



COLOMBIA: HUMAN RIGHTS AND THE PEACE AGREEMENT

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
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CONTENTS

INTRODUCTION	4
FOLLOW UP TO THE PREVIOUS REVIEW	5
PROTECTION OF HUMAN RIGHTS DEFENDERS	5
VIOLENCE AGAINST WOMEN AND GIRLS	6
RIGHTS OF PERSONS WITH DISABILITIES	6
JUSTICE FOR HUMAN RIGHTS ABUSES AND RIGHTS OF VICTIMS	6
THE NATIONAL HUMAN RIGHTS FRAMEWORK	7
LAW ON VICTIMS AND LAND RESTITUTION	7
LEGISLATION ON THE RIGHTS OF WOMEN AND GIRLS	7
THE PEACE AGREEMENT WITH FARC AND ITS LEGISLATIVE AND JURISPRUDENTIAL DEVELOPMENT	8
HUMAN RIGHTS SITUATION ON THE GROUND	8
HUMAN RIGHTS DEFENDERS	8
RIGHTS OF WOMEN AND GIRLS	9
RIGHTS OF PERSONS WITH DISABILITIES	9
JUSTICE FOR HUMAN RIGHTS ABUSES AND THE RIGHTS OF VICTIMS	9
RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW	10
ANNEX	12

INTRODUCTION

Amnesty International submitted this document for the UN Human Rights Council's Universal Periodic Review (UPR) of Colombia in May 2018. The document includes an analysis of the implementation of recommendations made to Colombia during its previous review in 2013. Amnesty International also reports on the situation of human rights defenders, violence against women and girls, violations of the rights of persons with disabilities and the rights of victims of the armed conflict.

Negotiations between the guerrilla group, the Revolutionary Armed Forces of Colombia (FARC) and the Colombian government formally started in October 2012 with the aim of ending more than 50 years of internal armed conflict. The first version of the Peace Agreement was signed by the parties on 26 September 2016 and submitted to a referendum on 2 October 2016. The Agreement was rejected in the referendum which cast doubts over the continuation of the peace talks and raised issues around how to balance the need to reach a peace agreement with Colombia's international obligations with regard to justice and the rights of victims.

A new version of the Peace Agreement was signed on 24 November 2016 and in a subsequent vote in Congress on 1 December 2016 it was approved by a majority vote.¹ The Constitutional Court stated that it would use a "fast track" process² to prioritise the constitutional analysis of the legislative initiatives to implement the Peace Agreement. The implementation has begun with the aim of achieving the disarmament of the FARC and gathering its members into designated areas across the country, monitored by the UN Peace Mission.

Amnesty International has stated on a number of occasions that the effective implementation of the Peace Agreement in territories historically affected by violence could contribute to the non-repetition of such crimes.

In some departments, including Chocó, Cauca, Antioquia and Norte de Santander, crimes under international law and human rights violations persist, including the murder of members of Afro-Colombian communities and Indigenous Peoples, collective forced displacements, confinement of communities in certain areas of the country, forced recruitment of children to serve in the armed groups, sexual violence, and the use of anti-personnel mines. Since the Peace Agreement was signed, the armed conflict has intensified in some areas due to confrontations between the guerrilla forces of the National Liberation Army (ELN), paramilitary groups and state security forces, all attempting to fill the power vacuum left by the FARC.

A bilateral ceasefire was agreed on 4 September 2017 between the ELN and the government of Colombia as part of the Quito negotiations. The ceasefire started on 1 October 2017 and will run until the beginning of 2018 when the government and the ELN will begin to discuss a possible peace agreement.

¹ Colombia's Agreement to End Conflict and Build Peace, available from the webpage of the High Commissioner for Peace in Colombia:
<http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/summary-of-colombias-peace-agreement.pdf>

² The "fast track" process is a mechanism set out in Legislative Act No 1 of 2016 which reduces the number of debates required in Congress for the approval of the laws and constitutional reforms necessary to implement the Agreement with the FARC.

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in 2008, Colombia accepted a number of recommendations regarding human rights defenders, violence against women and girls, and the rule of law and justice, including impunity.³

At its second review in 2013, Colombia accepted recommendations to fight impunity for human rights violations, implement a national education and culture policy, continue to implement the recommendations of the Office of the UN High Commissioner for Human Rights, and consolidate the policy for combatting human trafficking.

In this section, Amnesty International considers the follow-up to recommendations of most concern, including in the context of the current dynamic of violence and implementation of the Peace Agreement.

PROTECTION OF HUMAN RIGHTS DEFENDERS

In the 2013 review, Colombia accepted 16 recommendations related to the rights of human rights defenders, including to ensure their effective protection, in particular people from rural areas involved in land restitution processes, by promoting access to justice and reparation under equal conditions, and improving recognition of their work in order to protect their lives, security and integrity.⁴

Amnesty International considers that the Colombian protection mechanism, headed by the National Protection Unit in the Ministry of Internal Affairs, provides protection measures to thousands of people in situations of risk, such as human rights defenders and victims of the armed conflict. The mechanism has saved lives and, over the years, has made progress in adopting a protocol for implementing a collective protection plan.

However, the measures envisaged by the National Protection Unit remain largely police-based and civil society organizations have criticised some of the emergency measures for the negative consequences they could have on the human rights of those to be protected. The mechanism is currently facing a number of challenges due to the growing number of human rights defenders murdered in 2017 since the Peace Agreement was signed. Impunity for attacks against human rights defenders continues to be a serious concern for Amnesty International.⁵

³ Report of the Working Group on the Universal Periodic Review, A/HRC/10/82, 9 January 2009.

⁴ Report of the Working Group on the Universal Periodic Review – Colombia, A/HRC/24/6, recommendations 116.19/20/21 (Switzerland, Australia, Ireland) and 116.73/74/75/76/77/78/79/80/81/82/83/84/85 (Slovakia, Slovenia, United Kingdom, United States of America, Belgium, Canada, Czech Republic, France, Germany, Hungary, Netherlands and Norway).

⁵ Amnesty International, AMR 0162112017, Protection Mechanisms for Defenders.

VIOLENCE AGAINST WOMEN AND GIRLS

Colombia accepted 19 recommendations on the rights of women and girls, particularly in relation to gender-based and sexual violence in the context of the armed conflict.⁶ Amnesty International welcomes the incorporation of some international human rights standards into domestic law and constitutional jurisprudence, demonstrating the government's interest in progressing these issues.

However, despite this progress, the effective application of these laws is still not guaranteed throughout the country (particularly in remote areas) and the institutional culture has not changed to avoid the re-victimisation of women and girl victims of gender-based violence. Through Orders 092 of 2008 and 009 of 2015,⁷ the Constitutional Court established that sexual violence was a widespread and systematic practice in the context of the internal conflict. In Order 009 of 2015, the Court recognized the link between sexual violence and the armed conflict, when it occurs in areas of violence, and urged the Attorney General to start investigations into this in order to reverse the burden of proof in favour of the victims.

RIGHTS OF PERSONS WITH DISABILITIES

Colombia accepted five recommendations about human rights of persons with disabilities.⁸ Amnesty International welcomes Colombia's ratification of the UN Convention on the Rights of Persons with Disabilities and urges it to also ratify its Optional Protocol.

The greatest challenges facing Colombia in this regard are to guarantee inclusive education throughout the country, unrestricted recognition of the legal capacity of persons with disabilities, effective enjoyment of sexual and reproductive rights for women and girls with disabilities, and full social inclusion.⁹ Amnesty International is also concerned that Colombia has not established measures within the Peace Agreement to guarantee the mental and physical health of the victims of the armed conflict.

JUSTICE FOR HUMAN RIGHTS ABUSES AND RIGHTS OF VICTIMS

Colombia accepted six recommendations aimed at guaranteeing access to truth, justice and reparation for victims of human rights abuses and combatting impunity, focusing on the rights of the victims of the armed conflict as a priority.¹⁰

Amnesty International remains concerned that the long-term viability of any provision contained in the Peace Agreement could be affected if those responsible for crimes under international law, including war crimes and crimes against humanity as well as human rights violations, are not brought to justice.

⁶ A/HRC/24/6, recommendations 115.1/2/3 (Sweden, Belgium and Austria), 116.38/39/40/41/42 (Brazil, Hungary, Azerbaijan, Chile, Nigeria), 116.50/51/52/53/54/55/56/57/67 (South Africa, Indonesia, Paraguay, Senegal, Slovakia, Spain, Canada, France, Switzerland), 117.5/6 (Finland and Ireland).

⁷ In complying with the requirements of Judgment T-025 of 2004, by which the Constitutional Court declared an Unconstitutional State of Affairs (ECI) with regard to the human rights of those forcibly displaced, the High Court is issuing Orders that carry the strength of constitutional precedent.

⁸ A/HRC/24/6, recommendations 116.47 (Algeria), 116.94 (Niger), 116.103/104/114 (Czech Republic, Algeria, Peru and Austria).

⁹ INT_CRPD_CSS_COL_25292_S. Aportes del Equipo de País de Naciones Unidas en Colombia para el examen del informe presentado por el Estado colombiano sobre la implementación de la Convención sobre los derechos de las personas con discapacidad (CDPD) [Contribution of the UN Country Team in Colombia to the review of the report presented by the Colombian State on implementation of the Convention on the Rights of Persons with Disabilities] [Available in Spanish only].

¹⁰ A/HRC/24/6, recommendations 115.5 (Spain), 116.44 (Italy), 116.70/71 (France and the United States of America), 116.68/69 (Gabon, the United Kingdom).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

LAW ON VICTIMS AND LAND RESTITUTION

On 10 June 2011, President Juan Manuel Santos signed the Law on Victims and Land Restitution.¹¹ The law came into force on 1 January 2012 and establishes reparations for survivors of crimes under international law and human rights abuses committed in the context of the armed conflict. The law also contains measures that could enable millions of hectares of land unlawfully appropriated by paramilitary groups to be returned to the rightful owners.

However, six years after its approval the law has yet to be fully implemented. The victims have complained that the rulings of the Constitutional Court have not yet been implemented with regard to the government's obligation to address the causes of forced displacement of Indigenous and Afro-Colombian communities, nor with regard to measures to provide care and comprehensive reparation from an ethnic perspective and differentiated approaches, including for children and persons with disabilities.¹²

Amnesty International is concerned that, at first, victims of paramilitary groups and "criminal gangs" were not recognized in the law and not allowed to register to access the Route for Assistance, Attention and Comprehensive Reparation.¹³ This was made possible in 2013 through Order 119 of the Constitutional Court,¹⁴ which recognized the status of all victims of the armed conflict, regardless of the legal or illegal actor that committed the abuse.

LEGISLATION ON THE RIGHTS OF WOMEN AND GIRLS

Given the high rates of violence against women in the country, the government has adopted legislation to raise awareness of gender-based violence and to achieve a life free from violence. Amnesty International welcomes the legislative progress represented by Law 1719 of 2014, which highlights the violence suffered by thousands of women in Colombia as a consequence of the internal armed conflict and establishes standards¹⁵ aimed at guaranteeing access to justice, truth

¹¹ Law 1448 of 2011 which includes measures for the care, assistance and comprehensive reparation of victims of the internal armed conflict, approved on 10 June 2011.

¹² In Rulings 004 and 005 of 2009, the Constitutional Court ordered the Colombian government to design differentiated measures for Indigenous and Afro-Colombian victims of the armed conflict.

¹³ The Route for Assistance, Attention and Comprehensive Reparation is the care and support process developed by the Administrative Unit for Assistance and Comprehensive Reparation of Victims (UARIV) aimed at implementing measures for the care, assistance and comprehensive reparation of victims in a coordinated manner between the relevant institutions.

¹⁴ Constitutional Court of Colombia, Ruling 119 of 2013 on registration of victims of criminal gangs in the Single Registry of Victims (RUV), available at <http://www.corteconstitucional.gov.co/T-02504/AUTOS%202013/009%20Auto%20119%20de%2024%20de%20junio%20de%202013%20seguimiento%20gobierno%20referente%20al%20componente%20de%20registro.pdf> [Available in Spanish only].

¹⁵ Colombia has ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Pará Convention), which establishes that States Party shall condemn all forms of violence against women. Colombia is also a party to the UN Convention on the Elimination of All

and reparation for women survivors of sexual violence in the context of the armed conflict. In addition, Law 1761 of 2015 was adopted which classifies femicide as an autonomous crime and establishes measures to ensure that those responsible are prosecuted.

Thanks to advocacy by women's organizations, the Peace Agreement establishes that those suspected of individual criminal responsibility for crimes of sexual violence should be brought to trial through the transitional justice courts. It also establishes that such crimes cannot be liable for an amnesty or pardon. Amnesty International has serious reservations, however, regarding the application of this provision, in particular with regard to the guaranteed right to effective justice under equal conditions, the right to reparation and guarantees of non-repetition for women and girl survivors of sexual violence in the context of the armed conflict.

THE PEACE AGREEMENT WITH FARC AND ITS LEGISLATIVE AND JURISPRUDENTIAL DEVELOPMENT

Point 5 of the Peace Agreement creating the “System of Truth, Justice, Reparation and Non-Repetition” includes the Special Peace Jurisdiction and judicial mechanisms, such as the unit to investigate and dismantle the criminal organizations that have replaced the paramilitary groups. Point 5 sets out the position on reparation of victims and establishes what the parties must undertake to re-establish their rights and “to transform their living conditions”.

In implementing Point 5 of the Peace Agreement the government will face the greatest challenges to re-establishing and guaranteeing the rights of victims to truth, justice, reparation and non-repetition. In particular, Amnesty International considers it is the government’s duty to effectively exercise its authority over territories that have historically been controlled by armed actors in the conflict, ensuring the full enjoyment of human rights by people and communities who lived in those territories.

HUMAN RIGHTS SITUATION ON THE GROUND

The civilian population, particularly the Indigenous Peoples, Afro-Colombian and peasant communities, as well as human rights defenders, continue to be the main victims of the armed conflict. Although official figures point to a decrease in the number of civilian deaths due to military action between the FARC and the security forces since the talks commenced and up to the signing of the Peace Agreement, the conflict is still smouldering under the surface and in regions such as the Pacific coast it appears to have re-emerged.

HUMAN RIGHTS DEFENDERS

Human rights defenders continue to suffer threats and murders in Colombia. Eighty human rights defenders were reported murdered in 2016 and the figure has increased since the Peace

Forms of Discrimination against Women (CEDAW), which establishes human rights standards that States must apply in order to implement measures to ensure gender-based violence can be prevented, treated and punished.

Agreement was signed.¹⁶ Amnesty International is concerned at the increase in attacks on defenders, particularly community leaders, land and environmental defenders and those campaigning for the Peace Agreement. Attacks on Indigenous defenders, Afro-descendants, peasants and women defenders also continue at an alarming rate.

While many of the death threats against human rights defenders and other activists have been attributed to paramilitary groups it is difficult to identify those actually responsible for most of these murders. Many are likely to have been murdered for their human rights work and denouncing abuses appears to be perceived as a threat to regional and local economic and political interests and to different armed groups, including the paramilitaries.¹⁷

RIGHTS OF WOMEN AND GIRLS

During the transition to peace, non-lethal forms of violence, such as violence against women, have increased, including during the demobilisation of the Self-Defence Units.¹⁸

Due to the persistence of different forms of gender-based violence, particularly sexual violence against women in the context of the internal conflict, the social and institutional culture must be transformed in order to promote a zero tolerance policy towards these forms of violence.

RIGHTS OF PERSONS WITH DISABILITIES

In its analysis of Colombia in September 2016, the UN Committee on the Rights of Persons with Disabilities stated that legislation and jurisprudence referring to institutionalisation for reasons of disability, forced sterilisation and systems limiting legal capacity, were not in line with the Convention on the Rights of Persons with Disabilities.

The Committee also noted that persons with disabilities had been extra-judicially executed and subsequently falsely reported as “guerrilla members” in ten cases of “false positive” victims.¹⁹

Amnesty International is also concerned that people continue to be affected by anti-personnel mines in departments such as Chocó (Colombian Pacific).

JUSTICE FOR HUMAN RIGHTS ABUSES AND THE RIGHTS OF VICTIMS

The implementation of the Peace Agreement with the FARC must be governed by international law, international human rights standards and international humanitarian law and must take as its central focus the rights of victims of legal and illegal armed actors.

A key aspect of the Peace Agreement is to guarantee access to justice for victims. Amnesty International is concerned, however, at the adoption of Legislative Act 01 of 2017 which provides differentiated and privileged treatment of state agents to the detriment of the rights of victims of state crimes committed in the context of the armed conflict.

¹⁶ According to the Office of the United Nations High Commissioner for Human Rights in Colombia, 92 human rights defenders were murdered in the country in 2017.

¹⁷ *Colombia: The human rights situation in Colombia. Amnesty International's written statement to the 34th session of the UN Human Rights Council (27 February - 24 March 2017)*, AMR2355732017.

¹⁸ Article in Fundación Ideas para la Paz. *La violencia sexual y de género: el continuum entre la guerra y la paz*, March 2016. [Sexual Violence and Gender; the continuum between war and peace] [Available in Spanish only].

¹⁹ Extrajudicial executions in the form of “false positives” occur when high-level military officials present civilian murders as having occurred during combat to gain privileges during their service.

Amnesty International is also concerned about a number provisions of the Peace Agreement, such as the definition of command responsibility which breaches applicable international law, and some of the legislative measures implementing the Peace Agreement. The Legislative Act exceeds what is established in the Peace Agreement and omits international criminal law as the applicable legal framework. It also establishes the possibility of waiving criminal prosecution without a clear basis for its application, which may be in contravention of the state's duty to investigate, prosecute and punish serious violations of human rights and of international humanitarian law.

Amnesty International is concerned at the serious humanitarian situation in Chocó Department. Crimes under international law and human rights violations continue, including murders of members of Afro-Colombian communities and Indigenous Peoples, collective forced displacements, community confinement, victims of anti-personnel mines, and the forced recruitment of children.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF COLOMBIA TO:

HUMAN RIGHTS DEFENDERS

- Take effective measures to guarantee individual and collective protection of human rights defenders in situations of risk, ensuring their effective participation and the application of ethnic, territorial and gender-based approaches;
- Ensure that the National Protection Unit provide effective protection, including preventive and collective measures, according to differential and gender-based approaches, to guarantee the safety of human rights defenders, especially those working in rural areas;
- Ensure that judicial authorities conduct full and impartial criminal investigations and prosecutions of crimes under international law and human rights abuses against human rights defenders;
- Ensure that all government bodies work with due diligence to provide prevention, care, protection, reparation and guarantees of non-repetition for women human rights defenders.

RIGHTS OF WOMEN AND GIRLS

- Ensure that the voices of women victims of sexual violence are heard and that they can participate under equal conditions in all the implementation of the Peace Agreement, in compliance with the gender approach;
- Strengthen administrative, legislative and judicial mechanisms to ensure women's right to live free from violence and discrimination, in accordance with international human rights standards;
- Guarantee the rights to truth, justice, reparation and guarantees of non-repetition for women and girl survivors of sexual violence in the context of the armed conflict, committed by legal and illegal armed actors.

RIGHTS OF PERSONS WITH DISABILITIES

- Ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- Prioritize mental health care for victims of the armed conflict, including effective strategies for their treatment, care and rehabilitation as part of the right to comprehensive reparation;
- Guarantee full rehabilitation and community reintegration to civilian victims of anti-personnel mines, as well as access under equal conditions to the care and comprehensive reparation established in Law 1448 of 2011 for victims of the armed conflict;
- Exhaustively investigate cases of persons with disabilities as victims of extrajudicial executions and establish criminal responsibility and reparation for their families;
- Guarantee access to inclusive education, sexual and reproductive rights and respect for the legal capacity of persons with mental disabilities.

ACCESS TO JUSTICE AND THE RIGHTS OF VICTIMS]

- Ensure that the obligations under international human rights law, international humanitarian law and international criminal law are binding on the implementation of the Peace Agreement with the FARC and its legislative and jurisprudential development;
- Guarantee the right of victims of the armed conflict to truth, justice, reparation and guarantees of non-repetition;
- Dismantle the paramilitary groups and investigate their links to state security forces, and bring to justice anyone found guilty of maintaining such links;
- Ensure that the victims of the armed conflict have access to justice, guarantee their right to truth and comprehensive reparation, and, in particular, ensure non-repetition of crimes such as forced displacement and sexual violence, for Indigenous Peoples, Afro-descendants and peasants at risk;
- Comply with the duty to prevent forced displacement of Indigenous Peoples and Afro-Colombian communities from their lands and guarantee their rights as victims of the armed conflict.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE²⁰

EXAMPLE:

Colombia: Recent Collective Displacements and Violence indicate the lack of Non-Repetition Guarantees for Chocó's Indigenous Peoples and Afro-Colombian Communities, 16 August 2017 (Index: AMR 23/6946/2017).

Colombia: Amnesty International's written statement to the 34th session of the UN Human Rights Council (27 February – 24 March 2017), 1 February 2017, (Index: AMR 23/5573/2017).

Colombia: Over 300 Displaced due to Paramilitary Incursion, 6 March 2017, (Index: AMR 23/5826/2017).

Colombia: Paramilitary Invasion of Humanitarian Zones, 22 March 2017, (Index: AMR 23/5908/2017).

Colombia: Wounaan Indigenous Community in Danger, 20 July 2017, (Index: AMR 23/6774/2017).

Colombia: Risk of Forced Displacement in Chocó, 26 October 2017, (Index: AMR 23/7356/2017).

²⁰ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/americas/colombia/>

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