or in any way participates in operations by paramilitary groups, known as “self-defence groups”, responsible for torture is identified, arrested, suspended from duty and brought to justice;

(d) Ensure that the staff of the Human Rights Unit of the Public Prosecutor’s Office are able to carry out their duties independently, impartially and in safety and provide the Unit with the resources needed to do its work effectively;

(e) Investigate, prosecute and punish those responsible for rape and other forms of sexual violence, including rape and sexual violence that occur in the framework of operations against illegal armed groups;

(f) That in cases of violation of the right to life any signs of torture, especially sexual violence, that the victim may show be documented. That evidence should be included in forensic reports so that the investigation may cover not only the homicide but also the torture. The Committee also recommends that the State party provide medical staff with the training necessary to determine when torture or ill-treatment of any kind has occurred;

(g) Respect the provisions of the Military Penal Code that exclude cases of torture from the jurisdiction of the military courts and ensure that those provisions are respected in practice;

(h) Take effective measures to protect human rights defenders against harassment, threats and other attacks and report on any judicial decisions and any other measures taken in that regard. The Committee also recommends the adoption of effective measures for the protection of the physical integrity and independence of members of the judiciary;

(i) Take effective measures to improve conditions in places of detention and to reduce overcrowding there;

(j) Ensure, so as to preclude all instances of torture or cruel, inhuman or degrading punishment, that persons subjected to any form of arrest, detention or imprisonment are treated according to international standards;

(k) Report in its next periodic report on the domestic legal provisions that guarantee non-refoulement to another State when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture;

(l) Make the declarations referred to in articles 21 and 22 of the Convention and ratify the Optional Protocol to the Convention;

(m) Ensure the wide distribution in its territory of the Committee's conclusions and recommendations;

(n) Provide to the Committee, within one year, information on its response to the Committee's recommendations contained in subparagraphs (b), (d), (f) and (h) above.
