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## Human Rights Council

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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

## **Annual Report of the United Nations High Commissioner for Human Rights**

**Addendum**

**Situation of human rights in Colombia<sup>\*\*</sup>**

### *Summary*

The United Nations High Commissioner for Human Rights celebrates the advances in the negotiations to end the internal armed conflict between the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP), highlights their positive effects during 2015 and identifies risks and opportunities for peacebuilding, based on the human rights situation observed and international experience.

The High Commissioner further examines structural human rights challenges considered priorities for the peace process to transcend the end of hostilities and create a transformation toward the enjoyment of human rights by all men, women, girls and boys in Colombia.

The report includes 13 recommendations.

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\* The summary of the present report is circulated in all the official languages. The report itself, which is annexed to the summary, is being issued in English and Spanish only.

\*\* The present document is submitted late in order to reflect the most recent information.

## Annex

*[English and Spanish only]*

### **Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia**

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## I. Introduction

1. The Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR) was established by a 1996 agreement with the Government and renewed in 2014 through 31 October 2016. This report is the result of OHCHR monitoring of the human rights situation and technical cooperation, through its 12 field offices. From 15 to 21 April, the Deputy High Commissioner for Human Rights visited Colombia, meeting national and local authorities, and representatives of ethnic, social and human rights organisations in Bogotá, Cauca and Putumayo. Colombia's periodic reports were reviewed by the committees on the rights of the child, against torture and against racial discrimination.

2. The High Commissioner transmits his sincere recognition to the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) for the historic advances in their negotiations in Havana to end the internal armed conflict. Four of the six negotiation agenda items have concluded in preliminary agreements. The agreement reached in 2015 on victims of the armed conflict follows accords on rural reform, political participation and illegal drugs. Congress approved holding a referendum on the peace accords that will require approval by 13% of the electorate. The Government and the National Liberation Army (ELN) have yet to initiate formal peace negotiations.

3. The United Nations and the Union of South American Nations (UNASUR) designated representatives to support the negotiating parties' sub-commission on the end of the armed conflict. In 2015, the President of the Republic announced that Colombia would request Security Council support in monitoring an eventual ceasefire.

4. As the Government recognised in its planning, the sustainability of peace will depend on Colombia overcoming the enormous divide in human rights enjoyment between rural and urban areas, between men and women, and between different population and ethnic groups. This will require participative processes so that the state - with commitment, funds and capacity - and civil society, including social movements, the private sector, academia and faith-based entities - find and implement solutions jointly. The implementation of the eventual peace agreements must aim to generate the conditions necessary to overcome past conflict-related violations, as well as structural human rights problems.

5. OHCHR continued coordinating with and supporting the Ombudsperson's Office throughout the country. It also strengthened coordination with the United Nations Country Team, advising on the integration of a rights-based approach in the Development Assistance Framework 2015-19 (UNDAF) and on support to State implementation of international and regional human rights mechanisms' recommendations.

## II. Peace process and victims of the armed conflict

6. In 2015, the peace negotiations completed their third year. The High Commissioner highlights Government and FARC-EP recognition of the centrality of victims and their rights in the negotiations and underlines the importance of the realisation of these commitments in the implementation phase.

7. Between June and December 2015, the parties announced agreements to create an Integrated Truth, Justice, Reparation and Non-Recurrence System, composed of an independent and non-judicial Commission on the Clarification of Truth, Coexistence and Non-Repetition; a Special Unit for Locating Persons Disappeared in the Armed Conflict; and a Special Jurisdiction for Peace. They also agreed upon measures on integral

reparations and non-recurrence of violations, and emphasised State human rights obligations.

8. The Integrated System's scope offers a unique opportunity to address victims' rights. OHCHR advises the State on overcoming the considerable implementation challenges, including budgetary issues, financial support mechanisms, operational management, and coordination and deployment processes that promote victims' rights.<sup>11</sup> Transparent member selection processes and an effective administrative system are essential for the system's credibility and legitimacy. Coordination and cooperation mechanisms, including those to ensure constructive relationships with institutions dealing with victims and the judiciary, require definition. A clear system of incentives and guarantees to maximise participation by state actors, the FARC-EP and third parties is necessary. The situation observed by OHCHR highlights the urgent need for an independent protection mechanism for military and police members wishing to contribute to truth and justice.

9. The High Commissioner recognises the value of the Report of the Historical Commission on the Conflict and its Victims, published in February upon request of the negotiating parties in Havana. Future historical clarification processes should further include women's, indigenous peoples' and Afro-Colombian's perspectives.

10. OHCHR advises so that truth clarification and the recognition of responsibilities via a future truth commission reflect varied and ethnically distinct local realities. The proposed commission's mandate incorporates social reconciliation promotion and should provide a common understanding of the magnitude and causes of violations in a context marked by polarisation, violence and exclusion. The commission could be invaluable for confronting the denial that has characterised human rights violation patterns.

11. The agreement on persons reported disappeared or missing includes immediate measures such as the parties' provision of information to accelerate location processes. The Office advises the Government on the creation of the Special Location Unit, foreseen in the accords, with victims' and human rights organisations' participation, and specialised institutions' support. In December in Villavicencio, the Attorney General's Office (AGO) returned the remains of 29 previously unidentified persons, buried in four cemeteries in Meta and Guaviare, to their families.

12. OHCHR advises the Government on overcoming the challenges of the multiple and dissimilar registries of disappeared persons that make measuring the phenomenon's magnitude difficult. The AGO register includes 70,000 persons; the National Registry of the Disappeared 19,855 men and 2,511 women; and the Victims Attention and Reparation Unit (UARIV) 45,515. The National Registry of the Disappeared recorded 5,482 disappearances between January and November, of which 105, including 18 women, are alleged forced disappearances. In October, the National Location Commission began revising its registries, with relevant institutions and social organisations, to produce more reliable data

13. The justice component of the peace agreements generated gruelling debate and was a focus for sectors critical of the peace process. The Special Jurisdiction for Peace accord foresees amnesty and pardon mechanisms and a special judicial procedure on individual criminal responsibility for serious crimes not subject to amnesty, pardon, sanctions or

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<sup>1</sup> Given its mandate, the resources necessary for the future truth commission in Colombia are likely to exceed those invested, for example, in South Africa (400 staff and US\$18 million annual budget in its first years), Peru with a less ambitious mandate (500 staff and over US\$13 million biannual budget), or Guatemala (200 staff and US\$10 million cost over two years).

reparations. It would apply differently to guerrilla, state actors and individuals responsible for grave human rights and/or international humanitarian law violations. The Special Jurisdiction offers a window of opportunity against impunity. OHCHR advises on overcoming the challenges implicit in addressing such a wide range of violations. The accord presents only a general outline and its implementation requires greater definition, including the specific acts to be prosecuted, the applicable legal framework and the procedures for strategic orientation. Shortly after publishing the agreement, the President of the Republic unilaterally announced how it would apply to state and private actors.

14. Between August and November, the country experienced the least intense offensive actions in 50 years of armed conflict, due to confidence-building measures such as the FARC-EP's unilateral ceasefire and the Government's de-escalation of offensive operations. OHCHR observed that the peace negotiations prevented many human rights violations. Nevertheless, the acute humanitarian situation generated by diverse actors continues, disproportionately affecting the rural, indigenous and Afro-Colombian population. The Ombudsperson's Office documented displacements, social control, threats, extortion and restrictions of movement in various departments.

15. OHCHR welcomes the 7 March accord on mine and ordnance clearing. The Government and the FARC-EP initiated a Pilot Mine Clearing Plan in Briceño (Antioquia) with the United Nations Mine Action Service (UNMAS) support. The deactivation of 33 explosive artefacts and clearing of 14,000m<sup>2</sup> of land was announced. A second phase began in Mesetas (Meta). During 2015, the Government reported 222 mine and other artefact victims; 31 died. Sixty-six were civilians, including 12 women and 27 children.

16. In November, the Government announced unilateral measures on behalf of 106 imprisoned FARC-EP members, including pardoning 30 not convicted of serious crimes and a pilot programme for return to civilian life with psychosocial and health support and access to education and job training. OHCHR advises the Government on improving institutional coordination in these processes.

17. The High Commissioner welcomes the announcement that the FARC-EP will end child recruitment and release children under 15 years from their ranks. A child separation programme must be developed rapidly, guaranteeing respect for girls' rights and an ethnically sensitive approach.

18. The High Commissioner supports the recognition of responsibility by all those responsible for human rights violations as part of the peace process. On 6 November, 30 years after the extrajudicial executions and disappearances resulting from the recovery of the Palace of Justice by security forces, the State recognised its responsibility, in partial compliance with an Inter-American Court of Human Rights' judgement.<sup>2</sup>

19. On 6 December, the FARC-EP conducted a recognition of responsibility and public apology ceremony in Bojayá (Chocó) for the civilian deaths and damage caused during a 2002 combat with paramilitary forces. This symbolic event, in which the State also recognised its responsibility, is historic. OHCHR advises on this process, which requires additional action by the State and the FARC-EP to empower and de-marginalise the Medio Atrato (Chocó) residents.

20. The High Commissioner applauds the Presidential decision to request United Nations support for the peace process. The international response must adapt to the Colombian context and characteristics. This will be one of the first such operations since the United Nations adoption of the Human Rights up Front initiative to ensure early and

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<sup>2</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_287\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_287_ing.pdf)

effective United Nations action to prevent or respond to large-scale violations of human rights and/or international humanitarian law. The High Commissioner's annual reports on Colombia document how the conflict's civilian impact transcends the direct effect of hostilities, undermining the free exercise of rights necessary for peace.

21. The peace process presents numerous challenges but greater opportunities to improve human rights enjoyment. The challenges, including illicit economies, require budgetary changes and the will to invest in change opportunities. Compartmentalisation of collective State responsibilities and practices that prioritise process over results must be discarded, in order to reflect the peace accords' integral nature and realise their objectives.

### **III. Peacebuilding: opportunities and risks for human rights**

22. On 9 December, the President of the Republic stated that respect for human rights represents a sound development plan for Colombia. The High Commissioner considers that maximising the opportunity of the peace accords will depend on the capacity to create cultural, institutional, political and economic change in order to enhance human rights enjoyment by the most excluded sectors. Based on its 18 years monitoring in Colombia, OHCHR considers that change must come in the following interrelated areas.

#### **A. Violence**

23. OHCHR observed that post-demobilisation armed groups and related actors constantly undermine human rights and citizen security, the administration of justice and peacebuilding, including land restitution. Dismantling the groups that control stolen land through the use or threat of violence represents a permanent challenge to peace. During two weeks in December in the urban centre of Tumaco, where state presence is strong, 14 persons, including two children and two women, were killed in incidents that the police linked to such groups. In June, a member of a family claiming land restitution in Turbo (Antioquia) was killed in Ayapel (Córdoba). In northern Urabá, a post-demobilisation armed group threatened and harassed peasants whose land had been stolen. In Magdalena, a land restitution judge suffered repeated threats and, in Cesar, computers containing information on land restitution processes were stolen.

24. Based on international experiences, it is foreseeable that the cessation of hostilities and guerrilla demobilisation could lead to power vacuums and disputes over the control of illicit incomes generated by drug trafficking, extortion, human trafficking, prostitution, mining and co-optation of State resources. Diverse local interests and groups opposed to change resulting from the peace process are already employing violence and intimidation to protect their interests, and the State has not had a sufficiently effective response.

25. As OHCHR has observed, this violence is directed against the population, state officials and social leaders defending rights or opposed to illegal activities. Persons that participate in the implementation of the peace agreements, including demobilising guerrillas contributing to truth, justice and non-recurrence, could also be vulnerable. The risks for demobilising persons are known from previous demobilisation processes in Colombia, including of the M-19 and paramilitary groups.

26. Local elections were held on 25 October. The civil society Electoral Observation Mission (MOE) reported 179 politically-related violent incidents during 2015 in 112 municipalities in 28 departments, including 124 threats, 29 attempted killings, 20 killings, four kidnappings and two disappearances. Victims included candidates, elected public officials and political leaders, undermining the right to participate in public affairs, to vote and to be elected.

27. The High Commissioner welcomes on-going State action against organised crime and the numerous arrests made, including of high-level criminals. Greater dismantling of criminal structures through the investigation of criminal money flows and laundering remains necessary, as does strengthening AGO internal coordination.

28. The FARC-EP affirm that its members' reintegration will be an essentially rural process. This represents a new challenge for Colombian institutions more experienced in urban reintegration. Colombian experiences demonstrate the need to address illicit economies and provide attractive alternative economic incentives, such as specialised five to ten-year employment programmes.

29. The guerrilla must abandon the exercise of control through violence practiced during decades operating outside legality. The individual and collective changes necessary for reintegration and civilian political participation require that guerrilla leaders publicly ensure respect for the population's rights and reject violence.

30. The hundreds of assassinations of Unión Patriótica political party leaders and members in the 1980s and 1990s illustrate the elevated risk for new political movements. Security guarantees and transformation of the political reality are essential to avoid repetition of this situation.

## **B. Illegal economies**

31. OHCHR continued accompanying the negotiating platforms on crops for illicit use. While the Peasant Association of Catatumbo (ASCAMCAT) in Norte de Santander fulfilled its commitment that peasant families cease cultivating coca, despite efforts, a number of Government commitments remain unfulfilled. The success of voluntary substitution programmes depends on technical accompaniment and creating viable markets for products. This in turn requires rural infrastructure, among other solutions. For example, in its dialogue on substitution, the Regional Platform of Social Organisations in Putumayo requested government implementation of the Integrated Development Plan for the Amazon-Andes region.

32. The High Commissioner supports the premises of the peace accord on "Solving the problem of illegal drugs," which highlight the human rights impact of producing crops for illicit use and its relationship with poverty, marginalisation, weak state presence and criminal activity. OHCHR also values the decision to develop a participatory human-rights-based response, with a localised focus, recognising the ancestral uses of coca and differentiating between consumption, coca growing and organised crime. A public health approach to address consumption and the promotion of alternative, dignified livelihoods, together with the disarticulation of criminal networks, represent an appropriate strategy to improve living conditions around the country.

33. In the context of health effects of glyphosate in crop eradication, confirmed by the World Health Organisation (WHO), and the Havana agreement on illegal drugs, the National Council on Narcotics took the precautionary measure of suspending glyphosate use from October, and offered incentives for peasants to cease cultivation.

34. OHCHR continued advising Government action to confront illegal mining and its social and human rights effects. A strong expansion of such mining on the Pacific coast was especially detrimental. The situation of the Renacer Negro Community Council (Cauca) exemplifies how gold extraction opportunities and State abandonment attract armed actors and outsiders, debilitating community organisation, control and the environment. The integral measures agreed to by the Government and the Afro-Colombian women of northern Cauca affected by illegal mining were partially implemented but the dialogue was suspended. Illegal mining presents complex challenges that require an integrated response

similar to that proposed on illicit crops. Differentiating between organised crime and other actors, fulfilling human rights and ensuring participation are essential, as is addressing the relationship with corruption and omission by certain authorities.

## **C. Institutional architecture**

35. OHCHR observed the ongoing difficulties of State institutions to effectively implement their legal mandates and ensure their action closes the gap between law and public policy and the genuine enjoyment of rights, especially in conflict-affected zones. These difficulties are especially pronounced when inter-institutional coordination is required. OHCHR advises the nearly 50 State entities that comprise the National Victims Attention and Reparation System. Differences of vision and interests between these institutions neutralise implementation and dilute both responsibility and accountability, generating frustration and disempowerment among victims.

36. Institutional effectiveness, efficiency and credibility are also undermined by the perception of corruption, lack of transparency and the impact of 50 years of conflict on institutional culture, which contributes to stigmatising human rights defenders and social, ethnic and political actors. Lack of transparency, including in the security sector, is disproportional, undermining accountability and the right to participate in public affairs. The following are proposals for overcoming those challenges.

### **a. Human rights indicators**

37. The High Commissioner welcomes the inclusion of references to the rights-based approach in the National Development Plan 2014-2018 and the instruction to apply the approach to all public policy. Nonetheless, development plans and budgets continue to have a sectorial focus oriented more toward implementing budgets than guaranteeing rights. This undermines State ability to measure public policy and investment impacts in terms of the progressive realisation of rights.

38. The Presidential Human Rights and International Humanitarian Law Office has a civil and political rights information management system which OHCHR has advised on but requires improvement. No such system for economic, social and cultural rights (ESCR) exists. OHCHR reiterates its availability to advise on constructing and updating basic human rights indicators. The Havana accords and Agenda 2030 for Sustainable Development emphasise the centrality of ESCR for sustainable development, which obligates the State to maintain detailed data on the enjoyment of rights, disaggregated by location, age, gender, ethnicity, disability and other criteria in order to develop, implement and evaluate public policy.

39. In 2015, the National Planning Department promoted a public discussion of the peace process and its potential dividends based on international experiences. In addition to scarce state presence in various areas, the double challenge of weak institutional capacity, corruption and illicit co-optation of local state authorities on one hand, and deficient quality of results, lack of oversight and clientelism in policy implementation from Bogotá on the other, were emphasised. Ensuring gender equity, particularly in conflict-affected areas, is an additional challenge.

### **b. Participation and social dialogue**

40. As requested by negotiating parties, OHCHR continued to act as guarantor/facilitator in social dialogue processes between the Government and social sectors claiming their rights, including the Agrarian Negotiating Platform (Mesa Única Nacional de la Cumbre Agraria, Étnica, Campesina y Popular), regional platforms in



Antioquia, Arauca, Cauca, Catatumbo, Sur de Bolívar and central Cesar, and dialogue processes with indigenous peoples and Afro-Colombians.

41. Social protest is a means to demand human rights respect and fulfilment, and an opportunity to reorient State policies. The High Commissioner salutes the Government's open and positive response to social demands, creating national, regional and local dialogue processes with diverse sectors, including rural and marginalized groups. Dialogue with conflict-affected rural populations represents a complementary form of participation for peace.

42. OHCHR identified various causes of Government in compliance with its social dialogue-acquired commitments. The lack of appropriate and responsive institutions, institutional readjustment and budgetary restrictions affected project-implementation commitments negotiated with the Agrarian Negotiating Platform, for example by the Ministry of Agriculture. Flexible, agile administrative procedures responsive to beneficiary rural organisations were lacking. In processes such as the Catatumbo regional platform, disarticulation between national and local levels affected project sustainability. The Cauca and Antioquia dialogue platforms relied on local institutions but, despite Interior Ministry efforts, participation by other national institutions was inadequate.

43. Successful social dialogue requires clear agendas, procedures and indicators for follow-up, and consequences for non-implementation. All affected communities must be empowered to participate. Strengthening Government implementation capacity is necessary, as are creative alliances with the private sector, civil society and faith-based entities.

**c. Non-recurrence and security sector reform**

44. In 2015, OHCHR observed that intelligence reform processes lacked high-level civilian leadership. Human rights were not adequately integrated into intelligence manuals and procedures. In December, journalists investigating alleged police corruption and illegal activities denounced illegal surveillance by the police intelligence service. OHCHR welcomes the National Intelligence Directorate's (DNI) interest in receiving advice on human rights integration in the curriculum for its personnel.

45. The High Commissioner welcomes the June commitment by the new Minister of Defence to recognise, dialogue and act on human rights issues. An example is the public recognition, on 28 October, of the illegality of the arbitrary detentions in the context of military recruitment ("batidas") which previously were institutional policy. Statements by the army chief on the need to modernise military doctrine and the creation of a working group on gender within the military, are promising.

46. The High Commissioner considers that state, institutional and individual recognition of grave human rights violations is key for reconciliation. Security sector institutions and their current and former members must now publicly recognise such responsibilities and visibly participate in truth, justice and reparation processes. The omission of references to the massive human rights violations that led to the closure of the Department of Administrative Security (DAS) intelligence agency, in the new "Historical DAS Museum" call into question Government coherence in this regard.

47. The negotiating parties' recognition in Havana that non-recurrence guarantees represent a pillar of the peace process implies, among other issues, the State commitment to rationalize, reorient and strengthen security institutions toward full respect of human rights and constitutional mandates. Agreement was reached that the Government would address this issue.

48. OHCHR monitoring and international experiences suggest that a security sector reform agenda for non-recurrence in Colombia includes: strengthening democratic oversight by civil society and the three branches of Government; creating a ministry related to public security; greater transparency in security sector spending to counter corruption; police modernization to enable full mandate implementation capacity nationwide; Police Code reform; application of international human rights law in all action against crime; enhancing the citizen security implementation capacity of regional and local authorities; robust civilian oversight of arms and private security companies; gender integration; and vetting of personnel linked to human rights violations, corruption or illegal groups. In various countries, military support to internal security has become quasi-permanent, undermining police-strengthening, budgets, effectiveness and the rule of law, and generating cycles of insecurity.

**d. Archives**

49. The protection, access and use of state and non-state human rights archives are essential for building peace. Archive destruction, loss or deterioration would hamper the effective functioning of truth, justice, reparation and non-recurrence mechanisms. State action is thus urgent, especially by the Procurator General's Office, which is responsible for administrative archive protection under the Victims and Land Restitution Law but has taken no known measures to respond to ongoing reports of military archive destruction or "loss".

50. OHCHR received documents outside the public domain, such as a July 1993 report attributed to the DAS that states "...this Unit has not conducted any operation except for routine missions by Detectives including Psychological Torture, Simple Kidnapping and Extortion." The DAS Intelligence Plan 2003-4 identified human rights organisations to establish "...what type of political work they conduct against the State and the National Government, especially complaints at national or international levels related to Human Rights, the Peace Process or Democratic Security among others." A 2008 confidential military document, emitted the year the Ministry of Defence published its Integrated Human Rights Policy in response to "false positive" extrajudicial executions, confirms an order by the then army chief to incinerate internal orders that had established institutional rewards for deaths in combat and captures.

51. The special truth and justice mechanisms agreed in Havana will require broad access to archives to fulfil their mandates. However, according to the accords, they will have access "in conformity with applicable laws". OHCHR observes that existing law and practice in Colombia do not guarantee the necessary access. Presidential or independent state entities' powers to make confidential archives public are also lacking, except for presidential powers under the intelligence law. The budgets, technological tools and methodologies for processing and making archives available are yet to be established.

**D. The fight against impunity for gross human rights violations**

52. State institutions, particularly the judiciary, continue to have considerable difficulties overcoming their deficiencies and producing results.

**a. Attorney General's Office**

53. In 2012, the AGO adopted a prioritisation policy and created a new criminal investigation system to improve the investigation and sentencing of illegal intelligence activities, as well as gross human rights violations, including extrajudicial executions, killings of human rights defenders, sexual violence and enforced disappearances.

54. OHCHR confirmed that by 2015 the AGO's lack of results was due to strategic deficiencies including failure to apply situational crime analysis methodologies to link investigations and disarticulate criminal structures, and an inadequate internal incentives system. The isolated advances made were more a result of the commitment of individual personnel.

**b. Past extrajudicial executions**

55. In a 2015 ruling on the army execution of a physically and mentally disabled young man in Casanare in 2007, the State Council declared that extrajudicial executions had been a systematic practice.<sup>3</sup> A significant indicator in the fight against impunity in Colombia would therefore be the successful prosecution of the highest ranks responsible for this systematic practice between 2002 and 2008.

56. These criminal investigations have not advanced sufficiently. In 2015, the AGO Human Rights and International Humanitarian Law Directorate, which processes a significant portion of these cases, registered 2,653 homicide investigations of which 167 are closed. 7,773 members of the army are linked to these cases involving 4,392 victims, including 183 women and 223 children. As of August, 838 army members (six colonels, 99 officers, 127 junior officers, 603 soldiers and three with undefined rank) had been convicted in 210 cases.

57. OHCHR observed dilatory tactics by the defence and judicial laxity in homicide cases against security sector members. For example, one human rights prosecutor sought unsuccessfully for three years to indict an army colonel for a September 2007 killing in Neira (Caldas). Similar tactics are evident in the process against police officers for the killing of Diego Felipe Becerra in 2011. Lack of disciplinary action against lawyers using these practices or judges that tolerate them undermine non-recurrence.

58. Since 2012, the Attorney General made multiple public commitments to move forward investigations against senior military officers. At the end of 2015, nine army generals had given preliminary declarations. While international law recognises criminal responsibility through omission, this has not been adequately applied to military commanders in Colombia including in "false positive" extrajudicial executions or paramilitary actions in zones under military control.

59. The Attorney General's Directive 0003, issued in December, on the criminal persecution of war crimes on national territory must be modified to be consistent with international standards and Constitutional Court decisions to reflect the simultaneous application of international human rights and humanitarian law.

**c. Current extrajudicial executions**

60. During 2015, OHCHR documented ten cases of alleged arbitrary deprivations of life by army members in Antioquia, Cauca, Tolima, Arauca, Meta, Norte de Santander and Caquetá. The army qualified five of these as "military errors" without clarifying the operational, command and control, tactical, indiscipline or procedural causes. The State breaches its international obligations when it fails to take effective criminal, disciplinary, operational and/or command and control action to ensure non-recurrence.

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<sup>3</sup> State Council, Administrative Chamber, Third Section, Direct Reparation Action (judgement), 7 September 2015.

**d. Intelligence**

61. In two significant reverses in the fight against impunity for past civilian intelligence (DAS) violations, the AGO declared that the statute of limitations for those three crimes had elapsed and failed to impose preventive imprisonment against eight ex-DAS officials. In the case for psychological torture against a female journalist, State omission enabled the ex-Director and ex-Secretary General of DAS to leave the country despite an arrest warrant and known location.

**e. Femicide**

62. OHCHR considers the criminalisation of femicide through Law 1761 of 2015 an advance. It is necessary to conduct integrated analysis of the procedural and investigative failings that impeded convictions against those responsible for the killings of women and to ensure that the normative change leads to substantive improvement in women's enjoyment of the right to life. OHCHR offers its technical advice in this regard.

**E. Victims' rights****a. Registration**

63. The Government has from the outset prioritised the rights of and response to armed conflict victims through the Victims Law and victim recognition in the peace process. In four years, an average of 1,600 victims of incidents prior or after the law's adoption, have been registered daily. A total of 7,874,201 victims are now registered, almost 50% women and children. The UARIV calculates that 6,084,064 persons – 12.4% of the population – require reparation. This exceeds the currently allocated economic and technical resources.

64. Internally displaced persons represent the largest collective of registered victims: 6,897,450. In 2015, 76,017 new displaced persons were registered. This enormous attention and reparation challenge requires action in isolated zones of recurrent displacement, such as the Pacific coast and Antioquia, and special protection for indigenous and Afro-Colombian communities.

**b. Transformative reparations**

65. The greatest number of individual compensations to victims was paid in Medellín, Bogotá, Apartadó, Bello, Cúcuta, Villavicencio and Cali. In some cities, complementary transformative and non-recurrence measures were implemented. In rural zones and other cities, compensation lost its transformative potential due to the relatively low level of human rights enjoyment and the inaction, inadequate budgets, technical capacity or political will of local authorities.

66. OHCHR continued to advise and accompany the UARIV, whose enormous efforts merit recognition. However, UARIV's mandate, labour and achievements alone cannot substitute an articulated State effort for ESCR improvement in marginalised zones. As the UARIV has insisted, with inadequate response by other entities, complementarity between reparation processes and development action is necessary. After four years implementing the Victims Law in municipalities like Tumaco (Nariño), Buenaventura (Valle del Cauca), Turbo (Antioquia) and Riosucio (Chocó), communities and victims continue to suffer profound vulnerability for structural and historical reasons. Weak fiscal and political controls over resource implementation compound this.

67. OHCHR observed that, despite state efforts, the collective reparation regime has not achieved its principle objectives of repairing collective damages; providing means to transform inequality, violence, stigmatisation, mistrust and pain; ensuring opportunities to

reconstruct memory, social fabric and identity; and non-recurrence in affected communities. OHCHR also observed difficulties in articulating collective reparation of territorial rights with other collective Afro-Colombian and indigenous peoples' rights. Of 153 ethnic communities due for collective reparation, only 24 are under previous consultation.

68. OHCHR advised the Government on reconceptualising State responses through improved national-local articulation and coherence between development plans, basic service provision related to rights such as health and education, as well as victim attention and reparation. It is important to build trust, capacity and local community participation to create required social and economic transformations.

**c. Land restitution and respect and protection of territory**

69. At year's end, the Land Restitution Unit reported having received 87,119 requests for inclusion in the land-theft register, 42,325 (49%) of which were being responded to in "micro-focalised" zones where the Ministry of Defence had authorised initiation. 30,593 (35%) were finalised. 11,374 processes (13%) are being processed by the judicial authorities and 3,160 claims (4%) relating to 20,000 people have been ruled upon. 51% are outside these areas and have not advanced given State difficulties to ensure adequate security conditions for its personnel and for victims. Partial restitution claim implementation frustrates claimants' expectations. In November, the Constitutional Court ordered the Government to develop a plan, within six months, to respond to all claims until 2021, the end-date for the process.

70. In the Caribbean region, Antioquia, Meta, Tolima and Santander, OHCHR observed that the principal difficulties faced by claimants include inadequate local institutional budgets, institutional disarticulation and disparities in capacity and political will among the up to 20 different entities responsible for implementing land restitution orders. OHCHR recognises Land Restitution Unit efforts to respond to collective indigenous and Afro-Colombian claims and awaits prompt judicial decisions. The implementation of the two existing judicial decisions on indigenous territories faced difficulties.

71. OHCHR observed that people currently occupying lands to be restituted ("secondary occupants") include landless peasants, victims, rural users and others. The State faces the challenge of distinguishing between good and bad faith secondary occupants. The historic lack of access to justice in rural areas has created layers of legal uncertainty which today hinder solutions, particularly in Santander, Norte de Santander, Cesar, Sucre, Bolívar, Magdalena, Antioquia, Nariño and Tolima.

72. The law on Rural Development Interest Zones (ZIDRES), passed in December, has generated intense public debate. The Government considers it an opportunity to promote rural employment, access and regularisation of land ownership, while others argue that it will increase the concentration of ownership and private use of vacant lands for massive agroindustry, affecting small property and family economies. Providing institutional support for both visions, based on human rights, is necessary for victim reparation, peace accord implementation and reconciliation in rural areas.

**d. Participation**

73. Government actions to implement the Victims Law and other dialogue processes have been significant. However, ensuring that victims can genuinely influence decision-making and implementation remains necessary. This requires processes that transcend formalism with greater resources, patience and flexibility in order make them true participants in creating solutions.

## **IV. Structural human rights challenges for an equitable and sustainable peace**

74. In addition to issues directly addressed in the peace process, there are multiple additional human rights challenges that urgently require attention for peace, some of which have been addressed in previous reports. The construction of a sustainable and equitable peace is only possible through the progressive realization of rights, and the eradication of discrimination and exclusion. While local policies incorporate rights-based language, institutional action loses this approach, neutralising impact. Below, five focus areas are emphasised.

### **A. Economic and social rights**

75. Joint State action on ESCR continues to be precarious. Law 1751 of 2015 recognises the fundamental right to health as autonomous and inalienable. However, OHCHR observes that normative advances should result in genuine enjoyment in practice. Global advances in affiliation to the public health service do not necessarily represent greater access to the right to health, given service scarcity in many rural areas. The National Health Superintendence sanctioned the Chocó department for the death of 30 children in 2015 due to lack of drinking water and medical attention. It is imperative to ensure non-recurrence of such situations.

76. Right to health violations observed in departments including Amazonas, Caquetá, Putumayo and Arauca particularly affect indigenous peoples and require a determined State response. Problems include deficient access to drinking water, basic sanitation, primary, secondary and tertiary health services; lack of medicines and personnel; scarcity of means for attending to sexual violence victims; and non-recognition of indigenous and Afro-Colombian health perspectives.

77. La Guajira is one of the departments that has received most oil revenue and one of the poorest. According to the National Health Institute, 37 persons died of malnutrition there in 2015 and 492 children were born underweight. The National Government recognised the problem but corruption and lack of transparency undermined its response. OHCHR welcomes the arrest warrants against public officials linked to massive corruption that diverted public resources for child services in La Guajira.

78. OHCHR highlights advances in the development of education programmes for children with disabilities in Antioquia and Nariño and observes with interest the design of the Department of Social Prosperity pilot programme “More Families in Action”. However, children with disabilities do not enjoy access to the education system in many parts of the country and, as a consequence, do not receive this assistance.

### **B. Human rights defenders**

79. The work of human rights defenders (HRDs) represents a cornerstone for democracy and the promotion of an equitable and sustainable peace. However, violence against HRDs continues and the State is yet to achieve full respect and protection of their rights and work. In 2015, OHCHR registered 295 attacks against 885 defenders, including 310 women. The Somos Defensores Programme and OHCHR registered the murder of 63 defenders. OHCHR verified 41 of these cases and continues to monitor the others. These figures are

above the national average of the last 20 years<sup>4</sup>. OHCHR also registered 20 attempted killings including nine against trade unionists, 151 individual and collective death-threats, and 80 complaints of illegal surveillance. In 2015, OHCHR recorded 39 pamphlets threatening 211 women, 298 men and 47 social organisations. The consistencies and commonalities of language, message, and target victims and organisations reveal a high level of perpetrator organisation. This situation confirms the hostile and insecure environment suffered by defenders. The Attorney General obtained one conviction in 2015 for such crimes.

80. OHCHR observed that violations against HRDs occur principally in four modalities: firstly, conflicts over land, particularly Afro-descendant and indigenous territories. The murder of four indigenous Emberá-Chamí leaders (Caldas and Risaralda) in 2015, and the constant threats against community council members in the Pacific region occurred in the context of opposition to illegal and legal mining. Threats against the indigenous Nasa people (Cauca) increased in the face of their actions to protect their territories. Nineteen of the 36 HRD killings were related to such conflicts.

81. A second modality is the demand for justice by defenders. In reiterated cases, victims' representatives are targeted, especially those that litigate human rights violations by State actors. Various types of surveillance and information theft against HRDs coincide with key moments in criminal proceedings.

82. The third modality is that of social and political leadership. Leaders of the *Marcha Patriótica* and *Congreso de los Pueblos* movements received threats and surveillance based on stigmatisation as having links with the guerrilla. In a widely broadcast television programme, a recognised indigenous leader was accused of supporting the guerrilla. In another case, an army officer publicly accused a peasant organisation of links with the FARC-EP given its support of a ceasefire.

83. Finally, peace activism generated persecution. Persons and organisations that participated in victims' dialogues in Havana received threats.

84. Since 1997, OHCHR has observed that HRDs are repeatedly arrested and deprived of their liberty for up to a number of years, only to be freed for lack of evidence. Arbitrary and illegitimate use of justice administration to impede or punish human rights action not only violates human rights but also undermines democracy, the rule of law and judicial independence.

85. In 2015, OHCHR observed the opening of six investigations against HRDs by the AGO Counter-Terrorism Directorate based on inadmissible military intelligence or informant information. In one case in 2015, four HRDs were charged with kidnapping 26 police during the 2013 agrarian social protests. OHCHR and the Ombudsperson's Office had directly observed those demonstrations and verified that those leaders had ensured the liberation of the police retained by others. The damage caused by the National Counter-Terrorism Directorate and military intelligence when they persecute HRDs based only on their legitimate work cannot be underestimated, especially in the context of the peace process. This contrasts with the lack of results in investigations for attacks against defenders.

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<sup>4</sup> From 1994 to 2014, 683 human rights defenders were killed; an average of 33 defenders were murdered per year over the last 20 years (figures consolidated by OHCHR-Colombia, in the framework of the National Guarantees Round Table, with information provided by the AGO and civil society organisations).

86. OHCHR observation reconfirms the need for greater national preventive and protective action for human rights defenders, and the failure of local authorities to develop preventive policies and strategies.

### **C. Gender and sexual diversity**

87. Peacebuilding requires the State and society to overcome gender stereotypes, violence and discrimination against women and lesbians, gays, bisexuals, trans and intersex (LGBTI) people, to ensure their full recognition and participation as rights-holders and their quality access to justice.

88. Women represent 50.6% of the population but do not enjoy their rights equally with men. According to UN Women, women represent 21.2% of legislators, 31.2% of ministers, 15% of governors and 12% of mayors. The sub-commission on gender created under the negotiations in Havana has played an important role. However, it is important to ensure greater women's participation in the peace process.

89. According to the National Institute of Legal Medicine and Forensic Science, violence against women is generalised. 85.57% of intra-familial violence victims are women, as are 85.08% of alleged sexual violence victims. State policies and mechanisms to mainstream women's rights require political, technical and budgetary strengthening. OHCHR welcomes the broad categorisation of crimes against sexual liberty and integrity applied by the UARIV when registering victims.

90. According to the National Police, 18 LGBTI people were killed in 2015. One transsexual leader and human rights defender who had suffered discrimination was killed in August in San Marcos (Sucre).

91. Religious beliefs, political positions, social prejudice and the lack of a public policy limit the rights of LGBTI people, including same-sex couples' rights to form a family and receive legal protection. OHCHR welcomes recent judicial and ministerial decisions that confront discrimination but their application has been limited. In February and November, the Constitutional Court, applying the best interests of the child principle, ruled to recognise the rights of same-sex partners to adopt children and in July ruled to prevent discrimination in school based on children's sexual orientation. In June, the Ministry of Justice issued a decree modifying the sex of transsexual people in official documents.

### **D. Sexual violence**

92. The magnitude of sexual violence in Colombia is founded on the persistence of patriarchal and chauvinistic power structures that reproduce stereotypes and multiple forms of legal, institutional, social and cultural discrimination against women. The organisation Sisma Mujer drew attention to the significant increase in sexual violence against women and the lack of investigative results against sexual violence. The AGO estimates that nearly 90% of non-armed conflict rape cases remain in impunity, while almost 100% of those related to the conflict show no procedural advances. The problem of sexual violence transcends the armed conflict and requires broad national debate and action, from schools to courts, to create the transcendental change society requires. Official information systems on sexual violence remain inadequate to facilitate effective state action.



## **E. Persons deprived of their liberty**

93. The Constitutional Court again declared an “unconstitutional state of affairs”<sup>5</sup> in prisons and ordered urgent measures to address persistently inhuman penitentiary conditions due to overcrowding and lack of medical attention.<sup>6</sup> 36.5% of persons deprived of their liberty have not been sentenced.

94. Given the persistent deterioration of the prison situation, OHCHR advises on national efforts to conceptualise effective crime prevention measures. Prison construction is not a solution if unaccompanied by profound criminal policy reform. Ratification of the Optional Protocol to the Convention against Torture would complement the peace process.

## **F. Indigenous peoples and Afro-Colombians**

95. Despite State efforts, 25 years after the constitutional recognition of indigenous peoples’ and Afro-descendant rights to collective property, effective participation and autonomy, these rights remain unsatisfied due to lack of finance and agile, strong national institutions specialised in intercultural approaches. Although indigenous and Afro-Colombian lives, territories and cultures have been disproportionately affected by the conflict, the parties in Havana have yet to dialogue with them to ensure the success of the peace process.

96. All persons have the right to participate in decisions affecting them. Afro-Colombians and indigenous peoples enjoy additional protections. OHCHR observed that oversight and evaluation of State investment for these populations are impeded because State entities do not disaggregate their budgets and spending, or make such information accessible.

97. Six years after the Constitutional Court order to create the “Ethnic Protection Route” – an administrative measure to prevent collective territorial rights’ violations – it remains insufficiently implemented. Only approximately 20% of claims presented by indigenous and Afro-Colombian victims of forced displacement, armed conflict and megaprojects have been addressed by State institutions, but without achieving effective protections. According to the Interior Ministry, 25 of 60 titling claims by Afro-Colombian communities have been processed for titling, while 17 are being processed.

98. The High Commissioner previously welcomed the advance represented by Decree 1953 of 2014 to enable the autonomous functioning of indigenous territories through direct budgetary implementation of the General Participation System. However, regulatory gaps and prerequisites, considered difficult to comply with by some indigenous reserves, limited implementation. OHCHR registered cases that confirm the urgent need to fully implement the Constitutionally-recognised special indigenous jurisdiction and ensure its respect by and coordination with ordinary jurisdiction.

## **V. Recommendations**

99. **The United Nations High Commissioner for Human Rights:**

<sup>5</sup> Such declarations mean that the Constitutional Court has confirmed the repeated and constant violation of the fundamental rights of a multitude of persons and a solution requires intervention by various State entities to address structural issues.

<sup>6</sup> Judgement T-388/2013, approved on 28 June 2013 but inexplicably published in March 2015. Judgement T-762 of 15 December 2015.

- a) **Calls upon the Government to unify, strengthen and make public its systems on follow-up to recommendations of international and regional human rights systems, and to include civil society participation in assessing their implementation.**
- b) **Exhorts the parties in Havana to seize the opportunity to dialogue with indigenous peoples and Afro-Colombians to ensure that the peace accords and their implementation maximise the enjoyment of their collective and individual rights. The final accord should include specific reference to the commitment to ensure respect for internationally and constitutionally recognized indigenous and Afro-Colombian rights in all aspects of implementation.**
- c) **Encourages the Government to adopt all necessary measures, in the current economic context, to maximise the peace accords' potential for a positive transformation of the Colombian human rights situation; for example by carrying out a substantial redistribution of the State's human and financial resources.**
- d) **Urges the Government to intensify planning exercises for the future Integrated Truth, Justice, Reparation and Non-recurrence System, which will require respect for international standards and, given its magnitude, greater human and financial resources than any similar past or current transitional justice process worldwide. This should include an informed budgetary exercise, and flexible and rapid spending mechanisms.**
- e) **Urges the Government to create an institutional architecture capable of responding to the challenges of the peace process, including overcoming lack of coherence and coordination, in order to achieve observable and measurable impacts in human rights enjoyment by all persons. This entails changing the relationship between State and citizenry, overcoming the impact of 50 years of armed conflict on institutional culture, generating collaboration between state officials and the most vulnerable populations, and empowering them to demand respect, protection and fulfilment of their rights.**
- f) **Recommends the State protect State and non-state human rights archives immediately and transparently, and harmonise the access to information regime with international standards and the aims of the peace process. The High Commissioner urges countries holding information useful for transitional justice in Colombia to facilitate expedited access to relevant archives.**
- g) **Urges the FARC-EP to expand its commitment to victims and society, reflected in the public recognition act for Bojayá, by taking public actions of respect for human rights and for the organisational systems of the peoples and communities where they will reintegrate, in favour of truth, justice, reparation and non-recurrence.**
- h) **Recommends the Government adapt the collective reparation model to achieve its transformative objectives; promote complementarity between collective reparation and development processes; incorporate the relevant content of the Havana agreement on victims; improve technical and budgetary capacity of relevant institutions at all levels; ensure adequate inter-institutional and national-local coordination; strengthen community organisation and participation; and fully implement the differential approach.**
- i) **Encourages the ELN and the Government to initiate formal peace negotiations and prioritise respect for the rights of the population, especially victims.**
- j) **Recommends an ample public discussion on security sector reform and instilling citizen security in the post-accord context. The Government should ensure that military assistance in public security is progressively reduced and applied under the police primacy principle in full compliance with international human rights law.**

k) Urges the State to develop a system to process the totality of sexual violence data to improve prevention, attention and criminal policy, to be evaluated annually.

l) Urges the international community and all United Nations entities in Colombia to consider the conclusions and recommendations of the United Nations Secretary-General and his 2015 High-level Independent Panel on Peace Operations to ensure that all international support for the peace process: responds to the human rights realities of the armed conflict; is designed to strengthen national capacities sustainably based on international human rights standards; and responds to priorities of both the Government and the population, including women, Afro-Colombians and indigenous peoples.

m) Encourages the United Nations Country Team to redouble its efforts to integrate a rights-based approach in its peace and development programming, and to support State implementation of international and regional human rights mechanisms' recommendations.

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