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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 on the situation of human rights in Colombia\*

### Note by the Secretariat

The present report describes the human rights situation in Colombia in relation to peace, security, development and democracy in 2017. It also highlights some activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the country. In particular, the report presents the assessment by OHCHR of the first year of implementation of the human rights aspects of the peace agreement. It stresses the specific challenges in rural areas, including insecurity, violence linked to illicit economic activities in the context of disputes between illegal armed groups and organized crime, particularly in the areas of former Revolutionary Armed Forces of Colombia – People’s Army influence.

The report also highlights the increasing attacks on human rights defenders, the impact of corruption on disparities in the enjoyment of economic, social and cultural rights, and the difficulties of addressing multi-dimensional, decades old problems suffered by the rural communities.

The report includes 19 recommendations.

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\* The present report was submitted after the deadline in order to reflect recent developments.

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

### **I. Introduction**

1. This Report is based on the monitoring of the human rights situation in Colombia by the Office of the United Nations High Commissioner for Human Rights (OHCHR) between 1 January and 31 December 2017.

2. The Peace Agreement (the Agreement) between the Government of Colombia and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP) assigned OHCHR in Colombia with substantial responsibilities<sup>1</sup> - in addition to those included in its agreement with the Government of Colombia - without additional resources.

3. The parties requested OHCHR to include in its annual report to the Human Rights Council its findings on the human rights impact of the implementation of the Agreement. Whilst several organizations monitor the Agreement from a quantitative or procedural perspective, such as the number of laws expedited and the number of activities undertaken, OHCHR monitors the impact of the Agreement in terms of the effective enjoyment of human rights by the people living in the areas most affected by the conflict. Such monitoring was conducted through 1,850 field missions in 2017. While negative effects were visible in the first year, positive transformations require more time, as resolving entangled problems that have prevailed for decades is a complex process.

4. The Agreement allowed the end of hostilities between the parties. OHCHR recognizes the efforts of FARC-EP to comply with its commitments related to the demobilization and reintegration process, as well as the work of thousands of State agents to implement the Agreement. The Agreement reiterates pre-existing human rights obligations of the State. Its full implementation can greatly improve the human rights situation, especially in rural areas.

5. There has been a high level of resistance to the implementation of the Agreement in various sectors of society, including among political and economic actors, the legislative and judicial bodies, as well as civil servants. For example, during the referendum process, the advancement of LGBTI and women’s rights within the Agreement were used to leverage opposition to the Agreement, which has had a chilling impact on previous gains related to these rights.

6. OHCHR has observed that other armed groups, including the ELN, and criminal organizations have entered areas of former FARC-EP influence, often seeking to control illicit economies, negatively impacting the rights of civilians. The consolidation of armed groups and criminal organizations in these areas can substantially hamper the implementation of the Agreement and undermine potential human rights benefits of the peace process. Considering these movements, the window of opportunity for improvements in the human rights situation is short.

7. OHCHR reaffirms his commitment to continue working with the State and civil society to facilitate improvements in the human rights situation in Colombia. Through its field presence in the areas most affected by the armed conflict, OHCHR contributes to positive human rights change by empowering rural communities; facilitating community-duty-bearer interaction; and building their capacity to respond to the rights of the community. The Agreement provides an additional tool to facilitate human rights change as much of it is designed to benefit rural communities through economic and political inclusion. OHCHR also promotes the participation of victims and the realization of their rights, for which the Agreement opens new possibilities and challenges. It also provides technical assistance and capacity building to facilitate the investigation and sanction of human rights violations.

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\*\* Circulated in the language of submission and Spanish only.

<sup>1</sup> A/HRC/34/3/Add.3, paragraph 3.

## **II. Challenges in the Implementation of the Peace Agreement With Regard to Guarantees of Non-Repetition**

### **A. Attacks on Human Rights Defenders**

8. Notwithstanding the efforts of the State to reduce these attacks, OHCHR is extremely concerned by the increase in killings of human rights defenders, including social and community leaders. In 2017, OHCHR registered a total of 441 attacks including 121 killings. Fatalities included 84 human rights defenders with leadership roles, 23 members of social and political movements, and 14 people killed during social protests. OHCHR also recorded 41 attempted killings; 213 threats; 61 violations of the rights to privacy and property (e.g., unsolicited photos and information theft); four forced disappearances; and the rape of a woman activist.

9. Fourteen of the murdered defenders were women, which doubles the percentage of women defenders killed in comparison to last year. Three of the victims were from the LGBTI community. The categories of defenders most affected by attacks were community, indigenous, peasant, Afro-Colombian and union leaders.

10. The regions where the highest numbers of killings occurred were Antioquia (13) and Cauca (11). Sixty-two per cent of the killings occurred in rural areas, 24 per cent in towns near the former conflict zone and 14 per cent principal cities.

11. The 64 per cent of killings occurred in Areas Most Affected by the Conflict (ZOMAC)<sup>2</sup> and where FARC-EP were historically present. The power vacuum that followed the demobilization of FARC-EP; the lack of an integrated State presence; and delays in the implementation of the Agreement allowed illegal and criminal groups to enter areas and take over the illicit economies that had not yet been transformed leading to increased violence. Several of the victims were apparently killed due to their support for policies derived from the Agreement, such as substitution of illicit crops and the integral rural reform. This constitutes a new tendency in the motives for killings. In previous years, most human rights defenders were killed because of their opposition to Government policies, not for their support of them.

12. Fifty-seven per cent of the killings were apparently perpetrated by contract killers, making identification of the intellectual author difficult. The alleged material authors of the killings were mainly members of criminal groups that potentially include former members or structures of paramilitary organizations (54 cases); illegal armed groups - ELN (four cases), ex-FARC-EP (three cases), the People's Liberation Army (EPL) (one case); individuals not affiliated to any criminal or illegal armed groups (19 cases); and members of security forces (three cases).

13. Members of the police and military are being investigated for 14 killings committed during social protests. In October, in Tumaco, Nariño, seven protesters were killed in the context of protests against the forced eradication of illicit crops. Before the formal investigation, the police alleged having been attacked with Improvised Explosive Devices. In situ, OHCHR could not confirm this allegation. OHCHR is reinforcing the ongoing investigations into this incident. Two commanders have been charged thus far.

14. Some of the killings of human rights defenders, especially in areas of former influence of FARC-EP, could arguably have been prevented by a timely and coordinated State response to implement the Agreement, prioritizing the rights of the population. The weak State presence in these areas generates a lack of access to rights and opportunities for the communities to become part of the legal economy. It therefore exacerbates poverty and contributes to the development or maintenance of illicit economies, which then facilitates the formation and/or arrival of criminal organizations and illegal armed groups that fight for control, generating corruption and endemic levels of violence. In the last trimester of 2017,

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<sup>2</sup> Municipalities designated by decree 1650 of 2017.

OHCHR registered the occurrence of four massacres in the context of disputes for the control of illicit economies in areas formerly controlled by FARC-EP (Nariño and Cauca).

15. The context of the vast majority of killings of human rights defenders share three characteristics: the presence of illicit economies (e.g. trafficking or production of narcotics, illicit crops, illegal mining, micro-trafficking, extortion); a municipal homicide rate exceeding the levels of endemic violence according to the criteria established by the World Health Organization (WHO)<sup>3</sup>, and a multidimensional poverty rate higher than the national average.

16. OHCHR welcomes the decision of the Office of the Attorney-General to prioritize its investigations of killings of human rights defenders, and takes note of the 15 sentences related to such crimes issued since 2015, including five in 2017. OHCHR also welcomes the strategy adopted by the Office of the Attorney-General to intervene in 500 prioritized municipalities, as well as the adoption of directive 0002 of 2017, which establishes guidelines for the investigation of crimes against human rights defenders, based on a dialogue with the Inter-American Commission on Human Rights. OHCHR further notes the support given by specialized prosecutors to regional prosecutors to improve capacity for urgent actions to investigate crimes against human rights defenders.

17. While significant progress has been made by the Office of the Attorney-General to identify the material author of the crimes, in most cases, the intellectual authors have not been identified. OHCHR considers that full criminal accountability for the attacks against human rights defenders is critical as it would constitute a safeguard for protection and non-repetition.

18. Importantly, through directive 002/2017, the Office of the National Procurator announced it will use its administrative and disciplinary powers to address the stigmatization of human rights defenders and the lack of action by municipal, departmental or national authorities to protect them.

19. OHCHR acknowledges the efforts made by the National Protection Unit of the Ministry of Interior to protect human rights defenders, but notes that 4 defenders were killed while under protection of that Unit in 2017 (all four had been assigned bodyguards). These victims who had bodyguards were killed when the bodyguards were not present, indicating that bodyguards do deter attacks. It also appears that budgetary cuts affecting the Unit have negatively impacted protection schemes.

20. It is critical to strengthen the gender analysis in the threats to human rights defenders, as well as an analysis of threats in rural settings given the prevalence of killings in these areas.

21. OHCHR recommends the modification of protection measures in rural areas and the strengthening of collective protection measures, such as through indigenous and afro-Colombian guards, as means of individual and territorial protection. The provision of protection measures has its limits as human rights defenders will continue to run risks unless the structural factors of multidimensional poverty, illicit economies, power vacuums and lack of State presence are addressed.

22. OHCHR welcomes the creation of the elite corps of the National Police, established in the Agreement to combat criminal organizations, and of the special investigation unit of the Office of the Attorney-General for the dismantling of criminal organizations and the efforts undertaken by both entities. The latter requires more financial and technical resources and political support to function properly. The Office of the Attorney-General should investigate the links between corruption and organized crime as some defenders who have denounced this correlation have suffered attacks.

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<sup>3</sup> According to WHO, a homicide rate above 10 per 100,000 inhabitants is a region suffering from endemic violence.

## **B. Reintegration of former combatants and children**

### **1. Reintegration of former combatants**

23. Sixty-six per cent of the reintegrated population of FARC-EP are from rural areas. 30 per cent identified themselves as belonging to an ethnic group, and 23 per cent are women<sup>4</sup>.

24. Serious deficiencies, such as the lack of clean water, sanitation and habitable housing, were observed in the Transitory Zones for Normalization, where the combatants were concentrated to begin the demobilization process. This situation may have led some former FARC-EP members to abandon these locations. OHCHR observed cost overruns and delays in the construction of infrastructure in some of the Zones. Given the centralization of the contracts, the Zones did not generate the expected positive economic impact on rural communities through local contracting, as foreseen in the Agreement.

25. The reintegration of former combatants in rural areas is a major challenge due to multidimensional poverty, problematic access to health and education, illicit economies and endemic violence in 96 per cent of the areas near the Zones. According to a socioeconomic study of FARC-EP conducted by the National University of Colombia, health is one of the major challenges in the reintegration process, as 33 per cent of the surveyed (3,305 persons) indicated having a disability due to the conflict.

26. OHCHR highlights the importance of accelerating the implementation of the reintegration programmes foreseen in the Agreement, including from a gender and ethnic perspective, considering the specific conditions of individuals living in rural areas. Former combatants may be reintegrated into society by undertaking jobs and/or activities such as forest rangers, logistic support for productivity, and provision of basic healthcare. Successful reintegration is key to prevent ex-combatants from engaging in illegal activities and to incite those who abandoned the reintegration process to return.

27. Illegal armed and criminal groups that have entered areas of former FARC-EP influence have generated violence in rural communities and potentially constitute a threat for former members of FARC-EP who are participating in the upcoming electoral processes. Certain sectors of society refuse to accept demobilized FARC-EP, particularly in the political arena, which has delayed and complicated the implementation of the Agreement, particularly related to their political participation. OHCHR received information regarding the killing of at least 36 ex-members of FARC-EP in 2017. Worryingly, there has been limited progress in the security guarantees for the political participation of FARC-EP, as stipulated in the Agreement. The Integral Protection Programme for organizations and communities in rural areas that includes former FARC-EP members is not yet fully operational. There is also a lack of significant progress regarding the structural changes needed to limit the impact of criminal organizations on politics, such as transforming the illegal economies.

28. The 160 members of the Security and Protection Corps created by the Agreement are demobilized FARC-EP combatants and have begun to provide protection for the new FARC political party. While this reintegration programme is a concrete example of what is possible to achieve in terms of reintegration, a higher number of demobilized FARC-EP members were supposed to be integrated it.

29. The Office of the Human Rights Ombudsman indicated that as of 25 October there may be 800 former FARC-EP fighters who had formed or joined other illegal armed or criminal groups - approximately 11 per cent of ex-combatants.

### **2. Reintegration of children**

30. The Agreement and human rights law require respect for the principle of the best interest of the child within the process of their separation from FARC-EP. However, thus far this principle has not been respected in its totality.

31. According to the Presidential Counsel for Human Rights, as of 31 December 2017, only 135 children had been separated from FARC-EP (75 girls and 60 boys). OHCHR has

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<sup>4</sup> Socioeconomic Study of Former Members of the FARC-EP, National University of Colombia, 2017.

received reports of informal separation of children that occurred before the formal process in at least Cauca, Caqueta and Meta.

32. Those who have opted to rejoin their family, which is the favoured response, face inadequate access to health and education, as is frequent in rural Colombia. It is therefore necessary to ensure the full implementation of the Agreement to improve the situation so that the children's rights could be respected when they rejoin their families. Those who have remained in separation-reintegration facilities have had better access to health and education, but are often far from their families and communities.

33. Moreover, in 2017, OHCHR received information through its field presences indicating the continued recruitment and use of children from areas where ex-members of FARC-EP were operating. In addition, ELN and criminal groups continued recruiting and using children.

### **III. The Rural Challenge and Other Structural Factors Affecting the Human Rights Situation**

34. The problems suffered by rural communities are interconnected and multidimensional. Addressing these issues is complex. The solution to one specific problem requires solutions to other problems. For example, OHCHR observed in several areas previously controlled by FARC-EP that in order for local justice to function properly without threats from criminal groups, it requires substitution of illicit crops. However, substitution involves clarification of land titles, which necessitates land purchase and distribution. All these steps entail budgetary allocations, which require a political majority at municipal, departmental and national levels to pass the budget. As disentangling the problem is distinct in each community, transformative nation-wide goals motivate each actor to take action without considering the necessary sequencing or ability to generate human rights impact. More realistic goals are required, with indicators that reflect the human rights situation down to the township level.

35. As a concrete example, OHCHR observed the challenge in solving interconnected and multidimensional problems in rural communities, in the regions of Norte de Santander, Nariño and Putumayo, where illicit crops were substituted with legal ones. However, these communities expressed concern for the lack of effective assistance to commercialize their new products. OHCHR has encouraged actions that could lead to market access for rural communities in Chocó, Norte de Santander, Antioquia and Tolima. The State, the international community and the private sector should encourage direct and fair economic relations of the rural communities with consumers to increase the standard of living and prevent a return to the illegal economy

36. State presence and the necessary budgetary guarantees are paramount in order to advance the formalisation of land ownership<sup>5</sup> as foreseen in the implementation of the Agreement's Integrated Rural Reform as well as for the creation of local markets, connectivity, technical assistance, loans and access to public services. State action is necessary to create a context where the substitution of illicit crops can be successful. While the Agreement foresees partnerships with rural communities in its implementation (for example, in the Ethnic Chapter<sup>6</sup>), community members in many rural areas have expressed to OHCHR great frustration that their participation has been reduced to attending meetings, with no visible impact.

37. In this regard, OHCHR encourages the relevant State authorities to value the participation of indigenous people, afro-Colombians, peasants, women and persons with disabilities as a mechanism for effective empowerment that could end structural exclusion and discrimination, rather than as a mere formality.

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<sup>5</sup> The National Agency for Land (ANT), has indicated to OHCHR that 3 billion pesos for the next ten years are needed in order to formalize the totality of land that now is registered as informal.

<sup>6</sup> See 6.2. of the Agreement.

## **A. Human Rights Impact of the Lack of State Presence, the Existence of Illicit Economies and Their Effect on the Implementation of the Agreement**

38. The effective and integral presence of the State in rural areas is fundamental to guarantee security, justice, the empowerment of leaders and authorities, and to stimulate economic development. While plans have been made and laws passed to ensure more presence, the deployment of State services has barely been initiated.<sup>7</sup> The sole presence of the State's security forces seeking to impose its authority through force has not contributed to create positive and sustainable change for the communities. The lack of an integrated state approach has instead led to an escalation of violence in certain parts of the country.

39. Violent groups taking advantage of the weak State presence in former areas of FARC-EP influence include organized crime groups (national and transnational), numerous local crime groups, groups that emerged due to shortcomings in the reintegration of FARC-EP, and organized armed groups such as ELN and EPL.

40. Their power struggle for the control of illegal economies is reflected in the rising homicide rates in several of these regions, including the ones declared as ZOMAC. For instance, in Mesetas, Meta; Maguí Payán, Nariño as well as in El Carmen, Norte de Santander, the number of homicides registered by the National Police during 2017 surpassed the number registered in 2016 by 1095, 966 and 916 per cent, respectively. Those living in areas of illicit economies have faced different types of violence, which has led some civilians to seek the support of illegal groups as a means of protection.

41. A sustainable solution to illicit crops requires structural changes to enable farmers to be fully integrated into the legal economy in the long-term. Provisions in the Agreement related to the substitution of illicit crops and rural reform provide a historic opportunity for tens of thousands of small and landless farmers who wish to substitute illicit crops. The State and the international community should support substitution, and not undermine it through forced eradication, to maximize this historic opportunity where over a hundred thousand coca growers have manifest their interest in substitution. The State and donors have thus far been using a metric of how much coca is eradicated as the goal, when a rights/Agreement-based indicator related to successful substitution is required.

42. The implementation of forced eradication of illicit crops operations conducted by the Ministry of Defence in areas where voluntary substitution agreements have been signed, or were being considered, triggered protests and confrontations. OHCHR intervened in many cases to prevent an escalation of violence. The presence of illegal groups who have threatened, kidnapped and killed people supporting substitution (local activists, Government workers, staff members of international organizations), coupled with the contradictory messaging created when communities interested in substitution have been subject to forced eradication, have pushed some communities into the sphere of influence of illegal armed groups and criminal organizations.

43. OHCHR undertook actions to empower local community governance structures, such as Township Councils for Community Action<sup>8</sup>, indigenous and afro-Colombian authorities, as well as women's participation in rural areas, to strengthen their capacity to claim their rights. OHCHR has also been involved in stimulating closer relations between these entities and municipal, departmental and national authorities. Such empowerment is critical to support the establishment of an effective and integrated State presence in areas of former FARC-EP influence.

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<sup>7</sup> Plan marco de implementación del acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera, paragraphs 14-24.

<sup>8</sup> The Township Councils for Community Action were created by law 743/2002 to "promote an integral, sustainable development through the exercise of participative democracy".

## **B. Development Plans with Territorial Focus**

44. The Development Plans with Territorial Focus (PDET) are the main tool created in the Agreement for the advancement of human rights in the rural areas most affected by the conflict. They should be implemented in a strategic, coordinated and timely manner, with a set of attainable goals. While there is a need for implementation in all of the conflict-affected communities, it is suggested to orient implementation in a gradual and focalized manner so that tangible changes are produced in one area before moving to the next. This would produce greater trust in the peace process. It would also generate opportunities for inter-institutional learning of the needed sequential and simultaneous approaches to the interrelated problems faced by the communities, thus providing a means to more rapidly resolve the entanglement.

45. The resources announced by the Government in the framework of the Rapid Response Strategy, conceived to generate immediate impacts in the areas of former FARC-EP influence, have not been made available. Therefore, it is necessary to accelerate the process of implementation, properly resource this strategy, and assure that these delays are not repeated while implementing PDET.

46. OHCHR observes that the possibility of success for PDET diminishes in areas with a high incidence of illicit economies and criminal groups. In areas where such risks are high, the intervention should be geographically focused (e.g. at the township level) and include a human rights “do no harm” protocol.

## **C. Governance and Local Justice**

47. OHCHR observes that the Township Councils for Community Action, responsible for conflict-resolution at the township level, have been losing power and legitimacy in many rural areas. FARC-EP often implemented the decisions of the Township Councils. Creating a new relation with national, departmental and municipal institutions has been difficult as the Township Councils have no additional resources for this task and the delays in the needed expansion of State entities, such as the Office of the Attorney-General, the Office of the Procurator General, the national police, the Regional Autonomous Corporations<sup>9</sup> and municipalities, undermine the ability of the Township Councils to coordinate with State authorities and to manage conflicts. This has even forced them to attend to situations that surpass their functions, including homicides and rapes.

48. In areas with presence of illicit economies, many members of Township Councils are part of such economies. This affects their credibility, legitimacy and ability to interact with the police or prosecutors before the implementation of substitution, thereby enabling criminal groups or actors with private economic interests to usurp local justice functions.

49. A similar situation has been observed within afro-Colombian councils and indigenous authorities, but for different reasons. These authorities are recognized in the Colombian Constitution, but not yet in practice. Some State actors are beginning to accept self-governance of these authorities over their territory. At the same time, high-level State officials have made public statements against the principle of prior, free and informed consultation as many still see self-government as an obstacle for the implementation of agro-industrial and mining projects and not as a means to improve the human rights situation.

50. OHCHR considers that actions towards the strengthening of local justice and self-governance systems are more viable and entail fewer risks for the communities and authorities in regions without illegal economies. To avoid doing harm and wasting resources, the Government and donors should be aware of the difficulties and dangers of working in areas with illicit economies and criminal groups, and of the need to prioritize economic transformations in those areas.

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<sup>9</sup> Regional Autonomous Corporations are regional organs for environmental control. Their presence in dispersed rural areas is fundamental to avoid the deterioration of the environment after the signature of the Agreement.



## **D. Economic, Social and Cultural Rights**

51. One of the principal obstacles faced by the State in relation to the guarantee of economic, social and cultural rights is the temptation to prioritize public spending in population centres to obtain votes, over spending to ensure access and enjoyment of basic rights in less populated deprived rural areas.

52. Serious challenges regarding equal access to the right to health persist in rural areas. By way of example, the situation observed in the municipality of Riosucio, Chocó – an area of former FARC-EP influence - indicates that despite material improvements in the health centre of the urban area, challenges persist in rural areas, namely lack of drinking water and sewage systems, absence of health centres and health professionals. Moreover, children are deprived of healthcare for lack of birth certificates. Between January and August, six children died due to preventable and curable causes in this area, such as diarrhea and respiratory infections.

53. The lack of basic health care and of a culturally pertinent public health policy affects indigenous peoples at risk of extinction in Amazonas, Putumayo and Caquetá. Likewise, there is a lack of access to health care in small and landless farmer communities in various parts of the country formerly under FARC-EP influence.

54. The infant mortality rate amongst the indigenous population (20,9 per every 1000 children born alive) is five points higher than amongst the non-indigenous population (15,9). The maternal mortality rate of afro-Colombian women is 152,9 whilst it is 66,5 amongst the rest of the population.<sup>10</sup>

55. The rights to water, health and food are also negatively impacted by legal and illegal mining polluting rivers in various parts of the country, especially in areas affected by the armed conflict. This is the case of rivers Caquetá and Putumayo, which affects indigenous peoples; the river Nechí, in Antioquia; the river Cauca; and the rivers Quito and Atrato, in Chocó.

56. OHCHR supports two processes of restructuring of illegal mining into legal and environmentally sustainable mining, in El Bagre, Antioquia, and in the basins of the rivers Beberá and Bebaramá, in Chocó. In the latter area, the Ministry of Environment, local and ethnic communities, the international community, and the United Nations Industrial Development Organization are involved in a process that seeks to improve living conditions in mining communities, avoid the presence of criminal groups, and minimize the environmental impact of gold mining.

57. The lack of continuity in the contracting of teachers, and the precariousness of school facilities and pedagogical material, contribute to dropout rates and hinder access to quality education, as OHCHR observed in rural areas affected by the conflict in Antioquia, Amazonas, Bolívar, Huila, Putumayo, Nariño, Choco, Arauca, Caquetá, Meta and Tolima.

58. The lack of commitment to measurably improve the level of rights enjoyed by the communities is observed among some civil servants – even high-ranking ones – who interpose their personal and career interests over the rights of the population. It is therefore necessary to create indicators at the township level that identify the problems of access to economic, social and cultural rights, as current statistics at the municipal or department levels do not capture these violations.

## **E. Corruption and Human Rights**

59. Corruption deprives many communities of social investments and undermines the efforts by the State to guarantee all human rights. Thus, the Committee on Economic, Social and Cultural Rights recommended that the Government of Colombia address the causes of corruption.<sup>11</sup>

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<sup>10</sup> [http://repositorio.cepal.org/bitstream/handle/11362/41598/4/S1700567\\_es.pdf](http://repositorio.cepal.org/bitstream/handle/11362/41598/4/S1700567_es.pdf).

<sup>11</sup> E/C.12/COL/CO/6 de 6 de octubre de 2017.

60. The Office of the General Comptroller estimates that the cost of corruption amounts to approximately 17 billion USD per year. The Office of the Attorney-General evaluates the cost at 4 per cent of the GDP. This can be compared with the World Bank estimation that Colombia spends roughly five per cent of its Gross Domestic Product (GDP) on health.

61. In its response to the Committee on Economic, Social and Cultural Rights in its sixth periodic report, the Government of Colombia indicated that between 2012 and 2016, that Office of the Attorney-General had received 64,095 complaints regarding corruption. OHCHR notes that only 1,6 per cent of the cases were resolved, demonstrating significant historic impunity.

62. In the framework of its new anti-corruption plan, to be implemented between 2016 and 2020, the Attorney-General announced<sup>12</sup> that over 500 civil servants were being investigated, involving approximately 686 million USD. Of particular concern is the case of the former Directing Prosecutor on Corruption, who was arrested for allegedly requesting bribes from the ex-Governor of Córdoba. In 2017, the efforts of the Office of the Attorney-General resulted in a spike in public complaints on corruption.

63. Indicators to measure the impact of corruption on access to economic, social and cultural rights should be created. Resources recovered from corruption should be used to increase access to such rights, particularly in the communities most affected by the conflict.

64. OHCHR is concerned by the events that occurred in Mocoa, Putumayo, in March 2017, where a mudslide caused 328 deaths and 103 disappearances, and affected 5,883 residents. The last Territorial Zoning Plan designated this particular area as an “urban expansion zone”, which allegedly made land purchase possible for construction, despite objections by the environmental authority due to previous warnings and incidents. This example demonstrates how corruption can affect the right to life.

65. OHCHR obtained information on acts of corruption allegedly perpetrated by members of the military linked to fuel-smuggling in Norte de Santander. According to Ecopetrol, 1,800 barrels were stolen in the first nine months of 2017. There are numerous allegations of armed forces involved in facilitating transport of material to produce cocaine and machinery for illegal mining. Corruption by members of the armed forces can empower economically criminal groups and other armed groups. The high levels of impunity in cases of corruption in the past have encouraged the persistence of such practices within the armed forces.

66. It is therefore essential to accelerate and strengthen the implementation of the aspect of the Agreement related to the intensification of measures against corruption.

67. OHCHR highlights an investigation by the Office of the Attorney-General into alleged asset-laundering by national and transnational criminal organizations allegedly involving municipal officials in Pitalito, Huila, as well as a renowned local businessman. The investigation linked the alleged perpetrators to at least two cases of killings of human rights defenders who were investigating cases of corruption committed in 2015 and 2017.

## F. Land

68. OHCHR has observed that the process of land restitution is seriously hampered in areas of interests for agro-industrial, mining and energy companies. OHCHR welcomes the decision of the Constitutional Court<sup>13</sup> expressing concern regarding the fact that thousands of case files related to land conflicts (including 6,000 in Córdoba alone) were “lost” before a transfer from one state entity to others.

69. Illicit economies generate criminal activities, which engender security risks for people claiming land restitution and for State agents working on this process, as observed by OHCHR in Atrato River Basin/ Urabá and in La Dorada, Caldas.

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<sup>12</sup> <http://www.fiscalia.gov.co/colombia/noticias/casos-de-corrupcion-detectados-e-investigados-por-la-fiscalia-ya-ascienden-a-2-billones-de-pesos/>.

<sup>13</sup> Constitutional Court, Auto 540 of 2017.

## **G. Participation**

### **1. Political participation**

70. While most urban voters enjoy excellent access to polling stations, the population in rural areas is facing challenges in exercising their right to vote. Lack of infrastructure in these areas requires from several hours to days of travel in order to vote, which implies costs to the voter. This undermines participation and hinders political inclusion. Equal access should therefore be guaranteed for rural voters, especially considering the 2018 presidential and legislative elections.

71. Equal access is also important to prevent pressure on voters as candidates and parties backed by different economic sectors – including illicit ones – often offer trips to polling stations, thus influencing the voting.

72. OHCHR notes with concern serious obstacles to the implementation of the political participation chapter in the Agreement due to attacks from political sectors interested in the maintenance of the political *status quo* or that have some other reason to oppose the Agreement. It is particularly alarming that Congress did not approve the Special Constituencies for Peace, conceptualized in the Agreement as a means to increase the political participation of those living in former conflict affected areas.

### **2. Social Dialogue**

73. In 2017, multiple protests took place, including in Buenaventura, Valle, Norte de Santander, Cauca and Chocó, as well as nation-wide indigenous protests. Gaps in the guarantees of rights, and citizens' perception of institutional incapacity, lack of democratic representation and corruption, were among the motivations for these protests.

74. OHCHR intervened in several protests to facilitate dialogue among the parties, diminish tensions and support the implementation of the rights-enhancing agreements reached. OHCHR notes the positive role played by the Minister of Interior, the Minister of Environment and the Procurator General in these difficult processes.

75. Social protests are common in Colombia and resulted in 14 deaths and numerous injuries in 2017. It is therefore urgent to implement the guarantees for mobilization and social protests stipulated in the Agreement, and to ensure the conformity of domestic protocols on the use of force in social protests with international standards.

76. OHCHR recognizes the efforts of the Government and protesters to find solutions based on respect for human rights. Notwithstanding, binding mechanisms, such as disciplinary control by the Procurator General and effective monitoring of implementation of obligations, are needed to avoid future protests derived from failure to fulfill previous agreements, as observed in Chocó, Buenaventura and Cauca.

## **IV. Citizen Security in a context of peace**

77. National, regional and international human rights law stipulates that the military is not responsible for public safety and law enforcement, nor for the fight against organized crime, or the fostering of social harmony and development. Exceptionally, the police may require military support, which should be provided under the principle of police primacy, and with a strict civilian oversight. The tasks of promoting social harmony and development are the exclusive responsibility of civilian authorities.

78. OHCHR is concerned with plans developed by the military<sup>14</sup> that justify their active participation in tasks of public safety, as well as other guidelines issued for the application of International Humanitarian Law instead of International human rights law to respond to organized criminal groups.

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<sup>14</sup> Directive 015 of 2016 of the Ministry of Defense.

79. OHCHR documented 11 cases of alleged extrajudicial executions in 2017, in Arauca, Bolívar, Cesar, Córdoba, Norte de Santander, Tolima and Cundinamarca. Eight were allegedly perpetrated by members of the military and three by the police. OHCHR notes with great concern that, for the second consecutive year, alleged extrajudicial executions perpetrated by the military were registered in Bolívar, Cesar and Norte de Santander.

80. Five extrajudicial executions were allegedly perpetrated in the framework of public safety operations conducted by the military, demonstrating the risks of involving the military in police tasks. Three other cases allegedly occurred during military operations against ELN. Three cases were related to possible excessive use of force during routine police procedures.

81. Factors contributing to alleged extrajudicial executions included the possible absence of command and control by police and military commanders, lack of operational planning, and absence of tactical discipline as factors contributing to the persistence of these human rights violations.

82. The State must strengthen the operative capacity of civilian institutions in rural areas to avoid that the military performs tasks outside of its responsibilities. Some politicians have called for the military to be involved due to the fact that they are among the few State institutions operational in former areas of conflict. However, this implies its involvement in situations where military training and discipline are not suitable and produces distortions in relation with other State authorities, particularly local authorities and the police, generating dependence and, occasionally, subordination of civilian to military power. Such situations were observed in Bolívar, Huila, Meta, Cundinamarca, Tolima, Antioquia, Caquetá, Cauca, Valle del Cauca, Putumayo, Amazonas, Norte de Santander, Arauca and Chocó.

83. The Instrument of Prevention and Monitoring of Criminal Organizations foreseen by the Agreement has not been fully implemented, although the first step towards its implementation was taken in December, through the Ministry of Interior's decree 2124, which regulates the new alert and prevention system for the rapid reaction to activities of criminal organizations.

84. Through its monitoring in rural Colombia, OHCHR has observed the necessity to provide the national police with necessary resources to fully assume its duties and functions in the implementation of the Agreement. OHCHR calls on the Government to make the necessary adjustments to its budget.

85. OHCHR has observed that the State still does not have valid statistics of the dimension of sexual violence despite the existence of the Integrated Information-system on Gender-based Violence, and that the protocols for intervention are usually not respected in rural areas, including when victims wish to make a complaint to the police and prosecutor.

## **V. Transitional Justice and the Response to the Rights of the Victims**

### **A. Progress and Challenges of Transitional Justice Mechanisms Derived from the Agreement**

86. The Agreement called for the creation of an Integrated System of Justice, Truth, Reparations and Guarantees of Non-repetition (Integrated System). If fully implemented as conceptualized, it would generally conform to international standards. However, Congress did not implement the Integrated System as conceptualized and thus far, implementation has not complied with international standards.

87. This system is composed of one judicial mechanism, namely the Special Jurisdiction for Peace (JEP), and of two extrajudicial ones, the Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV) and the Unit for the Search of Persons declared as Disappeared (UPBD). These entities were conceived to address grave violations of human rights and international humanitarian law committed during the armed conflict.

88. As requested in the Agreement, OHCHR has supported the functionality of the Integrated System, mainly through the provision of logistical and technical assistance to the territorial liaisons of the Executive Secretariat of JEP, which was the only operational entity of the Integrated System in 2017.

89. The Integrated System will have difficulty operating in many areas of former FARC-EP influence given continuing human rights violations there.<sup>15</sup>

90. OHCHR is deeply concerned as the expectations created by the Integrated System to reduce impunity for violations of human rights and international humanitarian law are undermined by the exclusion of non-military State agents and private individuals from the scope of mandatory application of the system. Moreover, despite OHCHR efforts,<sup>16</sup> the definition of penal responsibility of military superiors established in the Legislative Act 01 of 2017 and in the Statutory law of JEP does not comply with international standards. The Prosecutor of the International Criminal Court warned that this circumstance “could frustrate the efforts of Colombia to observe its duty to investigate and sanction international crimes.”<sup>17</sup> The regulation makes it virtually impossible to prove responsibility by omission of military commanders. This seriously affects the capacity of JEP to guarantee accountability of the most responsible.

91. Notwithstanding the adequate conceptualization and important work of the Selection Committee of the Integrated System, OHCHR is deeply concerned by the decision of Congress to prohibit the appointment of some of the selected judges due to their involvement in litigation against the State in cases of alleged human rights violations. This contradicts international and national standards relative to the independence of the judiciary, as well as the Agreement regarding the profiles and competencies required to be appointed a judge to JEP. This also risks exacerbating the stigmatization of human rights defenders in a context where the killings of human rights defenders have been rising.

92. OHCHR is concerned with the Congressional dispensation of amnesties, pardons and other measures of commutation for members of FARC-EP and Colombian military convicted or charged with human rights-related crimes that, under international law, are not subject to amnesty. These individuals have been provided conditional liberty with few conditions, for example, without effective collaboration in terms of justice, truth, reparations and guarantees of non-repetition. This affects the legitimacy of the Integrated System. The Amnesty Law as applied in these cases may result in benefits for the perpetrators rather than in the intended alternative or non-retributive treatment through the participation in the Integrated System as conceptualized in the Agreement. Up to 24 November, the Executive Secretariat of JEP reported the release from prison of 2,381 former members of FARC-EP and of 1,011 members of the military. OHCHR observed that there has been no information regarding the whereabouts of those released or as to whether they will assist with, for example, truth and reparations.

93. OHCHR notes with concern that of the 36 ex-members of FARC-EP killed in 2017, 11 were amnestied and released from prison without a re-entry/reintegration programme. OHCHR has advocated that those leaving prison through an amnesty or conditional release should become part of a re-entry/reintegration programme that would include work of social value and contributions to reparation and reconciliation, participation in which would also contribute to their security.

94. OHCHR notes a lack of consistency in the application of the amnesty law by the judiciary, resulting in similar cases receiving distinct treatment. Thus, some ex-members of FARC-EP were released with the same charge as others who remain in prison.

95. OHCHR reiterates that CEV is the legitimate body mandated in the Agreement to uncover the truth of past violations and abuses. The Truth Commission of the Active Reserve

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<sup>15</sup> <http://www.hchr.org.co/map>.

<sup>16</sup> A/HRC/34/3/Add.3.

<sup>17</sup> Amicus Curiae of the office of the Prosecutor of the International Criminal Court, 18 October 2017, para. 58.

of the Armed Forces and National Police lacks objectivity as its members were an active party to the conflict, and its creation seems intended to undermine CEV.

96. The search for disappeared persons is a significant obligation of the State to the victims. Due to the humanitarian role of the Unit for the Search of Persons declared as Disappeared, OHCHR calls on the Office of the Attorney-General, the National Institute of Forensic Medicine and Sciences and other stakeholders to collaborate with the Unit regarding search, localization, exhumation, identification and dignified delivery of remains. This process must include the active participation of the victims.

97. OHCHR urges the State to ensure the financial and operational sustainability of all the mechanisms of the Integrated System, noting that in 2017, these efforts were largely funded by the international community.

## **B. Extrajudicial Executions of Previous Years**

98. OHCHR is concerned by the selective impunity in cases of extrajudicial executions perpetrated by members of the armed forces that involve Generals, and notes that this compromises the victims' rights to justice and truth. OHCHR received information regarding alleged threats to victims, witnesses and judicial officials involved in litigation concerning extrajudicial executions. The affected persons have not made formal complaints, indicating that they distrust the authorities.

99. The decisions of the Council of State establish that the extrajudicial executions (so called "false positives") were a generalized and systematic practice.<sup>18</sup> OHCHR observed that high-ranking officers in the chain of command, including some of those under investigation for numerous "false positive" cases, had been promoted in the past two years while they should have been subjected to a vetting process to ensure that those involved or who failed to take action to stop these heinous crimes at the very least be removed from active duty. Additionally, funds obtained throughout the chain of command as bonuses for killings in combat that were in fact extrajudicial executions should be reimbursed and used for reparations to victims.

## **VI. Recommendations**

**100. The High Commissioner for Human Rights reiterates the recommendations made in his previous reports and makes the additional following recommendations:**

### **A. Creation of Change Indicators to Monitor the Effective Enjoyment of Human Rights**

**(a) Urges for the creation of a system, including at the township level, to measure the impact of the Agreement on the effective enjoyment of human rights.**

**(b) Urges the Offices of the Attorney-General, the Comptroller General and the Procurator General to continue to increase their efforts to prevent, prosecute and punish cases of corruption of civil servants and political representatives, and to measure how that work contributes to improvements in the progressive realization of economic, social and cultural rights.**

**(c) Calls on the Ombudsman's Office to include lack of access to economic, social and cultural rights, as well as corruption, in its early warning/risk-reports.**

**(d) Urges the State to make effective use of the Integrated Information-system on Gender-based Violence.**

**(e) Urges the international community to establish efficient control mechanisms to guarantee that the resources allocated for the implementation of the**

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<sup>18</sup> Council of State, 5 September 2017, case number: 73001-23-31-000-2008-00561-01 (38.058).

Agreement generate measurable impacts that favour greater enjoyment of rights in rural communities most affected by the conflict.

## **B. Transformation and Empowerment of Small and Landless Farmers, Indigenous and Afro-Colombian Communities**

(a) Urges the State to secure integral and effective institutional presence in rural areas, particularly those of former FARC-EP influence, with the objective to consolidate the recognition, strengthening and support the legitimacy of the work of the Township Councils, afro-Colombian councils and indigenous authorities.

(b) Urges the State and international community to prioritize structural changes in the rural areas, particularly where the conflict had the most impact, and to empower local administration and justice (e.g. transitional, ordinary and indigenous jurisdictions).

(c) Recommends the State to set realistic goals regarding the implementation of the Agreement in rural areas, and include a risk-analysis that considers the presence of illicit economies and the dangers to communities and implementers.

(d) Recommends the State use public purchases of locally produced products from the rural areas most affected by the conflict as a means of transforming historic poverty and exclusion, aiming at 30 per cent of all public purchases by 2020.

(e) Encourages the State to develop a system that allows for more civil servants at all levels to have experience working in rural areas, in order to understand the challenges facing each region and apply differential approaches including from gender and ethnic perspectives.

## **C. Positive human rights impact through the implementation of the Agreement with FARC-EP and in the framework of the negotiations with ELN**

(a) Urges the Office of the Procurator General to investigate and adopt adequate administrative and disciplinary measures regarding delays in the implementation of the Agreement. Notwithstanding, the parties should consider orienting implementation of the Agreement in a gradual, differential and focalized manner in order to generate tangible changes in a realistic number of communities as a first step, rather than aiming at a one-time nationwide implementation strategy.

(b) Urges the increase of public spending in areas where informal separation of children from FARC-EP took place so that children can have access to education, psychosocial and development support, applying the principle of the best interest of the child as well gender and ethnic approaches

(c) Urges the State to timely implement all aspects related to the reincorporation of ex-members of FARC-EP as foreseen in the Agreement, including a gender-approach, in order to promote their full social, economic and political inclusion, with the necessary security guarantees.

(d) Urges the Elite Corps of the Police to coordinate with the entities that are part of the National Commission for Security Guarantees (e.g. the Office of the Attorney-General) to provide a comprehensive response in prevention, protection and investigation related to security concerns in areas of former FARC-EP influence.

(e) Calls upon the State to correct aspects of the Integrated Transitional Justice system that are not in conformity with international standards; to secure funding for the mechanisms created; and to allow for the effective participation of the victims.

(f) Reminds all personnel of the Integrated Transitional Justice system to act in accordance with Colombia's human rights obligations.

(g) Encourages the Government and ELN to increase their level of respect for human rights and international humanitarian law to build confidence in the peace process.

(h) Recommends that the Government and ELN reach an agreement based on a human rights approach that would allow for timely structural transformations in rural territories with ELN presence, to avoid the creation of power vacuums.

(i) Insists that the use of force on behalf of the State, particularly in situations of social protests, adhere to the principles of international human rights law, as required by the Agreement; the use of lethal force should be subject to strict conditions, as per relevant international standards, and transparent accountability.

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