



Economic and Social Council

Distr.: General
7 June 2010

Original: English

Committee on Economic, Social and Cultural Rights
Forty-fourth session
Geneva, 3–21 May 2010

Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Colombia

1. The Committee considered the fifth periodic report of Colombia on the implementation of the Covenant (E/C.12/COL/5) at its 3rd, 4th and 5th meetings, held on 4 and 5 May 2010 (see E/C.12/2010/SR.3, 4 and 5), and adopted, at its 23rd, 24th and 25th meetings, held on 19 and 20 May 2010, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth report of the State party and the presence of the delegation which included a number of representatives from different ministries that allowed for a frank and open dialogue. The Committee also welcomes the written replies to the list of issues, as well as the responses orally provided by the State party, and additional information received.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the Rome Statute on the International Criminal Court, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

4. The Committee also welcomes the enactments by the State party of:

- Act No. 581 of 2000 on effective participation of women at the decision-making levels
- Act No. 823 of 2003 on equality of opportunities for women
- Act No. 599 of 2000 (Criminal Code) which criminalizes violation of the freedom to work.

5. The Committee further welcomes decisions taken by the Constitutional Court, namely:
- Decision No. C-169/01 on positive discrimination, on the basis of the constitutional principle in favour of vulnerable people who do not stand on an equal footing with the rest of the country's population
 - Decision No. C-1064/01 which establishes criteria for determining the legal minimum wage, the right to fair remuneration and maintenance of purchasing power
 - Decision No. C-355/06 decriminalizing abortion by declaring article 122 of Act No. 599 of 2000 (Penal Code) constitutional.

C. Factors and difficulties impeding the implementation of the Covenant

6. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

7. The Committee is deeply alarmed about the consequences of the long-standing internal armed conflict in the State party. The Committee regrets the lack of sufficiently detailed information regarding the actual implementation by the State party of its obligations under the Covenant, in relation to the civilian populations, in the areas affected by the internal armed conflict.

The Committee urges the State party to take immediate and effective measures to implement the plans described in the report to address the ongoing armed violence. In this regard, the Committee requests the State party, in its next periodic report, to provide detailed information on the implementation of its obligations, as required by the Covenant, in relation to all economic, social and cultural rights of the civilian populations affected by the internal armed conflict. The Committee reminds the State party that it is precisely in situations of crisis, that the Covenant requires the protection and promotion of all economic, social and cultural rights, in particular of the most marginalized and disadvantaged groups of the society, to the best of its ability under the prevailing adverse conditions.

8. The Committee regrets that the report of the State party does not contain sufficiently updated information and detailed statistics that would enable it to fully assess whether and how the rights set out in the Covenant are being implemented in the State party.

The Committee recommends that the State party provide updated information in its next periodic report on the practical application of the Covenant, including through disaggregated data and relevant statistics on a comparative annual basis, regarding the implementation of its laws and the practical results of plans, programmes and strategies carried out in relation to the various rights enshrined in the Covenant.

9. The Committee is concerned that infrastructure, development and mining mega-projects are being carried out in the State party without the free, prior and informed consent of the affected indigenous and Afro-Colombian communities. The Committee is also concerned that, according to the Constitutional Court, the legitimate representatives of the Afro-Colombian communities did not participate in the process of consultation and the authorities did not provide accurate information on the scope and the impact of the mining mega-project of Chocò and Antioquia. The Committee is further concerned that the Presidential Directive No. 001 aimed at establishing a general framework for prior consultation may not be sufficient and that indigenous and Afro-Colombian peoples were

not consulted regarding the draft bill elaborated by the Working Party on Prior Consultation of the Ministry of the Interior that, therefore, does not create the adequate framework for the process of genuine consultation (art. 1).

The Committee recommends that the State party take practical measures to review the processes concerning infrastructure, development and mining projects and fully implement decisions of the Constitutional Court in this regard. The Committee also recommends that the State party review the Presidential Directive No. 001 and the draft bill elaborated by the Working Party on Prior Consultation of the Ministry of the Interior. The Committee further recommends that the State party adopt legislation in consultation with and the participation of indigenous and Afro-Colombian people, that clearly establishes the right to free, prior and informed consent in conformity with International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as the relevant decisions of the Constitutional Court.

10. The Committee is concerned that bilateral and multilateral trade agreements signed by the State party may affect the enjoyment of economic, social and cultural rights, in particular of disadvantaged and marginalized groups, such as indigenous and Afro-Colombian peoples and persons living in rural areas. The Committee is also concerned that the free trade agreement signed between the State party and the United States of America contains provisions on intellectual property that may result in increase of prices of medicines and negatively impact on the enjoyment of the right to health, in particular of those with low income (arts. 1, 12).

The Committee recommends that the State party take effective measures to ensure that economic, social and cultural rights are taken into account in all free trade and bilateral and multilateral trade agreements, and develop effective policies to protect the rights of the population, in particular the marginalized and disadvantaged groups, against the negative impact of such agreements. In this regard, the Committee recommends that the State party consider revising the intellectual property provisions of the free trade agreement signed with the United States, in order to ensure protection against the increase of the price of medicines, in particular for those with low income.

11. The Committee is concerned that unemployment remains high in the State party, in particular in rural areas and among young persons, women, indigenous and Afro-Colombian peoples. The Committee is also concerned that the creation of employment opportunities is taking place primarily in the informal economy (60 per cent) with a negative impact on access to social security. The Committee is further concerned about the working conditions in the informal economy and rural areas where wages remain very low (arts. 6, 7).

The Committee recommends that the State party:

- (a) Take effective measures to reduce the high rate of unemployment;**
- (b) Design specific policies and strategies aimed at creating employment opportunities for young persons, women, indigenous and Afro-Colombian peoples;**
- (c) Continue the vocational training programmes for young persons, as well as incentives already adopted.**

The Committee strongly recommends that the State party promote employment opportunities while improving the working conditions in the informal economy and rural areas, in particular with regard to low wages and social security benefits.

12. The Committee is alarmed at the murders of trade unionists in the State party and that they continue to be victims of various forms of threats and violence. The Committee

remains concerned that, despite the implementation of the National Programme of Protection that covers trade unionists and the creation of sub-unit within the Human Rights Unit in the Attorney General's Office to deal with murders against trade unionists, only a small number of acts of violence against trade unionists were investigated (art. 8).

The Committee urges the State party to strengthen its efforts to protect trade unionists, by enhancing the National Programme of Protection, and to reinforce the sub-unit which deals with murders and murder attempts against trade unionists in the Attorney General's Office. It also urges the State party to firmly combat impunity, by investigating all cases, prosecuting and sentencing those responsible, and to compensate victims or their families under the Victims Compensation Fund.

13. The Committee is concerned that persons working on temporary contracts or earning a minimum salary do not enjoy equal treatment within the health system – since they contribute more than persons with formal contracts for health services – and that they are not generally recognized as being eligible for health subsidies (art. 9).

The Committee recommends that the State party take necessary measures to ensure that persons working on temporary contracts or earning a minimum salary have equal access to health-care services and are eligible for health subsidies.

14. The Committee is concerned at the wide inequalities in the distribution of income in the State party in the context of poverty. It is particularly concerned that the taxation system is regressive and more favourable to persons from the highest income groups (art. 9).

The Committee recommends that the State party review its taxation system, so as to reduce inequalities between different groups of the population with a view to poverty eradication. The Committee also recommends that the State party adopt a fiscal system based on progressive income-related taxes.

15. The Committee is deeply concerned at the large number of women and girls that continue to be raped and killed in the State party, and that violence against women and girls, in particular sexual violence is perpetrated by illegal armed groups and army forces, despite the legislative and policy measures taken by the State party to combat violence against women. The Committee remains concerned at the fact that perpetrators of such violence remain unpunished. The Committee is particularly concerned by violence against women in situation of forced displacement due to the armed conflict (art. 10).

The Committee urges the State party to strengthen its efforts aimed at preventing and eliminating violence against women by effectively implementing its programmes to provide integral assistance to protect and rehabilitate victims; facilitating access of women to justice; prosecuting perpetrators of such violence; and compensating the victims. The Committee also recommends that the State party take measures to prevent and protect women in situation of forced displacement due to the armed conflict from violence by:

- (a) Adopting and implementing the programme “Protection of the Rights of Indigenous Internally Displaced Women”;**
- (b) Implementing, through Acción Social, the 12 specific programmes of protection ordered by the Constitutional Court;**
- (c) Conducting investigation on sexual violence cases concerning displaced women in the State party;**
- (d) Prosecuting and sentencing perpetrators; and**
- (e) Providing compensation to victims.**

The State party should also adequately support the Attorney General's Office and the special group set up in its Human Rights and Humanitarian Law Unit, by providing sufficient resources, and give full effect to the Act No. 1257 of 2008 on measures to raise awareness, prevent and punish all forms of violence and discrimination against women.

16. The Committee is deeply concerned that children continue to be forcibly recruited by illegal armed groups, notably by FARC-EP and ELN, including through recruitment campaigns in schools, as well as by new paramilitary groups, thus preventing them from enjoying their economic, social and cultural rights. The Committee is also deeply concerned that a large number of children are killed during assaults, by homicides, landmines or as victims of cross-fire between the army and illegal armed groups (art. 10).

The Committee urges the State party to take all necessary measures to:

- (a) Fully implement its Directive No. 500-2 of 2005 aimed at developing strategies to prevent child recruitment by armed forces;**
- (b) Prevent the recruitment of children by illegal armed groups;**
- (c) Pursue demobilization, reintegration and rehabilitation programs in compliance with its legislation;**
- (d) Prosecute and sentence those responsible.**

17. The Committee is concerned at the large number of children that continue to be victims of sexual exploitation, in particular children from disadvantaged and marginalized groups, including internally displaced children and children living in poverty, in spite of measures already taken by the State party, such as legislation that criminalizes sexual exploitation; sex tourism with minors; and child pornography with specific provisions regarding Internet providers, as well as the National Plan of Action to prevent and eradicate sexual exploitation (2006–2011) (art. 10).

The Committee urges the State party to effectively enforce legislation to combat trafficking in children. It also recommends that the State party strengthen its programmes and information campaigns to prevent trafficking under the National Strategy to Combat Human Trafficking 2007-2012, with particular attention to children from disadvantaged and marginalized groups; to continue to provide mandatory training for law officials and judges; and to prosecute and sentence those responsible for the crimes of trafficking in children. The State party should provide in its next periodic report statistical data disaggregated on an annual basis, by sex and country of origin of children who are victims of exploitation and trafficking, as well as on cases investigated and the decisions taken.

18. The Committee is concerned that it is permissible for children to get married at 14 years with the consent of a parent or guardian, though the legal minimum marriage age in the State party is 18 years. It is also concerned that getting married at 14 years has a negative impact on the enjoyment by children of their economic, social and cultural rights, in particular the rights to health and to education (art. 10).

The Committee encourages the State party to implement the legal minimum marriage age of 18 years for girls and boys, in compliance with international standards. The Committee also requests that, in its next periodic report, the State party provide detailed information on the extent of this phenomenon.

19. The Committee is concerned that some 20 per cent of children born in the State Party are not registered, in particular in remote areas and among indigenous and Afro-Colombian peoples and internally displaced persons. It is also concerned that the lack of registration

results in difficulties in the access to and enjoyment of their rights under the Covenant (art. 10).

The Committee recommends that the State party take immediate measures to ensure that all children born in the State party are registered, in particular in rural areas and among indigenous and Afro-Colombian peoples and internally displaced persons. The Committee also recommends that the State party complete the modernization of its Civil Registry, and provide sufficient resources to the National Registry's Office to facilitate the registration in rural areas and by internally displaced persons.

20. The Committee is concerned at the large number of persons living in poverty (46 per cent) and in extreme poverty (17.8 per cent) in the State party. The Committee is also concerned that in rural areas extreme poverty is double that of the national average (32.6 per cent) (art. 11).

The Committee urges the State party to effectively combat and reduce poverty by developing effective policies and programmes. In particular, the Committee recommends that the State party give priority to policies aimed at generating income and implement its Strategy on the Reduction of Poverty and Inequalities adopted in 2004, in full compliance with economic, social and cultural rights, as recommended by the Committee in its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).

21. The Committee is concerned about the high malnutrition rate which affects a considerable number of children and women, in particular among internally displaced groups, as well as persons living in rural areas.

The Committee firmly recommends that the State party adopt an effective national food policy to combat hunger and malnutrition, in particular among children, women, internally displaced persons and persons living in rural areas.

22. The Committee is concerned that the policy encouraging agro-exporting goods, such as agro-fuels, may deprive peasants from cultivating their lands. The Committee is also concerned about the unequal distribution of lands owned by a minority of the population, as well as about the absence of a genuine agrarian reform, as recommended in the previous concluding observations of the Committee (art. 11).

The Committee recommends that the State party develop agricultural policies which prioritize the production of food; implement programmes that protect national food production with incentives for small producers; and ensure the restitution of lands taken from indigenous and Afro-Colombian peoples, as well as peasant communities.

23. The Committee is concerned that access to safe drinking water and sanitation is not universal and that, in some rural areas, especially in the Chocò region, almost 90 per cent of the population do not have access to safe drinking water.

The Committee calls upon the State party to adopt a national water policy in order to ensure universal access to safe drinking water, in particular to persons living in rural areas.

24. The Committee is concerned about housing deficit in the State party in terms of quantity and quality, and that overcrowding in housing is widespread among disadvantaged and marginalized individuals and families. The Committee is also concerned that internally displaced persons are offered inadequate temporary housing. The Committee is further concerned that forced evictions are widespread in the State party, including in relation to internally displaced families (art. 11).

In line with its general comment No. 4, the Committee recommends that the State party adopt a national strategy to provide the population with sustainable solutions for

housing; take immediate measures to ensure access to adequate housing, in particular for disadvantaged and marginalized individuals and families, including internally displaced persons, indigenous and Afro-Colombian peoples. The Committee urges the State to take practical measures, including by adopting an adequate legal framework to ensure that persons forcibly evicted are provided with alternative accommodation or compensation, in accordance with the guidelines adopted by the Committee in its general comment No. 7. The Committee also urges the State party to provide detailed information in its next periodic report, about the extent of homelessness in the State party and the practical measures taken to address this problem.

25. The Committee is concerned that maternal and infant mortality remain very high and persistent in the State party, in particular in rural areas and among indigenous peoples in Amazonas and Antioquia, and Afro-Colombian peoples in the Pacific and Atlantic coasts, due to difficulties in accessing health-care services (art. 12).

The Committee recommends that the State party strengthen its public health policy, to ensure for all, in particular for the indigenous, Afro-Colombian peoples and persons living in rural areas, universal access to health-care services. The Committee also recommends that the State party take all necessary measures to ensure that health-care services are accessible to those living in poverty.

26. The Committee is highly concerned about the increasing rate of teenage pregnancies and the lack of adequate and accessible sexual and reproductive health services, in particular in rural areas and among internally displaced persons (art. 12).

The Committee recommends that the State party ensure sexual and reproductive education in schools. It also recommends that the State party increase resources allocated to sexual and reproductive health services, in particular in rural areas and among internally displaced persons, and carry out a proactive strategy to prevent early pregnancies.

27. The Committee is concerned at the high rate of drug consumption in the State party, in particular among adolescents and its negative effects on individual health, as well as its impact on public health care (art. 12).

The Committee recommends that the State party include programmes to combat drug consumption in its public health and education policies, including information campaigns on the negative effects of the use of narcotics.

28. The Committee notes with deep concern that drug production and trafficking remains persistent in the State party and that it is a major processor and exporter of cocaine, despite efforts made to eradicate illicit coca production. The Committee also notes with concern the resulting drug violence; large-scale internal displacement; widespread corruption; negative consequences of anti-narcotics measures such as the effect of aerial fumigation on food security, adverse health impacts and denial of livelihoods; and that profit from this illicit economy finances all sides of the armed internal conflict in the State party (arts. 11, 12).

The Committee recommends that the State party incorporate economic, social and cultural rights in strategy to combat drug-trafficking.

In this regard, the State party should allocate significant resources for:

- (a) Ensuring transparency and accountability in counternarcotics efforts;**
- (b) Conducting alternative and sustainable development activities for farmers currently involved in illicit coca production;**
- (c) Enhancing the Presidential Programme against corruption, prosecuting and sentencing those responsible, including State and local officials;**

(d) Strengthening and reforming local institutions particularly the police and judiciary.

The Committee reminds the State party that counternarcotics efforts should not lead to adverse impacts on the enjoyment of economic, social and cultural rights.

29. The Committee is concerned that access to free and compulsory education is not fully ensured, as families continue to pay for the provision of educational services such as school exams reports, carnet, certifications and the use of equipment based on their incomes (arts. 13, 14).

The Committee recommends that the State party take immediate measures to ensure access of all children without discrimination, to free and compulsory primary education.

30. The Committee is concerned about the high rate of illiteracy among young persons and adults in the State party, in particular among disadvantaged and marginalized groups, as well as in rural areas (arts. 13, 14).

The Committee recommends that the State party take all necessary measures to combat illiteracy, including by carrying out awareness-raising campaigns to sensitize parents, in particular indigenous and Afro-Colombian peoples and populations in rural areas, to the importance of education for their children.

31. **The Committee encourages the State party to resume the drafting process of the National Plan of Action on Human Rights and International Humanitarian Law in consultation with different stakeholders.**

32. **The Committee encourages the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

33. **The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.**

34. **The Committee invites the State party to update its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting.**

35. **The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2015.**
