



Committee Against Torture, 43rd session, Colombia 2nd – 20th November 2009

1. Introduction

On the 10th and 11th of November 2009, Colombia reported to the Committee Against Torture (CAT). The report submitted by Colombia is the 4th report submitted by Colombia to the CAT so far, and it reflects the progress made and challenges faced by the State bodies in the period 2002-2006. The Colombian State Report was introduced by Ambassador Mr. Angelino Garzón, Representative of Colombia to the United Nations in Geneva.

2. Presentation of the State Report

In its report Colombia confirms its commitment to respecting, guaranteeing and promoting fundamental rights and to abide by the international instruments that it has ratified, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) being one of those instruments.¹ The constitutional framework for the protection of life and personal integrity in Colombia is extensive. The guarantees in article 178 of the Colombian criminal code are in fact stronger than provisions of the international instruments that have been ratified by Colombia. During the time in question of the Report sentences for torture were lengthened by one third to a half to 180 to 270 months. The number of complaints about torture and cruel, inhuman or degrading treatment or punishment registered by the Office of the Ombudsman increased during the period, from 710 in 2004 to 785 in 2006. According to the Report this data does not include the activity of organised paramilitary armed groups. The fight against impunity for human rights violations was emphasised both in the written report and the oral presentation of the Report before the CAT. This is being conducted by efforts to strengthen the existing organisations, practices and procedures detecting human rights violations and breaches of IHL, resolving cases, punishing the perpetrators and compensating the victims

Promotion and protection of human rights and international humanitarian law

The State report focuses on what measures have been adopted or proposed regarding the protection and promotion of human rights and international humanitarian law (IHL) in Colombia. In its National Development Plan for 2002 – 2006, the Colombian Government incorporated a strategy aimed at preventing the effects of violence on civilians. The training and educating of

¹ The full State Report can be found on the CAT website (<http://www2.ohchr.org/english/bodies/cat/cats43.htm>) in English, French, Russian and Spanish.

police and military forces to secure that their activities are based on respect for and compliance with the relevant principles and rules is a crucial action in reaching this aim.

Colombia cooperates with several international bodies to improve the situation within the country, for example by participating in the Universal Periodic Review in the UN Human Rights Council (HRC), by following recommendations of the UN Office of the High Commissioner for Human Rights (OHCHR) and cooperating with the Inter American Court of Human Rights (IACtHR). Señor Garzón also emphasised the work on a state policy against impunity (CONPES) as an example of good practices in the work of the Colombian Government to fulfil its international obligations regarding the promotion and protection of human rights and IHL. This policy was created in cooperation with the Government of the Netherlands and the OHCHR. The work of training

The Colombian delegation accentuated the importance of the early warning system governed by the Inter-Agency early warning committee (CIAT) as a key mechanism to prevent displacements and violations of human rights and IHL. The CIAT is responsible for evaluating reports of the Ombudsman's Office and developing responses that will be implemented by the civilian authorities and the public security forces. During the period under review Colombia has created a National plan of action for human rights and IHL to promote human rights and humanitarian provisions. This plan is meant to be a guide for State actions for human rights and IHL in the implementation of international treaties and it includes a guide for State and civil society collaborations in these matters. The dialogue in the Committee returned to the new Law of Justice and Peace (Act No. 975 of 2005) several times. The Law of Justice and Peace addresses the issue of reintegration in society of organised paramilitary group members as a contribution to re-establishing national peace.

Persons subjected to arrest, detention or imprisonment

Señor Garzón expressed concern in his presentation about the overcrowding in Colombian detention centres. In the period up for review the rate of overcrowding has been decreased from 37,2% in 2004 to 14,6% in 2006, according to the National Penitentiary and Prison Agency (INPEC), much due to the increase of places. The Government has chosen to respond to this issue by building 11 new penitentiaries and prisons. INPEC issued a Manual on Security and Special Treatment Units in 2005 aimed at ensuring that the rights of detainees, due process and constitutional and legal guarantees are respected and protected when disciplinary measures are taken in the centres of detention.

Forensic investigations

The importance of forensic investigations as a means for fighting impunity for the crimes of torture and other cruel, inhuman or degrading treatment or punishment was highlighted both in the report and by señor Garzón in his presentation. The framework used by the National Institute of Legal Medicine and Forensic Sciences (the Institute) has the purpose of mainstreaming the Minnesota Protocol² and the Istanbul Protocol³. The Institute works with training and monitoring of technical and scientific procedures used to investigate deaths, preservation and recording of physical evidence that may be useful at the trial stage. Experts practicing autopsies are also trained in identifying specific points such as indicators of sexual offences, injuries caused by electric current and other possible indicators of acts of torture. The Institute staff are also trained and kept up to date in the area of human rights and IHL. The Institute is also developing a national registry

2 The Model Protocol for a Legal Investigation of Extra – Legal, Arbitrary and Summary Executions (the "Minnesota Protocol"). The guidelines set forth in this proposed model protocol for a legal investigation of extra-legal, arbitrary and summary executions are not binding. Instead, the model protocol is meant to be illustrative of methods for carrying out the standards enumerated in the Principles.

3 The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Istanbul Protocol") is the first set of international guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body. It became a United Nations official document in 1999

of disappeared persons to enable the identification of deceased and facilitating the follow-up on cases of enforced disappearances.

3. Issues brought forward by alternative report

One NGO submitted a report to this CAT session on Colombia; La Coalición Contra la Tortura (la Coalición). In their report "Informe Alternativo al 4o Informe Periódico del Estado Colombia al Comité Contra la Tortura"⁴ la Coalición paints a different picture of the situation in Colombia than that of the state report.

The main issue brought forth by la Coalición is the systematic and generalised use of torture in the Colombian society. The report highlights among other things the situation for population in Colombian detention centres as they continue to be victims of torture. It also focuses on different specifically vulnerable groups within society such as women, children and LGBT⁵ persons.

The statistics of la Coalición shows that out of the 899 cases of torture committed between July 2003 and June 2008 the state was responsible in 92,6% of the cases either direct performed by state agents (50,6%) or indirect by supporting, tolerating violations committed by paramilitary groups. In 7,4% of the cases the guerrilla was attributed the responsibility. In regards to the population in detention centres a study made by El Comité de Solidaridad in 2008 shows that 54% of the interns in Colombian prisons have been victims of torture in the prison. It is also notable that 46% of the inmates in the study chose not answer the question at all.

Although the normative framework within Colombia prohibits torture and other cruel, inhuman or degrading treatment or punishment, in practice these acts are still being performed by the armed groups that are active in the armed conflict. There is almost absolute impunity for these crimes and there does not seem to be any changes.

La Coalición is concerned that impunity is promoted further by the new law 975 of 2005, that is the law of justice and peace, that is meant to be a truth finding and reconciling mechanism, but as they believe that it is not working as it should the consequence instead is that it hides the systematic and generalised practice of torture and sexual violence by paramilitary forces. This violates the rights of victims of these crimes to truth, justice and reparations.

The fight against impunity is also standing against the obstacles of a lack of exhaustive investigations within the ordinary court system, torture cases are still within the jurisdiction of the military court system, lack of sanctions and disciplinary investigations for torture and the invisibilisation of the crime of torture due to the application of the law of justice and peace.

When there are other crimes involved in case, ex homicide, extrajudicial executions, massacre, forced disappearances, arbitrary detentions, forced recruitment, torture is made invisible. Authorities should at least look at the possibility of torture being involved in these cases as well.

La Coalición are highly critical against the law for justice and peace. In their opinion it benefits the members of the armed forces and the grave violations they have committed during the conflict as part of the paramilitary groups. The law establishes an obligation to confess all crimes they have been responsible for. These declarations of members of paramilitary forces are riddled with problems as they are known to not always be as truthful as they are supposed to be. There are no guarantees for the victims' participation and their protection. This creates fear and distrust towards the judicial system and it increases the risk of threats and intimidations towards victims who are willing to testify against the perpetrators.

⁴ The full report can be found on the CAT website (<http://www2.ohchr.org/english/bodies/cat/cats43.htm>) in Spanish.

⁵ Lesbian, Gay, Bisexual and Transgender or Transsexual persons.

If there are no truthful confessions and they are only a mean of apologising for their participation in paramilitary groups and not for the actions they committed the victims of their past acts will stay stigmatised and society in general will stay in the dark of what actually occurred in the past.

La Coalición expressed concerned about the extradition of the 18 ex paramilitary leaders to the US for their drug trafficking crimes. Within the group of extradited Colombians several are known for their crimes against humanity and war crimes, including massacres, homicides, enforced disappearances, torture, sexual violence and enforced recruitments. In the opinion of La Coalición these extraditions are part of governmental strategy. By having these leaders extradited, they are no longer in the country to participate in the process provided for by the law for justice and peace.

In its report la Coalición expressed concern for the situation of an almost absolute impunity for the crime of sexual violence against women, which is described as a systematic practice that is almost invisible within the context of the ongoing armed conflict in Colombia. The major issues here are the lack of sufficient investigations. Women are afraid to report the crimes committed against them and there is no belief in the judicial system

The Colombian government continue to not recognise their international obligations especially concerning the vulnerable groups in their society, which are women, children and LGBT persons. The number of cases of torture is increasing which shows that the government has failed to adopt necessary means to prevent and sanction torture and mistreatment. The crime of torture and other cruel, inhuman and degrading treatment or punishment has existed within the Colombian penal system for over three decades and still there are not sufficient investigations and sanctions to combat this systematic practice. Lack of political will for adequate reparation for victims of torture.

It is not only the person de facto being tortured that is the victim of such a crime, there is a multitude to the crime of torture which affects the whole society, the family of the victims and the community are also affected by the fear and violence it generates in society as a whole.

4. Issues taken up by the Committee

One of the greatest concerns brought up by the Committee was the ongoing fight against impunity for the crime of torture and other cruel, inhuman and degrading treatment or punishment. Colombia has developed a system of multiple institutions and mechanisms for the prevention of torture. Despite this, torture and other cruel, inhuman and degrading treatment or punishment is still practiced, particularly by armed forces and paramilitary groups. Several Committee members also expressed specific concern for the rights of the victims of torture within Colombia, and wanted more information on what is being done regarding rehabilitation and of fair compensation to victims of these crimes.

Fighting Impunity

The Committee recognised the fight against impunity as one of the major obstacles for Colombia in the creation of a secure society. By ensuring accountability for the crime of torture and other cruel, inhuman and degrading treatment or punishment, the government could take a major step towards preventing the occurrence of this crime in the future. The Committee had several questions on the issues of convictions for torture and reparations for victims. They also expressed a specific concern for the occurrence of extrajudicial killings, that is still not eradicated in Colombia, and they asked the Colombian delegation what specific measures have been taken by the government in this regard. Another action taken in the fight against impunity is the opening of mass graves, and the Committee asked for more details in relation to this on how the identification of victims is going and if there are any criminal trials for those murders in progress.

The recent extradition by Colombia of 18 military leaders to the United States, for involvement in drug trade, was brought up by a majority of the Committee members during both the first and second round of questions and comments. There is no international agreement in place regulating this subject, and the Committee was worried what consequences this would have for the accusations of Crimes against Humanity brought up against these 18 individuals. If this would exempt them from being tried for Crimes against humanity in Colombia, it would be a disastrous step backwards in the fight against impunity. By extraditing these individuals, the Committee suggested that it could be seen as a way of avoiding the subject of torture, as there have not yet been any investigations in this regard. The Committee also wanted to know more about how the government is handling the fact that these paramilitary leaders are could be holding valuable information relating to the ongoing conflict in Colombia.

During the second round of questions and comments by the Committee several Committee members criticised and questioned the fact that there have been only 8-11 convictions for torture in relation to around 10 000 complaints and investigations.

Human rights defenders

A particularly vulnerable group in Colombia when it comes to being subject of torture and other cruel, inhuman and degrading treatment or punishment is human rights defenders. According to statistics of the Committee 21 human rights defenders were assassinated during 2008. The Committee was therefore interested to know what measures have been taken to investigate these kinds of crimes in particular. Several specific cases were brought up by the Committee and one them was the case of Guillermo Rivera, a labour union activist who disappeared and later was found murdered. The Committee asked for more information about the follow up of this and other cases, they wanted to know if any reparations had been to the family of Guillermo and why the autopsy had been delayed, instead of having it done immediately when the body was found. Further the Committee criticised the fact that despite the existing international obligations, the domestic Colombian law does not include any provisions on reparations for victims of torture. The Committee also criticised the fact that confession under torture are still used during trials in Colombian courts.

On a more general note the Committee asked the Colombian delegation to provide more information on what measures are being taken to protect human rights defenders and their families in Colombia. To get a clearer picture of accountability for killing human rights defenders the Committee also asked for statistics regarding the number of investigations of threats against human rights defenders and their families and how many of these investigations leads to actual convictions.

Women – gender based violence

The issue of sexual violence was emphasised several times during the session. The Committee stated that sexual violence as a form of torture in Colombia has been increasing from 12 000 cases in 2000 to 21 000 cases in 2008. They also mentioned that 85% of the victims are girls in the ages between 10 and 14 years old. Committee members also expressed concern over the structural problems of gender based violence within Colombian society.

Children in armed conflict

The use of children in armed conflict has been criticised by the Committee previously and it was brought up again during this session. The Committee asked the delegation what the situation is for children used by armed forces and by the police. The information that was requested included how many children are recruited by armed forces or police for different purposes, the status of these children, what measures the government has taken to prevent this situation and if there is any form of rehabilitation for children who have been used by the different parties to the armed conflict. During the second round of questions and comments the Committee developed on this issue and asked for further information about good programmes for demilitarisation of children and adults for that matter.

Penitentiary system

The state report in preparation for this CAT session focused a lot of attention to prison system and the treatment of detainees. In the report the government emphasised that 11 new prisons are being built presently to solve the problem of overcrowded prisons. The Committee welcomed this approach and were positive about action being taken to address this problem, but they also wanted to know more about psychologically ill prisoners and how their problems are being taken into consideration by the government.

The Committee was also interested in getting more information on the electronic tagging system that Colombia is in the process of introducing as an alternative for detention. This is another instrument to handle the overcrowding of detention centres that is still at the experimenting stage.

Militarism in society

The Committee stated that a major problem in Colombia is the present generalised sensation of fear in society. The role of the military is therefore crucial to face this obstacle in the every day life of all citizens. Placing military forces close to civilian communities and using community facilities for military purposes causes psychological damages. In many cases it also increases the insecurity for the community in question when it is being surrounded by enforced disappearances and extrajudicial killings etc.

Judicial system

A further concern brought up by the Committee that also relates to the subject of militarism in society had to do with the occurrence of prosecutors being based in military units, which was also brought up in the previous CAT review. The Committee asked the delegation to inform them if there are any review mechanisms to guarantee that there is no undue interference from military personnel. They also wanted to know what measures the human rights unit in the public prosecutors office are taking to ensure the independence and impartiality in investigations of threats against the unit. The subject of prosecutors' independence in general was also mentioned by most members of the Committee during the review.

The Committee emphasised the importance of training and monitoring of police and military on all human rights aspects. This applies especially in relation to investigations of torture and other cruel, inhuman and degrading treatment or punishment. Those in charge of and performing the investigations are in need of training to detect when torture has been involved. The Committee also highlighted the importance of training in gender issues and wanted to know more about the existing investigative strategies in regards to sexual violence.

The Colombian system of military courts was also under the review of the Committee. There were concerns expressed as to conflicts and contradictions in jurisdiction of military courts. An example of this contradiction that was mentioned was the fact that in military tribunal it is still the military that is responsible for collecting evidence, which becomes a big problem when it is the military itself that is under investigation. Military courts has a specialised jurisdiction in indigenous and the Committee asked how this system is taking into account the specificity of the traditions and customs of the indigenous communities in question. This issue was brought up during both the first and second round of questions as the Committee members were not entirely satisfied on the clearing of jurisdictions and competences after the first round of replies.

Forced Displacements

The Committee briefly touched upon the issue of forced displacements within Colombia and asked the delegation to give details about what measures have been taken in regard to forced displacements and if the existing Early Warning System is effective in preventing forced displacements.

5. Responses by the Colombian Delegation

The Colombian delegation was given a substantial amount of questions by the Committee and made an effort to get back to as many of the questions and comments as possible during the limited time that was provided for during the session.

Fighting Impunity

Regarding the questions asked about the ongoing investigations and the number of convictions for torture and other cruel, inhuman and degrading treatment or punishment the Colombian delegation stated that approximately 500 presumed cases of torture are presently under investigation, 21 cases are under trial and there are 8 convictions. Unfortunately it was not very clear for what exact period of time these figures referred to.

Colombia has established a Commission for reconciliation which is dealing with the issues of participation and reparation of victims of torture, and the government also established an exhumation support unit in 2006. In response to the comment made regarding the multitude of institutions in Colombia, the delegation stated that this fact does not imply inefficiency on behalf of the authorities; rather this is something that provides for an improvement of the human rights situation in the country.

In reply to the subject of the eighteen extradited paramilitaries the Colombian delegation stated that the dates to hear these individuals have been set and they are still linked to the law of peace and justice and have not fallen out of the penal system of Colombia.

The Colombian delegation became slightly antagonistic at the end of the review and declared that for public service to provide for justice in the situation as that in Colombia, with an ongoing armed conflict, fighting impunity requires a decisive message to the public that organised crimes is not accepted. It was also stated that there is a need to find effective mechanisms, for example specific indicators to measure the fight against impunity. Serving justice through fighting impunity also requires a lot of resources being allocated for justice, which is not an easy task. On a friendlier note the delegation stated that the views of civil society are very important in order to find a way out of the problems within society.

Human rights defenders

The delegation replied to some of the question of current investigations of crimes committed against human rights defenders. Among other things they stated that regarding the crime of homicide of protected person there have been 150 convictions of militaries, 300 are being prosecuted and another 800 are currently under investigations. On the issue of murder of unionists the delegation mentioned that the government has developed a tripartite cooperation-agreement between unions, the government and the judiciary. This agreement establishes a social dialogue policy and union protection policy to protect the rights of unionists.

In regards to the individual cases that were brought up by the Committee during the review, the delegation replied that in the case of unionist Guillermo Rivera, the remains were found only one day after urgent search mechanisms had been taken by the authorities. They did not, however, say anything about how much time had passed from his disappearance until these mechanisms were set into force, or if there are any suspects on trial for this disappearance and murder. The delegation also replied in relation to the other individual cases that were brought up, by stating that investigations were currently being performed or on the way.

Women – gender based violence

The delegation mentioned several instruments that exist in Colombian domestic law on the issue of sexual and gender based violence. The government has developed a database for sexual violence acts and are performing special training for prosecutors and others working with the crime of sexual violence. This effort creates an institutional coordination that assist in defending victims of sexual violence. The delegation stated that the law on gender based violence from

2006 has made some progress in fighting gender based violence. One of the novelties with that law was that it increased the penalty for domestic violence. As a final note on this subject the development of a comprehensive strategy to fight gender based violence was presented by the delegation. This strategy includes the developing of action plans, training of authority personnel, promotion and awareness raising, a system for keeping statistics of these crimes and the establishment of a periodic follow up mechanism.

Children in armed conflict

On the topic the military forces using children in the armed conflict, the delegation simply stated that there are no boys or girls under eighteen years that are involved in military forces or police as it is prohibited by law.

Penitentiary system

During the first round of replies the delegation only repeated what was already stated in their report, which is the fact that they are building 11 new prisons to deal with the overcrowding in the penitentiary system. They did not acknowledge the questions raised by the Committee regarding the psychiatric care of inmates.

During the second round of replies on the other hand, the delegation introduced more information about the electronic tagging system that was introduced this year. They seemed very hopeful about this approach as a way of avoiding overcrowding in detention centres.

Judicial system

In response to the Committees concerns for the judicial system the Colombian delegation provided a short presentation of their court system and the division between the ordinary and the military jurisdiction. The delegation also brought up the issue of prosecutors in military barracks and explained this with concerns of their personal safety, and for the safety of their families. They withheld that there are no interferences by militaries in decisions of the prosecutors, on the contrary their decisions are entirely independent of the public forces who are there solely as a protection for the prosecutors and their families.

Forced displacements

In reply to the concerns expressed on the subject of forced displacements the Colombian delegation mentioned that there is an agreement in force between the United Nations and Colombia to prevent the occurrence of forced displacements. They did not give any more details of the content or results of this agreement.

6. The next step

It is clear that Colombia has developed a system with a multitude of institutions and mechanisms to fight impunity and to prevent torture and other cruel, inhuman and degrading treatment or punishment. The fact that Colombia is fully participating in this review, making the effort in developing a state report for this session, taking the initiative of inviting the High Commissioner for Human Rights and seem to be taking the questions and comments by the Committee very serious are all very positive steps. Despite the governments signs of ambition to fight this obstacle for a secure and just society, there is still a way to go for Colombia before the situation in the country will be acceptable and the generalised sensation of insecurity in society will be defeated. The fact that the government is so open to civil society participation is very positive, as there will be no changes in the societal structures unless the government include people on all levels in the process of change.

Colombia will be reporting to the Committee on Economic, Social and Cultural Rights (CESCR) in May 2010.