

UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)

INTRODUCTORY TEXT: After considering the seventh periodic report submitted to it by Colombia, the UN Human Rights Committee requested certain clarifications from Colombia. In this case, we focus on the Committee's requests concerning extrajudicial executions, landmines, military justice and child recruitment. The Colombian Government provided the required explanations, on the basis of which the CCPR adopted its concluding observations.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

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A. LIST OF ISSUES

[**Source:** United Nations Human Rights Committee, "List of issues in relation to the seventh periodic report of Colombia", UN Doc. No. CCPR/C/COL/Q/7, 26 April 2016, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCOL%2fQ%2f7&Lang=en (footnotes omitted)]

[...]

Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; violence against women; right to liberty and security of person (arts. 2, 3, 6, 7 and 9)

[...]

12. Please provide updated information on the investigations into alleged extrajudicial executions, including those referred to as “false positives” [the execution of civilians reported by the security forces as lawful killings of members of the guerrillas forces engaging in hostilities], and their results, including any proceedings and the sentences handed down to the perpetrators; indicate whether any investigations are ongoing and, if so, their current status; specify which court handled or is handling the investigations; and indicate how many of the alleged perpetrators who have been or are being investigated were commanding officers. Please provide information on the number of reports of extrajudicial killings by military or police officers received during the reporting period and on the investigations carried out and their outcomes, including any proceedings and the sentences handed down to the perpetrators. Lastly, please provide information on measures taken to prevent civilians from being affected by any unexploded landmines in the State party and on efforts to have them safely removed by trained personnel.

[...]

Right to a fair trial and independence of the judiciary (art. 14)

21. Please provide information on the content and current status of the draft legislation relating to military courts that is currently under discussion. Please also comment on information suggesting that the draft legislation is not fully consistent with the State party’s human rights obligations under the Covenant in that, if approved, it would allow military courts to exercise jurisdiction over certain offences, such as homicide, that could also constitute human rights violations. [...]

[...]

Measures for the protection of minors (art. 24)

[...]

27. [...] [P]lease provide updated information on the impact of measures adopted to prevent and combat the use and recruitment of children by armed groups. In doing so, please provide statistical information on the number of children who were separated from non-State armed groups during the period under review. [...] [P]lease provide statistics for the reporting period on the number of separated children who received protection and/or care, specifying the type of protection and/or care received. Please also clarify whether the aforementioned prevention, protection and care measures are also applicable to children used and/or recruited by illegal armed groups that emerged in the wake of the demobilization of paramilitary organizations and provide information on measures taken to ensure that these children receive adequate protection and reintegration assistance and are not treated as criminals. Please provide updated information on measures taken to prosecute and punish those responsible for the use and recruitment of children, and on the results of such measures. With regard to the Committee’s previous recommendations [...], please also provide information on measures taken to prevent the involvement of children in intelligence activities or in military civic acts.

[...]

B. REPLY TO THE LIST OF ISSUES

[Source: United Nations Human Rights Committee, "Replies of Colombia to the list of issues," 18 August 2016, UN Doc. No. CCPR/C/COL/Q/7/Add.1, available at :

[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCOL%2fQ%2f7%2fAdd.1&Lang=en)

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[...]

IV. Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; violence against women; right to liberty and security of person (arts. 2, 3, 6 and 9)

[...]

9. Investigations of suspected homicide of a protected person

30. The cases referred to as "false-positives" in the media do not correspond to any criminal category or offence. The illegal acts that took place in such situations are heard by the Attorney General's Office as homicides that were falsely presented as combat deaths by members of the public security forces and each one is criminally investigated and prosecuted as a homicide of a protected person.

31. There are 3,348 cases of homicides associated with acts by the public security forces for which proceedings are under way; 7,567 victims have been identified and 1,199 members of the public security forces have been convicted in these cases. According to information provided by the Attorney General's Office, at least 2,154 cases are related to homicides falsely presented as combat deaths by members of the security forces.

Measures taken to prevent civilians from being affected by unexploded landmines

Humanitarian demining

32. In August 2015 and in January 2016, respectively, San Francisco (Antioquia) and San Vicente Chucurí (Santander) were declared to be the fourth and fifth municipalities free of suspicion of landmines in Colombia. Humanitarian Demining Battalion No. 60 cleared 477,328 m² of land and destroyed 414 devices in these two municipalities. Throughout Colombia, 288,712 m² of land have been set aside for demining purposes; 158,121 m² have been cleared, and 283 unexploded ordnance destroyed by demining teams.

33. In addition, an agreement was concluded at the Havana Talks to clear and decontaminate the land of

anti-personnel mines, improvised explosive devices and unexploded ordnance and explosive remnants of war more generally. Under the agreement, the parties undertook to maintain the cleared and decontaminated areas identified in order to provide guarantees of non-recurrence and to the communities concerned. The areas identified for the purposes of the Agreement were the village Orejón, in Briceño (Antioquia), and the village Saint Helena, in Mesetas (Meta).

34. National initiatives have also been developed to educate communities about the dangers posed by anti-personnel mines. In 2015 and 2016, training was given on how to deal with emergency situations and on unexploded ordnance risks. In terms of communities, training was provided for first responders, coffee-grower trainers, and manual illicit crop eradicators, as well as for staff of national parks and for indigenous communities. Workshops were also conducted as part of school and sports activities, as well as in coordination with the National Learning Service mobile classrooms. Educational materials were distributed to children and to local authorities. A total of 23,532 individuals, including 3,545 indigenous persons, participated in the various training initiatives.

[...]

VII. Right to a fair trial and independence of the judiciary (art. 14)

18. Military penal justice

85. Legislative Act No. 01 of 25 June 2015 amended article 221 of the Constitution of Colombia on military penal justice. The Act seeks to ensure that when a member of the public security forces is investigated or tried in the ordinary or special courts, for a criminal offence committed in connection with the armed conflict or confrontation that meets the aforementioned exceptional conditions, such investigation or trial is carried out within the normative framework of international humanitarian law. It also requires that whoever is responsible for investigating or trying the member will have undergone the relevant studies and training. Thus, the competence of the military penal justice system is subject to criteria that are subjective (member of the public security forces in active service), objective criteria (related to the service), and normative criteria (breaches of international humanitarian law), given that international humanitarian law is the particular rule applicable to the security forces in the context of the armed conflict.

86. It is important to clarify that Act No. 1407 of 2010, or the Military Penal Code, precludes military penal courts from hearing cases of serious human rights violations, cases with characteristics of crimes against humanity or genocide, and breaches of international humanitarian law.

[...]

XI. Measures for the protection of minors (art. 24)

[...]

23. Prevention of the use and recruitment of children by armed groups

105. From 1999 to 31 May 2016, a special support programme operated by the Colombian Family Welfare Institute on restoring the rights of children and adolescents who are victims of unlawful recruitment has benefited a total of 6,006 children and adolescents. The regions of Antioquia, Bogota, Meta and Valle have welcomed the highest number of children separated from non-State armed groups.

106. The focus of the various aspects of the programme is comprehensive protection, including actions aimed at restoring the effective implementation of the rights of victims, providing conditions for a decent life, promoting their integration into social, economic and political life, and providing information, and legal and psychosocial support and guidance with a view to facilitating access to the rights to truth, justice and reparation. [...]

[...]

C. CONCLUDING OBSERVATIONS

[Source: United Nations Human Rights Committee, “Concluding observations on the seventh periodic report of Colombia”, 17 November 2016, UN Doc. No. CCPR/C/COL/CO/7 available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCOL%2fCO%2f7&Lang=en (footnotes omitted)]

Concluding observations on the seventh periodic report of Colombia

[...]

C. Principal matters of concern and recommendations

[...]

Internal armed conflict

8. Although the Committee notes that peace negotiations with the Revolutionary Armed Forces of Colombia — People’s Army (FARC-EP) have led to a considerable reduction in the impact of the armed conflict on the civilian population, it is concerned by reports that violations of Covenant rights, including the arbitrary deprivation of life, enforced disappearances and torture, continued to be committed during the period under review. [...]

9. The State party should continue and intensify its efforts to prevent violations of Covenant rights and to give effect to the rights of victims of the armed conflict to truth, justice and full reparation. It should, in particular, ensure that:

[...]

(b) All violations of Covenant rights are investigated promptly, thoroughly and impartially, and the perpetrators of such violations are brought to justice and held accountable for their acts;

(c) Effective protection and care is afforded to the most vulnerable persons and communities, in particular women, children, older adults, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, Afro-Colombians and indigenous peoples;

(d) All victims receive full reparation, including the restitution of their land.

[...]

11. The State party should redouble its efforts to ensure that none of the serious violations of Covenant rights committed by members of demobilized paramilitary groups — including violations that have allegedly been committed by paramilitary leaders who have been extradited to the United States — goes unpunished and that the victims receive full reparation.

Illegal armed groups that have formed in the wake of the demobilization of paramilitary organizations

12. While the Committee takes note of the measures adopted by the State party to combat organized crime, it is concerned by reports of abuses allegedly committed during the period under review by illegal armed groups that have formed in the wake of the demobilization of paramilitary organizations. It is also concerned by claims that some of these groups have acted in collusion with agents of the State and by reports of abuses allegedly committed by these groups in Buenaventura (Valle del Cauca), although it does take note of the State party's assertion that the strategy which it has used there has reduced the level of violence [...].

13. The State party should redouble its efforts to prevent the commission of abuses by illegal armed groups that have formed in the wake of the demobilization of paramilitary organizations and to ensure that the responsible parties, including any agents of the State who provide support to such groups or allow them to act with their acquiescence, are brought to justice and punished. The State party should also ensure that victims receive sufficient protection and full reparation.

Arbitrary deprivation of life

14. The Committee notes with concern the allegations that, during the period under review, cases of arbitrary deprivation of life by members of the security forces continued to be recorded. It notes the information provided by the State party on the progress made in investigating homicides associated with the actions of the security forces, including those known as "false positives", but is concerned that the number of perpetrators convicted remains low in relation to the high total number of victims (art. 6).

15. The State party should intensify its efforts to prevent arbitrary deprivations of life by agents of the State. It should also ensure that all cases of arbitrary deprivation of life are investigated promptly, thoroughly and impartially, and that the perpetrators, including those in a position of command, are prosecuted and punished. In that regard, it should also ensure that investigations are launched, carried out and concluded in the regular justice system.

[...]

Use and recruitment of children by illegal armed groups

40. The Committee takes note of the efforts made by the State party to prevent children from being used or recruited by illegal armed groups and to separate those who have been recruited from those groups and offer them assistance and protection. It is concerned, however, at reports of the continued use and recruitment of children by illegal armed groups, including, in particular, the use and recruitment of indigenous and Afro-Colombian children, and by illegal armed groups that formed in the wake of the demobilization of paramilitary organizations. The Committee takes note of the State party's statement that, in accordance with the laws in force, security forces do not engage in intelligence activities or military civic acts that involve children. It is concerned, however, by reports of cases in which members of the security forces allegedly involved children in such activities during the reporting period (art. 24).

41. The State party should continue and step up its efforts to prevent the use and recruitment of children by illegal armed groups; to ensure that, in accordance with the jurisprudence of the Constitutional Court, all children who have been used or recruited by such groups are treated as victims, regardless of which armed group they have been separated from; to ensure that all children separated from such groups receive protection and proper care with a view to their physical and psychological recovery and to the restoration of their rights; and to ensure that the responsible parties stand trial and are punished. The State party should also adopt effective measures to ensure that, in actual practice, children are not involved in intelligence work or in military civic activities.

[...]

Discussion

I. Applicable Law

1. (*Document C, para. 12*) Assuming that there was a NIAC in Colombia, is it possible to distinguish illegal armed groups that are parties to the conflict from criminal gangs that are not parties? Under what circumstances is the conduct of the latter not governed by IHL? Where illegal armed groups act in collusion with agents of the State, to whom should violations of IHL be attributed?
2. Does International Human Rights Law (IHRL) apply in times of armed conflict? In the same way as in times of peace? Are Colombia's armed groups bound by IHRL? Are criminal gangs? (See ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para 25; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para 106; ICJ, *Democratic Republic of Congo v Uganda*, Judgment, 19 December 2005, paras. 216-220).
3. From the information in this case, how could one argue that the UN Human Rights Committee serves as an IHL implementation mechanism?

II. Murder/Arbitrary deprivation of life

4. (*Document A, para. 12; Document B, paras 30 – 31; Document C, paras 14 – 15*)

a. How do IHL and IHRL rules differ as regards the right to life? In times of armed conflict, how do we determine whether deprivation of life is “arbitrary”? (CIHL, Rules 1, 6 and 47; P I, Art. 48 and 51; ICRC Interpretative Guidance on the notion of Direct Participation in Hostilities, Part 2; International Covenant on Civil and Political Rights, Art. 6)

b. (*Document A, para. 12; Document B, para. 30*) How do the killings described as “false positives” violate IHL? Do you agree with the Colombian Government’s allegation that false positives “do not correspond to any criminal category or offence”? Does the State have the obligation to investigate and prosecute every extra-judicial execution under IHL? What obligations do States have to comply with as regards the allegation of the commission of war crimes? Under which circumstances may an extra-judicial execution amount to a grave breach? (CIHL, Rule 157, GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; P I, Art. 85)

III. Humanitarian demining activities

5. (*Document A, para. 12; Document B, paras 32 – 34*)

a. Is the use of landmines prohibited under IHL? In IACs? In NIACs? What about landmines makes their use in armed conflicts problematic? (CIHL, Rule 81; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; Protocol II to the Convention on Certain Conventional Weapons; Protocol II to the Convention on Certain Conventional Weapons as amended on 3 May 1996)

b. Are parties to conflicts obliged to clear landmines and other unexploded ordinance? Even those they have not themselves laid? In your opinion, is this an IHL obligation, or rather an IHRL obligation? If it is the latter, does it apply equally to armed groups? (Protocol II to the Convention on Certain Conventional Weapons, Arts 5(1), 9; Protocol II to the Convention on Certain Conventional Weapons as amended on 3 May 1996, Arts 3(2) and 10; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Art. 5)

IV. Military Justice

6. (*Document A, para. 21; Document B, paras 85 – 86*)

a. Can military courts prosecute war crimes committed by a State’s own armed forces? Enemy armed forces? Is your answer the same for IACs and NIACs? (GC I-IV, Art. 3; GC III, Art. 102; P I, Art. 75 (4); P II, Art. 6(2))

b. What, in your opinion, is the essence of the Human Rights Committee’s concern in *para. 21* of Document A? What argument does the Government of Colombia make to reassure the Committee in the following paragraph?

c. Do you agree with the position expressed by the Government of Colombia in *para. 85* of *Document B* that IHL is the “particular rule applicable to the security forces in the context of the armed conflict”? Is IHL, in your opinion, the only branch of international law applicable in armed conflict, as the *lex specialis*? (See ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, para. 25; ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, para. 106; ICJ, Democratic Republic of Congo v Uganda, Judgment, 19 December 2005, paras 216-220).

V. Use and recruitment of children

7. (*Document A, para. 27; Document B, paras 105 – 106, Document C, paras 40 – 41*)

- a. Does IHL prohibit the recruitment of children into armed forces? Is there an explicit age limit? Does IHRL prohibit the recruitment of children into armed forces? Are there differences between the IHL prohibition and the IHRL prohibition? (P II, Art. 4(3)(c); CIHL, Rules 136 and 137; P I, Art. 77; Convention on the Rights of the Child, Art. 38; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Arts 2, 3 and 4)
- b. Why, in your opinion, does the Committee only refer in *para. 27* of Document A to the “recruitment of children by armed groups”? How do you explain the fact that the Committee brings up violations by armed groups with the Colombian Government? (CIHL, Rule 136; P I, Art. 77; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Art. 4)
- c. Are children below the age of fifteen allowed to directly participate in hostilities? If they do, can they be targeted? Prosecuted for their participation in hostilities? If they are recruited into the armed forces of the State? If they are members of an armed group? If they are civilians directly participating in hostilities? (CIHL, Rule 137; P II, Art. 4(3)(c)-(e); P I, Art. 77)
- d. Can “involvement in intelligence activities” and the involvement in “military civic acts” referred to in *para. 27 of Document A*, and *paras 40 and 41* of Document C constitute direct participation in hostilities? What would you need to know in order to make such determination? Is the concept of direct participation in hostilities prohibited for children the same as the concept of direct participation in hostilities making a civilian lose protection against attacks? (P II, Art. 4(3)(c)-(e); CIHL, Rules 136 and 137; P I, Art. 77; Convention on the Rights of the Child, Art. 38; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Arts 2, 3 and 4; ICRC Interpretative Guidance on the notion of Direct Participation in Hostilities, pp. 43-64; ICC, *The Prosecutor v Thomas Lubanga Dyilo*, Decision on Confirmation of Charges, paras 260 – 267)

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