Bogotá, May, 2022

**Secretariat of the Human Rights Committee**

Office of the United Nations High Commissioner for Human Rights

Palais Wilson – 52, rue des Pâquis CH-1201

Geneva (Switzerland)

**Re: Independent information on Colombia, submitted for consideration by the Human Rights Committee (the “Committee”) for the 136th Session**

Distinguished Committee members,

The Center for Reproductive Rights (the Center) —an international non-profit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Kathmandu, Geneva, and Washington, D.C.—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfil.  The Center seeks to contribute to the Committee’s elaboration of the List of Issues (LOIs) for Colombia by providing independent information concerning Colombia’s compliance with its obligations to respect, protect, and fulfil the rights protected under the International Covenant on Civil and Political Rights (the “ICCPR”).

This document focuses on: (**I**) the impacts of ***“ the Illicit Crop Eradication Program using aerial spraying with the herbicide Glyphosate glyphosate”*** (hereinafter PECIG), applied by the Colombian Government, on reproductive rights, particularly of rural women ; (**II**) the implementation of the landmark decision C-055/2022 of the Constitutional Court, which decriminalizes abortion up to week 24 and, (**III)** The recognition of reproductive violence occurred during the conflict by the transitional justice mechanisms, mainly, the Special Jurisdiction for Peace (hereinafter JEP) and the Commission for the Clarification of the Truth (hereinafter CEV or Truth Commission)

1. **Impacts of PECIG on reproductive rights**

*Application of the precautionary principle*

1. Between 1992 and 2017, the Colombian government used the herbicide glyphosate to eradicate so-declared illicit crops by aerial spraying in rural areas particularly affected by armed conflict[[1]](#endnote-2). There have been several reports of health damage cause by the exposure to glyphosate.
2. Civil society organizations[[2]](#endnote-3) and scientists’ studies has reported negative consequences to health and environment after applying the PECIG. Between 1997 and 2002, around 1.852 complaints were presented to the regional Ombudsman's Offices, Personerías Municipales and Policie Inspections, regarding damage to food crops, destruction of natural pastures, animal diseases and deaths, poisoning of people, mainly children, among other consequences in the departments of Boyacá, Meta, Guaviare, Caquetá and Putumayo.
3. Among the negative impacts on health in occasion of the PECIG, people reported damages on reproductive health. In Caquetá, “women suffered miscarriages or the births of children with congenital problems attributed to glyphosate exposure”[[3]](#endnote-4). The state of Ecuador sued Colombia before the International Court of Justice for serious consequences caused to Ecuadorian citizens living in border areas due to aerial spraying[[4]](#endnote-5). The lawsuit presented scientific evidence of "an association” of the sprays “with an increased risk of miscarriages, premature births and non-Hodgkin's lymphoma"[[5]](#endnote-6). In addition, an analysis made on 47 women living on the frontier between the two countries, and exposed to the PECIG, found symptoms of intoxication and genetic damage in part of their cells.
4. The Center for Reproductive Rights, alongside the School of Public Health of the Universidad del Valle, launched a report on 2020 that reveals the negative impacts of glyphosate on reproductive health. The study concludes that there are affectations such as, abortion, perinatal effects and transgenerational effects and recommends preventing exposure of women of reproductive age, their children and their partners to glyphosate[[6]](#endnote-7) in application of ***the precautionary principle***. Based on these conclusions, a report entitled "Reproductive Health and Glyphosate" was submitted to the Truth Commission, in which we propose a reading of the damage caused by glyphosate spraying from a gender perspective and through the lens of reproductive rights.

*Limited access to justice for people affected by PECIG*

1. Due to the advocacy of civil society organizations and human rights defenders[[7]](#endnote-8), it was only until the end of 2001 that the CNE adopted a procedure for addressing complaints resulting from PECIG fumigations[[8]](#endnote-9). A total of 17,643 families filed complaints, but by August 2015, 17,017 had been rejected or filed (96.5%); 474 processed for compensation (2.7%); 14 families did not accept the compensation offered (0.08%); and 138 cases were still in process (0.8%)[[9]](#endnote-10). According to civil society organizations, this procedure was inefficient, among other reasons due to its complexity, the lack of visits to the sprayed areas by the authorities in charge caused by situations of public order, lack of logistics and economic resources, and the unwillingness of the affected people to file complaints due to the impossibility of providing evidence of the toxicity of glyphosate[[10]](#endnote-11).
2. Regarding the internal legal procedures, the people who suffered impacts were requested to present highly specialized evidence difficult to obtain, such as the exact location of the places sprayed and the clear relation between the glyphosate spraying and damage[[11]](#endnote-12). Particularly, the Council State did not recognize the harmful effects and the risk of PECIG for people’s health, arguing that no evidence was provided that could determinate absolute scientific certainty of irreversible damage. In some decisions, this Court required evidence from individuals that they were unable to provide in order to consider that the right to life or health was threatened or damaged[[12]](#endnote-13).

*Current status of PECIG in Colombia*

1. In 2015, the PECIG was suspended by the CNE[[13]](#endnote-14). In 2017, the Constitutional Court studied a tutela action filed by the Personero of Nóvita (Chocó) to protect the indigenous and black communities of the municipality, affected by glyphosate fumigations carried out without prior consultation. Ruling T-236 of 2017 ordered the National Narcotics Council (Hereinafter CNE) not to resume the fumigations and imposed requirements in case the Government wanted to reactivate this policy[[14]](#endnote-15).
2. Despite the evidence and reports on the impacts of the PECIG, at the initiative of the current national government, the Anti-Narcotics Police recently proposed to the National Environmental Licensing Authority (ANLA) to resume spraying in 104 municipalities, concentrated in six zones of the country, covering more than 170,000 hectares[[15]](#endnote-16). According to the government, it does not imply "repeated and prolonged exposure to the substance", and therefore "the potential risk of suffering an acute adverse health effect is low for all age groups "[[16]](#endnote-17).
3. Seven United Nations Rapporteurs expressed their concerns regarding the Colombian Government's intention to resume the PECIG, warning that it would pose enormous risks to human rights and the environment and that it would not comply with the conditions established by the Constitutional Court, nor with international obligations on the matter[[17]](#endnote-18). Nevertheless, the government issued Decree 380 of 2021 establishing the regulatory framework for this program, should the CNE approve its resumption[[18]](#endnote-19).
4. **Decriminalization of abortion up to week 24 by the Constitutional Court**

*Causa Justa movement*

1. Since Ruling C-355 of 2006 of the Constitutional Court, access to safe abortion was permitted in Colombia in three circumstances: when the life and health (including mental health) of the woman is at risk, when the fetus is inviable and when the pregnancy is the result of rape or incest[[19]](#endnote-20). Since then, the Court had established several precedents that recognize access to abortion as a fundamental right and prohibits the imposition of illegal requirements or delays and limits the use of conscientious objection[[20]](#endnote-21). Despite this, for 15 years, abortion had a dual nature, as a right and as a crime, generating serious barriers to women's access to this essential service, even in the three circumstances that were allowed by the Court in 2006. Women and girls continued facing discrimination and stigma, largely due to the structural constraint of criminalization.
2. Under the system implemented since the C-355 ruling, 97% of the women and girls criminalized for abortion were in rural areas and 30% of the criminalized women have been victims of different forms of gender-based violence[[21]](#endnote-22). Additionally, 12.5% of the abortion cases prosecuted by the Colombian justice system corresponded to women between 14 and 17 years of age; and 24% of the cases that ended in conviction corresponded to girls and adolescents. In other words, the system of grounds criminalized the most vulnerable women[[22]](#endnote-23).

*Constitutional Court Decision: C-055/2022*

1. The Court took a historic step to guarantee the reproductive rights of women, girls, adolescents and persons with gestational capacity. It decriminalized abortion up to 24 weeks of gestation and, without time limit, for situations under the grounds endorsed by Ruling C-355 of 2006[[23]](#endnote-24). In the ruling, the Constitutional Court urged Congress and the Government to regulate the matter in a comprehensive way, including access to contraceptives, sexual education, and maternal health[[24]](#endnote-25). The decision was made as the result of a lawsuit presented in September 2020 by Causa Justa, a diverse movement of reproductive rights defenders and activists that brings together more than 100 civil society organizations throughout Colombia[[25]](#endnote-26).
2. Even though this is an important step in the protection of women’s rights, there are still barriers that affect the access to safe abortion. Some healthcare providers disregard for the binding nature of the rulings of the Constitutional Court, both Ruling C-355 of 2006 and Ruling C-055 of 2022). As a result, health professionals keep imposing delays and additional requirements to access a safe and legal abortion, violating standards stablished by the Constitutional Court and regulation of the Ministry of Health on the matter[[26]](#endnote-27). Local organizations report that in the last two months at least 52 women faced difficulties to access abortion, and the barriers are deeper in cases of migrant women and girls from Venezuelan with an irregular migratory status who do not have access to public health care system[[27]](#endnote-28).
3. **The recognition of Reproductive Violence and Sexual Violence occurred during the conflict by the mechanisms of transitional justice in Colombia**

*The recognition of Reproductive Violence by the Commission for the Clarification of the Truth (CEV)*

1. The Center for Reproductive Rights published a report for the CEV in June 2020 that provides specific legal and conceptual elements for the identification and analysis of reproductive violence, understood as practices that violated reproductive autonomy, within the Colombian armed conflict, and its impacts on the lives of victims. The report identifies several modalities of reproductive rights violations, some of which directly impact or hinder reproductive capacity, such us forced contraception, forced sterilization, and forced abortion[[28]](#endnote-29).
2. As a result, the Truth Commission stated that all armed groups in Colombian armed conflict have perpetrated different forms of reproductive violence against women, yet its occurrence has received less visibility and importance then sexual violence[[29]](#endnote-30). Since then, CEV has established the relevance of implementing educational mechanisms so that people understand the serious impact of reproductive violence on women's health and life project.
3. However, there is still a need to ensure that Colombia’s Special Peace Jurisdiction, the other transitional justice mechanism, “address the full spectrum of gender-based and sexual-violence”. In order to do so, it must consider alternatives to prosecute women’s key experiences during conflict, including violations of their reproductive rights.

*The demand of civil society organizations to the JEP to open a national case about reproductive violence, sexual violence and violence against LGTB community occurred during the armed conflict.*

1. The strategy of implementing a gender focus in the JEP, regarding victimizing events that occurred during the armed conflict, has been widely questioned by feminist and LGTBI organizations. They consider that cases of sexual and reproductive violence and violence against LGTBI community have been treated from a limited perspective in relation to the depth and systematicity with which these types of events occurred during the armed conflict.
2. On 2020, feminist and LGBTI organizations questioned in a report the legal strategy of the JEP. In their consideration, the JEP has used stereotypical views that tend to classify acts of sexual violence as private, incidental and unconnected to the conflict environment [[30]](#endnote-31). They are advocating as well for the JEP to prioritize the national macro-case about sexual violence and reproductive violence during the armed conflict, as it was incorporated in the Final Agreement [[31]](#endnote-32).
3. **Suggested questions**
4. The Center respectfully suggest that the Committee asks Colombia to report on the following:
5. i. The steps taken to investigate human rights violations resulting from the effects on health, reproductive health and the environment caused by the application of the PECIG, up to year 2015, as part of the policies against illicit crops; ii. what epidemiological surveillance measures are being or will be implemented to detect and diagnose the effects of exposure to toxic substances and their effects on health, including reproductive health in the most affected departments; iii. the implementation of procedures, both administrative and judicial, that allow the recognition and reparation of damages caused to the population by the PECIGs, without requiring disproportionate standards of proof that impede the victims' access to justice.
6. i. The steps being taken by the Government to implement the Ruling C-055/2022 in all its integrity, specially, the policy to eliminate any obstacle to the exercise of sexual and reproductive right.
7. i. The steps being taken by the transitional mechanisms to recognize the occurrence of reproductive violence during the conflict; ii. what are the JEP's arguments for prioritizing, or not, a national macro-case on gender violence; iii. How the JEP will guarantee the inclusion of the reproductive violence concept in their decisions, in order to make visible the impact of this type of violation on the life projects of women and girls.
8. We appreciate the Committee’s longstanding commitment to reproductive rights. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

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