

MASTER THESIS

**HUMAN RIGHTS
ENFORCEMENT AND GENDER
ISSUES IN TRANSITIONAL
JUSTICE SITUATION:
THE EXAMPLE OF COLOMBIA**

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Human rights enforcement and gender issues in transitional justice situations: the Colombian case

- **Abstract:**

Colombia has been involved for more than fifty years in a complex war, mixing a plurality of actors, some of them being difficult to identify (guerrillas, narco-traffickers, paramilitarism, State army, ...). These conflicts had very strong impacts on the lives of their actors, but above all on the civilians who have been victims of a high level of violence and suffered many violations of their fundamental rights.

The armed conflict in Colombia originated from a confrontation between a group of peasants protesting against the politics of the State, and the national army. From this dispute emerged many guerrillas fighting against the national army, and with each other, added to the proliferation of narco-trafficking activities, generating violence across the country, and many human rights violations such as massacres, disappearances, extrajudicial killings, rapes, torture, among others. During many years, the State did not recognize the existence of an armed conflict in its territory, trying to minimize it and considering it was only an issue of terrorism. Even if the judicial system in Colombia is quite developed, and inspired from the French model, the introduction of human rights as a theme subject to protection in the government agenda has been slow and rather recent.

On 24th August 2016, the Colombian State and the Fuerzas Armadas Revolucionarias de Colombia (FARC), the main guerrilla involved in the war against the State, have signed an historic Peace Agreement, putting an official end to hostilities. This Peace Agreement is a tremendous act considered as unprecedented, since it generated the creation of many mechanisms of reconciliation to reach a lasting peace. The issue of human rights and the recognition of their violation has been put in the center of the negotiations, and the country started a process of transitional justice for the implementation of the agreement. Through the framework of transitional justice, many institutions have been created, aiming at repairing the victims, understanding what happened during the conflict and punishing the perpetrators, under the creation of the “Integral System of Justice, Truth, Reparation and Non-Repetition” (Sistema Integral de Justicia, Verdad, Reparación y No Repetición).

Furthermore, a special focus on gender has been settled in the agreement, which is an historic step in a country where women suffer from many forms of discrimination and violence. Women have been touched in a particular way by the armed conflict, being victims of gender-based

violence and instrumentalization of their bodies by the armed actors. During the negotiations of the Peace Agreement, thanks to the determination, mobilization and work of many women in the country, a Gender Subcommittee has been created, working to introduce a whole chapter on the condition of women in the agreement to better their situation on some important points. Therefore, the Peace Agreement has been a relief for many people in Colombia. But the official end of the conflict does not mean the end of violence, and several issues remain in the country. One of the biggest set of problems today are the increasing attacks against social leaders and human rights defenders who, fighting for the respect of their rights, their lands or their convictions, and for the implementation of the agreement, are targets for remaining actors who used to benefit from the conflict.

This phenomenon of violence affects all the more female social leaders, who suffers from a double victimization for first being a woman, and second for belonging to a social group particularly at risk. Today, almost three years after the signing of the Peace Agreement, the situation remains complicated and fraught with obstacles for the complete implementation of the agreement, and therefore, to the complete enforcement of the mechanisms created to reach peace. The main challenges remaining today are therefore, the protection of human rights defenders and social leaders and the real implementation of the agreement, for the reparation of victims, the protection of former combatants who dropped their weapons, the process of reconciliation within the society, the punishment of human rights violations perpetrators, aiming at the achievement of a durable peace.

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TABLE OF CONTENTS

INTRODUCTION	6
I. THE COLOMBIAN CONFLICT: BETWEEN HUMAN RIGHTS VIOLATIONS AND NEGATION OF THE CONFLICT	11
A. Situation of Human Rights throughout the conflict	11
1. Genesis of the armed conflict	11
2. Negation of the conflict	13
3. Nature of human rights violations	16
a. Extrajudicial killings, the case of “false positives”	16
b. Disappearances	17
c. Torture and other cruel, inhuman or degrading treatment or punishment	18
d. Arbitrary arrest or detention	19
e. Massacres of civilians in which the State is involved	19
f. Massacres of civilians by illegal armed groups	21
g. Internally Displaced People	22
h. Other ways of violence	23
4. Functioning of justice in Colombia regarding Human Rights: before and during the conflict	25
a. The political and normative (legal) system of Colombia	25
b. Historic of the introduction of Human Rights in the State mind	28
B. Signing of the Peace Accord: between critics and relief	34
1. The changes regarding Human Rights	34
a. The entrance in the framework of transitional justice	34
b. Judicial achievements with the Peace Accord	41
i. Creation of new institutions	41
(1) For the access to justice: Sistema integral de verdad, justicia, reparación y no repetición (Integral System of Truth, Justice, Reparation and Non-Repetition)	42
(a) “Justicia Especial para la Paz” (JEP), Special Jurisdiction for Peace	46
(b) Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, dicha “Comisión de la Verdad” (CEV) (Commission for the Clarification of Truth, Coexistence and Non-Repetition)	50
(c) “Derecho a garantías de no-repetición” (Right to guarantees of non-repetition)	52
(d) “Unidad de búsqueda de personas dadas por desaparecidas (UBPD) en el contexto y en razón del conflicto armado”: Unit for the search of persons reported missing (UBPD) in the context and because of the armed conflict	53
(e) Medidas de reparación integral para la construcción de paz (Integral reparation measures for peacebuilding)	54
(2) Others mechanisms provided by the Peace Agreement	56
(a) Program of reinsertion of ex-FARC combatants	56
(b) “Consulta previa de obras, proyectos y actividades” (Prior consultation of works, projects and activities)	59

TABLE OF CONTENTS

c. Distinction of the Peace Agreement as an example of transitional justice	59
2. Critics of the Peace agreement	60
II. THE ROLE OF WOMEN IN THE PATH TO PEACE	62
A. Situation of women during the conflict	62
1. Women, a category particularly affected by the conflict	62
a. Physical, psychological and sexual violence suffered by women victims of the armed conflict	63
b. The losses and resignations suffered by women	65
c. The increase of male control over women's lives	65
2. Gender based violence : the body of women marked by the conflict	66
3. The old phenomenon of femicide in Colombia	70
B. Major role of women in the Peace Agreement	72
1. Major role of the Gender Subcommittee in the inclusion of a gender approach in the Final Peace Agreement	72
2. Official improvement for women achieved with the Peace Accord	77
3. The situation of women in practice	81
4. Situation of persons with sexual orientation and diverse gender identity	84
III. HUMAN RIGHTS ISSUES NOWADAYS: BEHIND THE SCENE OF THE PEACE ACCORD	85
A. The problematic of attacks against social leaders	85
1. Increasing of attacks against social leaders: explication of the phenomenon	86
2. Criminalization and stigmatization of human rights defenders	88
B. The special difficulty of being a woman social leader	90
1. Difficult positions to access and at risk for women: comparison of numbers between men and women murders	90
2. The differential treatment reserved to women social leaders	93
3. The impact of murdering a woman leader	96
4. The situation today	96
C. Action of women in the country, sign of their empowerment	97
IV. THE FUTURE OF HUMAN RIGHTS IN COLOMBIA	101
A. Promises of the new government	101
1. The engagement of the new government regarding human rights	101
2. Status of implementation of the Peace Agreement	103
B. The situation today : between hopes and fears	105
C. The challenges remaining	109
1. Functioning of the Special Jurisdiction for Peace (JEP)	109
2. Progress on the reincorporation program of ex-combatants	111
3. Remaining attacks against human rights defenders	113
4. About extrajudicial killings	114
Conclusion	124
Bibliography	126

Introduction:

Colombia has suffered for many years from a complex war. Complex because mixing a plurality of actors who are difficult to identify and who are pursuing different goals: drug traffickers, armed groups, paramilitary groups, State and national army, police, terrorist groups, miscellaneous guerrillas... These different actors have been instigators, observers and victims of this armed conflict which has lasted for more than fifty years.

In 2012, under the mandate of former President Juan Manuel Santos, the negotiations for the definitive Peace Agreement began between the FARC (Fuerzas Armadas Revolucionarias de Colombia) and the Colombian State. Finally, on 24th of August 2016, the FARC, represented by Rodrigo Londoño and Juan Manuel Santos as president of Colombia, signed a Peace Agreement and put an end to the FARC as an armed group, which became a political group under the country's legality and democracy.

This momentous act put officially an end to hostilities which lasted for over fifty years. More than 10,000 FARC combatants abandoned their weapons and started their transition into civilian life. Several leaders are even holding seats in Congress and Senate, while victims have been provided mechanisms for truth and justice¹. This constitutes an historical step forward for a conflict which has made more than 220 000 dead, 40 000 disappeared and 7 millions of displaced people in the country. Nonetheless, even if the conflict has officially stopped, wildness remains in the country and seems to increase from the last months with a resurgence of menaces, attacks and homicides. According to Michel Forst, Special Rapporteur on the situation of human rights defenders, regarding his last visit in the country²: “despite tremendous efforts made, two years later, the effective implementation of the Peace Accord remains elusive and is fraught with challenges”. He adds that this situation is “some arguably linked to a lack of sufficient resources and deficient inter-institutional coordination” along with “a lack of sufficient support by some sectors”³. This escalation of violence affects in majority rural communities, mainly poor territories with very few resources to defend themselves, and the most targeted groups are social leaders and human rights defenders

¹ End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst on his visit to Colombia, 20 November to 3 December 2018.

² 20 November to 3 December 2018

³ End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst on his visit to Colombia, 20 November to 3 December 2018.

engaged in the collective interest of those communities. All the more, the most vulnerable group is the one of women social leaders and women human rights defenders, which suffers from a double vulnerability and double victimization, first for being women in a country where women use to suffer from harassment, violence and feminicides, and then for being targeted by criminal groups for trying to prevent or at least moderate that the country returns to violence.

The main objective of this project is to give an overview of the situation regarding human rights few years after the signing of the official end of the armed conflict. The research question of my project is, therefore, to analyze the effects - either positive, negative or mitigated - the Peace Accord had on the situation in the Republic of Colombia regarding human rights. This demonstration will have a special gender based focus, with a focal point on the situation of women in the country, along with the situation of human rights defenders and more specifically the challenges women social leaders are facing.

Therefore, we will start by considering what was the situation regarding human rights during the armed conflict in Colombia, exposing the general panorama of human rights currently in the country. We will then analyze the situation during the writing and the firming of the Peace Accord, which changes the Peace Accord brought regarding human rights and their legal enforcement, as officially determined in the accord and comparing it with the situation in practice (I). We will then analyze the setting regarding women, what has been their situation in the conflict, and figure out the role women played in the writing of the Peace Accord and the achievements they have reached from it (II). After that, we will evaluate what challenges regarding human rights the country still has to face. In this section, we will mainly focus the research on the situation of social leaders and human rights defenders, victim of a wave of attacks and assassinations in the country, with a deeper approach on the situation of women social leaders (III). Finally, we will try to figure out which are the perspectives for the future of the country, whether it seems positive, negative or mitigate, and to determine what are the challenges remaining (IV).

The justification for the research: importance and relevance for academia and the humanitarian field:

This research seems to me of a great importance and relevance, firstly for the humanitarian field because the subject is really topical and the situation seems to get worth every days. It seems

important to be aware of the situation the country is facing and moreover about the case of human rights defenders which are being more and more targeted in the country. It has also a great importance for the academia, because this Peace Agreement is one of the main example of transitional justice that the international law community has ever observed. It has been a very long and hard process, and we are now in the heart of its implementation, so it is absolutely relevant to analyze it and even more, to encourage it, especially on the international stage.

I. I. The Colombian conflict: between Human Rights violations and negation of the conflict

Colombia in the past fifty-years has been the theater of lot of massacres, threats and violations of human rights (A). The signing of the Peace Accord has been a big change in the political and social panorama of Colombia by putting an official end to the conflict, bringing relief to lots of Colombian, but in the same time generating critics (B).

A. Situation of Human Rights throughout the conflict

The current situation of the country could not be understood without a throwback to the genesis of the conflict (1), the political approach of the State on it (2), a panorama of the human rights violations perpetrated (3) and the functioning of the justice in Colombia (4).

1. Genesis of the armed conflict Colombia

The armed conflict in Colombia originates from the organization of a group of farmers between 1957 and 1964, who, after an agreement between Liberals and Conservatives in 1957, expressed their disagreement with the amnesty resulting from it. They initiated an organized protest, demanding an agrarian reform from the Colombian State, protests that were increasingly organized and resulted in occupying territories in different cities of the country. Communist ideas started to arise and influenced the ideology of these groups, which first constructed themselves as the "Independent Republics".

By May 1964, after being attacked by the Colombian military forces, around 50 ex-participants remaining from the "Independent Republics" organized an armed opposing group known as the Revolutionary Armed Forces of Colombia (FARC)⁴, which at its beginning was known as a guerrilla group of vindication of the radical agrarian fight.

The actions of the FARC at this time drastically affected the functioning of the Colombian regime and political system in terms of economy, politics, investments and mainly in the social sphere and

⁴ Fuerzas Armadas Revolucionarias de Colombia (FARC)

in maintaining law and order throughout the Colombian territory. Their consolidation as an illegal armed group gave rise to the appearance of new illegal armed groups formed as a result of disagreements over some national processes - the best known being the ELN (Ejército de Liberación Nacional)⁵ in 1964 and the M-19 in 1970 - and to the creation of paramilitary groups opposed to the guerrillas and insurgent groups.

Another influential factor was drug trafficking, which, among the problems between the government and the different armed groups, could hide itself without generating alarm. It finally took such an importance that it became an ally and a source of funding of different armed groups.

With the increase of drug trafficking, guerrilla armed groups and paramilitary groups, Colombia has been involved in a long crisis in terms of security and social welfare. It generated a high level of delinquency in all cities and regions of the country, with guerrilla takeovers of checkpoints and military and police bases, many civilians victims of disappearances, stray bullets, anti-personnel mines, forced recruitment of civilians in armed groups, displacement of their homes and lands, among many other unfortunate events typical of an internal war. Moreover, and due to the illegal persecution and fights between paramilitary groups and guerrillas (mostly between the FARC and ELN) in the 90's and 2000's, the number of civilian victims has incredibly increased, due to settling of scores, supposed collaborations with one or another armed group, links with drug trafficking, relationships with any members of any groups... At the end, anything could become a reason for assassination or any violence to lots of civilians, which generated massacres, human rights violations from all points of view, fear, insecurity and violence everywhere.

Characterization and effects of the Colombian armed conflict in recent years⁶:

The Colombian conflict has been framed in complex social, economic and political factors, among which we can highlight the struggle for property, the absence of a real organic agrarian reform, the unequal distribution of wealth and access to government power. Thus, the main armed actors

⁵ Literally: "National Liberation Army"

⁶ This part has been inspired by the report "La justicia transicional en Colombia. Los estándares internacionales de derechos humanos y derecho internacional humanitario en la política de Santos" (Transitional Justice in Colombia. International Standards of Human Rights and International Humanitarian Law in the Policy of Santos) by Andrés Mauricio Valdivieso Collazos (Lawyer of the Faculty of Law of the Universidad Santiago de Cali, Colombia), 2012 <http://www.scielo.org.co/pdf/papel/v17n2/v17n2a09.pdf>

involved were: the state armed forces (Army and Police), the anti-state irregular forces (ELN and FARC, among others illegal armed groups), and the parastatal irregular forces (paramilitaries)⁷. This has historically generated a challenge for the State: the constant and unsuccessful search for peace. In a country dominated by heterogeneities, which are sometimes incompatible and create links of selective inclusion that generate and reproduce persistent inequalities, this issue results in peace processes being fragmented, divided and intermittent over time⁸.

In the 1990s, former President César Gaviria Trujillo tried to establish a first peace process with an insurgent armed group (M19) and included them in the 1991 National Constituent Assembly, granting them political pardon to guarantee their political participation in a new state, characterized by the assurance of political pluralism based on inclusion, guarantee of individual autonomy and constitutional guarantees for citizens within the framework of respect for human rights⁹.

Later, the government of former president Pastrana promoted another initiative to establish a new peace process and authorized a demilitarized zone where the guerrillas had territorial control without the presence of state forces. This process, marked by mistrust, was never successful since it finally failed to sign any peace agreement (El Tiempo, 17 October 1988).

2. Negation of the conflict

Later, during its two terms (2002-2010), former President Uribe securitized and bowed to the anti-terrorist discourse as an almost unique resource for the design of policies in his government plan of the international agenda. Uribe's political affinity with Bush framed the Colombian conflict in the global fight against terrorism that began on 11 September 2001¹⁰.

In that order, the execution of an anti-terrorist policy implicitly denied the existence of the armed conflict. "There is no armed conflict in Colombia," said former President Uribe. "There are no state

⁷ López, C. (2011). "Conflicto, crimen organizado y procesos de construcción de Estado en Colombia". En C. Niño y H. Mathieu (ed.). *Seguridad regional en América Latina. Anuario 2011*.

⁸ Vera, 2010, "El camino hacia la reconciliación nacional en Colombia: avances y retos entre paradojas políticas", p.115

⁹ Llano, H. (2005). "La Carta del 91. Un consenso Constitucional". *Criterio Jurídico* 5. Santiago de Cali: Universidad Pontificia Javeriana.

¹⁰ Pastrana, E. (2011) p. 67-68. "La política exterior colombiana hacia Sudamérica: de Uribe a Santos". Artículo presentado en el IX curso para Diplomáticos Suramericanos, celebrado en Río de Janeiro en el Palacio de Itamaré entre el 4 y 15 de abril de 2011. Fundación Alexandre de Gusmao, Ministerio de Relaciones Exteriores de Brasil.

crimes here," said ex-President Uribe's advisor José Obdulio Gaviria. This behaviour of negation has had implications on the Colombian situation, since the legal and political strategies to face a terrorist threat cannot be the same as the ones to overcome an armed conflict¹¹. A terrorist threat has only the option of submission to ordinary justice and military actions. On the contrary, an armed conflict can be approached from a political negotiation with pretensions of peace. Incidentally, on several occasions, members of the government defended the thesis that in Colombia there is no armed conflict but only a terrorist threat against democracy and citizenship¹².

Nevertheless, the concept of non-international armed conflict is provided by international law in Protocol II in addition to the Geneva Conventions of 1949 which states that, in order to affirm the existence of an internal armed conflict, the following conditions must be met: irregular armed groups must be identifiable, must respond to a hierarchical hand structure, carry out acts of violence that are sustained and prolonged in time, in addition to exerting control of a part of the territory¹³. In this sense, if we compare the characteristics of an armed conflict established in Additional Protocol II with the Colombian context, we can affirm the existence of an armed conflict in Colombia, in contrast with Uribe's anti-terrorist policy, which argues that the conflict does not exist.

This can be seen as a setback in terms of compliance with international human rights and international humanitarian law standards, since the effects of the armed conflict in the humanitarian field lose political relevance under the antiterrorist logic, which promotes military responses to humanitarian affairs¹⁴. That is to say, some governments might think that, under the perspective of the world war against terrorism, a better margin of maneuver can be counted on making the compliance with Human Rights and International Humanitarian Law more flexible in order to achieve the objective of security and stability. To a certain extent, this interpretation loses its validity today because, with the growing strength of international regimes, States who omit, evade or does not act in accordance with international obligations are exposed to legal prosecution

¹¹ "Transitional Justice in Colombia. International Standards of Human Rights and International Humanitarian Law in the Policy of Santos" by Andrés Mauricio Valdivieso Collazos, 2012, p. 627

<http://www.scielo.org.co/pdf/papel/v17n2/v17n2a09.pdf>

¹² Uprimny, R. (2005). *¿Existe o no un conflicto armado en Colombia?* Bogotá: Centro de Estudios de Derechos, Justicia y Sociedad, pp. 1-7.

¹³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument>

¹⁴ Ceballos M. y H. Suárez (2005). "Percepciones y dimensiones de la crisis humanitaria y de derechos humanos en Colombia". *Colombia Internacional* 60: p.55.

and will be sanctioned if they committed abuses against human rights and international humanitarian law¹⁵.

Therefore, the prioritization of the military strategy for dealing with the aforementioned problems, especially the armed conflict, resulted in the worsening of the humanitarian crisis. The civilian population was locked up in the crossfire between the actors in the conflict. Chronically, murder, massacres, kidnappings, hostage-taking, enforced disappearance, gender-based violence (against women and children), population confinement, forced displacement and attacks on humanitarian actors have persisted¹⁶.

This negation of the conflict has been perceived for many civilians as an offence regarding the victims. Indeed, this was like to consider that human rights violations never occurred, and led to the non-recognition of the victims for what they are: victims.

It is finally former President Juan Manuel Santos (2010-2018) who started to insert in its foreign agenda the importance that issues such as drug trafficking, security and terrorism had in the past for the diplomatic relationship of Colombia with the world. These issues since then began to have a space in Colombia's foreign policy strategies.

It is in this dynamic that former President Santos finally recognized the existence of the armed conflict in Colombia, so that, consequently, through Law 1448 of 2011, the victims of the conflict can be repaired¹⁷. Similarly, he enunciated a public policy based on respect for International Public Law and especially with the commitment to defend Human Rights and International Humanitarian Law¹⁸. Thus, the President's agenda showed a substantial change in human rights policies, as the protection of human rights became a priority for the government.

¹⁵ Sikkink, Frey y Luons (2010). "Reporte temático de política exterior colombiana: derechos humanos y derecho internacional humanitario". En *Misión de Política Exterior Colombiana*. Bogotá: Universidad de los Andes.

¹⁶ "Transitional Justice in Colombia. International Standards of Human Rights and International Humanitarian Law in the Policy of Santos" by Andrés Mauricio Valdivieso Collazos, 2012, p. 628
<http://www.scielo.org.co/pdf/papel/v17n2/v17n2a09.pdf>

¹⁷ El Tiempo (2011). "Reconocimiento del conflicto armado".
http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-9323565.html

¹⁸ Colombia. Presidencia de la República. (2010). "La defensa de los derechos humanos, compromiso indeclinable de mi gobierno": Presidente Santos.
http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_14.aspx

3. Nature of human rights violations

Human rights violations have been perpetuated as by State actors, as by non-State actors. The Defensoría del Pueblo on its report “Cuadernos de Paz n°3: Sistema Integral de Verdad, Justicia, Reparación y No-repetición” establishes a panorama of human rights violations in terms of numbers:

- Displacement: 80%
- Homicides: 10.9%
- Threat: 4.0%
- Enforced disappearances: 1.8%
- Loss of movable property: 1.2%
- Terrorist acts: 1.0%
- Kidnapping 0.4%
- Sexual integrity: 0.3%
- Torture: 0.1%
- Abandonment of land: 0,1%
- Anti-personnel mines: 0.1%
- Vinculation of minors: 0.1%

a. Extrajudicial killings, the case of “false positives”:

The scandal of “false positives” in recent years revealed the involvement of members of the Colombian Army in the murder of innocent civilians. They kidnapped young people to assassinate them and dressed them as guerrillas to pass them off as guerrillas killed in combat, in the context of the combat against irregular armed groups the State was pursuing at this moment. These murders were intended to present results by the combat brigades for which they received secret rewards from Álvaro Uribe's government. The Attorney General's Office has registered 4,716 cases of homicides allegedly committed by agents of the public forces.

In 2008, 19 youths from the municipality of Soacha and Ciudad Bolívar south-west of Bogotá suffered forced disappearances by state agents. They were approached by recruiters proposing them jobs in agricultural farms as palm sowers etc. Instead, the recruiters kidnapped them and handed them over to Colombian army agents in remote areas in the north of the country, where they took away their documents, killed them, dressed them as guerrillas soldiers and claimed to have killed them in combat¹⁹. This is one example among many others. According

¹⁹ « Así se fabrican guerrilleros muertos », ANDER IZAGIRRE, Bogotá, 26 Mars 2014
https://elpais.com/elpais/2014/03/06/planeta_futuro/1394130939_118854.html

to a Public Prosecutor's Office report published on May 2019, there were at least 2,248 extrajudicial executions between 1998 and 2014, although 97% of the cases occurred between 2002 and 2008, during the mandates of former president Álvaro Uribe. According to estimations by various human rights associations, the number of executions is higher and would amount to at least 4,000 people²⁰.

b. Disappearances

According to the National Center of Historical Memory (CNMH), at least 80,000 people have been victims of disappearance in Colombia. This form of violence is aiming at producing terror, to prolong suffering, to disrupt the lives of families for generations and to paralyze entire communities and societies²¹. Thousands of Colombian families are suffering from the absence of their relatives and the uncertainty produced by the lack of news or evidence to account for what happened to them. The relatives and close friends of the disappeared live immersed in a pain that cannot be relieved, which keeps them condemned to a long wait and prevents their lives from moving quietly.

Ten years ago, the photos of disappeared people in the country were dispersed in various institutions and social organizations. In 2016, the National Center of Historical Memory (CNMH) published the report "Hasta encontrarlos: El drama de la desaparición forzada en Colombia"²², which revealed that between 1970 and 2015, 60,630 people were forcibly disappeared in the country. The Observatory of Memory and Conflict of the CNMH continued with the work of this investigation and compilation, and until August 2018, reported 80,000 victims of this scourge.

"It grabbed me like an attack, a thing, it seemed to me that I saw him huddled around, that I saw him struggling around in the middle of those coffee grounds... I would start screaming, I would

²⁰ Numbers from the article "Los 'falsos positivos', un capítulo oscuro de la historia de Colombia", June 5th 2019 https://elpais.com/internacional/2019/06/04/colombia/1559680921_517540.html

²¹ "Lo que sabemos de los desaparecidos en Colombia", Centro Nacional de Memoria Histórica (CNMH) <http://www.centrodememoriahistorica.gov.co/micrositios/balances-jep/desaparicion.html>

²² Centro Nacional de Memoria Histórica (CNMH), "Hasta encontrarlos: El drama de la desaparición forzada en Colombia", 2016 <http://www.centrodememoriahistorica.gov.co/micrositios/hasta-encontrarlos/>

grab a thing (...) My son was so young and who knows how he died
(...) What do you think? In 18 years there still have to be bones,
right?".

Testimony of the documentary "Trujillo: a tragedy that does not stop" by the
National Commission for Reparation and Reconciliation.

According to the National Center of Historical Memory (CNMH), regarding the perpetrators, paramilitary groups were responsible for 46.1% of the cases registered between 1970 and 2015 (a total of 13,562), guerrillas for 19.9% (5,849), post-demobilization groups for 8.8% (2,598) and state agents for 8% (2,368)²³. It also reveals that this phenomenon has occurred in 1,010 municipalities out of 1,115 in the country, and that the most affected regions are the Magdalena Medio, Oriente Antioqueño and Valle de Aburrá²⁴.

According to the National Institute of Forensic and Legal Medicine, from January 1st through August 30th, 2018, 3,643 cases of disappearances were registered, against 6,670 cases in 2017. The government did not provide information on the number of victims of disappearances who were located or a disaggregation of the number found alive or dead²⁵.

c. Torture and other cruel, inhuman or degrading treatment or punishment

Torture and others degrading treatments are forbidden by law in Colombia. Nevertheless, some reports reveal that government officials have been employing it. The NGO Center for Research and Education of the People (CINEP) reported that through October, security forces were allegedly involved in six cases of torture.

Recently, a media reported that on September 28th, 2018, the Colombian National Police officers in Bogota allegedly forced several youths to strip to their underwear and beat them, while verbally abusing them. The incident has been filmed and became public. Media reported that authorities had initiated criminal and disciplinary investigations into the case, which a prosecutor

²³ "Lo que sabemos de los desaparecidos en Colombia", Centro Nacional de Memoria Histórica (CNMH) <http://www.centrodememoriahistorica.gov.co/micrositios/balances-jep/desaparicion.html>

²⁴ "Lo que sabemos de los desaparecidos en Colombia", Centro Nacional de Memoria Histórica (CNMH) <http://www.centrodememoriahistorica.gov.co/micrositios/balances-jep/desaparicion.html>

²⁵ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 5 <https://www.justice.gov/eoir/page/file/1148416/download>

said met the legal definition of torture²⁶. Between January 1st and August 10th, 2018, the Attorney General's Office charged sixty-four members of the military and police forces with torture, for cases which have occurred prior to 2018²⁷.

d. Arbitrary arrest or detention

Arbitrary arrest or detention is prohibited by law in Colombia, which provides the right of anyone to challenge the lawfulness of their arrest. Nevertheless, the CINEP has reported thirteen cases of arbitrary detentions committed by State security forces through June 30th 2018²⁸.

According to the Country Reports on Human Rights Practices for 2018 for Colombia by the United States Department of State, some NGOs complained that military investigators were sometimes the perpetrators of deaths resulting from actions of security forces. The government seems to have made progresses in investigating and trying abuses, but claims of impunity for security force members continued. According to the report, this was due in some cases to an obstruction of justice and an opacity in the process by which cases are investigated and prosecuted in the military justice system. "Inadequate protection of witnesses and investigators, delay tactics by defense attorneys, the judiciary's failure to exert appropriate controls over dockets and case progress, and inadequate coordination among government entities that sometimes allowed statutes of limitations to expire (resulting in a defendant's release from jail before trial) were also significant obstacles", states the report²⁹.

e. Massacres of civilians in which the State is involved

²⁶ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 5
<https://www.justice.gov/eoir/page/file/1148416/download>

²⁷ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 5
<https://www.justice.gov/eoir/page/file/1148416/download>

²⁸ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 5
<https://www.justice.gov/eoir/page/file/1148416/download>

²⁹ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 5
<https://www.justice.gov/eoir/page/file/1148416/download>

One of the most emblematic example of violence between armed actors which led to the harm of civilians is the Santo Domingo case.

On December 12, 1998, while a carnival took place in the village of Santo Domingo, a Cessna light aircraft landed on the road that leads from the village of Santo Domingo to Panama de Arauca or Pueblo Nuevo with money and weapons for drug trafficking activities. This led to clashes between the Colombian Armed Forces and the guerrillas. Within the framework of these events, the Armed Forces planned an airborne military operation that lasted several days and in which an army brigade and a counter-guerrilla battalion also participated.

The following day, several planes flew over Santo Domingo during the morning and the crew of a helicopter of the Colombian Air Force launched a cluster device of type AN-M1A2, composed of six grenades or fragmentation bombs AN-M41A on the main street of village, causing the death of seventeen people, among them six children, and injuring another twenty-seven, among them ten children. As a consequence of the events, that same day the population of Santo Domingo had to abandon their homes and move to the towns nearby. After the cluster device was launched, the Colombian Air Force fired machine guns from the airplanes at people moving in the opposite direction to the village, either fleeing by foot or in a vehicle.

The judges of the Inter-American Court of Human Rights declared the Colombian State responsible for not effectively protecting the victims and accepted the partial conclusions of the national justice system, which condemned two Air Force pilots because they allegedly fired a bomb on the farmhouse³⁰.

Another example is the massacre perpetrated by soldiers of the national army and paramilitaries in the village of San José de Apartadó on 21 February 2005. On that occasion, four adults and four minors were killed in retaliation for the FARC attack on members of the XVII Brigade of the National Army in the village of El Porroso, ten days before the massacre. The massacre was directed against two historical leaders of the peace community of San José de Apartadó and their families, so the event was perceived as a systematic persecution from the national army against the peace community that had been erected in 1997³¹.

³⁰ Facts from the “Corte Interamericana de Derechos Humanos”, Masacre de Santo Domingo vs. Colombia <https://www.csjn.gov.ar/dbre/Sentencias/cidhMasacreSantoDomingo.html>

³¹ Reporte “¡Basta ya! Colombia: Memorias de guerra y Dignidad”, 2016, Informe general Grupo de Memoria Histórica, Centro Nacional de Memoria Histórica, p.42

f. Massacres of civilians by illegal armed groups

According to the Center of National Memory, massacres are a form of violence that combines experiences of horror with serious and complex impacts on their victims. It is a modality that armed actors privilege because of their ability to install terror and depopulate territories. Massacres were a practice of continuous violence in the development of the armed conflict in Colombia. The barbaric acts that characterize them have marked the lives of thousands of families and have left indelible traces in their memory.

All massacres are barbaric and cruel, and are more destructive as more people die. It is a cruel method because they are surprising, they paralyze the victims, if a part of the population is more vulnerable their spirits are broken, the burning of houses and looting add to the loss of lives other material ones, when there are rapes and disappearances the tragedy lasts forever, when the victims are humiliated in public and in places that used to be a community meeting place, they feel ashamed for a long time, and when, above all, they cannot bury their dead out of fear, there is no peace to be reached³².

Among the 1,982 massacres committed between 1980 and 2012, the participation of armed actors was divided as followed: 58.9% paramilitary groups; 17.3% guerrillas; 7.9% Nacional Armed Forces; 14.8%, unidentified armed groups; 0.6%, paramilitaries and Nacional Armed Forces in joint actions; and 0.4%, other groups. This reveals that out of every ten massacres, six were perpetrated by paramilitary groups, two by guerrillas and one by members of the Fuerza Pública³³.

Among the massacres perpetrated by the guerrillas, 238 were executed by the FARC; 56 by the ELN; 18 by the EPL; 3 by other guerrillas (M-19 and the “Quintín Lame Movement”); 7 by two or more guerrillas in joint actions; 18 by unidentified guerrillas; and 3 by dissidents or guerrilla factions (the Ricardo Franco Front of the FARC or the ERP of the ELN). This reveals that

³² Reporte “¡Basta ya! Colombia: Memorias de guerra y Dignidad”, 2016, Informe general Grupo de Memoria Histórica, Centro Nacional de Memoria Histórica, p.288-289

³³ Report “¡Basta ya! Colombia: Memorias de guerra y Dignidad”, 2016, Informe general Grupo de Memoria Histórica, Centro Nacional de Memoria Histórica, p.47

for every ten massacres committed by the guerrillas, seven are the responsibility of the FARC, while the ELN is responsible for two³⁴.

Evolution of cases of massacre due to armed conflict in Colombia according to alleged perpetrator, 1980-2012:

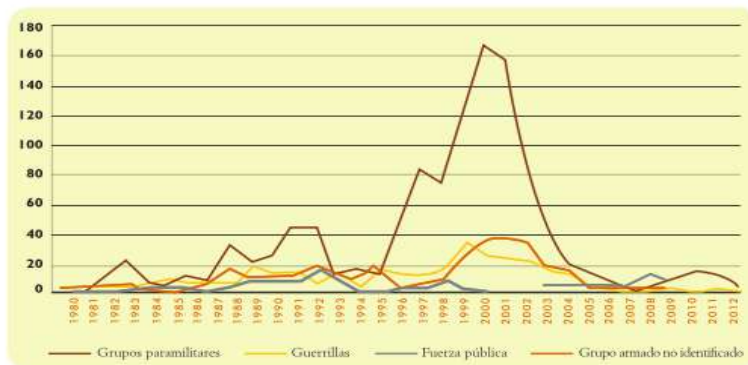


Figura 3. Evolución de casos de masacre por conflicto armado en Colombia según presunto responsable, 1980-2012. Fuente: GMH, base de datos de masacre del conflicto armado en Colombia (1980-2012).

35

In the period 1988-1992, the massacres were operations aiming at punishing social mobilization and to reject the political success of the left, in particular of the Patriotic Union and the Popular Front. Among the emblematic cases of massacres perpetrated against territories and militants of the left are: the massacres in Honduras and La Negra (Urabá, Antioquia) committed by the paramilitaries on March 4, 1988 which left 30 victims; the one in Punta Coquitos (Turbo, Antioquia) on April 11, 1988, in the region of Urabá with a result of 20 victims, against trade unionists and militants of the Popular Front; the one in La Mejor Esquina, in the south of the department of Córdoba, on April 3, 1988 which left 28 victims; that of Caño Sibao (El Castillo, department of Meta), in the Ariari region, on July 3, 1988, with 17 victims, against Patriotic Union militants; and the one of Segovia (department of Antioquia), on November 11, 1988, which left 46 victims as a result of the population's electoral support for the Patriotic Union³⁶.

g. Internally Displaced People

³⁴ Report “¡Basta ya! Colombia: Memorias de guerra y Dignidad”, 2016, Informe general Grupo de Memoria Histórica, Centro Nacional de Memoria Histórica, p.48

³⁵ Graphic found on the report “¡Basta ya! Colombia: Memorias de guerra y Dignidad”, 2016, Informe general Grupo de Memoria Histórica, Centro Nacional de Memoria Histórica, p.48

³⁶ Report “¡Basta ya! Colombia: Memorias de guerra y Dignidad”, 2016, Informe general Grupo de Memoria Histórica, Centro Nacional de Memoria Histórica, p.50-51

The armed conflict has resulted in almost 7.6 million of internally displaced people in Colombia. Illegal armed groups operating in the country are the main cause of displacement of people, by exercising threats, extortion, physical and psychological violence and sexual violence against civilians. In fact, the armed confrontation between illegal armed groups for territorial control and resources, added to drug trafficking and illegal mining activities have made the rural areas the theater of violence which contributed to displacements³⁷. According to OCHA, over 30,000 persons have been affected by displacements between January and October 2018. Among them, 45% were Afro-Colombian or indigenous people. In 2017, 139 359 new Colombian IDPs were forced to flee their homes due to the ongoing conflict (OCHA)³⁸. Moreover, Colombia is one of the most disaster-prone countries in the world, and highly vulnerable to climate change-induced disasters such as earthquakes, volcanic eruptions, landslides, severe recurrent floods and droughts, which affect millions of people throughout the country³⁹ and make the lives of IDPs even harder. On January 2018, the European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations stated that the main needs for conflict-affected populations were mainly protection, food assistance, access to healthcare, education in emergencies and safe water. Regarding refugees and IDPs, they require temporary housing and basic household items, and psychological support and assistance to apply for legal assistance or refugee status⁴⁰.

h. Other ways of violence

Colombia is a multicultural and multiethnic country. The Spanish conquest generated a process of miscegenation which resulted in a very diverse culture across the country. 85% of the

³⁷ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, pp. 18
<https://www.justice.gov/eoir/page/file/1148416/download>

³⁸ Colombia Fact Sheet report of the European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, January 17th 2018 :
https://reliefweb.int/sites/reliefweb.int/files/resources/colombia_en_0.pdf

³⁹ Colombia Fact Sheet report of the European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, January 17th 2018 :
https://reliefweb.int/sites/reliefweb.int/files/resources/colombia_en_0.pdf

⁴⁰ Colombia Fact Sheet report of the European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, January 17th 2018 :
https://reliefweb.int/sites/reliefweb.int/files/resources/colombia_en_0.pdf

people of Colombia are mixed-race, 10.6% are Afro-descendant, 3.4% indigenous, and 0.01% gypsy⁴¹. This diversity generates across the country many cases of discrimination and racism.

On a recent research, the University of Los Andes of Bogota, Colombia, explains that although only 5.4% of people polled by the Democracy Observatory said they felt discriminated against because of their skin color, "Colombia continues to be a country where racism and social imaginaries persist around the issue," basing its development on the Barometer of the Americas Survey, which indicates that in rural areas of the country, in the "post-conflict" era, this rate of discrimination "increases considerably"⁴².

The statistics from the research show that Afro-Colombians are the ethnic group that has felt most discriminated against because of their skin colour, with 19.8% of those surveyed. Then there are the indigenous (14.2%), mixed-race (3%) and finally, whites (1.9%).

Surprisingly, the regions where most people felt discriminated are areas with the highest number of ethnic population: the Pacific, the Amazon, the Orinoco and the Caribbean. One of the research questions was how much the respondents believe that ethnic groups contribute to the country's economic development. The results showed that 565 people (34%) stated that Afro-Colombians do not contribute and 685 (41.2%) said the same about indigenous people.

The investigation shows that gender is also a factor of discrimination, in addition to ethnic status. According to the Los Andes research, one of the most striking data from the survey is related to where the discrimination occurred. While 27.5% of women claimed to have been victims of racism at home, no man felt rejected in this area.

One of the researcher on the project explained that this result coincides with the fact that many of these women are more restrained to frequent private spheres, dedicated to traditional roles related to the care of the home and children, which makes their probabilities of being

⁴¹ Colombia, a multi-ethnic and multicultural country
<https://www.colombia.co/en/colombia-country/colombia-multi-ethnic-multicultural-country/>

⁴² "En Colombia la discriminación por color de piel es más intensa en zonas rurales", El Espectador, March 22th 2019
<https://www.elespectador.com/noticias/nacional/en-colombia-la-discriminacion-por-color-de-piel-es-mas-intensa-en-zonas-rurales-articulo-846457>

discriminated higher. Meanwhile, almost half of those surveyed (47.5%) said that public places are the spaces where they have felt most racism, followed by their workplace (43.5%)⁴³.

4. Functioning of justice in Colombia

a. The political and normative system in Colombia

Colombia is a constitutional, multiparty Republic recognized as a State of law. The State has had a relatively stable regime, despite numerous episodes of violence, since its independence in 1819. It is a presidential system (Constitution of 1991), based on a strict separation of powers, largely inspired by the North American model, even if elements of a parliamentary system persist.

The political and normative system in Colombia is composed of three branches of Public Power, the set of public institutions that, by mandate of the Political Constitution, permanently exercise the functions of the State. The three branches are the legislative power, executive power and judicial power.

Regarding the executive power, the President of the Republic and the Vice-President are elected by universal suffrage for a four-year term. The President of the Republic holds the functions of Head of State, Head of Government and Supreme Administrative Authority. The legislative power is exercised by a bicameral congress comprising a 102-member senate (single constituency) and a 166-member House of Representatives (territorial constituencies) elected for four years.

The judicial power is inspired by the French model with specific features, in particular the existence of an autonomous public prosecutor, the general "Fiscal", appointed by the Supreme Court from three candidates proposed by the President of the Republic.

Judicial power is exercised by the Supreme Court of Justice, the Constitutional Court and the Council of State. It is responsible for administering justice, resolving conflicts and

⁴³ "En Colombia la discriminación por color de piel es más intensa en zonas rurales", El Espectador, March 22th 2019
<https://www.elespectador.com/noticias/nacional/en-colombia-la-discriminacion-por-color-de-piel-es-mas-intensa-en-zonas-rurales-articulo-846457>

controversies among citizens and between citizens and the State, and deciding controversial legal issues through pronouncements that acquire the force of definitive truth. It is responsible for enforcing the rights, obligations, guarantees and freedoms enshrined in the Constitution and laws, in order to achieve and maintain social coexistence.

Therefore, the judicial branch is composed of:

- An **ordinary jurisdiction**, made of Courts of law, Federal district high courts and the Supreme Court, which is the higher court of the ordinary jurisdiction, composed of twenty-three judges elected by the same corporation for eight years.
- The **administrative jurisdiction**, composed of administrative courts and the State council. The State council is the higher court of the administrative contentious and is composed of twenty-seven judges, elected by the same corporation for eight years.
- The **High Council of the Judiciary**, responsible for the administration of the judicial branch and for exercising the disciplinary function.
- The **Constitutional Court**, which exercises the guardianship of the integrity and supremacy of the constitution.
- The **Attorney General of the Nation**, institution created by the political constitution of 1991, is an entity of the judicial branch of government with full administrative and budgetary autonomy, whose function is to provide the citizens with a full and effective administration of justice. Its functions are: (1) To ensure the appearance at trial of the alleged offenders of criminal law, adopting the measures of assurance; (2) if necessary, to take the necessary measures to make effective the re-establishment of the right and the compensation of the damages caused by the crime; (3) to direct and coordinate the judicial police functions permanently performed by the National Police, other bodies provided for by law in the other public entities to which the Attorney General has temporarily assigned such functions; (4) ensuring the protection of the victim, witnesses and participants in the process.
- **Jurisdiction of Indigenous Communities**: authorities of the indigenous territories provided by law, exercising their jurisdictional functions only within the scope of their territory and in accordance with their own rules and procedures, which may not be contrary to the Constitution and the laws.
- **Special jurisdictions called “Jurisdictions of peace”** which seek to achieve the integral and pacific treatment of the communitarian or particular conflicts that is voluntarily submit to its knowledge.

In 2017 have been taken a legislative act called “Legislative Act 01 of 2017”⁴⁴ by which a title of transitional provisions of the constitution for the termination of the armed conflict and the construction of a stable and lasting peace is created, along with other provisions enacted. It is called the Integral System of Truth, Justice, Reparation and Non-repetition (SIVJRR) and is composed of: the Commission for the Clarification of Truth, Coexistence and Non-repetition; the Unit for the Search of Persons Found Disappeared in the Context and Because of the Armed Conflict; the Special Jurisdiction for Peace; the Integral Reparation Measures for the Construction of Peace and the Guarantees of Non-Repetition.

Therefore, independent judiciary is provided by the law in the country, and the government normally respects judicial independence and impartiality. However, according to the Country Reports on Human Rights Practices for 2018 for Colombia, much of the judicial system was overburdened and inefficient, and subordination, corruption, and intimidation of judges, prosecutors and witnesses hindered judicial functioning⁴⁵.

The constitution and the law provide the right to a fair and public trial, and an independent judiciary generally enforced this right. In 2008, the government began implementing an accusatory system of justice. But the use of delay tactics by defense lawyers to slow or impede proceedings, prosecutors’ heavy caseloads, and other factors diminished the anticipated increased efficiencies and other benefits of adopting the adversarial model⁴⁶. The criminal procedure code foresees that the prosecutor presents an accusation and evidence before an impartial judge at an oral and public trial. Defendants are presumed innocent until proven guilty beyond a reasonable doubt and have the right to confront the trial evidence and witnesses against them, present their own evidence, and communicate with an attorney of their choice (or a duty counsel). Defendants have adequate time and facilities to prepare their defense,

⁴⁴ Acto Legislativo 01 de 2017 :

<http://es.presidencia.gov.co/normativa/normativa/ACTO%20LEGISLATIVO%20N%2001%20DE%204%20DE%20ABRIL%20DE%202017.pdf>

⁴⁵ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 9

<https://www.justice.gov/eoir/page/file/1148416/download>

⁴⁶ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 10

<https://www.justice.gov/eoir/page/file/1148416/download>

are not compelled to testify or confess guilt and have the right to appeal their proceedings. They have the right to an interpreter, but the court system lacked interpreters for less commonly encountered languages⁴⁷. For damages resulting from a human rights violation, civilians can sue a government agent or entity in the Administrative Court of Litigation, considered as impartial and effective. For the cases involving violations of an individual's human rights, they may be submitted through questions to the Inter-American Commission on Human Rights, which may submit the case to the Inter-American Court on Human Rights. However, many critics arose about the delays of the process⁴⁸.

Regarding international law, under the Colombian Constitution, international treaties and agreements that recognize human rights ratified by Congress have the status of constitutional enactments. Thus, they take precedence in the domestic legal order, as provided by article 53, 93, 94, 102 (2) and 214 (2) of the Constitution. Colombia has ratified almost all relevant Human Rights Treaties. However, it has not ratified the Optional Protocol to the Convention against Torture, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, nor the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Furthermore, despite Colombia is a State party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, it does not recognize the competence of article 8 and 9, which would allow the CEDAW Committee to initiate a confidential investigation on alleged grave violations⁴⁹.

b. Historic of the introduction of Human Rights in the State mind

The NGO « Somos Defensores » has produced a deep analysis of the evolution of the interlocution between the Government and association of protection of human rights during the

⁴⁷ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, pp. 9-10
<https://www.justice.gov/eoir/page/file/1148416/download>

⁴⁸ Country Reports on Human Rights Practices for 2018, Colombia - United States Department of State • Bureau of Democracy, Human Rights and Labor, pp. 11
<https://www.justice.gov/eoir/page/file/1148416/download>

⁴⁹ Office of the United Nations High Commissioner for Human Rights, UN Treaty Body Database, Ratifications and reserves status
https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=37&Lang=FR

different administrations of the country⁵⁰. The analysis has been made up through interviews of officials of the Government and members of NGOs who have complied with important roles in the interlocution processes. Also have been made a follow-up of press registration regarding facts and public declarations which have characterized the relations between State and NGOs working in the promotion and defense of Human Rights.

This retrospective view shows the transition from a period characterized by the predominance of denunciation of Human Rights violations committed by State agents and the official responses and explications, to a period of active interlocution State - NGOs, formation of joint committees to formulate diagnostics and recommendation about Human Rights issues.

The report shows that NGOs have developed their work in a context of disqualification and stigmatization which have determined a disadvantageous environment for their exercise, characterized by threats, detentions and attacks against Human Rights defenders.

- **The phase of denounce:** Until the middle of the 1980's in Colombia, the thematic of Human Rights was foreign to statewide speeches and practices. The constitutional consecration of Human Rights was precarious and restricted to some political and civil rights. The ratification of international treaties of Human Rights has sound to be a step forward on this matter, but has in fact not conducted to an adequacy between internal legislation and the contracted obligations, and neither constituted a landmark to adequate the statewide practices.

Human Rights organizations arose in a context of recurrent use, almost permanent, of the stage of "State of siege" in Colombia (article 121 of the National Constitution of 1886) allowing the restriction of fundamental freedoms and the grant of special faculties to the State to establish exceptional legislation and extraordinary powers to the Military Forces and the Police, including capture, investigations and judgments of civilians. These elements have constituted the basis of several violations of Human Rights, which have occurred in the mark of control operations of public order, dissolution of public manifestations, captures of social leaders etc.

In this context, human rights organizations appeared in the 1970-1980's have focused their work on public denunciation of facts of Human Rights violations and the exigence to

⁵⁰ This part has been deeply inspired from the report « Defender y proteger la vida, la acción de los defensores de derechos humanas en Colombia » by Somos Defensores, Cinep, Comisión Colombiana de Juristas.

authorities to respect the fundamental rights of association, expression and mobilization, as the ones of liberty, integrity and due process. The reduced political space and the treatment as « prohibited » conceded to Human Rights by the government made unthinkable the possibility of an interlocution between State and NGOs. Moreover, the precariousness of the political space for the defense of Human Rights at this time was characterized by the non-existence of a space of interlocution between organizations and public authorities, by the negativity of the authorities in receiving the complaints and by the threat of Human Rights defenders to receive a repressive treatment for their actions.

This precariousness started to be affronted by NGOs through the recurrent communication to international organizations and organs of Human Rights, in the goal to diffuse their perception on the gravity of the situation and to promote the realization of visits and missions to the country to check out the alleged violations. The reports of organizations such as Amnesty International, the working groups of the United Nations, the Inter-American Commission of Human Rights, have ratified in a large extent the denounces and assessments of NGOs regarding the situation of Human Rights in the country. Without a doubt, the opening of relations with international organisms and the posterior actions of observation visits, reports on the evolution of the situation, elaboration of recommendations and callings to the State to recognize the work of Human Rights defenders, have contributed in an important way to the evolution of the governmental behavior above the subject.

- **Evolution of the behavior of the State above human rights defenders:** The behavior of the State regarding the work of Human Rights defenders has known an evolution during the decade from 1970 to 1980's, from the refractory attitude of systematic negation of the violations denounced, to the critical attitude of recognition of the existence of abuses and violations as isolated acts of some agents, which do not compromise the state responsibility and has to be the object of a preventive state policy.

The government of Turbay Alaya from 1978 to 1982 made front to the international and national denounce by a politic of negation of the facts and the qualification of NGOs as part of an international conspiracy against the Colombian political institutions and a threat to the national sovereignty. In response to the report of Amnesty International of 1980, Turbay qualified it as "vague and imprecise", based on rumors and testimonies, and not on evidences. The Minister of Justice at this time, Hugo Escobar Sierra, told that Amnesty International violated the

sovereignty of Colombia and has intervened in intern affairs of Colombia by formulating recommendations about some aspects which are of autonomous management of the Colombian authorities.

The first expression of critical recognition of the existence of abuses and violations has been realized by former President Belisario Betancur in 1984. He is the first president of Colombia in admitting that the Military Forces have been incurred in abuses by applying the doctrine of National Security. Moreover, Betancur administered some recommendations contained in the report of Amnesty International of 1980.

- **The State affronting the thematic of Human Rights:** In 1987 has been created in Colombia the Presidential Council of Human Rights (Consejería Presidencial de Derechos Humanos) from what emerged many initiatives of promotion of Human Rights. This started to modify gradually the governmental attitude above the theme of Human Rights. It came from being a taboo subject, characteristic of a leftist organization, to form part of the governmental discourse. In this, we might find an explanation to the start of the experiences of interlocution between State and NGOs. The emergence of the Presidential Council of Human Rights made the stage to a new form of relation between the Government and the NGOs. Little by little, the Government was more willing to admit the responsibility for some determined actions of its agents in terms of Human Rights violations, but argued that such violations were constituting of isolated cases and are not the expression of a deliberate politic of civil and military authorities. In the same way, the Government insisted in arguing that Human Rights are mainly violated by armed groups outside the law.

- **The impact of the international reputation on the Government politics:** The turnaround in the politics of Human Rights have been set up mainly thanks to the perception of some agents regarding the negative incidence on the legitimacy of the Colombian State on its international reputation, resulting from the denounces, every time clearer and proven, of human rights violations committed by State agents.

The leadership of the Presidential Council of Human Rights in the work of responding to the requirements of the international organs has conducted to a change of attitude within the government. It started from confrontation, based on the systematic negation of the fact that

State agents have been committing violations of Human Rights, to deliberation based on the argument that violations were isolated and not systematic. In parallel, the leadership of the Council has conducted the government to present a panorama of violence in the country, but by still showing the State as a minor violator comparing to other actors such as illegal armed groups. The Council made important appeals and efforts to respond to urgent actions, reports and recommendations issued by international organizations, NGOs and foreign governments.

This attitude of opening above the international community has promoted the decision of the Government to invite several working groups and special rapporteurs of the United Nations and the Inter-American Commission of Human Rights, in the aim of evaluating the situation of Human Rights in the country. Many reports have been issued regarding numerous visits between 1988 and 2002, including important recommendations to the Government of Colombia.

- **Incidence of the international reports on the legitimacy of NGOs:** The reports from international organizations also had a good incidence on the work of NGOs of defense of Human Rights. NGOs were frequently mentioned by international reports as the main sources of information, highlighting the quality of their work and reliability of their experts, and remembering the difficult and dangerous conditions in which they have to operate and work. Moreover, they widely asked the authorities to set up a favorable climate for the free exercise of their functions and provide protection and guarantees to human rights defenders. The speeches of various international bodies have created an opener perception to recognize the work of NGOs, which has resulted in opening the path to future processes of interlocution.

- **First experiences of interlocution State - NGOs:**

> Commission of Human Rights of the General Attorney of the Nation:

The first experience of interlocution State - NGOs started with the creation of the Commission of Human Rights of the General Attorney of the Nation, through resolution No. 035 of September 9th of 1986, including the participation of NGOs. One of the outstanding result of this Commission was the creation of the principle according which military facilities are not an appropriate place for the detention of civilians, added to the presentation of the first project of law to typify the crime of enforced disappearance of people.

> The Defensoría del Pueblo (Ombudsman Office) and human rights NGOs:

The creation of the Defensoría del Pueblo (Ombudsman Office) in Colombia within the framework of the Political Constitution of 1991 as the State institution guaranteeing the protection of human rights, has constituted a growing source of expectations for civil society. Very soon, the Defensoría del Pueblo assumed a public position that favored its relationship with nongovernmental organizations. Since the early years of the Defensoría del Pueblo, nongovernmental organizations found on it spaces for dialogue with and placed their trust on it to facilitate processes of dialogue with the government. In many occasions, the Defensoría del Pueblo assumed the role of guarantor of the rules of the game agreed upon by the interlocutors.

> Establishment of the Office in Colombia of the United Nations High Commissioner for Human

Rights: At the beginning of the 1990s, human rights organizations began a constant effort to influence the United Nations Commission on Human Rights, aimed at ensuring that the grave human rights situation in Colombia, recognized by various reports of working groups and special rapporteurs of the universal system, was the subject of discussion within the Commission and, as a result of that, a mechanism for monitoring the situation was established through the issuance of a resolution appointing a Special Rapporteur.

In order to avoid the appointment of a special rapporteur for Colombia, the government of Ernesto Samper requested the United Nations Human Rights Commission to create a permanent office in Colombia of the United Nations High Commissioner for Human Rights, with the mandate to offer technical assistance to the national authorities, reaffirming the willingness of the government to cooperate with the organs of the United Nations system. Human rights organizations were determinant in defining the terms of the agreement between the government and the United Nations High Commissioner for Human Rights for the establishment of the Office in Colombia, and finally reached to include in the agreement the mandate to observe the situation of rights, to produce public reports and to prepare an annual report to be presented to the human rights commission.

The Colombian conflict has been really trying and tough for everyone living in the country, and the signing of the Peace Agreement has been a very long-awaited act, form of relief for most of the Colombians, but on the same time generating critics.

B. Signing of Peace Accord: between critics and relief

On November 24th 2016, the Colombian government and the FARCS made an agreement for peace, leading to the creation of the « Sistema Integral de Verdad, Justicia, Reparación y No Repetición » (Integral System of Truth, Justice, Reparation and No Repetition), and to promote alternatives ways of resolution of conflicts through the « Acuerdo Final para la terminación del conflicto y la construcción de una paz estable y duradera » (Final Peace Accord for the termination of the conflict and for the construction of a stable and durable peace).

The main objective of this accord was to get the best satisfaction for the rights of the victims. It marked the start of the process of transitional justice in the country, which aims at privileging the participation of victims and the society in general for the enlightenment for the violations occurred. By recognizing the impacts of the war and the integral reparation for victims, added to the structural and institutional transformation of the State in the territories and the reincorporation of ex-combatants, the accord is looking for rebuilding confidence and trust, and to guarantee the non-repetition of serious violations of human rights derived from the armed conflict (1). But on the other hand, the Peace Agreement has generated critics by its detractors for who the perpetuation of the conflict benefits (2).

1. The changes regarding Human Rights

The signing of the Peace Accord marked the entrance of Colombia in the process of transitional justice (a) leading to many judicial achievements (b).

a. The entrance in the framework of transitional justice

The signing of the Peace Accord marked the entrance of Colombia in the process of transitional justice. Even more, regarding the Colombian conflict, we are used to hear about

“restorative justice”. But what are the differences between both notions and what is the terminology appropriate for the current situation in the country?

According to the International Center of Transitional Justice, “transitional justice refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response”⁵¹. According to Van Zyl, the goal of transitional justice involves bringing perpetrators to justice, revealing the truth about past crimes, repairing victims, reforming abusive institutions, and promoting reconciliation⁵².

The Centre for legal and social studies “DeJusticia” defines it as a “specific form of justice, which is characterized by appearing in exceptional contexts of transition, and having the hard task of finding a middle point between full retributive justice and absolute impunity”⁵³, and distinguishes it from the “restorative justice”.

According to DeJusticia, restorative justice emerged as an alternative and critical paradigm about the functioning of the criminal system in contexts of normality and, in particular, about its methods for punishing ordinary crime. In fact, transitional justice takes place in exceptional political and social circumstances, and faces crimes that go against the most essential content of human dignity. In contrast, restorative justice was designed to face small-scale criminality in peaceful societies⁵⁴.

⁵¹ The International Center of Transitional Justice : <https://www.ictj.org/about/transitional-justice>

⁵² Van Zyl, 2008, p.14 “Promoviendo la justicia transicional en sociedades post-conflicto, verdad memoria y reconstrucción”. En M. Romero (ed.). *Verdad, memoria y reconstrucción serie de justicia transicional*. Centro Internacional para la Justicia Transicional.

⁵³ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, Dejusticia, Rodrigo Uprimny and Maria Paula Saffon.

⁵⁴ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, Dejusticia, Rodrigo Uprimny and Maria Paula Saffon., p.7

Differences between restorative and transitional justice⁵⁵ :

	Restorative Justice	Transitional Justice
Faced conducts	Ordinary crime	Massive and/or atrocious crimes
Contexts of application	Normality	Exceptional contexts of transition
Dilemma	How to replace the repressive and retributive character of the criminal system?	How to reckon with past wrongs, achieving an equilibrium between justice and peace?

Restorative justice can, thus, be referred as an alternative model for facing crimes, based on reconciliation between the victim and the perpetrator.

From the restorative perspective, retributive punishment is seen as insufficient for reestablishing a peaceful social coexistence, because it does not give primary importance to the victim’s suffering and needs, and neither leads to the adequate reincorporation of the delinquent in the community, whereas the restorative paradigm is only concerned with the future and does not focus on evaluating the guilt of the offender, but in promoting all ways to making him realize the harm he caused, admitting his responsibility and trying to repair the damages caused⁵⁶.

To understand deeper this complex concept, the Defensoría del Pueblo⁵⁷ has highlighted its important features:

- It is often identified as a « reparative justice » from its particular interest in repairing integrally people who have been affected by the problematical situation with a will to repair integrally the damages beyond the economic part and to recognize the social impact of such a situation.
- It aims to permit to the victim to live with the affectation fact in a more constructive way.
- It aims to develop itself through an exchange process in which dialogue is privileged, where people participate on a voluntary basis, on a parity plan, with inclusion of communities in which

⁵⁵ Table from Dejusticia report “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”

⁵⁶ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, Dejusticia, Rodrigo Uprimny and Maria Paula Saffon. p.6

⁵⁷ Defensoría del Pueblo de Colombia, Cuadernos de Paz n°1, “Justicia Restaurativa”, 2018, p.7

conflicts occur, not only dealing with the offended and the offender. By considering that victims are not only the people but also the social relations, it uses to call the all community to attend the conflict.

The restorative programs at a worldwide stage include the practice of mediation, restorative circles, conferences of familiar groups, among others. It uses the term of « circle » because it allows to understand the constant exchange in which interaction is fundamental, where there is no marked hierarchy, and just finalizes when we get a response to the conflict. Whatever the model is, it is important that we habilitate a space to listen, speak and look for the well-being across the individual dimension⁵⁸.

Moreover, it is important to create a follow-up mechanism for the implementation of measures. Lots of these practices can be inserted in the ordinary judicial system and be in relation with criminal justice. Others look to cohabitate with ordinary justice, avoiding the use of coercion and punitive force, with a look to generate other social dynamics and a different approach of the conflict. This is, in this kind of situation, the objective of a process of « desjudicialization » of conflicts. Even if restorative justice can be seen as a good way because it can reduce the cost of administration of the conflicts in the ordinary criminal judicial system, the fundamental reason of its existence is the practical application and the design of measures of humanist character⁵⁹.

Then, what is not restorative justice?

A way to define restorative justice is by delimiting what is not restorative justice. Zehr (2012: 8) establishes that restorative justice:

- Is not limited to crimes and neither looks for replace criminal justice. According to the United Nations Office against Drug and Crime (UNODC 2006:5): « the restorative process is used to solve conflicts in a large variety of contexts and environments, including schools and workplaces ».
- Does not have an unique program and neither a specific project, does not formulate an unique solution and neither propose a saving recipe against conflict. Each situation generates different challenges and thus, requires differing answers.

⁵⁸ Defensoría del Pueblo de Colombia, Cuadernos de Paz n°1, "Justicia Restaurativa", 2018, p.11

⁵⁹ Defensoría del Pueblo de Colombia, Cuadernos de Paz n°1, "Justicia Restaurativa", 2018. p. 12

- Restorative justice is not new, it looks to rescue experiences of indigenous communities and ancestral groups whose first interest is protection and reconstruction of social links.
- It is not a “cure-all”, it is not a solution to all issues and neither a remedy to achieve that the society settles its social debts. Nonetheless, its humanist inspiration is oriented to better social relations and not only to punish the responsible.
- As provided by the National Plan of Criminal Politics⁶⁰, « restoratives practices look at the conflict from a perspective of restoration of broken relations and protection of rights and the satisfaction of necessities of affected persons, and also the aggressors. It looks that those who have committed the pain recognize it and repair it, and to protect the rights of the victim and avoid the generation of offenses in the future ».

- **Application of restorative justice in the Colombian case:**

In Colombia, the Decenal Plan of Judicial System 2017-2027: 279⁶¹ states that « the existence of these mechanisms looks to achieve the following results:

- The victim can see the offense repaired and regain the truth on itself and on the State, which have been damaged with the conflict.
- The aggressor recognizes the offense and understand the negative consequences of his acts.
- The aggressor assumes the obligations derived from its harmful acts.
- The relations within the community can be repaired and the project of life of each of the person affected can be retaken.
- Avoiding the use of jail, for the negative effects it has on people”.

Therefore, in addition to the communitarian and ancestral indigenous practices of justice constitutionally recognized, the Decenal Plan of Judicial System 2017-2027 looks for promoting the application of restorative justice mechanisms in the context of ordinary justice. According to this point, several normative dispositions receive restorative justice in Colombia⁶².

⁶⁰ National Plan of Criminal Politics, Draft Document, « Consejo Superior de Política Criminal, Comité Técnico, GIZ y la Dirección de Política Criminal del Ministerio de Justicia y Derecho, 2016 ».

⁶¹ Plan Decenal del Sistema de Justicia 2017-2027 :

<https://www.minjusticia.gov.co/Portals/0/PLAN%20DECENAL%20IMAGES/DocPropuestas/InvestigaciónCriminal%2013062017.pdf>

⁶² Defensoría del Pueblo de Colombia, Cuadernos de Paz n°1, “Justicia Restaurativa”, 2018, p.13

For example, the Political Constitution of 1991 establishes that the law has to establish the mechanisms of restorative justice, opening the possibility of application of such a justice for criminal acts: Article 250 modified by article 2, Legislative Act N°03 of 2002: « in the exercise of its functions, the Attorney General of the Nation will have to (...) 7. watch the protection of victims, juries, witnesses and other interveners in the criminal process, the law will fix the terms on which victims would be able to intervene in the criminal process and the restorative justice mechanisms ».

- Role of restorative justice in the framework of transitional justice in Colombia:

The actual conjecture requires to understand the role of restorative justice and its applicability regarding the peace policy in the country and its socio-political settings, recognizing the necessity to adopt measures of an exceptional character to face serious and massive violations occurred in the frame of the armed conflict. From 2005, the efforts to reach peace and re-incorporate to civil society the members of organized groups outside the law have been sustained in transitional justice⁶³.

In Colombia, the restorative justice model has been defended as the best way to face the atrocities committed by paramilitary groups, which are currently negotiating peace with the government⁶⁴. Dejusticia explains that in recent years, the restorative model has reached its pinnacle in discussions regarding justice. It is thought of as a better way of facing the criminal system's dysfunctions and inequities, by replacing its punitive and retributive components. This is why restorative justice mechanisms were recently included in the Colombian Constitution.

But does is restorative justice strong enough to handle the complex situation of Colombia?

As we can see, restorative and transitional justice have two different origins and ways of achievement. But instead of seeing it as opposite concepts, the better is to consider it in a complementary scope. Indeed, transitional justice main objective is to find a conciliation between the demands of justice and peace in exceptional contexts of transition from war to

⁶³ Defensoría del Pueblo de Colombia, Cuadernos de Paz n°1, "Justicia Restaurativa", 2018, p.16

⁶⁴ "Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case", Dejusticia, Rodrigo Uprimny and Maria Paula Saffon. p.1

peace and/or from authoritarianism to democracy, in which massive and systematic atrocities have been committed⁶⁵.

Moreover, as explained by DeJusticia, what happens in Colombia is a multiple victimization of civil society by the different armed actors. The Colombian war is not characterized by a massive social mobilization in favor or against armed actors, and civil society does not actively support either side of the conflict, but rather suffers the attacks of them all indiscriminately⁶⁶. Thus, a model based on reciprocal pardons exchanged among armed actors would exclude the participation of civil society in the transitional justice process: civil society would not participate in the concession of those pardons and, moreover, would not necessarily feel represented by the armed actors⁶⁷. Indeed, this share of pardons should imply a symmetric relationship between the different actors of the conflict, who could forgive each other for the harm caused to each side. This is not the situation Colombia is facing, since the civil society have not been an active actor of the war, but only victims of collateral damages. Therefore, since the different actors cannot be considered on the same stage, and that does exist a risk for civil society to be excluded from the reconciliation process, restorative justice cannot be seen as sufficient to restore the situation in its wholeness.

As states DeJusticia, crimes against humanity which have been committed during the Colombian war are abominable and unpardonable, which implies that, with some exceptions, punishment should be imposed in a transitional process by a public condemnation of these atrocities. Indeed, this would become the base on which the new democratic regime should be founded: a regime that would imply the absolute exclusion of past atrocities and that would focus on the respect of human rights⁶⁸. Promoting the impunity of perpetrators might have the counterproductive result of making the population lose confidence in the effectiveness of the peace process and lead them to believe that those who have committed atrocities could start again without being ever punished for their acts. Moreover, Colombia has ratified international

⁶⁵ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, DeJusticia, Rodrigo Uprimny and Maria Paula Saffon., p.5

⁶⁶ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, DeJusticia, Rodrigo Uprimny and Maria Paula Saffon. p.18

⁶⁷ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, DeJusticia, Rodrigo Uprimny and Maria Paula Saffon. p.18

⁶⁸ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, DeJusticia, Rodrigo Uprimny and Maria Paula Saffon. p.19

human rights treaties that impose the duty to prevent atrocities from taking place in their territories, and to prosecute, judge and punish all those who commit them⁶⁹.

Furthermore, restorative justice could not afford the complex dilemmas transitional justice confronts, such as the social traumas left by massive and systematic violations of human rights⁷⁰. This is why restorative justice can be considered as a complement to transitional justice, in a way aiming to the reconciliation between the victim and the perpetrator as a key, in the long term, and for each case taken as a whole, to reach social peace. They are, in fact, complementary tools for a same goal: reconciliation and peace. We can consider that transitional justice is taken at the State level in a macro-approach, and that restorative justice is pursued at a societal stage, in a micro-approach, being both of them necessary for the achievement of peace. Moreover, transitional justice processes can sometimes lead to a lack of law, which can be filled by restorative tools, that would help to avoid the emergence of new germs of violence which could endanger the success of the transitional process⁷¹.

b. Judicial achievements with the Peace Accord

The conclusion of the Peace Accord includes the creation of new institutions (i) and programs (ii).

i. Creation of new institutions

As previously seen, in 2017 have been taken the “Legislative Act 01 of 2017” which created the Integral System of Truth, Justice, Reparation and Non-repetition (SIVJNR). This has generated the creation of new entities: the Commission for the Clarification of Truth, Coexistence and Non-repetition; the Unit for the Search of Persons Found Disappeared in the Context and

⁶⁹ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, Dejusticia, Rodrigo Uprimny and Maria Paula Saffon. p.19

⁷⁰ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, Dejusticia, Rodrigo Uprimny and Maria Paula Saffon., p.8

⁷¹ “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case”, Dejusticia, Rodrigo Uprimny and Maria Paula Saffon. p.9

Because of the Armed Conflict; the Special Jurisdiction for La Paz; the Integral Reparation Measures for the Construction of Peace and the Guarantees of Non-Repetition.

(1) For the access to justice: Sistema integral de verdad, justicia, reparación y no repetición (Integral System of Truth, Justice, Reparation and Non-Repetition):

Created by article 5 of the Peace Accord, it aims at satisfying the rights of victims, establishing responsibilities, looking after no repetition and no re-victimization, for the integral reparation, co-living and reconciliation.

It is composed of (1) the Special Jurisdiction for Peace; (2) the Commission for the Clarification of Truth, Coexistence and Non-Repetition; (3) the Unit for the Search for Persons Found Disappeared in the Context and Because of the Armed Conflict; and (4) comprehensive reparation measures. The different components of the SIVJNR should operate in a coordinated and articulated manner, and contribute to the non-repetition.

The Integral System of Truth, Justice, Reparation and Non-Repetition is, henceforth, an organ incorporated in the Political Constitution of Colombia through the Legislative Act 01 of 2017 "by means of which a title of transitional provisions of the Constitution is created for the termination of the armed conflict and the construction of a stable and lasting peace"⁷² which has an administrative and budgetary autonomy.

By Rule C-674 of 2017, the Constitutional Court declared the aforementioned Legislative Act enforceable. It emphasized that from the legal point of view, one of the relevant axes is that in the face of serious human rights violations and breaches of international humanitarian law, the transition to peace should be made within the broad framework of possibilities available to the State to comply with its obligation to investigate, judge and sanction⁷³.

The constitutional foundations of the SIVJNR are human dignity (art.1.), the State's duty to protect the rights of Colombian residents (art. 2), due process guarantees (art. 29), the general

⁷² Congress of the Republic, Legislative Act 01 of April 4th 2017.

⁷³ "Cuadernos de Paz n°3 : Sistema integral de verdad, justicia, reparación y no repetición", Defensoría del Pueblo, 2018, p. 11

clause of State responsibility for damages caused by public servants such as fraud or gross negligence (art. 90), the integration of the constitutional block with international treaties on DD.HH. ratified by Colombia (art. 93), the right of access to justice (art. 229), the rights of victims as of constitutional rank (art. 250) and the duty to adopt traditional justice mechanisms that guarantee at the highest possible level the rights of victims to truth, justice, reparation (Legislative Act No. 1 of July 2012).

The SIVJNRN seeks to provide the victims and society with a comprehensive response to the events that generated serious human rights violations and breaches of International Humanitarian Law during the armed conflict; a response based on the recognition of truth, justice and reparation with a guarantee of non-repetition. It also seeks the recognition of victims and their dignity through the materialization of constitutional rights⁷⁴.

The main principles that influence the implementation of the SIVJNRN are:

- The recognition of the victims as citizens of right: it implies that the victim, in addition to hold rights, can exercise them against the other entities (society, State, international bodies, etc.).
- The recognition of responsibilities towards the victims by State agents, members of the FARC guerrilla and members of paramilitary groups that participated in the conflict and were involved in serious Human Rights violations and breaches of International Humanitarian Law.
- The total, direct, indirect or incidental participation of the victims through the mechanisms (judicial, extrajudicial and measures) implemented by the SIVJNRN, with guarantees of protection for their lives and physical integrity.
- Satisfaction of victims' rights to truth, justice, reparation and non-repetition.
- The right to the truth implies that the victims, their families, the community and society in general know the truth about the facts and circumstances in which the Human Rights violations occurred.
- The right to justice implies the duty of the State to carry out an effective investigation that leads to the clarification of Human Rights violations and breaches of International Humanitarian Law, the identification of the perpetrators, their respective sanctions and the reparation of the damages caused.

⁷⁴ “Cuadernos de Paz n°3 : Sistema integral de verdad, justicia, reparación y no repetición”, Defensoría del Pueblo, 2018, p. 12

- The guarantee of integral reparation is part of the actions of the persons responsible for the facts that generate human rights violations and is materialized, among others: the delivery to the State of the goods illicitly taken for the reparation of the victims, the public acknowledgement of having caused damages, the public declaration of repentance, the request for forgiveness addressed to the victims and the promise to not repeat the punishable conducts.
- Restoring the rights of victims and transforming their living conditions is a fundamental part of peacebuilding.

The SIVJRRR has several characteristics.

First, the System is **integral** in that it is not a series of isolated mechanisms, but a set of mechanisms interconnected among others in a coherent manner. It must be comprehensive because only in this way is it possible to provide an adequate response to all the victims left behind by the armed conflict and to all their rights, as well as to society as a whole in the transition to peace⁷⁵.

Previous experiences of transitional justice processes in Colombia and international experiences have shown that it is impossible to satisfy the different rights of all victims only through the criminal process, or only through extra-judicial processes. They have also demonstrated that the best way to achieve the satisfaction of the rights of all victims is by establishing relations and incentives between, on the one hand, the recognition of responsibility, the clarification of the truth and the contribution to reparation, and, on the other, the special treatment of justice that each person receives. No mechanism of the System should take precedence over another. Each mechanism has to fulfill its main function in an agile way and without duplicating those of the other mechanisms, for which the necessary collaboration protocols will be established⁷⁶.

⁷⁵ "P&R: Sistema integral de Verdad, Justicia, Reparación y no Repetición", Alto Comisionado para la Paz, §3 <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/proceso-de-paz-con-las-farc-ep/Paginas/PR-Sistema-integral-de-Verdad-Justicia-Reparacion-y-no-Repeticion.aspx>

⁷⁶ "P&R: Sistema integral de Verdad, Justicia, Reparación y no Repetición", Alto Comisionado para la Paz, §3 <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/proceso-de-paz-con-las-farc-ep/Paginas/PR-Sistema-integral-de-Verdad-Justicia-Reparacion-y-no-Repeticion.aspx>

Then, the System takes precedence over the principle of constitutionality. The Constitutional Judgment of Legislative Act 01/17 alludes to the "Conditionality Regime" in the understanding that each of the special treatments, benefits, waivers, rights and guarantees is subject to verification by the Special Jurisdiction for Peace of compliance by the appearing parties with the obligations derived from the Peace Agreement⁷⁷.

Finally, the active participation of victims of the armed conflict is an indispensable requirement for the System, since victims are the ones who make the most valuable contributions for the implementation and operation of judicial and extrajudicial mechanisms. Their participation in the process of designing and implementing transitional justice ensures the effectiveness of policies to combat impunity and ensures that their current needs are met⁷⁸.

Participation of victims is their right to intervene, to be informed and to follow up on projects, measures and decisions involving them. In the different mechanisms and measures that are contemplated within it, the forms, means and spaces of participation have been established. The participation of victims can be direct when they act on behalf of their own interests, without the need for intermediaries or representatives, or indirect when victims act through representatives or intermediaries, when an organization or a person is chosen to carry the voice and defend the interests and rights of several victims⁷⁹.

Within the SIVJNR, the following means and spaces have been established to participate:

- In the **development of plans and strategies**: victims can participate in the design of some plans or strategies to be implemented in the SIVJNR, in order to ensure their functioning. For example :
 - In the “Unidad de búsqueda de personas dadas por desaparecidas (UBPD) en el contexto y en razón del conflicto armado” (Unit for the search of persons reported missing in the context and because of the armed conflict) there will be an Advisory Board composed of organizations of victims (indirect participation).

⁷⁷ “Cuadernos de Paz n°3: Sistema integral de verdad, justicia, reparación y no repetición”, Defensoría del Pueblo, 2018, p. 14

⁷⁸ “Cuadernos de Paz n°3: Sistema integral de verdad, justicia, reparación y no repetición”, Defensoría del Pueblo, 2018, p. 15

⁷⁹ “Cuadernos de Paz n°3 : Sistema integral de verdad, justicia, reparación y no repetición”, Defensoría del Pueblo, 2018, p. 15-19

- Victims, victims' organizations and human rights defenders will be able to participate in the Advisory Council sessions in territorial participation bodies scheduled in the regions prioritized by the UBDP for the implementation of the regional search plans (direct participation).
- In the **delivery of information**: victims can present their cases, in order to ensure due process. For this, the System created different spaces, for example:
 - Before the “Comisión para el esclarecimiento de la Verdad, la convivencia y la no repetición, dicha Comisión de la Verdad” (CEV) (Commission for the Clarification of Truth, Coexistence and Non-Repetition): the CEV has the function of creating spaces, especially thematic, territorial and institutional audiences, of organizations and of emblematic situations and cases, in the aim to hear the voices of victims and to know what happened during the armed conflict.
 - Before the UBPD: for the completion of its functions, the UBPD will request and receive information from persons, State entities or social organizations and victims who contribute to the search, location, recovery and identification of persons reported missing during and because of the armed conflict.
 - Before the JEP: this is done through reports presented by victims collectively and by victims' organizations before the Truth and Responsibility Awareness Room.
- When **requesting information**: victims can request information from the mechanisms of the system, for example to the UBPD: one of its functions is to provide family members with a detailed official report of the information they have managed to obtain on what happened to the person reported missing at the end of the execution of the corresponding search plan. The System applies to victims of the internal armed conflict who seek to participate in its measures and mechanisms, and to human rights violated agents who participated directly or indirectly in the armed conflict, who are encouraged to collaborate in the process of truth, justice, reparation and non-repetition⁸⁰.

(a) “Justicia Especial para la Paz” (JEP), Special Jurisdiction for Peace:

⁸⁰ “Cuadernos de Paz n°3 : Sistema integral de verdad, justicia, reparación y no repetición”, Defensoría del Pueblo de Colombia, 2018, p. 15-19

The Special Jurisdiction for Peace (JEP) has the function of administering transitional justice and hearing crimes committed in the context of the armed conflict committed before 1 December 2016. The existence of the JEP is ephemeral and may not exceed 20 years.

The JEP was created to satisfy the victims' rights to justice, to offer them truth and to contribute to their reparation, with the purpose of building a stable and lasting peace.

The work of the JEP will focus on the most serious and representative crimes of the armed conflict, in accordance with the selection and prioritization criteria defined by the law and the judges. In particular, it may hear about crimes committed by former FARC combatants, members of the security forces, other State agents and civilian third parties. Regarding the latter two, the Constitutional Court clarified that their participation in the JEP would be voluntary⁸¹.

That is to say, it is a parallel jurisdiction created to judge ex-guerrillas, military, State agents and civilians linked to crimes related to the Colombian war. Those who are and will be tried in the JEP may have access to lesser penalties than those imposed by ordinary justice, as long as they acknowledge their guilt and meet other conditions such as the delivery of goods and information⁸².

From an organic perspective, the JEP will be composed of⁸³:

- A government body: in charge of establishing guidelines to ensure the effective functioning of the jurisdiction.
- A presidency: social and institutional representation of the JEP, unique spokesperson of the jurisdiction, in charge of convening and chairing the plenary sessions of the JEP, the Peace Tribunal and the Governing Body; serves as a channel of communication and coordination between the JEP and the other mechanisms and institutions of the SIJVRNR; and guide the execution of the resources in charge of the Executive Secretariat and to decide on the administrative situations of employees and officials of the jurisdiction.

⁸¹ Jurisdicción Especial para la Paz, Gobierno de Colombia : <https://www.jep.gov.co/Paginas/JEP/Jurisdiccion-Especial-para-la-Paz.aspx>

⁸² "Objeciones a la JEP en Colombia: la Corte Constitucional rechaza los reparos del presidente Duque a la Jurisdicción Especial para la Paz", BBC, May 30th 2019 <https://www.bbc.com/mundo/noticias-america-latina-48453600>

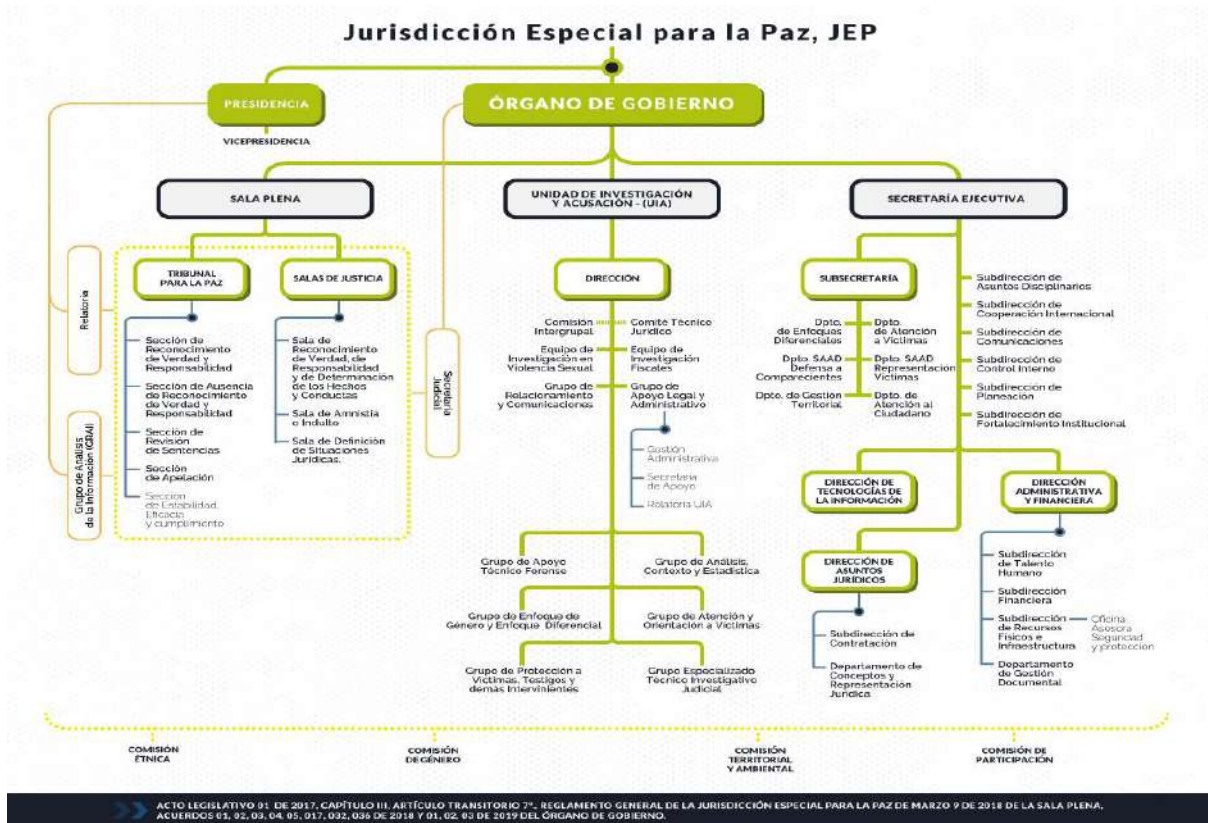
⁸³ This is part is inspired of the organogram of the JEP presented in the website: <https://www.jep.gov.co/Paginas/JEP/Jurisdiccion-Especial-para-la-Paz.aspx>

- Courtsrooms: the JEP has three Chambers of Justice, made up of 18 magistrates and 6 amicus curiae:
 - A room for the examination of truth, responsibility and determination of facts and conduct
 - An amnesty or pardon room
 - A legal situations definition room
- A Tribunal for Peace: composed of 20 judges and 4 amicus curiae.
 - Section on recognition of truth and responsibility for facts and conduct
 - Section on the absence of recognition of truth and responsibility for facts and conduct
 - Sentencing review section
 - Appeal section
- Investigation and Prosecution Unit: organ in charge of investigations and the exercise of criminal action when the alleged individual or collective perpetrators of serious human rights violations or breaches of international humanitarian law do not recognize full truth or responsibility.
- An executive secretary: body that administers, manages and executes the resources of the JEP to fulfill its mission objectives. In addition, it administers the JEP's Autonomous Defence System, which provides its services to those appearing and to the victims.
- A judicial secretary: body of the JEP which supports the chambers and sections in secretarial work of their sessions, distribution and notification of decisions.
- An information analysis group: function to collect, systematize and contrast information from various sources, to provide the different rooms and sections of the JEP, according to their needs, documents and analytical inputs about the contexts, organizations and armed networks, patterns and practices of interaction of these in the framework of the armed conflict.

In addition, commissions and committees have been created by the General Regulations of the JEP (Agreement 001 of March 9, 2018 issued by the Plenary Hall):

- Territorial and Environmental Commission: promotes the effective implementation of the territorial and environmental approach in the justice component of the SIVJRNR.
- Ethnic Commission: promotes the effective implementation of the ethnic-racial approach in the JEP.

- Gender Commission: promotes the effective implementation of the gender approach in the JEP.
- Inter-institutional Coordination Committee of the SIVJRNR: promotes the coordination and coordination of the actions of the System's bodies.
- Ethics Committee: watches over the observance and compliance with the Code of Ethics, good practices and coexistence.



84

The mission of the JEP is to administer justice in order to consolidate the transition towards peace and restore the social fabric, guaranteeing the rights of victims and the legal security of those appearing, with a territorial, differential and gender approach.

The vision of the JEP for 2033 is to have done justice, clarifying and establishing individual criminal responsibilities for the most serious and representative crimes committed during the Colombian armed conflict and resolving the legal situation of all those appearing before the JEP, thus contributing to the construction of peace and national reconciliation.

⁸⁴ Organigram found on: Jurisdicción Especial para la Paz, Gobierno de Colombia : <https://www.jep.gov.co/Paginas/JEP/Jurisdiccion-Especial-para-la-Paz.aspx>

Its objectives are, mainly, to:

- Investigate, judge and punish the most serious and representative crimes that occurred in the conflict, prioritized by the Jurisdiction. Resolve, within a reasonable period of time, the requests, benefits, and legal situation of those appearing before the JEP.
- Satisfy the victims' rights to justice, truth and contribute to the satisfaction of the rights to reparation and non-repetition as a judicial component of the SIVJNR, guaranteeing their effective participation before the JEP.
- To be recognized as a legitimate and reliable entity, through the constant and clear communication of its management, and the active participation of the different actors in the construction of peace and the search for reconciliation.
- Consolidate the institutional strengthening that guarantees effectiveness and efficiency in the fulfillment of the Jurisdiction's mission.

(b) Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, dicha “Comisión de la Verdad” (CEV)

(Commission for the Clarification of Truth, Coexistence and Non-Repetition)⁸⁵:

As part of the SIVJNR, the CEV is a national, autonomous and independent body, of a constitutional, temporary and extrajudicial nature. It is specified in article 2 of Legislative Act No. 1 of 2017 and regulated by Decree-Law No. 588 of 2017, which contains its objectives, guiding criteria, functions, mandate and administrative organization. The Constitutional Court declared the decree that regulated the CEV enforceable by means of Ruling C-017 of 2018. The CEV has an independent and impartial character that legitimizes it to tell the country what happened. The rigor of its work will allow it not to generate prejudices against it. This is achieved by listening to the victims and those appearing, especially in the regions where the conflict has fractured the social fabric and violence can more easily re-emerge.

⁸⁵ Cuadernos de Paz n°5 “Garantías de No Repetición y Comisión de la Verdad”, Defensoría del Pueblo de Colombia, 2018, p.39-49

The commission tends to generate truth, explain it and understand it, and tends to process non-repetition. But it also seeks that those who participated in the armed conflict, individually or collectively, voluntarily recognize their responsibility and commitment to non-repetition.

The victims can participate to the CEV in a direct or indirect way. In the direct way, participation takes place through public and private hearings, with the delivery of testimonies, providing interviews that contain stories of their territory and of the experiences that generated the serious violations of human rights as well as breaches of international humanitarian law. Indirectly, by delivering public or private documents, providing reports, also with the acknowledgements of those appearing and establishing complaints. The participation of victims in the CEV must, through the competent authorities, have an assistance that materializes in "psychosocial support and accompaniment, before, during and after their participation to overcome the effects that the Human Rights violations caused them⁸⁶".

The CEV have several characteristics: it does not have judicial character and it cannot imply the criminal imputation of those who appear to it. The information that it receives cannot be transferred by it to judicial authorities to be used to attribute responsibilities or to have probative value, nor can it be required by judicial authorities. Nothing that is said there will be used as evidence against anyone in the JEP and the participation is voluntary.

The Commission has a validity of three years and additionally a previous period of up to six months that is counted from the moment in which the totality of the commissioners are possessed and effectively begin to exercise their functions.

Its mandate aims at clarifying and promoting the recognition of six main points:

- Practices and facts that constitute serious human rights violations and serious breaches of International Humanitarian Law, particularly those of a massive nature that took place on the occasion of the conflict, the contexts that permitted the massacres, displacement, sexual violence, kidnapping and forced disappearance.

⁸⁶ "Participación de las víctimas en el Sistema Integral de Justicia, Verdad, Reparación y No Repetición. Serie Las Víctimas en el Centro del Acuerdo", Comisión Colombiana de Juristas, March 2017. http://www.coljuristas.org/documentos/libros_e_informes/Libro_LA_PARTICIPACIÓN_DE_LAS_VÍCTIMAS_CCJ_15_Marzo_2017.pdf

- The collective responsibility of the State and any other group, organization or institution involved in the conflict.
- The impact of the conflict on the society, on the exercise of democracy, on those who participated directly in it and in the historical context.
- Factors and conditions that facilitated or contributed to the persistence of the conflict, the actions of the State, the guerrillas, the paramilitaries, among others.
- Paramilitarism, displacement and dispossession of land, the relationship between the conflict and illicit crops.
- The processes of strengthening the social fabric in communities and the positive transformation of organizations and institutions.

Public authorities and institutions have a duty to provide information available to the CEV for the fulfilment of its objectives, mandate and functions. Reservations regarding access to public information regarding Human Rights violations or breaches of International Humanitarian Law are not opposable. The information enjoying a legal reserve may be used by the Commission in the fulfilment of its functions, but may not be public.

(c). “Derecho a garantías de no-repetición” (Right to guarantees of non-repetition)⁸⁷ :

Transitional article 1 of Legislative Act No. 1 of 2017 establishes that guarantees of non-repetition are part of the Integral System of Truth, Justice, Reparation and Non-Repetition. Moreover, transitory article 27 provides that as a contribution to the guarantees of non-repetition, the State must guarantee that the events occurred in the past will not be repeated. Therefore, guarantees of non-repetition are a constitutional right.

As one of the components of integral reparation, guarantees of non-repetition can be defined as the actions and measures that States must implement so that human rights violations and breaches of International Humanitarian Law never occur again. These guarantees are decisive for the effective enjoyment of rights. Non-repetition implies that the rights of the victims

⁸⁷ Cuadernos de Paz n°5 “Garantías de No Repetición y Comisión de la Verdad”, Defensoría del Pueblo de Colombia, 2018, p.15-21

of the conflict must be guaranteed and respected, essential requirements to avoid the continuity or repetition of the facts that generated the violation of their rights.

The resources to prevent the victims of the armed conflict from suffering a new victimization are twofold. First, the interrelated, coherent and integral application of the mechanisms and measures of the SIVJNR and second, the State's obligation to implement legal, political, administrative, cultural and social measures that allow a transformation from an approach motivated by the armed conflict to an approach motivated by peacebuilding.

The guarantees of non-repetition have several characteristics:

- They are essentially of a preventive nature: the measure seeks to safeguard human rights and ensure that eventual violations are treated as univocal conduct, guaranteeing not only sanction for those responsible but integral reparation for the victims.
- They are an integral element of integral reparation: the State must seek and impose sanctions on those responsible for the violation of human rights and reparation to the victims, in addition to assuming the commitment to avoid new conducts of this nature in the future, reparation must be adequate to the affectations, coherent with the type of victimization, complementary with other transitional justice measures that allow for integral reparation.
- They have a transforming character: they seek to generate structural changes in the institutions of the state, not only national, but regional and local, changes in the political, economic, social and cultural conditions that have allowed the serious Human Rights violations and breaches of International Humanitarian Law.

(d). “Unidad de búsqueda de personas dadas por desaparecidas (UBPD) en el contexto y en razón del conflicto armado”: Unit for the search of persons reported missing (UBPD) in the context and because of the armed conflict⁸⁸.

As part of the SIVJNR, the UBPD is a national, autonomous and independent justice sector entity of a constitutional, temporary and extrajudicial nature, which is specified in Article

⁸⁸ Cuadernos de Paz n°4 “Medidas de Reparación Integral y Unidad de Búsqueda de Personas Dadas por Desaparecidas” p. 35-41

3 of Legislative Act No. 1 of 2017 and is regulated by Decree-Law 589 of 2017, which contains its objectives, guiding criteria, functions, mandate and administrative organization.

The fundamental objective of the UBPD is to direct, coordinate and contribute to the implementation of humanitarian actions for the search and location of persons reported missing. Its purpose is to establish what happened to persons reported missing as a result of the actions of agents of the State, members of the FARC or any other organization that participated in the armed conflict, and to contribute to satisfying the victims' rights to truth and reparation.

It is valid for 20 years and can be extended by law. During its term, the UBPD must report periodically and publicly, at least every six months, on the activities of search, location, recovery, identification and dignified delivery of bodies carried out, always respecting the right to privacy of victims.

All State entities are obliged to collaborate with the UBPD in the performance of its functions. When the UBPD finds the alleged location of bodies or persons reported missing, it can directly carry out the search, location and exhumation of persons reported missing in the context and because of the armed conflict. It can also coordinate with the competent entities the work of search, location and exhumation. Moreover, when the needs of time, mode and place advise so, it may require the support of the security forces for the access and protection of places where there are presumed to be remains or persons reported missing.

(e). Medidas de reparación integral para la construcción de paz (Integral reparation measures for peacebuilding)⁸⁹

Transitional article 1 of Legislative Act No. 1 of 2017 establishes that comprehensive reparation measures for peacebuilding are part of the SIVJNR. Article 18 of the Law establishes the duty of the State to guarantee victims who have suffered individual or collective damage in the framework of the armed conflict "comprehensive, adequate, differentiated and effective" reparation, giving priority to subjects of special constitutional protection.

⁸⁹ Cuadernos de Paz n°4 "Medidas de Reparación Integral y Unidad de Búsqueda de Personas Dadas por Desaparecidas" p. 13-19

Integral reparation measures in the context of an armed conflict are a set of actions taken by a State to fully and integrally re-establish the rights of the victims who were seriously affected as a consequence of and on the occasion of an armed conflict.

The right to reparation is granted to individuals or collectives considered to have suffered harm in the context of the internal armed conflict. The reparation shall be proportional to the gravity of the acts that violate their human rights.

The internal order has provided two ways of reparation: judicial or administrative.

- Reparation in judicial headquarters emphasizes the granting of justice to individuals considered individually, examining violations on a case-by-case basis.
- Reparation in administrative headquarters is carried out through massive programs, such as the land restitution process. Administrative reparation distributes resources equitably, prioritizing the weakest populations that are in total vulnerability of their rights. The amount of resources that would be paid in full reparation in the ordinary way is reduced to provide greater reparation coverage to a large population of victims scattered throughout the national territory.

The Peace Accord developed seven comprehensive reparation measures, ranging from public and solemn acts of forgiveness to material reparation. The measures are differentiated according to the needs and interests of the victims:

1. Acts of recognition collective responsibility and contrition
2. Concrete actions to contribute to reparation
3. Collective reparation
4. Psychosocial rehabilitation
5. Collective processing of retakes of displaced persons
6. Measures on land restitution
7. Adaptation and participative strengthening of the policy of integral attention and reparation of the victims.



(2) Other mechanisms provided by the Peace Agreement

(a). Program of reinsertion of ex-FARC combatants

Within the framework of the Peace Agreement, the National Government and the FARC agreed on point 3.2. regarding the reincorporation of the FARC-EP into civil life in the economic, social and political spheres in accordance with their interests, and in particular point 3.2.2 concerning economic and social reincorporation.

Thus, point 3.1.1.2. establishes “the definitive termination of the offensive actions between the Armed Forces and FARC, and in general of the hostilities and any action foreseen in the Rules Governing the CFHBD, including the affectation to the population, thus creating the conditions for the beginning of the implementation of the Final Agreement and the drop-off of arms and preparing the institutional framework and the country for the reincorporation of FARC-EP into civilian life”⁹¹.

In this sense, “the members of the new movement or political party that arises from the transit of the FARC to legal political activity, its activities and headquarters, the former members of the FARC who re-incorporate into civilian life, as well as the families of all the former members according to the level of risk”⁹² have to be protected since they follow the legality of the process.

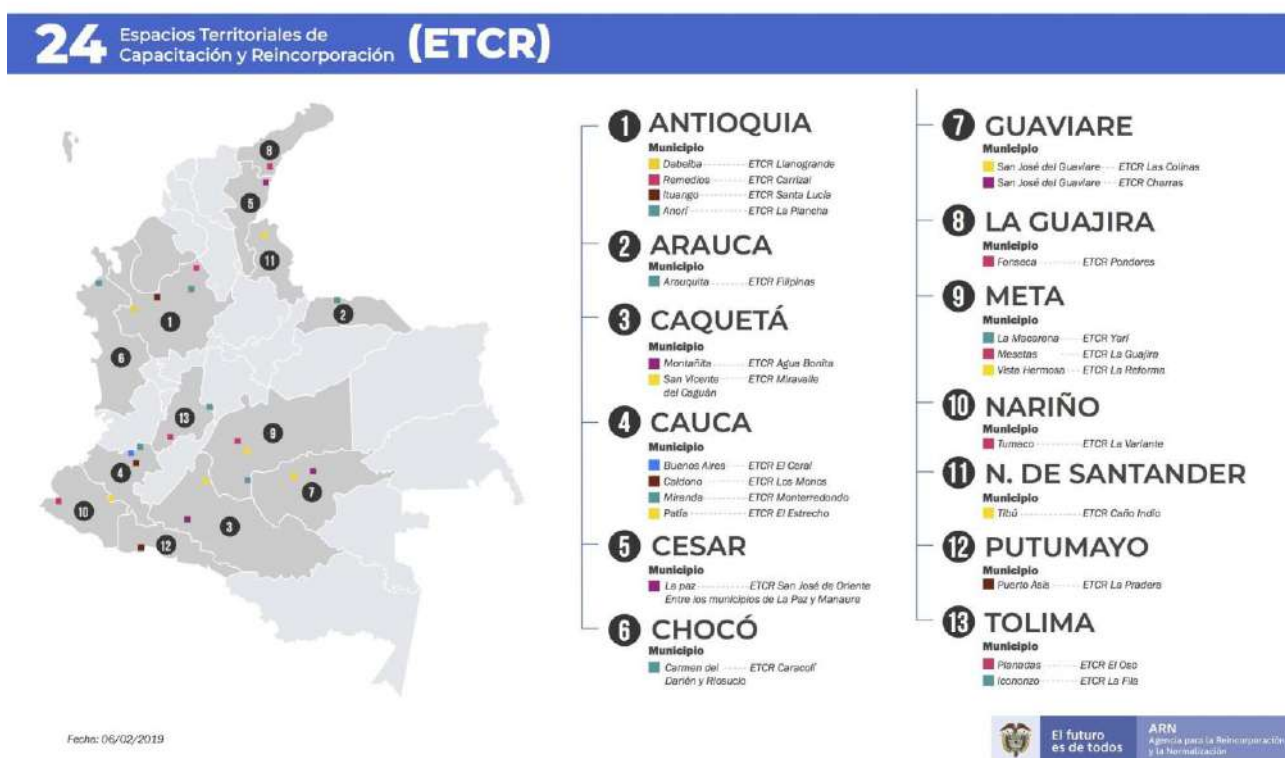
⁹⁰ “ACUERDOS DE PAZ: Punto 5”, Slideshare, Defensoría del Pueblo, August 15th 2017 : <https://www.slideshare.net/giovannygarcia1987/acuerdos-de-paz-punto-5>

⁹¹ “Acuerdo Final con las FARC en materia de reincorporación”, Punto 3.1.1.2. <http://www.reincorporacion.gov.co/es/reincorporacion/Paginas/La-reincorporación-en-los-Acuerdos.aspx>

⁹² “Paz con legalidad”, Ivan Duque, Presidencia de la Republica, 2018-2022, p.18, §4.2

Thus, the agreement "Reincorporation of the FARC into civilian life - economically, socially and politically - in accordance with their interests" lays the foundations for the construction of a stable and lasting peace which requires the effective reincorporation of the FARC into the social, economic and political life of the country. The reincorporation ratifies the FARC's commitment to close the chapter of the internal conflict, to become a valid actor within democracy and to contribute decisively to the consolidation of peaceful coexistence, to non-repetition and to transforming the conditions that have facilitated the persistence of violence in the territory.

For that, the State has created 24 "territorial training and reincorporation spaces" (Espacios Territoriales de Capacitación y Reincorporación (ETCR)) across the country. These spaces will serve to train the members of the FARC for their reincorporation into civilian life, prepare productive projects and meet the technical training needs of the surrounding communities, in a model of community reincorporation⁹³.



94

⁹³Agencia para la Reincorporación y la Normalización (ARN)
<http://www.reincorporacion.gov.co/es/reincorporacion/Paginas/Los-ETCR.aspx>

⁹⁴Agencia para la Reincorporación y la Normalización, Gobierno de Colombia:
<http://www.reincorporacion.gov.co/es/reincorporacion/Documents/ETCR-simple-Pagina-WEB-06022019.pdf>

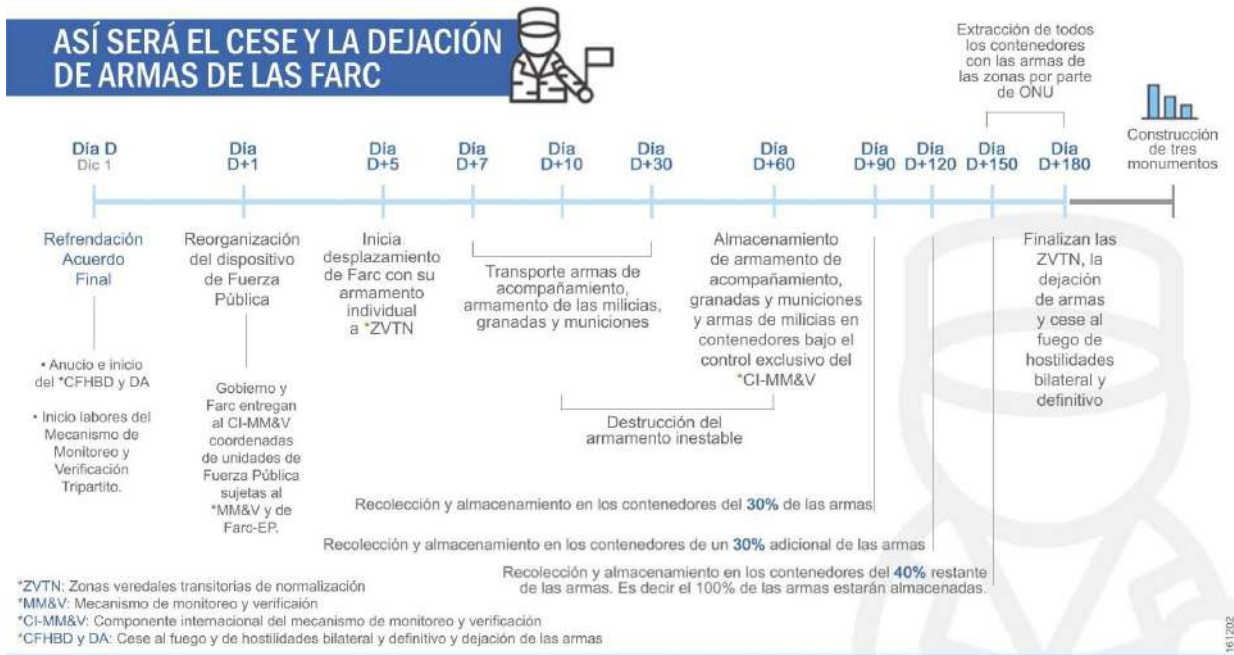
Furthermore, the State has developed a program of reintegration for persons accredited as demobilized by law or the Office of the High Commissioner for Peace, who demobilized after 24 January 2003. Among the requirements is to have not committed crimes against humanity, violation of international humanitarian law, among others. The program seeks to develop citizenship skills and competencies among demobilized people and their environments. At the same time, it proposes to provide spaces for coexistence and reconciliation actions, and to foster the co-responsibility of external actors.

The mission of this program is to promote the return of the demobilized population to the rule of law in a sustainable manner. For this reason, demobilized persons are not only provided with education, job training and psychosocial support, but are also helped to promote their productive projects.

The Colombian State provides legal benefits for political and related crimes to demobilized persons from the Armed Groups Organized to the Margin of Law (GAOML⁹⁵), as long as they do not reoffend after their demobilization. When a person enters the reintegration process, they receive economic support for reintegration if they attend at least 90 per cent of the activities programmed by the Agency of Reincorporation and Normalization. Each participant in the reintegration process commits to develop at least 80 hours of Social Service actions, fundamental for generating spaces for reconciliation⁹⁶.

⁹⁵ (GAOML) Grupos Armados Organizados al Margen de la Ley

⁹⁶ “¿Qué es la Reintegración?”, Agencia para la Reincorporación y la Normalización (ARN), Gobierno de Colombia <http://www.reincorporacion.gov.co/es/la-reintegracion/Paginas/quees.aspx>



97

(b). “Consulta previa de obras, proyectos y actividades” - Prior consultation of works, projects and activities⁹⁸

Prior consultation is one of the most clearly demanded ethnic collective rights in the process of sustained dialogue between the national government and the FARC. It was clearly enshrined in the ethnic chapter of the Havana Accords within the requirement of non-regressive step of its conquered rights, and compliance with a good part of such agreements is subject to the guarantee of this right. It is a fundamental right that only the ethnic communities hold. It is part of the constitutional bloc and is related to the right to life.

c. Distinction of the Peace Agreement as an example of transitional justice

For the head of the UN mission in the country, Carlos Ruiz Massieu, the Peace Agreement has to be "an example for countries around the world that negotiated solutions are possible"⁹⁹. The

⁹⁷ “Así será el cese y la dejación de armas de las FARC”, Alto Comisionado Para la Paz

⁹⁸ Cuadernos de Paz n°7 “La consulta previa de obras, proyectos y actividades”, Defensoría del Pueblo, 2018

⁹⁹ “La mayor incertidumbre para Colombia sería reabrir puntos centrales del Acuerdo de Paz”: ONU”, El Espectador, April 12th, 2019

<https://www.elespectador.com/colombia2020/pais/la-mayor-incertidumbre-para-colombia-seria-reabrir-puntos-centrales-del-acuerdo-de-paz-onu-articulo-857865>

EU Director for the Americas, Hugo Sabral, shared the same idea stating that “the European Union sees the Peace Agreement in Colombia as a model that can even serve as inspiration for other regions of the world, and it is important that its implementation continues”¹⁰⁰.

Therefore, the Kroc Institute, an entity designated by the Agreement to identify progress and difficulties in the implementation process, in its last report on follow-up to what was agreed in La Havana, made a special mention to the process of transitional justice in Colombia. "It is important to point out that in less than two years, the three transitional justice mechanisms have been in operation at the national level and are advancing in their territorial deployment: the Special Jurisdiction for Peace (JEP), the Commission for the Clarification of the Truth (CEV) and the Unit for the Search for Persons Disappeared in the Context and Because of the Armed Conflict (UBPD)”¹⁰¹.

According to the Kroc Institute, this model of transitional justice is practically the first in the world that effectively guarantees justice, truth and reparation because what usually happens in other countries is that one is sacrificed in exchange for the other. "In Colombia, those responsible for serious crimes that tell the truth go through a justice process that gives them alternative sentences and guarantees reparation to the victims, and that is completely innovative”.

2. Critics of the Peace agreement

Despite the great step forward the Peace Agreement in Colombia has offered, this turning point has been and is still criticized and challenged.

It is possible to consider that today, its first challenger is the current President Ivan Duque, elected in July 2018, who since the start of its electoral campaign had shared his vision about the Accord. According to him, the Peace Agreement signed in 2016 is too laxist towards the former guerrillas. Pursuing a fight against impunity, and therefore denying the fruits of transitional justice, he considers that “the Special Justice for Peace (JEP) is a mechanism of impunity that allows for the political eligibility of criminals against humanity, and where it was clear that telling the whole truth

¹⁰⁰ ““Colombia debe hacer más por los DD. HH.”: director de la UE para las Américas”, El Espectador, April 19th 2019 <https://www.elespectador.com/colombia2020/pais/colombia-debe-hacer-mas-por-los-dd-hh-director-de-la-ue-para-las-americas-articulo-857871>

¹⁰¹ “Peace Accord Implementation in Colombia Continues to Progress Two Years In Media Advisory: April 9, 2019” https://kroc.nd.edu/assets/316152/190409_pam_media_advisory_final.pdf

does not mean accepting responsibility”¹⁰². That is why on March 2019 he intended to amend 6 of the 159 articles regulating the JEP, and thus the transitional justice process, real backbone of the peace agreement signed in 2016. The objections were related to the economic reparation of the victims, the suspension of extradition processes, the selection of those who could be submitted to this special justice and the role of the ordinary justice before the JEP courts.

These objections have produced a huge outcry since the law objected by the President had already been subject to a control by the Constitutional Court. Thus, on a letter, negotiators of the Havana agreement and a group of intellectuals and leaders of diverse political currents have addressed to UN Secretary General Antonio Guterres, to the UN Security Council and the International Criminal Court, that they denounced the manoeuvre of the President to intent “to disregard the decision by which the Court declared the norms of the law to be constitutional”¹⁰³, and thus denying the principle of separation of powers.

At the same time, the objections filed by Duque before the Congress caused great controversy in the country, where have been organized marches and demonstrations by those who considered that it was an attempt to weaken the Peace Agreement¹⁰⁴.

The announcement, on the other hand, was supported by the ruling sectors, especially by the Democratic Center party, led by former president Álvaro Uribe.

The changes proposed by Duque were finally rejected by the House of Representatives, and in the Senate no consensus was found on the number of votes required for it to be approved, so the discussion was escalated to the Constitutional Court. The Court considered that Duque's objections failed to obtain a majority of votes, so they should not be implemented.

As observed, everyone in Colombia has been affected by the internal armed conflict, in all stage of the society. But the way people have been affected differs depending on being a man or a woman. The point of this part of the demonstration is not to show that one part of the people has

¹⁰² Interview of Ivan Duque to *El País*, January 18th of 2018

https://elpais.com/internacional/2018/01/17/colombia/1516162343_892303.html

¹⁰³ “Acusan a Duque ante ONU de poner 'obstáculos' al acuerdo de paz”, *El Tiempo*, March 11th 2019

<https://www.eltiempo.com/politica/proceso-de-paz/acusan-a-duque-ante-onu-de-poner-obstaculos-al-acuerdo-de-paz-336178?fbclid=IwAR1ZrL7K3ImxtaG9OeGRsiWz-2CBvbqXvc8wudaJkJyrEx0FExBJJCThLAK>

¹⁰⁴ “Objeciones a la JEP en Colombia: la Corte Constitucional rechaza los reparos del presidente Duque a la Jurisdicción Especial para la Paz”, *BBC*, May 30th 2019 <https://www.bbc.com/mundo/noticias-america-latina-48453600>

suffered more than another, but to show the impact the conflict has had and still has on a category of people, depending on their gender.

II. The role of women in the path to peace

Women have been affected in a particular way by the Colombian conflict (A). To fight the discrimination they can sometimes be victims of, a gender approach has been included in the Peace Agreement through the creation and the work of a Gender Subcommittee, in a country where women are still facing discriminations and violence (B).

A. Situation of women during the conflict

Women have been particularly affected by the conflict (1), victims of gender-based violence (2).

1. Women, a category particularly affected by the conflict

The NGO “Ruta Pacífica” has studied the situation of women during the conflict and analyzed the effects and consequences it has on them. They have interviewed more than 1,000 women who have been victims of human rights violations during the five decades of war, of all ethnicity present in the country and from age 17 to 83 years old¹⁰⁵.

Among the women interviewed, the number of violations suffered by each woman during their lives is between four and five, and more than 25% of the women suffered more than six distinct types of violence. They also made reference to between one and two other victims in their immediate environment in each testimony¹⁰⁶. In their stories, the main recurring theme was the masculine control over their bodies, projects and lives.

¹⁰⁵ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacífica
<https://rutapacifica.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹⁰⁶ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacífica, p.20
<https://rutapacifica.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

At listening the stories and experiences of women, three dimensions have been identified: (a) psychological, physical and sexual violence; (b) the losses and resignations suffered by women; (c) the increase of male control over women's lives.

a. Physical, psychological and sexual violence suffered by women victims of the armed conflict

Women in their testimonies recurrently mention experiences of physical, psychological and sexual violence that produce intense suffering, referring to loss, relinquishment, abandonment, confusion, insecurity, fear, humiliation, violence, torture, and loneliness¹⁰⁷. Many women in their testimonies refer to suffering that lead to profound sadness, and talks about “throwing oneself to death, to die of sadness, to die of moral shame”¹⁰⁸, as experiences they suffer.

Psychological violence: According to the report, women have experienced the continuous harassment of one or various armed actors on their villages and their families as a constant threat that abuses and terrifies them. The fact of not being able to identify the groups that invade their territories and come to their houses produces feelings of anxiety, terror and insecurity for women. In this context, it is very difficult to understand who is who, who are the perpetrators and why they come to their houses, what puts them in an incomprehension of the conflict that destroys their life. Another form of psychological violence that profoundly marks the victim is the compulsory witnessing of atrocities that serves to exemplify terror. According to the interviews, more than half of the women suffered different forms of psychological torture (54.4%; N=509), such as being followed or forced to witness torture of other people¹⁰⁹.

Physical violence: Women described kicks, blows, insults and wounds produced by armed actors, including the national army¹¹⁰. The recurring physical torture related in women's testimonies is a brutal and inhumane practice that crushes their dignity and destroys their personal integrity. Almost

¹⁰⁷ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.45

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹⁰⁸ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.45

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹⁰⁹ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.46

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹⁰ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.47

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

one on every six women interviewed reported having experienced physical torture (15%; n=140). Physical torture was reported more often by women between 30 and 49 years old, and especially in the Antioquia, Chocó and Santander regions¹¹¹. One of the testimonies speaks for itself:

“They came and passed through the Río Viejo lake and killed eight people, one of the people murdered was a woman who was giving food to the workers, because they were planting corn, and that’s when they began to kill her. They violently cut through her nipples, they ripped them off, they stuck her nipples in her mouth, cut off her tongue and they ripped off her fingernails.

Barrancabermeja, Santander, 161.”¹¹²

These torture practices frequently turn women’s bodies into combat zones, expressing vengeance or selective annihilation to destroy their morale.

Sexual violence: many women testified that sexual abuse of girls and adolescents is quite common in the domestic sphere and is reproduced generation after generation. The abusers are usually the men of the family (uncles, stepfathers, fathers...). According to the report, this type of violence typical of a patriarchal social-sexual system increases and intensifies in territories where the armed conflict operates¹¹³. The 15% of the women interviewed related they suffered from domestic violence at some point in their lives, the majority of which was sexual abuse. For armed actors, sexual violence is a good way to humiliate and destroy the safety and self-esteem of the women who inhabit territories of war, in order to facilitate their submission or their expulsion from those territories. The 12% of women interviewed stated that they had suffered sexual violence from armed actors¹¹⁴. Therefore, the investigation reveals that sexual violence has been a common practice, part of the systematic violence armed actors used as a weapon of war.

¹¹¹ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.47

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹² “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.47

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹³ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.48

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹⁴ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.48

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

b. The losses and resignations suffered by women

Many women in many situations had to leave everything behind because of the armed conflict. This has created among women a feeling of dispossession, of their own life, their home, belongings, relationships and friendships, which created a tragic dimension of loss. On four of every ten cases (42%), violence against women also generated material losses: destruction of their possessions (19.7%; n=184), destruction caused during raids (11.9%; n=111), confiscation (10.5%; n=98). These losses were more frequently reported by women between 30-59 years of age, from women identified as *mestiza*, indigenous, and of Afro-Colombian, in the regions of Bogotá, Chocó, Putumayo, Santander and Valle¹¹⁵.

According to the report, an overwhelming majority of the women refer to the experience of “loss” as the most painful and unjust event lived by them and their families in the context of the armed conflict. “Since that moment, my life was over,” reveals a woman from the community of Bojayá (Chocó, 2002, p. 83)¹¹⁶. Indeed, many women have lost everything during the war: their roots, their ties to their territory, their place or their culture. Forced displacement implies the abandon of the places they lived in, where they have constructed places of life and work: home, farm, land, their animals. Moreover, the loss of their house is very painful for women, since it is attached to their emotional life, their children, to the harmony and beauty that women imprint on their homes¹¹⁷.

Many women interviewed also related that, according to the patriarchal society they live in, they were dependent economically of their sons and/or husbands. When they have been killed in the conflict, women were left with no support and neither stability.

c. The increase of male control over women’s lives

The interviews held demonstrate constantly the terror felt by women regarding the threatening presence of armed actors: they describe attitudes, language, signs and symbols associated with masculine power that produce fear and trembling in the women. The furthest expression of this power is the use of weapons, which exacerbate masculine violence against

¹¹⁵ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.48

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹⁶ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.50

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹⁷ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.50

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

women¹¹⁸. The militarization of large stretches of land generates manners of domination and of controlling the lives of women, and increase the masculine superiority in continuation of the model of patriarchal socio-sexual system. This dominance was so deep that the armed actors who carry out forced displacement and exercise control, become the rule in women's lives¹¹⁹.

2. Gender based violence

- **Case study of the village of El Placer in Bajo Putumayo, south of Colombia, by the “Centro nacional de memoria histórica” in 2012¹²⁰, ¹²¹**

The department of Putumayo in the Southern part of Colombia has historically been constructed as a missionary territory, inhabited by « indomitable savages » as the common idea at this time, rich of natural resources as oil, and marked by booms and colonization. The expansion of coca cultivations, added to the entrance of mafias and armed actors in the zone, has converted Putumayo in a war area. During more than two decades, the civil population has been stigmatized as being part of guerrillas or paramilitaries. The deal of coca, which started in the region in the 1970's, attracted to the zone narco-traffickers, guerrillas and paramilitaries who have settled down within the civil population, exercising authority and construing particular social orders.



The United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia (AUC)), a Colombian paramilitary and drug trafficking group, active belligerent in the Colombian armed conflict during the period 1997-2006, entered in El Placer to try to get the territorial, political,

¹¹⁸ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.56

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹¹⁹ “La verdad de las mujeres, víctimas del conflicto armado en Colombia”, Ruta Pacifica, p.56-57

<https://rutapacifico.org.co/wp/wp-content/uploads/2019/02/165x235-Resumen-Colombia-ingles-FINAL-FEB6.pdf>

¹²⁰ This part has been fully inspired from the case study of the village of El Placer, Putumayo, in the South of Colombia, reported in the publication “El Placer: Mujeres, Coca y Guerra en el Bajo Putumayo”, Centro Nacional de Memoria Histórica, 2012

¹²¹ Map from “De TUBS - Trabajo propio Este gráfico vectorial, sin especificar según el W3C, fue creado con Adobe Illustrator. Este archivo fue subido con Commonist. Esta imagen vectorial incluye elementos que han sido tomados o adaptados de esta: Colombia location map.svg (de Shadowxfox)., CC BY-SA 3.0”

<https://commons.wikimedia.org/w/index.php?curid=17366758>

economic and social control against the Front 48 of the FARC, which during years was the authority in place in the area. The counter insurgency and consequences of this fight have been characterized by the use of terror, and by putting the civil population in the middle of the battlefield. The civilians of this area were quickly branded by paramilitaries as « collaborators », « auxiliaries », « militants » or « guerrilleros ». The stigmatization of El Placer as a « subversive village » has generated the “massacre of the 7th of November 1999”, where eleven people were indiscriminately assassinated. From this moment, the borders between combatants and civil population started to dissolve. Gesture, attitude, relations and diary practices of the inhabitants were associated with « being a guerrillero » and forcefully punished, in most cases by death. Paramilitaries deployed a serie of stereotypes and mechanisms to define who was a « collaborator » and to identify the appearing enemy. This system of selective terror and codification of population has affected in a different way men and women.

Even if, as men, women of the civil population were signaled just for the fact of living in « guerrillas zones », the stigmatization which felt on them was a lot deeper. Firstly, it dealt with their real or appearing affective and consanguinity links with the « enemy ». Be mother, wife, girlfriend or having an emotional relationship with a man marked as a guerrillero was enough for a woman to be categorized by the paramilitaries as a part of the other camp. A woman of El Placer (*witness n°1*), on September 2011, explained that « the girls who have had an history with the guerrilleros, they killed them ». The paramilitaries were seeing the sentimental relationships as « problems », and started to establish punishment to break the appearing links between civilian women and enemies. From the paramilitar look, women were seen as part of the affective environment of the enemy, which had to be destroyed to humiliate, demoralize and hurt the other camp, prolonging the suffering of the enemy by punishing theirs ones.

Moreover, regarding the links of consanguinity, one of the informer alias « the Doctor » explains how he and its subalterns were considering that a woman with a child on the guerrilla was a direct channel of information for the other camp. In this manner has started to appear the ideology between being mother and being « informer ». For some paramilitary commandants such as « Coco », « *be wife or mother of a guerrillero was the same that being a guerrillero* ». Other axis of the stigmatization of women was the appearing militancy in subversion and their network. Women were accused of holding role of information, branded as « spokesperson » or « informers ».

But the familiar and sentimental links were not the only way to link the women living in El Placer with the FARC. Their bodies and attitudes were also used as tracks of their suspected belonging to the guerrilla.

The testimony of an inhabitant of El Placer helps us to understand what characteristics the paramilitaries were looking for on the suspected guerrilleras. She explains that one day, while she and her patron (both women) were driving on a truck, the paramilitaries stopped them, forced them to get out of the car and requisitioned them. They told her that they will detained her because she had a « face of guerrillera » so that she was part of the guerrilla. From that, they quit her shirt and pants and review her shoulders to see if she had marks of charges, one of the distinctive sign of being a guerrillero. She was holding black clothes and rubber boots, what makes of her a suspect. Her boss, who was holding slippers, was not requisite as much as her. After a while, one of the paramilitaries said: « Those two, put them in the kitchen for them to cook something for me, I want them to do my breakfast », to what she answered: « I am not your employee ». The man directly answered: « Oh! You are like disturbed, like angry. You are like a guerrillera! ».

The first element of identification was thus associated to their physical appearance. The paramilitaries established a series of corporal attribute which mark the woman as an « enemy », with the idea that she had a « face of guerrillero » - result of a stereotyped lecture of the integrity of its body and aspect. Marks on the shoulders, color of the clothes, use of rubber boots, were assumed as signs of belonging to the FARC.

The second point was related to the attitude and character of women. The qualifiers of being « disturbed » or « angry » suppose a particular interpretation of the disposition of women. For the paramilitaries, the women civilians who were debating and was objecting their designs were branded guerrilleras.

Therefore, we can notice the will of the paramilitaries to exterminate the guerrilla and to find its members among the population, by the use of violence. The body of victims have been converted in vehicles of threatening messages against the population and the enemy. But as often, this violence was not operated in the same way for men and women.

The main form of violence attributed to women was the one of sexual violence. Many forms of sexual violence made part of the repertory of punishment deployed by the paramilitaries against women signaled as being « collaborators » or militants of the FARC. This kind of violence aims to break the links with the subversion, to punish the relations with guerrilleros and to emit demotivating messages to the enemy, by marking the bodies of women.

Firstly, the threats of death and the exile were a mechanism used to avoid an eventual contact of women with the FARC. Through this measure, the paramilitaries have eliminated and took out the mothers, wives, girlfriends of the suspected guerrilleros. In most of the cases, when a suspected guerrillero and his wife was caught, he was punished by death and she was forced to leave the village with all her family.

Other punishments were the domestic works. Paramilitaries used the traditional and culturally tasks attributed to women to punish them and complete their daily necessities: cooking, cleaning, wash the militants' uniforms, collect trashes, ...

But the necessities of paramilitary men did not limit to wash clothes and cook. One of the tasks expected from women was to satisfy the sexual appetites of the combatants, to « serve as a woman ». One witness tells that an officer told her « *you stay here because today I am like evil and I want a woman* ». The sanctions of domestic works are thus crisscrossed with the threat of sexual violence.

Another goal of sexual violence was to « wash » the women of their « dirt » from which, according to the paramilitaries, women have been impregnated of by the enemy. They assumed that their bodies were dirty for having worked with the guerrilla. The violation by sexual offence was a mechanism of sanction and « cleaning » which has been deployed in an horrible way on the bodies of women.

This punishment not only have an individual dimension, because through sexual violence, the enemy is symbolically attacked, such as the all community.

Moreover, sexual aggression attacks the reproductive tools of women. Some of them become sterile after having been raped, so by this mean, it breaks the capacity of physical and symbolical procreation of the enemy.

In other cases, the paramilitaries operated in group, and in front of the companion of the woman raped. This aims to offend and punish the man by converting him in spectator of the aggression, and

by this way emit a message of superiority and domination among him: they dishonor and humiliate the man who could not save the woman, and thus, could not accomplish his traditional role of protector which has culturally been assigned to him.

The treatment reserved to women effectively taking part of the guerrilla which have been captured was also very hard. Once caught, they were killed, and the fight was still going on their bodies. In these cases, mutilation of sexual organs and impalement from the vagina were dispositive of threat used to send terror and demotivating messages to the enemy. The public torture and the staged exhibition of their bodies had a really strong communicative dimension.

We can also tell the story of Rina Bolaño, a bacteriologist which have been captured by the FARC in August 2003 while she was on a medical intervention for indigenous communities in the Sierra Nevada, Magdalena, in the north of Colombia. She has been sequestered during 14 days during which she has been raped by one of the FARC commander. When they finally let her free, she denounced publically the facts: she is actually the first women in Colombia who has ever denounced openly the repeated rape she suffered from a Revolutionary Armed Forces of Colombia (FARC) officer. She made it publicly, on the national channels, without hiding her face or distorting her voice. After that, the Colombian government, the paramilitary forces and the guerilla made her life unbearable. She was accused by three men for the crime of rebellion as being part of the ELN (Ejército de Liberación Nacional) - an illegal armed group also present in the region. They finally admitted they have been paid to give such a testimony against Rina and that it was a fake. In an interview she gave in "Europe Diplomatic Magazine" in April 2005, she explains how the woman body in Colombia has become used as a fighting place. She exposed that if one of the forces arrives to the opponent's one, they rape women in front of their husbands to show them they have the power. She also denounces the lack of respect of women as a widespread costume in the country.

3. The old phenomenon of femicide in Colombia

The United Nations define « femicide » as « the assassination of women as the result of gender based violence which occurs such in the private that in the public area ». In Colombia, this crime is defined as « the assassinate of a woman just for being a woman ». This meaning of the word as been added to the reform of the Colombian Penal Code of Law N°1257 of the 4th of December

of 2008, in what has been added §11 to article 104, providing a penalty of 400 to 600 months of jail for the crime of femicide. Until then, this crime was not punished this way. Some years after, Law 1961 of 2015 came into force, which goal was to typify the femicide as « an autonomous crime to guarantee the investigation and sanction of violence against women for reasons of gender and discrimination, and to prevent and eradicate such violence and adopt strategies of awareness of the Colombian society, in order to guarantee the access of women to a life free of violence which favorite the integral development and their wellbeing, in accordance with the principles of equality and no discrimination ». This step forward shows a will from the public authority to protect women in a more consistent way. Moreover, the recognition of the crime of femicide grants to women a bigger spot in the society, legally recognizing the existence of an act of violence against them and allowing them to litigate and obtain reparations for the damage caused.

In the light of the data consulted by INDEPAZ, the cases of femicide in Colombia are more than preoccupying. The Colombia Legal Corporation qualifies the period from 2002 to 2009 of « alarming », with more than 627.000 of maltreatment against women, among which 11.976 are assassinated¹²².

According to the report of the United Nations about femicides in Latin America and Caribbean, during the period 2004-2009, Colombia was the tenth country with the more femicides in the world, averaging in a « very high » level¹²³. In 2015, the newspapers El Tiempo affirmed that « every three days, a femicide takes place in Colombia »¹²⁴. UN Women in their reports on Colombia still place the country in rank n°39 of the « Global Gender Gap Index Rank » and explains that « the role of violence against women as part of the armed conflict in Colombia have been eclipsed for the numerous other issues the country is facing ». The Special Rapporteur denounces the impact of the intern conflict on the situation of women, highlighting the « generalized and systematic character of gender violation and its diverse forms from which women are suffered »¹²⁵.

¹²² Femicide in Colombia: <http://www.colombialelegalcorp.com/el-femicidio-en-colombia/>

¹²³ Report « The regulation of the crime of femicide un Latin America and Caribbean »
http://www.un.org/es/women/endviolence/pdf/reg_del_femicidio.pdf

¹²⁴ « Every three days, a femicide takes place in Colombia » <http://www.eltiempo.com/archivo/documento/CMS-15856225>

¹²⁵ « Inform of Special Rapporteur about violence against women, their causes and consequences », UN Women, E/CN.4/2002/83/Add.3 11 March 2002

As we can understand, women social leaders suffer from a double victimization and a double vulnerability. First, for being a woman in a State in which femicide and gender-based violence are part of an old phenomenon pinned in gender problematics and, secondly, to be leader in a period in which numerous violence against social activists generate a climate of insecurity above them.

B. Major role of women in the Final Peace Agreement

The signing of the Peace Agreement has been a turning point for the Colombian society, but is all the more a great step forward for the condition of women through the inclusion in the Peace Agreement of special dispositions regarding women, contained in a whole chapter of the final text. The creation of a Gender Subcommittee (1) has brought the inclusion of special achievements for the condition of women (2) which effects have to be observed in practice (3).

1. Major role of the Gender Subcommittee in the inclusion of a gender approach in the Final Peace Agreement¹²⁶

Considering that the end of the armed conflict and the start of a phase of peacebuilding can be scenarios for identifying the specific needs of women and, in addition, for creating new opportunities for empowerment, the national Government, within the framework of the Havana Dialogues, has taken up the challenge of incorporating measures to integrate a gender perspective into each of the agenda items.

Thus, the Government's vision in the "Conversations Table" was to recognize the need for an inclusive and non-sexist language, but above all, to include concrete commitments aimed at resolving asymmetries and inequities based on gender, in order to recognize and guarantee

¹²⁶ This part is deeply inspired of the Final Peace Agreement between the Colombian State and the FARC, "Tomo VII: Los mecanismos e instancias de participación de la mesa de conversaciones y la construcción de Paz desde los territorios, Mecanismos de participación de la Mesa de conversaciones, la Subcomisión de Género el Capítulo Étnico y la construcción de paz desde los territorios":

<http://www.altocomisionadoparalapaz.gov.co/Documents/biblioteca-proceso-paz-farc/tomo-7-proceso-paz-farc-mecanismos-participacion-mesa-conversaciones.pdf>

women's rights in rural development, political participation, the solution to the problem of illicit drugs, the satisfaction of the rights of victims and the end of the armed conflict.

This perspective, therefore, is based on the constitutional right to equality. It was not a question, says the document, of overvaluing specific populations, but of ensuring that, in the implementation of the Final Agreement and in the development of peacebuilding, men, women and people with diverse gender identities participate according to their specific needs and interests and are benefited in an equitable manner.

The National Government in the Peace Agreement recalls how women have played an essential role in the prevention and resolution of conflicts and in peacebuilding. It also recognizes the consequences of breaches of international humanitarian law and that human rights violations have been most serious when committed against women and girls or against the LGBTI population. The document states that women have been the vortex in which the pain has been concentrated with greater intensity, but shares that it is also in them that hope for reconciliation and a hopeful outlook on the future of Colombia rests.

The National Government declares he is aware that the conflict has raged against women, causing unimaginable horrors. As the Constitutional Court warned at the time when analyzing the apparent homogeneity among the subjects of public policies on displacement, the reality showed that this group was heterogeneous. It identified factors revealing that women were in a more burdensome situation than the rest of the population or that they suffered more intensely from the rigors of the tragedy.

The Government also recognized that women's organizations had a great impact on the increase in participation of women in the Peace Process with the FARC, as they permanently supported the Negotiations and promoted initiatives that complemented the channels of participation arranged by the "Conversations Bureau". From the Government, the Delegation in the Roundtable tried to ensure that the discussions went beyond the traditional conception of gender.

The document states that women's commitment to peacebuilding is a great incentive to continue working with determination for peace. This commitment has been an act of great value, enriching the Government's intention to promote a framework towards tolerance and respect. On

the road to construction of a stable and lasting peace, this momentum must not only be symbolic, but must also become a reality.

The Subcommittee of gender states in the document that “the signing of the Final Agreement between the National Government and the FARC makes it possible for us, for the first time in the history of the peace processes in Colombia and, in general, at the international level, to have an end of conflict document with a holistic vision of the gender perspective and an effective inclusion of women's rights and of women as subjects of law”.

During more than three decades of peace processes, in Colombia or at the international stage, little attention was paid to how the armed conflict had differently affected men and women, without taking into account measures to compensate for the damage the armed conflict had caused to women and girls.

The Havana Conversation Table between the Colombian Government and the FARC was set up on 18 October 2012. During the beginning of the Conversations, the space of the so-called plenipotentiaries was dominated by the presence of men in the two delegations. However, it is important to say that, despite the fact that between the plenipotentiaries did not have women in the Government team from the beginning of the public phase of the Process, and even in the secret, there was already a broad participation of women, both within the Delegation and in the group of technical advisors, led by Elena Ambrosi Turbay, technical negotiator and Thematic Director of the Office of the High Commissioner for Peace (OACP). And so on, within the work teams of the OACP existed, the legal group was led by Mónica Cifuentes, the transitional justice group by Juanita Goebertus and the strategic communications group by Marcela Durán.

From the beginning of the Conversations, women in Colombia began an arduous work of advocacy with the National Government and the FARC to demand the presence of women in the Conversations Table and in the decision-making spaces, and to achieve the inclusion of the gender approach in the texts of the Agreement that was beginning to be constructed.

As an illustration of their commitment to peacebuilding, their work to find political ways to resolve the armed conflict and their contributions to the Peace Talks, in October 2013, a large group of women held the National Summit of Women and Peace, in which they took part, from which

emerged a substantive agenda from the diversity of women's voices around each point of the Peace Talks Agenda and post-conflict.

Added to this, and thanks to this work of Colombian women of all political allegiances, as well as to the will and opening of the National Government, it was achieved that, for the 27 November 2013, the President of the Republic shall appoint Maria Paulina Riveros and Nigeria Renteria as plenipotentiaries of the Government Delegation for Peace Dialogues with the FARC. Subsequently, in May 2015, Foreign Minister María Ángela Holguín joins the Government's Negotiating Team. Thus, between 2012 and 2016, three women (María Ángela Holguín, María Paulina Riveros and Nigeria Rentería) and two alternate negotiators (Elena Ambrosi and Lucía Jaramillo) were appointed as government delegates to the Conversation Table. Around 50% of the total number of members of the Government and FARC delegations consisted of women, who participated, especially, in the Technical Subcommittee for the End of the Conflict and in the Gender Subcommittee, an unprecedented advance in the history of world peace processes.

This direct participation of women, as well as the active participation of women from the FARC and the Government in the entire structure of the Negotiation Process, gave a distinctive stamp to the Dialogues and the Havana Agreement. The presence of these women in the Conversations Table deepened the inclusion of the voice of more than 51% of the Colombian population. In this sense, it should be noted that "thanks to the mobilization of the women's movement in the country, the willingness of the parties to the roundtable and the support of the international community, including that of the United Nations system in Colombia, the participation of women in the roundtable has been strengthened considerably"¹²⁷.

- **Creation and development of the Gender Subcommittee:**

Women's participation in conflict resolution and peacebuilding processes has proven to have very important results. Increasingly visible are the efforts of thousands of women who join local conflict resolution initiatives, in which, with creativity and perseverance, they have achieved great successes. As mentioned above, the Sub-Commission is, in large part, the result of the efforts made by the women of Colombia, the women's movement, women within the National Government and women from the FARC.

¹²⁷ Sanz Luque, B. (12 de diciembre de 2015) 1325: Participación de las mujeres a quince años de la agenda de Mujeres, Paz y Seguridad.

From the beginning of the public phase of the Havana dialogues, women in the delegations began to work for women's rights and achieved important inclusions in this regard, drawing on the collection of initiatives and proposals that women's and women's organizations in general carried out through the various alternatives for citizen participation available to the Conversations Table.

After the first year of the Conversations, different alternatives for achieving inclusion began to be analyzed through the gender focus on the points agreed and under discussion. To this end, multiple consultations were held with national and international experts, and various alternatives were considered, from which the idea of the creation of the Gender Sub-Commission emerged.

The Gender Subcommittee was born officially with the Joint Communiqué of June 7, 2014, through which the Conversations Table agreed to create a subcommittee with the mission of guaranteeing the inclusion of the perspective in the three partial agreements reached and in the remaining ones. The Subcommittee was made up of up to five members of the delegations and was supported by national and international experts.

Its installation took place on September 11, 2014, with the objective of ensuring that in the implementation of the Final Agreement and in the development of peacebuilding programs, men, women, gays, lesbians, heterosexuals and persons with diverse identities participate and benefit on an equal footing. It was a space to establish measures that would guarantee the overcoming of the traditional social gaps that have marked the Colombian society as unequal and stigmatizing.

- **Inclusion of civil society:**

The active participation of women in the different spaces of citizen consultation¹²⁸ planned to contribute to the Roundtable and their majority participation in the different delegations that spoke with the Roundtable, either as victims (62%), as gender experts, or as experts on violence against women and sexual violence in the context of the armed conflict, was important for the inclusion of the gender perspective in the Final Agreement. It made countless contributions to the process of constructing a gender perspective within the framework of the Peace Process.

¹²⁸ The Agreement established three mechanisms: i) the reception of proposals on the agenda items from citizens and organizations (either by physical or electronic means), ii) direct consultations to receive proposals on those items, and iii) the organization of participation spaces through third parties.

With regard to this work, the 2015 global study by UN Women “Preventing conflict, transforming justice, guaranteeing peace” highlights that Colombia made history with the creation of the Gender Sub-Commission, given it a pioneering character, which represents a window of opportunity and a great challenge to redesign the role of women as political actors, to recognize the value of their contributions in the reconstruction of the social fabric in the post-agreement and to dignify, consequently, the proactive character of their narrative in relation to the profound national and territorial transformations that the Colombian society requires in order to achieve a stable and lasting peace¹²⁹.

For Ana María Rodríguez, Representative before the United Nations of the Colombian Commission of Jurists (CCJ), the Peace Agreement has been the occasion for women to have a political scenario to address gender issues. Their conditions for speaking are better and easier since the creation of spaces for negotiation, which is a way for women to talk about what happened. In broader terms, this peace process has meant an opening to gender issues that did not exist in the country, space for discussion and negotiation for women that never existed before, where the State would sit down with the women and say: what do we have to do with girl soldiers? Rural women? And include gender approach in the State agenda¹³⁰.

2. Official improvement for women achieved with the Peace Accord

Gender perspective has been introduced in several principal points of the Peace Agreement during the negotiations:

- Point 1: Towards a new Colombian countryside: Integral Rural Reform

Rural women play a fundamental role in the peasant economy. However, they are not on an equal footing with men for the exploitation and development of the countryside. For this reason, measures were included in the Peace Agreement to observe the specific needs of the rural population of women, such as: special access of peasant women to the Land Fund, to the integral subsidy and to the special credit for the purchase of land. There are also specific measures to achieve

¹²⁹ UNWOMEN. (2015). *“Prevenir el conflicto, transformar la justicia, garantizar la paz. Estudio mundial sobre la aplicación de la resolución 1325 del Consejo de Seguridad de las Naciones Unidas”*

¹³⁰ Interview of Ana María Rodríguez, Representative before the United Nations of the Colombian Commission of Jurists (CCJ)

the formalization of property under equal conditions and balanced representation of men and women in the high-level bodies for the formulation of policies of general land use guidelines. Access to solidarity economy projects was also privileged and a gender perspective was also included in the national plan for commercialization of the peasant, family and community economy, promoting the economic autonomy and organizational capacity of rural women. Legal advice and special training for women on their rights and access to justice were also provided, with specific measures to overcome the barriers that hinder the recognition and protection of women's land rights. In the area of education, provision is made for access to scholarships with forgivable credits and a progressive increase in technical, technological and university quotas in rural areas.

- Point 2: Towards a democratic opening to build peace: Political Participation

Measures were introduced to facilitate the exercise of women's right to participation in bodies dealing with guarantees for the opposition and to facilitate access and effective dialogue with authorities at all levels, as well as legal and technical assistance for the creation, promotion and strengthening of social organizations and movements of women, young people and the LGBTI population. Specialized, individual, collective and comprehensive protection for popularly elected women and for women human rights defenders and social leaders based on specific risk assessments that consider not only their threats, but also their environment, such as children, parents and husbands.

- Point 4: Solution to the Problem of Illicit Drugs

In the Comprehensive National Substitution Program (PNIS), women will be included as active subjects in the collaboration processes in voluntary substitution, recognizing their role in rural development processes. In addition, their participation and the capacities of rural women's organizations for technical, financial and human support will be strengthened. Immediate care measures to guarantee their livelihood are envisaged for women who enter into voluntary substitution plans for illicit crops. With regard to the consumption of illicit drugs, the national intervention program will have a differential and gender focus so that the actions implemented in the area of consumption respond to the realities of consumers and take into account the relationship between the consumption of illicit drugs and gender-based violence, especially with domestic violence and sexual violence.

- Point 5: Victims

In order for the Commission for the Clarification of Truth, Coexistence and Non-Repetition to highlight the differential ways in which the conflict affected women, it was agreed to create a gender working group to contribute to specific technical and research tasks, such as the preparation of gender hearings. The Special Jurisdiction for (JEP) will have a special investigation team for cases of sexual violence. For these facts, it is obligatory to comply with the special provisions on the practice of evidence on the subject included in the Rome Statute. In relation to crimes in which women have been specifically and seriously affected, such as sexual violence, as well as abduction of minors, forced displacement and recruitment of children, it was determined that they will not be amnestiable.

Finally, the Final Peace Agreement has resulted in outcome of gender mainstreaming which can be grouped into eight thematic axes:

- First: In **equal access and formalization of rural property**, the purpose is to overcome the obstacles faced by rural women in formalization and access to rural property, making their right explicit to land ownership through the Land Fund, which is distributed free of charge under special conditions for women, and also through subsidies for purchases and credits.
- Second: In terms of **guaranteeing women's economic, social and cultural rights**, economic support measures, measures to overcome poverty and measures to stimulate local economies will respect the gender approach. It will be important to provide professional training and employment for women in non-traditional disciplines and production areas, and to provide specific health measures for girls, women and persons with different sexual orientations and gender identities.
- Third: **Promotion of women's participation in spaces of representation, decision-making and conflict resolution**: there will be a balanced participation of women in the decision-making bodies created in the Peace Agreement. We are talking, for example, about the high-level body for the formulation of general guidelines for land use, the decision-making bodies at territorial levels, the commission to define the guidelines for the statute of guarantees for political parties and movements, and the high-level body that implements the Comprehensive Security System

for Political Participation, as well as in participatory planning scenarios in the processes of consultation in voluntary substitution, among others. This also includes the guarantee of women's participation in the formation of participatory bodies that will recommend the new rules of the game on political parties and movements, or the electoral mission.

- **Fourth: Prevention and protection measures to address the specific risks for women.** In the implementation of comprehensive security and protection measures, preventive actions should be implemented, including those against stigmatization based on gender and sexual orientation, and specialized protection, in the case of women elected by popular vote, in political opposition, leaders of political parties and movements, and human rights defenders. These will need to be adopted on the basis of an assessment that considers the specific risks to which they and people of diverse sexual orientation are exposed.
- **Fifth: Access to truth and justice, measures to combat impunity and the creation of a gender working group within the Commission for the Clarification of Truth, Coexistence and Non-Repetition,** to highlight the differential ways in which the conflict affected women and to contribute to specific technical and investigative tasks, such as the preparation of gender hearings, implementation by the Special Investigation Unit of specialized methodological plans regarding the most serious acts of victimization against women, children, adolescents and the LGBTI population, in order to dismantle the organizations responsible for homicides and massacres or attacking human rights defenders, social movements or political movements. Likewise, it has been decided the non-amnestiable nature of crimes in which women have been specifically and seriously affected, such as sexual violence.
- **Sixth: Public recognition, non-stigmatization and dissemination of the work done by women as political subjects.** The duty to contribute to the development and promotion of a culture of participation, coexistence and peace of the media includes non-sexist values and respect for women's right to a life free of violence in its contents.

Moreover, the Defensoría del Pueblo, as the national institution responsible for promoting the effectiveness of human rights and through the creation of “dúplas de género”, has consolidated a model of care and accompaniment in the territory through professionals specialized in gender. The

“dúplas de género” provide their expertise in strengthening women's organizations in the territory, as well as in monitoring cases of gender-based violence against women and girls.

3. The situation of women in practice

The 2017 annual report of the Defensoría del Pueblo sets out the situation of Human Rights in Colombia¹³¹. In 2017 have been registered 3.243 cases of violence against women and persons with sexual orientation and identity of diver genders. Among those, 726 were victims from the armed conflict, 1.025 victims from sexual violence out of the conflict, 1.492 were victims from physical and 1926 from psychological violence.

In 43% of the cases, the potential aggressor was the partner of the victim, in 25% an illegally armed actor, and the 23% left were familiar or a known person. These numbers show that one of the main problematics of violence against women is the intra-familial violence and gender based violence in the framework of the armed conflict.

We also notice a breach of access to justice. Between January and August 2017, the « dúplas de género » created by the Peace Agreement attended 1.407 cases, but among them, only 457 were having an active criminal proceeding. Among this 457, 7 were in distribution, 265 in inquiry, 92 in study (investigation?), 34 in imputation, 14 in accusation, 5 were judged and 9 filed. This shows the existing barriers in terms of access to justice and the high indices of impunity ruling the offenses against women. The Defensoría del Pueblo asserts that in several of those cases, women have had brought their requests to State entities, such as the Commissioners of Families¹³², but their requests have been dismissed, considered as problems of less importance. The ways of protection were inadequate, some officials trying to convince the claimants to ignore the facts of violence in pursuit of the familial unity.

Moreover, the number of complaints about trafficking of women leads to recognize the structural problems which facilitates their apparition, such as poverty, inequality, inequity, exclusion, insecurity, narco-trafficking and organized criminality. The State should definitely fortify

¹³¹ Situation of Human Rights in Colombia in 2017, report of the Defensoría del Pueblo

¹³² Comisarías de Familia

its preventive intervention on those issues by promoting human rights and a corrective function through an inter-sectoral perspective.

The health system also represents one of the biggest barrier for women, and the effectiveness and materialization of their rights. In 2017, the « duplas de género » registered 27 cases of violation to the right of voluntary termination of pregnancy, on the three situations allowed by the Colombian Constitution¹³³.

Moreover, from the 1st of January to the 14th of November 2018, the System of Early Warning of the Defensoría del Pueblo¹³⁴ broadcasted 19 informs and 9 follow-up notes which include sexual violence as violations which affects the population living in municipalities disturbed by the presence of armed actors and sociopolitical violence.

On March 8th, 2019, the Committee on Elimination of Discrimination against Women (CEDAW) of the United Nations issued its concluding observations on the ninth periodic report of Colombia¹³⁵. In the positive aspects, the Committee welcomes the various progresses achieved in undertaking legislative reforms, and the efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality.

The Committee commends the signing of the Final Agreement for Ending the Conflict and building a stable and lasting peace and the establishment of the High-Level Forum on Gender. But it is, however, concerned that the level of implementation of gender provisions is progressing at a slow pace compared to other parts of the Agreement and that the gender mainstreaming part of the Framework Plan for Implementation lacks a budget. Moreover, the Committee has noted that the presence of the State is still weak in many areas and that armed groups continue to threaten the civil population and recruit children in former conflict zones. Recalling the general

¹³³ Sentence C-355 of 2006 of the Constitutional Court: when the pursuing of the pregnancy presents a danger for the life or health of the mother; when existing a serious malformation of the fetus which makes his life impossible; when the pregnancy results from a conduct, duly denounced, of defilement (acceso carnal) or a sexual act without consent, abusive, incest or of an artificial insemination or transfer of fertilized ovum without consent.

¹³⁴ Sistema de Alertas Tempranas, Defensoría del Pueblo de Colombia

¹³⁵ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 72th Session (18 Feb 2019 08 Mar 2019), Concluding observations on Colombia

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoVqDbaslinb8oXgzpEhivjlqHzzFTcwVEHsbJTgf5Is3h4f6Zlan7uSNhP3LjUWN3T35fZjny2BSLMMIEpOsZmwwPbgZF2yaRczk8%2bmGq9>

recommendation the Committee made in its last report in 2013, it recommends that the State to first accelerate the implementation of the gender provisions of the Peace Agreement, including those related to the Security Guarantees of women leaders and human rights defenders and the reintegration of female FARC former combatants, and ensure that sufficient human and financial resources are allocated for its effective implementation. It also asks for the integration of indicators disaggregated by sex, age, ethnicity, race, geographical location and disabilities, on impact to monitor the implementation of the gender provisions in the “Framework Plan for Implementation” and assign an indicative budget. Finally, it recommends to increase the presence of state institutions and access to basic services in previous conflict zones, taking into account the specific needs of Afro-Colombian and indigenous women, and women with disabilities¹³⁶.

Regarding gender-based violence against women, the Committee is concerned at the increasing and persistently high number of cases of gender-based violence against women and girls, including feminicides and violence in institutions, and at the level of impunity for such acts. It is also concerned about the limited implementation of Law 1257 regarding health services for victims and the low capacity for integrated services for victims in the rural areas.

Regarding employment, the Committee noted that the gender pay gap currently stands at 19%, and expressed its concern at the unequal sharing of domestic responsibilities, the difference in employment and unemployment rates between men and women and that a large part of women in the labour market are engaged in the informal sector. The Committee is also concerned at the high level of sexual harassment cases and that article 3 of law 1010 of 2006, which provides for mitigating circumstances, has still not been amended¹³⁷.

Moreover, the Committee is concerned at the persistence of deep-rooted stereotypes and discrimination against indigenous and Afro-Colombian women, which prevent their active participation in the process of land restitution¹³⁸.

Hugo Sadral, EU Director for the Americas, during his visit to the country, observed the issues regarding gender equality and women's rights. On this topic, he stated that “at this point there are positive elements and there are others that need to be worked on”. He highlighted that “it is one of

¹³⁶ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 72th Session (18 Feb 2019 - 08 Mar 2019), Concluding observations on Colombia

¹³⁷ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 72th Session (18 Feb 2019 - 08 Mar 2019), Concluding observations on Colombia

¹³⁸ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 72th Session (18 Feb 2019 - 08 Mar 2019), Concluding observations on Colombia

the few countries in the region that has this parity composition and it is important to send this signal from above, from the government, that there is a commitment to equity. There is a vice-president who is a woman, who has this gender agenda and that is positive. In what needs to be improved, for example, we see an increase in the murders of social leaders and another issue that needs to be given greater attention is the issue of equity in payment, there are still important differences between men and women. There are several points where it is necessary to continue working, but it is an incomplete agenda by definition, both in terms of gender and human rights”¹³⁹

4. Situation of persons with sexual orientation and diverse gender identity:

The situation of security and protection of the population LGBTI (lesbians, gays, bisexuals, transgender and intersexual persons) and the guarantee of their participation and leadership have also been seen limited and threatened consequently to the sociopolitical context of the country. Moreover, the legitimization of some speeches of hate, derived from the political polarization around the Peace Accord and the badly named « ideology of gender », is preoccupying. The increase of exclusion and violence against this social group have been noticed by different organizations of the civil society. The « Platform LGBTI for Peace », which reunites 250 organizations LGBTI of 30 departments and the Capital District of Bogota, forwarded to the « National Table of Urgent Cases »¹⁴⁰ 17 affairs of threats with direct link with the participation of this population to peace matters.

The Defensoría del Pueblo evidenced violations generated by « violence for prejudice », a form of gender based violence motivated by the will to castigate those considered by the perpetrators as challenging the social gender norms¹⁴¹. Crimes for prejudice constitute the justification of negative reactions, not only being a feeling of hate, but materializing itself by the realization of acts of violence, mainly explained by the context each other has lived and developed himself in, and the prejudices which have been created in it. People of this social group suffers from situations of discrimination because of their sexual orientation or identity. 18 cases have been handle in 2016 and 16 in 2017, for which have been requested the activation of protection

¹³⁹ ““Colombia debe hacer más por los DD. HH.”: director de la UE para las Américas”, April 13th 2019 <https://www.elespectador.com/colombia2020/pais/colombia-debe-hacer-mas-por-los-dd-hh-director-de-la-ue-para-las-americas-articulo-857871>

¹⁴⁰ Mesa Nacional de Casos Urgentes

¹⁴¹ Corte Interamericana de Derechos Humanos, 2015, §27

measures. Those acts of violence highlight the gaps and limits of public policies in terms of protection.

Moreover, despite the Constitutional Court ordered the legal recognition of same-sex marriages in 2007 in the country, lesbian, bisexual and transgender people continue to face unjustified delays, discriminatory interpretations and unforeseen requirements when exercising their rights, notified the Committee CEDAW in its last report of March 2019. Furthermore, the Committee welcomes the judgment of the Constitutional Court T-478/2015 which ordered the Ministry of Education to implement preventive and responsive measures against sexual and gender identity discrimination in school manuals. But it is also concerned that the measure has not yet been fully implemented.

III. Human Rights issues nowadays: behind the scene of the Peace Accord

Despite the signing of the peace agreement, violence has not stopped in the country and today, although civilians are less affected, the most at risk are social leaders and human rights defenders (A), and in a more targeted way women human rights defenders (B).

A. The problematic of attacks against social leaders and human rights defenders¹⁴²

Definition of “social leader and human rights defender”:

The international community has agreed on a broad definition of social leaders and human rights defenders, enshrined in the Declaration on Human Rights Defenders, adopted in December 1998¹⁴³. According to that, human rights defenders can be understood as people who, individually or with others, act to promote or protect human rights. The term of “human rights defender” has been used increasingly since the adoption of the Declaration of 1998.

¹⁴² This part have been deeply inspired by an article I wrote about the situation of social leaders in Colombia: “La dificultad de ser una lideresa social hoy en día en Colombia” published by INDEPAZ on 10th of September 2018: <http://www.indepaz.org.co/wp-content/uploads/2018/09/Art%C3%ADculo-Indepaz-lideresas-sociales-versi3n-final-WORD.pdf>

¹⁴³ The full name of this declaration is “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” – with such a long title is usually abbreviated to “The Declaration on human rights defenders”

For Michel Forst, Special Rapporteur of the United Nations on the situation of human rights defenders, regarding his last visit in the country from 20 November to 3 December 2018, the Peace Accord holds a “well-developed human rights based approach and sets out specialized mechanisms for the protection of human rights defenders and rural communities”. But “regrettably” he adds, “the national landscape continues to be marked by threats, gender-based violence and lethal attacks against human rights defenders, which is impacting heavily on civil society. The departments of Cauca, Antioquia, Norte Santander, Chocó, Nariño and Putumayo register the highest homicides rates against social leaders”¹⁴⁴.

1. Increasing of attacks against social leaders: explication of the phenomenon

In the last years, Colombia has been suffering from a new outbreak of threats, attacks and homicides against social leaders and human rights defenders. In 2002, three homicides have been recorded against them. In 2016, the number increased to 116, in 2017 to 191, and reached 226 in 2018. Finally, from 1st of January 2016 to the 10th of February 2019, 566 social leaders and human rights defenders have been killed in Colombia¹⁴⁵.

These homicides and violence against social leaders is kind of a new phenomenon. Victims are known in their communities for their actions in defense of human rights, territorial rights, or are politics and activists involved in actions of collective interest, for example the defense of the environment.

According to the investigation team of INDEPAZ - Centre of studies for peace and development, from January 2017 until March 2018, the 62% of the responsible of the attacks were unknown. Many sources indicate that at least the 70% of the homicides of leaders have been perpetuated by hired killers contracted by third parts, who we will consider as the “intellectual authors” of these

¹⁴⁴ United Nations Special Rapporteur on the situation of human rights defenders Michel Forst, Visit to Colombia, 20 November to 3 December 2018, End of mission statement:

https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf

¹⁴⁵ The numbers expounded have been highlighted from the investigation team of INDEPAZ.

<http://www.indepaz.org.co/566-lideres-sociales-y-defensores-de-derechos-humanos-han-sido-asesinados-desde-el-1-de-enero-de-2016-al-10-de-enero-de-2019/>

crimes¹⁴⁶. These intellectual authors are particularly difficult to identify, due to the quantity of intermediaries present in the chain of command of criminal organizations.

Furthermore, public authorities do not involve themselves in throwing the light on the resolution of this affairs. The ex-Minister of Defense Luis Carlos Villegas tried to minimize the impact of the homicides, maintaining that the main cases were about personal conflicts, and arguing that « the immense majority of deaths of social leaders is due to neighbors' fights, jealousy and illicit rents »¹⁴⁷. In this way, he denied the potential existence of armed groups taking as targets social leaders, and the apparent increase of homicides against social leaders in the last years. This behavior from representatives of the State is dangerous, in the way that it minimizes the gravity of the situation and makes event more difficult the resolution of cases.

At this point, we may wonder what are the reasons which make the perpetrators of violence against social leaders to behave this way.

According to the Defensoría del Pueblo, the goal of those homicides would be to generate an atmosphere of insecurity and general downfall, with a willingness to create confusion and mistrust towards the State institutions, along with the negation of democracy as the propitious stage for the guarantee and effectiveness of human rights (Defensoría, 2017). According to the Investigation team of INDEPAZ in their Report n°73 « Categories, patterns and determiners in the homicides and threats against social leaders »¹⁴⁸, this phenomenon would find its origins in the opposition to the transition to the post-conflict, and the consequences of the signing of the Peace Accord. On the first hand, the disappearance of the FARC as a military organization has generated a territorial recomposition, which resulted in clashes between several groups for the control of the lands and rents. In parallel, this disappearance has provoked a recomposition of local and regional powers and the zones where the FARC had the more incidence. On the other hand, these zones firstly controlled by the FARC are new objectives of control from the drug trafficking network and organized crimes. According to Michel Forst, United Nations Special Rapporteur on the situation of human rights

¹⁴⁶ INDEPAZ, Revista n°73 « Categorías, patrones y determinantes en los asesinatos y amenazas a líderes sociales » <http://www.indepaz.org.co/8099/categorias-patrones-y-determinantes-en-los-asesinatos-y-amenazas-a-lideres-sociales/Camilo-Gonzalez-Posso>

¹⁴⁷ "Asesinatos de líderes son por "lios de faldas"", El Espectador, 17th of December 2017 <https://www.elespectador.com/noticias/politica/asesinatos-de-lideres-son-por-lios-de-faldas-ministro-de-defensa-articulo-728893>

¹⁴⁸ INDEPAZ, Revista n°73 « Categorías, patrones y determinantes en los asesinatos y amenazas a líderes sociales » <http://www.indepaz.org.co/8099/categorias-patrones-y-determinantes-en-los-asesinatos-y-amenazas-a-lideres-sociales/Camilo-Gonzalez-Posso>

defenders, “the lack of an integrated State presence and delays in the implementation of the peace accord has allowed illegal armed groups and criminal groups to enter areas and take over the illicit economies leading to augmented violence”. “The lack of access to basic services, he adds, poverty and ramping unemployment rate hinders communities from becoming part of the legal economy, increasing their risk levels”¹⁴⁹. We are here dealing with a complex truss of relations in a constant evolution, including alliances between international organizations, contract killers (sicarios), paramilitary groups and State officials, which feed themselves from the continuity of the conflict and armed violence.

2. Criminalization and stigmatization of human rights defenders

The criminal phenomenon that we observe with the murders of social leaders is not reduced to homicides, since this type of aggression is complemented and interrelated with threats, extortion, recruitment into informal networks of organized armed groups and criminals; multiple forms of violation of human rights and IHL norms are in connection with cultures that support private justice and the reproduction of stigmatization and hate speech against individuals or groups¹⁵⁰.

Michel Forst, according to his last visit in the country in December 2018, highlighted the fact that human rights defenders in Colombia “operate in an extraordinary complex security, social, political and economic setting”. He says that “an open democratic society should value their essential contributions to political participation, freedom of expression and a flourishing culture and society”. But he explains that during his visit, he received a catalog of “shocking quotations” by political leaders, public officials and influential people, tending to stigmatize and marginalize human rights defenders. Indeed, these people are labelling human rights defenders as “guerrilleros” of criminal groups, as the internal enemy or terrorists, what seriously increases their exposure to risks and violations¹⁵¹. Michel Forst have admitted being particularly shocked by some comments of Antioquia’s Governor Luis Pérez, who associated social activists with illegal armed groups,

¹⁴⁹ United Nations Special Rapporteur on the situation of human rights defenders Michel Forst, Visit to Colombia, 20 November to 3 December 2018, End of mission statement :

https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf

¹⁵⁰ “CATEGORÍAS, PATRONES Y DETERMINANTES EN LOS ASESINATOS Y AMENAZAS A LÍDERES SOCIALES -CAMILO GONZÁLEZ POSSO”, Indepaz, <http://www.indepaz.org.co/wp-content/uploads/2018/04/Revista-Nº-73-PW.pdf>

¹⁵¹ United Nations Special Rapporteur on the situation of human rights defenders Michel Forst, Visit to Colombia, 20 November to 3 December 2018, End of mission statement :

https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf

questioning their honesty and truthfulness and suggesting that they should be prosecuted for peacefully protesting¹⁵².

Michel Forst finally stated that “Colombia urgently needs to elaborate and adopt a comprehensive public policy aimed at preventing human rights violations against defenders, as well as measures to address structural causes that contribute to the risk situation of defenders”¹⁵³. But he also welcomed the public statements of President Ivan Duque “that the protection of human rights defenders will be at the forefront of his government”. Subsequently, on 19 November 2018, the President signed Decree 2137, which created an Inter-institutional commission for the development called “Timely Action Plan”¹⁵⁴. The Commission will be tasked to articulate, guide and coordinate the different protection programs and resources of different government entities involved in the individual and collective prevention and protection of human rights defenders, social leaders, community organizations and journalists. This program demonstrates a clear will to restructure and articulate a public policy for the protection of human rights defenders. According to Michel Forst, this is a key element to improve the efficiency of existing measures.

However, the situation remains preoccupying. The levels of violence against social leaders and human rights defenders reached in the country during 2018 are unprecedented. Indicators in murders, threats, harassment and other violent acts shot up in relation to previous years and the state response was, at all times, inefficient. This is revealed in the most recent report of the “Somos Defensores” (*We Are Defenders*) Program which analyses the situation of social leaders in 2018. The publication shows a critical panorama during the last semester of the government of Juan Manuel Santos and even worse for the first months of Iván Duque's presidency.

Regarding 2019, Rupert Colville, spokesperson for the United Nations Office at Geneva, stated on May 16th 2019 that he is “concerned about the high number of human rights defenders killed, and the fact that these same murders continue to increase. We call on the Colombian authorities to take the necessary measures against the grave impunity surrounding these cases”. In

¹⁵² United Nations Special Rapporteur on the situation of human rights defenders Michel Forst, Visit to Colombia, 20 November to 3 December 2018, End of mission statement :

https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf

¹⁵³ United Nations Special Rapporteur on the situation of human rights defenders Michel Forst, Visit to Colombia, 20 November to 3 December 2018, End of mission statement :

https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf

¹⁵⁴ “PAO” in Spanish : “Plan de Accion Oportuna de Prevencion y Proteccion” <https://www.mininterior.gov.co/sala-de-prensa/plan-de-accion-oportuna-de-prevencion-y-proteccion-pao>

fact, in the first four months of this year 2019, 65 murders of human rights defenders have been registered by INDEPAZ, Institute for Peace and Development¹⁵⁵.

B. The special difficulty of being a woman social leader¹⁵⁶

Besides these threats common to every social leader, women human rights defenders are exposed to gender specific violations, including gender-based violence, both within their community and organizations and by external actors. The inform « Risk 010-17 » of the Defensoría del Pueblo about social leaders and defenders of human rights registered 112 individual threats addressed to women defenders between the 1st of January to the 5th of March 2017. The reports of the Defensoría del Pueblo presented in March 2018 showed that every nineteen days, a women social leader or human rights defender is assassinated in Colombia¹⁵⁷.

1. Difficult positions to access and at risk for women: comparison of numbers between men and women murders

People in leadership positions have a great influence and a transformative power in civil society and in decision-making. Unfortunately, women's access to these levels of responsibility is a very difficult task.

In Latin America, women occupy only a quarter of public positions in state powers. In comparison, in countries such as Sweden or Finland, their parliamentary representation is of 40%, approaching almost parity.

The United Nations Development Program in its Human Development Report shows that women are less likely than men to hold senior management positions in public administration: women's participation in ministerial positions is 18 per cent, in parliaments 22 per cent and in Supreme Courts 26 per cent¹⁵⁸. Similarly, The Global Gender Gap Report 2015 shows that the gender

¹⁵⁵ Report on human rights on the situation of human rights defenders, update on 23th May 2019
<http://www.indepaz.org.co/wp-content/uploads/2019/05/SEPARATA-DE-ACTUALIZACIÓN-mayo-Informe-Todas-las-voces-todos-los-rostros.-23-mayo-de-2019-ok.pdf>

¹⁵⁶ This part is deeply inspired by an article I wrote about the situation of social leaders in Colombia: “La dificultad de ser una lideresa social hoy en día en Colombia” published by INDEPAZ on 10th of September 2018:
<http://www.indepaz.org.co/wp-content/uploads/2018/09/Art%C3%ADculo-Indepaz-lideresas-sociales-versi3n-final-WORD.pdf>

¹⁵⁷ From Early Warning 026 of 2018 of the National Ombudsman Office, between January 2016 and February 2018.

¹⁵⁸ <http://www.undp.org/content/undp/es/home/librarypage/hdr.html>

gap in political participation is very high, and significantly larger than in other areas such as health and education. Globally, the rate of equality between men and women in terms of political participation is 23% (i.e., women represent only 23 out of every 100 political positions), while in health this rate rises to 96%, 95% in education¹⁵⁹.

In Colombia, "the way in which society is organized, the sexual division of labor or gender roles and stereotypes constitute barriers for women to occupy the same number of positions of power as men", explains the newspaper *El País*¹⁶⁰. This could partially explain why the country ranks 64th in terms of women's political empowerment¹⁶¹.

I had the chance to address this issue with Aída Quilcué, indigenous leader from the Department of Cauca, involved in human rights advocacy through the National Indigenous Organization of Colombia (ONIC). Aida explains that there are many obstacles for women - and even more for indigenous women - on the road to leadership. Indigenous women always find it difficult to develop power among the leaders of similar movements than themselves: "I have more problems or more difficulties with our own fellow leaders," she explains. Men, according to Aida, enjoy a minimum of respect for the causes they defend, while women who take part in negotiations or political discussions are questioned for the simple fact of carrying out this type of activity.

But according to her, the great advantage that women have in fighting against the "machist environment" that reigns in indigenous communities and in the western world, is the coherence of the radical character of their claims. She considers that women, when sitting down to debate the rights they consider inalienable, do not negotiate, but ask for their demands to be fulfilled. For the indigenous leader, this is indispensable when it comes to enforcing their rights, especially those inherent to her gender and ethnicity. She notes that men are often not as radical in defending rights and often end up giving up, losing power and strength in their claims and making lesser gains after negotiations.

Since 2008, many women have been fighting for the recognition of the importance of the role of women and their participation in different collective spaces. Since then, the role of Aída Quilcué has been to act as a reference so that women dare to get involved in collective and

¹⁵⁹ <http://reports.weforum.org/global-gender-gap-report-2015/>

¹⁶⁰ « Necesitamos más mujeres líderes », El País, Violeta Domínguez, 02 septiembre 2016
<https://elpais.com/tag/fecha/20160902>

¹⁶¹ World Economic Forum, Colombia : <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=COL>

participation spaces. She says that since then, many women have dared to go on in their leadership and that, thanks to this, the country now has more and more women authorities, guards, counsellors...etc. These elements allow us to affirm that within the framework of the women's empowerment process, women's participation is perceived as even more important and necessary. She adds that thanks to the fact that women assume their role with much responsibility, much detail and much attention, the processes become effectively useful.

Her message to women has always been and remains: "we have to qualify ourselves, to prepare ourselves, because it is necessary to prepare ourselves politically, but also technically, to guide and lead the collective processes of the communities. I believe that this is the challenge that we, women, have to face"¹⁶².

The main paradox is that, even if the level of women's participation in political and leadership areas is still very low, the rates of threats, violence and killings against them are very high. In fact, almost 15% of the social leaders murdered since the beginning of 2018 are women, while the proportion of politically committed women is much lower. Therefore, while in absolute terms the majority of victims are men, in relative terms the percentage of female leaders murdered is much higher than that of men.

In its report "Análisis comparativo de los asesinatos a líderes, líderes y defensoras de DDHH en Colombia durante los primeros meses del año, 29 de julio de 2018" (Comparative analysis of the murders of leaders and human rights defenders in Colombia during the first months of the year, July 29, 2018), the organization Sismo Mujeres, through numbers offered by the program "Somos Defensores" showed that the percentage variation of murders of both male and female social leaders was +43,2% from 2016 to 2017 and +49.1% from 2017 to 2018, while the percentage variation of murders of women social leaders was +133.3% from 2016 to 2017 and +14.3% from 2017 to 2018.

Percentage change in murders of social leaders regarding gender:

	2016 - 2017	2017 - 2018
Men and women social leaders murdered	+ 43,2 %	+ 49,1 %

¹⁶² Interview held with Aida Quilcué in the premises of the ONIC, Bogota, Colombia, August 2018.

Women social leaders murdered	+ 133,3 %	+ 14,3 %
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Thus, the general increase in violence against leaders has a differentiated and disproportionate effect on women leaders, expressed in a greater percentage of increase in murders against them in recent years. According to the annual report of Somos Defensores of 2019, assaults on women human rights defenders increased by 97% in the first quarter of 2019 over the same period last year¹⁶³.

2. The differential treatment reserved to women social leaders

In their judgments on the murders of women social leaders, the Justice and Peace Courts highlighted some modus operandi or patterns of criminality. According to the Attorney General's Office (2015), violent acts are part of a pattern when they show interrelation and correlation of variables that make up a criminal phenomenon¹⁶⁴.

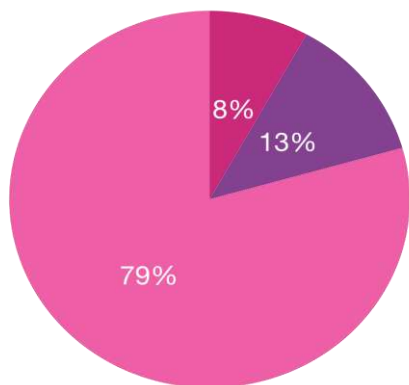
In the case of the murders of social leaders, the most common procedure in 2017 was murder with firearms (73% of cases) and with bladed weapons (10%). However, in several cases, the victims suffered previous violence, especially in the case of women. In 2017, 21% of women suffered previous violence before their murder, compared to 4% of men.

One of the most common forms of violence are the acts of torture: 4% of men showed signs of torture prior to their death compared to 8% of women. Another type of previous violence that highlights a reserved treatment based on gender is the rape: in the same period, almost 13% of the murdered women social leaders were raped previously, while no male leader has been raped.

¹⁶³ Colombia: "Aumentan un 97% las agresiones contra las defensoras de la tierra y medio ambiente en Colombia", RTVE, 24.06.2019 : http://www.rtve.es/noticias/20190624/colombia-aumentan-97-agresiones-contra-defensoras-tierra-recursos-colombia/1961175.shtml?fbclid=IwAR14ocVGaVcaWsB8EHxMp-O89gBzgK2KQPnNxb0_IvX1SnDiFaAF2avrK

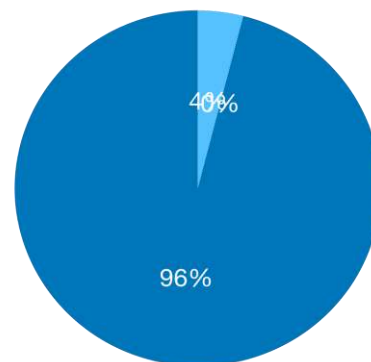
¹⁶⁴ FGN, 2015, Herramientas para la investigación y la acción penal. Consultado en https://www.scalia.gov.co/colombia/wp-content/uploads/CHP_Cartilla5_AF_Digital1.pdf

- Torturadas 8%
- Violadas 13%
- Asesinadas sin violencia previa 79%



165

- Torturados 4%
- Violados 0%
- Asesinado sin violencia previa 96%



These numbers are significant as they demonstrate gender differences in treatment, and it is clear that a leading woman is more likely to suffer previous violence than a leading man: she is twice as likely to be tortured and 13% more likely to be raped.

The Defensoría del Pueblo has noted with concern that cases of pre-killing sexual violence include acts of viciousness and torture against the bodies of women human rights defenders and leaders. It says that "these acts aimed at punishing women's participation in the public sphere" and that violence against them affect the leadership and its organization and seek to inhibit the emergence of new leaderships and visible organizational processes of women"¹⁶⁶.

The report "Lideresas Sociales en Colombia: el relato invisible de la crueldad" (Social Leaders in Colombia: The Invisible Story of Cruelty) published by the Consultancy for Human Rights and Displacement (CODHES)¹⁶⁷, also declares that violence against women leaders is crueler than against men leaders. "Dehumanization by armed actors against people who exercise leadership is exacerbated against women," says the report, which also warns that the purposes of violence are different against leaders: while against men the aim is to eliminate them, the violence against women seeks to punish them.

¹⁶⁵ Graphics from "La dificultad de ser una lideresa social hoy en día en Colombia" published by INDEPAZ on 10th of September 2018: <http://www.indepaz.org.co/wp-content/uploads/2018/09/Art%C3%ADculo-Indepaz-lideresas-sociales-versi3n-final-WORD.pdf>

¹⁶⁶ Nota de Alerta Temprana No 026-18 del 28 de febrero de 2018, pág. 56.

¹⁶⁷ "Lideresas Sociales en Colombia: el relato invisible de la crueldad" <https://codhes.wordpress.com/2019/03/29/lideresas-sociales-el-retrato-invisible-de-la-crueldad/>

Even homicides tend to be crueler when they kill women. The NGO “Sisma Mujer” found that 66% of murders against women are aggravated by sexual violence and torture¹⁶⁸.

Another way of violence used against women to punish them is to murder their relatives. The 10% of the aggressions against leaders in 2018 consisted of assaulting leftovers of women who exercise leadership, of that percentage more than half of the cases were perpetrated against them as a measure of intimidation and punishment¹⁶⁹.

There are also particularities in the way they are threatened. When armed groups send them intimidating messages, they attack them because they are women. "The threat is the main aggression and the main obstacle that the leaders have to carry out their work," warns the report¹⁷⁰. In the pamphlets and other ways by which they receive the threats, the violent actors use sexist language, make sexual advances and allude to their bodies, patterns that are not particular when men are threatened.

Sexual violence also affects women more chronically than men. The report cites figures from the Institute of Forensic Medicine, according to which of 18 cases of sexual assault in contexts of socio-political violence, 89% of cases were perpetrated against them. It is warned that in this type of violence the underreporting reaches very high levels.

The document points out that in the environments where the armed conflict persists there are some "hegemonic masculinities", which are a rejection of the "leadership and defense of human rights exercised by women". "Since structures of discrimination based on gender relations are manifested at all levels, they are exacerbated in scenarios of violence", states the report¹⁷¹.

Thus, we can observe that murders against women have an even deeper and greater impact, just for the fact of being women. These aggressions affect even more the organizations, communities or movements of which they are part, as well as the existing relations within their scope of action.

¹⁶⁸ “Las violencias contra las lideresas son más crueles que contra los líderes: Codhes”, El Espectador, 27 March 2019 <https://www.elespectador.com/colombia2020/pais/las-violencias-contra-las-lideresas-son-mas-cruelles-que-contra-los-lideres-codhes-articulo-857808>

¹⁶⁹ “Lideresas Sociales en Colombia: el relato invisible de la crueldad” <https://codhes.wordpress.com/2019/03/29/lideresas-sociales-el-retrato-invisible-de-la-crueldad/>

¹⁷⁰ “Lideresas Sociales en Colombia: el relato invisible de la crueldad” <https://codhes.wordpress.com/2019/03/29/lideresas-sociales-el-retrato-invisible-de-la-crueldad/>

¹⁷¹ “Lideresas Sociales en Colombia: el relato invisible de la crueldad” <https://codhes.wordpress.com/2019/03/29/lideresas-sociales-el-retrato-invisible-de-la-crueldad/>

3. The impact of murdering a woman leader

Despite the growing importance of social mobilization processes throughout the country, resistance to multiple threats and danger remains the daily routine for social leaders and human rights defenders in Colombia. In trying to prevent the country from returning to violence, they are perceived as targets by the actors who benefit from the conflict. Assassinations of leaders have a major impact on communities and the civilian population, an impact that differs in case of murdering a man or a woman.

Killing a male leader has a major negative impact on the movement and organization of which he is a part. It is usually men the ones who gain access to high levels of leadership, so their murder affects the organization as a whole, its structure, its peers and all the actions in process. We can say that these murders are linked to the movement and affect it in a vertical way.

Killing a woman leader has a different impact, because she does not usually enjoy the same leadership position as the man, so her death is linked to a more private sphere. A woman leader in her role is often seen as a mother who abandons her family and children and endangers them to pursue her objectives, and will not be admired for her courage as men who claim and fight for their rights are. The activity carried out by a woman leader does not have as much prestige as that of a man, since the traditional role of a woman is usually to carry for her family, to protect her children. By being engaged in public spaces and leadership, she becomes a military target and can harm her family and endanger them. Thus, the woman leader, by getting involved in collective matters, goes out of the traditional role assumed for her gender and her activity can be criticized or bad seen.

Her murder is going to affect the lower levels, especially other women who would be afraid to claim and fight for their rights. This phenomenon tends to inhibit the emergence of new women's leadership and organizational processes in a country where they already do not have sufficient access to positions of power. This results in their lack of possibilities to get involved in collective spaces. We can say that the assassination of a leader affects more at the grassroots social level and in a more horizontal way.

4. The situation today

As we observed, the situation of women leaders in Colombia is still complicated. Despite the creation of structures, such as the Comprehensive Programme of Guarantees for Women Leaders and Human Rights Defenders, the goals are far to be fulfilled. On its last report on Colombia in March 2019¹⁷², the Committee on the Elimination of Discrimination against Women of the United Nations said it was concerned at the prevalence of homicides, threats and other violations perpetrated against women human rights defenders and at the high levels of impunity for such crimes. The Committee says it is particularly concerned that women who work to implement the peace agreement at the local level and who seek redress for victims that suffered land rights violations are being particularly targeted. It is further concerned about the fact that women human rights defenders are often victims of a re-victimization when they seek protection and that law enforcement officers sometimes use discriminatory and re-victimizing language against them. Observing the increase of murders in the recent months and the treatment they receive, this situation does not seem to be heading towards a hopeful horizon. The responses against these crimes are not convincing and impunity continues to prevail. It would be important and necessary for the State and the Attorney General's Office to investigate and provide more consistent responses to these cases of violence and to redouble efforts to obtain justice and for this critical situation to be reversed¹⁷³.

On last 6 May 2019, the Offices of the UN High Commissioner for Human Rights and UN Women in Colombia have expressed their “deep concern about the attack on human rights defenders and, at the same time, urge that their right to defend human rights and to participate in the political and economic decisions of the country be respected, without fear of receiving public signals, threats and attacks on their lives”¹⁷⁴.

C. Actions of women nowadays in the country

¹⁷² CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 72th Session (18 Feb 2019 - 08 Mar 2019), Concluding observations on Colombia
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoVqDbaslinb8oXgzpEhivlqHzzFTcwVEHsbJTgf5Is3h4f6Zlan7uSNhP3LjUWN3T35fZjny2BSLMMIEpOsZmwwPbgZF2yaRcszk8%2bmGq9>

¹⁷³ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 72th Session (18 Feb 2019 - 08 Mar 2019), Concluding observations on Colombia
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoVqDbaslinb8oXgzpEhivlqHzzFTcwVEHsbJTgf5Is3h4f6Zlan7uSNhP3LjUWN3T35fZjny2BSLMMIEpOsZmwwPbgZF2yaRcszk8%2bmGq9>

¹⁷⁴ News release, 6 May 2019, OHCHR Colombia
<http://www.hchr.org.co/files/comunicados/2019/Comunicado-CAUCA-ONU-Mujeres-y-ONU-DDDHH.pdf>

As we observed, women have suffered in a particular way from the Colombian conflict. But far from letting themselves be defeated, they have managed to free themselves from social barriers to assert themselves and make their voices heard in the new society that Colombia is building.

- La Madres de Soacha:

Madres de Falsos Positivos de Soacha y Bogotá (MAFAPO) is an association made up of mothers, wives, daughters and sisters of the men illegitimately murdered by soldiers of the Colombian National Army and presented as guerrillas killed in combat between 2006 and 2009, during the government of Álvaro Uribe Vélez.

These women denounce the murders and the impunity of the crimes committed against their families and known as false positives. Since 2008, they have denounced the deaths of 19 young residents of Soacha and Bogotá who appeared in the northeast of the country, in the department of Norte de Santander, and were presented as guerrillas killed in combat with the army. For 10 years, they have fought against impunity and in 2018 they have presented a detailed report of the 19 cases to the Sala de Reconocimiento de Verdad de la Jurisdicción Especial de Paz (JEP) created after the signing of the Peace Agreement.

In August 2018, Jackeline Castillo, legal representative of MAFAPPO, asked General Mario Montoya, at the JEP submission hearing, to collaborate with the clarification of all these crimes. Every 20 September, the mothers will commemorate the anniversary of the murder of their children. With public, performative and community events.

- The Moravia district:

The newspaper Le Monde published an article stating that “women are the driving force behind the metamorphosis of the city of Medellín in Colombia”¹⁷⁵. It explains that women have taken charge of the urban transformation of the Moravia district in Medellín, which has long been a huge municipal landfill. Paula Andrea Vargas, a professor of social sciences at the University of Medellín, confirms that women have played an essential role in urban transformation. “Many women have arrived in Moravia as widows from rural areas in conflict,” says Ms. Vargas. The war had murdered or taken their men. Women heads of households had to get involved in the life of the

¹⁷⁵ Les femmes, moteur de la métamorphose de la ville de Medellín en Colombie, Le Monde, May 24th 2019
https://www.lemonde.fr/economie/article/2019/05/24/les-femmes-moteur-de-la-metamorphose-de-la-ville-de-medellin-en-colombie_5466562_3234.html?fbclid=IwAR2YonS2AoVWzXKbuc_tXnHoKcs_F3Cw_c3vVzxejYXAMr8xH2oTEGqT5P4

neighbourhood. While husbands - if they exist - work long hours, women organize themselves to take turns babysitting, setting up a cooperative, getting municipal authorities to provide a school or health centre. Mutual assistance has been a condition for survival. Today, it is mainly women who take the lead in neighbourhood councils, kindergartens and canteens and, on occasion, in social mobilization. According to the inhabitants, the ratio is now 1 on 5. That is, if there are two men in a meeting or neighbourhood council, there are ten women.

- The restaurant Atavico:

With the need to shake off and also with the desire to undertake and seek their space in the capital, thirty women who are part of the Association of Peasant, Black and Indigenous Women of Colombia (ANMUCIC) joined to give life to Atavico, a restaurant created by victims of the armed conflict, who, after surviving the violence, decided to organize themselves to have a dignified life, through the gastronomic wisdom that exists in their regions. "Atavico means ancestral foods. We want to bring the typical foods of the regions, such as corn, panela, yucca, banana, and play with what we know," said one of the members of the project.

They have left their rural lives where they have been targets and victims of the war and violence, to start a new life in the city. They describe their fears to run from death, to reach a huge city, and find a way to survive: to the high prices with the little money they have, to hunger and to the cold, and moreover feeling alone. They explain the feeling they had of do not feeling like you are from there, but don't feel like you're from anywhere else neither. And then find the strength to shake off and invent the way to go on. "We want to show you our interest in being part of this society. As victims, we want to be observed for our joy and not just for our sorrows, and to show that we are capable and that the scourge of war has not brought us down, but has strengthened us. We also want to delay that we are capable women, that nothing is left big, that we have goals and dreams," confessed one of the member of the project.

They recognize that it has not been easy, and that they are working hard for it. Another member of the collective explains they have been designing a space and an identity for three years, perfecting their cooking techniques and their ways of serving clients, learning how to manage a micro-business, cultivating a creativity that was hidden by fear. They did it among themselves, but also with the help of other organizations, such as Ministry of Labor, the United Nations Development Program, the Economic Development Secretariat of Bogota and the High Council for Victims.

Since then, they have shown the importance of peasant women in the society, their ancestral traditions, their defense of the territory and the need to make room for peace that, despite not having arrived entirely in their regions, they still yearn for in the distance. It is a way for them to show that war goes on, but so does life, and that they are far from giving up¹⁷⁶.

- The “PAZorodidad” experience¹⁷⁷:

PAZorodidad' is an initiative led by the “Centro de Estudios Territorio y Ciudad” (Centre for Territory and City Studies), which team believes in the peace of the country and in the power of rural women. According to this mindset, they have been able to gather a group of women from the Uribe municipality, in the department of Meta, to recognize themselves as women leaders and thus eliminate the stigmas they have carried for years as a consequence of their life histories.

Diana Rodriguez, project coordinator, emphasizes that reconciliation, within the framework of the Peace Accords, was a key point for women to begin to recognize each other as symbols of leadership and opportunities. "When we began to develop the project, we realized that reconciliation not only had to take place between actors who considered themselves to be opposites, but also in the role of women with themselves and in what their lives were like during the war," she explains.

During eight months of training, they learned what is necessary in audiovisual production, so these women have been able to show to their community and the whole country through YouTube their life stories, advice on resolving daily conflicts and building support networks. "The videos empower them as they learn to use the tools of communication, but above all it strengthens solidarity, which is why this project is called PAZoridad, which means: support among women for the construction of peace," explained Diana Rodríguez.

The National Human Development Report of the United Nations Development Programme "Colombia Rural, Reasons for Hope", points out that rural women suffer three forms of discrimination that have a disproportionate impact on their lives: because they live in the

¹⁷⁶“ Mujeres víctimas del conflicto inauguraron su restaurante en Bogotá”, April 1st 2019

https://www.elespectador.com/colombia2020/pais/mujeres-victimas-del-conflicto-inauguraron-su-restaurante-en-bogota-articulo-857824?fbclid=IwAR0JdY0Zcw2yV_PAGDg-nDVKX7rS4TcooppvWI8imXvSeg7iPFILkkItHVc

¹⁷⁷ “PAZorodidad’ mujeres campesinas que ahora son youtubers”, 3 de junio del 2019

<https://www.kienyke.com/noticias/pazororidad-mujeres-campesinas-youtubers-colombia>

countryside, because they are women, and because they are victims of violence. The first case refers to the rural debt that arises from the fact that peasants are discriminated against in relation to those in the urban world. The second is the gender debt, which has its origin in the traditional inequity between opportunities and the differentiated social value between men and women in today's society. The last form of discrimination refers to the greater vulnerability to which women who are victims of violence are exposed, both in the family environment and in the armed conflict.

According to DANE projections, it is estimated that among the more than 25 million women in Colombia, almost five and a half million live in rural areas. A high percentage of rural women (37.4%) are living in poverty, compared to a much lower percentage (12%) of urban women in this case.

Women and girls in the countryside continue to be engaged in domestic chores, partly because men take on the hard work related to agriculture, livestock, fishing, mining and logging, and partly because this division of labour is more of a cultural phenomenon. Both men and women living in rural areas consider the house to be a woman's affair.

Of the almost six million victims registered in the Victim's Care and Reparation Unit, 51% are women, mostly from rural areas.

IV. The future of Human Rights in Colombia

Almost three years after the signing of the official peace, the new government has made some promises regarding human rights (A) but the situation remains mitigated (B) and many challenges are remaining (C).

A. Promises of the new government

The new government has expressed its commitment to the respect of human rights in the country (1) which highly depends on the implementation of the Peace Agreement (2).

1. The engagement of the new government regarding human rights

In June 2018, Ivan Duque has been elected as the new president of the Republic of Colombia. The politician, driven by former President Álvaro Uribe (2002-2010), won the second round against the leftist Gustavo Petro with 53.85% of the vote. Here begun a crucial stage for the transition of

the country, a year and a half after the signing of the agreements with the FARC, to which Duque intends to apply modifications. "That peace we long for, that demands corrections, will have corrections so that the victims will be the center of the process to guarantee truth, justice and reparation," he told after the results.

In its last report on the situation of Human Rights in Colombia¹⁷⁸, the United Nations High Commissioner for Human Rights declared it is encouraging that, during the 2018 presidential election campaign, the new President Ivan Duque committed to a social pact for human rights, promoted by OHCHR. The pact reiterates the obligation to protect, respect and guarantee human rights, promoting inclusion and guarantee the effective realization of the civil, political and economic, social and cultural rights of the civilians. OHCHR also recognized the steps taken by the Government to formulate a national action plan on human rights. The plan should strengthen the Government's preventive approach, incorporate gender and ethnic perspectives and address the regional situation. In order to guarantee the effective implementation of the plan, the OHCHR advise that Colombia should set out indicators based on international standards and a process of evaluation and accountability.

Moreover, the last report of "Somos Defensores"¹⁷⁹ of May 23th 2019 also highlights the management of two state entities that have shown a significant commitment to stem the tide of violence against social leaders and human rights defenders. First, the "Procuraduría", which has placed this phenomenon at the centre of its priorities¹⁸⁰. On the other hand, it highlights the management of the Defensoria del Pueblo and its role in positioning the issue of violence against leaders on the public agenda. In particular, early warning 026 of March 2018 issued by this entity warns of the high risk and vulnerability of human rights defenders in the country.

On April 12th 2019, Carlos Ruiz Massieu, the representative of the United Nations verification mission in the country, before the United Nations Security Council, referred to the

¹⁷⁸ "Situation of human rights in Colombia", Human Rights Council, Fortieth session, 25 February - 22 March 2019 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/025/43/PDF/G1902543.pdf?OpenElement>

¹⁷⁹ "Clockwork orange", Annual report 2018, Information system on attacks against Human Rights Defenders in Colombia, April 23th 2019 https://somosdefensores.org/wp-content/uploads/2019/04/informe-somos-defensores-2019-ingles_web.pdf

¹⁸⁰ "2018, el año más violento contra los líderes sociales en Colombia" <https://www.elespectador.com/colombia2020/pais/2018-el-ano-mas-violento-contra-los-lideres-sociales-en-colombia-articulo-857894?fbclid=IwAR09xKvITzplrRO52CQbkcXC0OyfchQMG0TMVjdqwCgH4tmaizDsWgdWU2g>

progress and concerns regarding the implementation of the peace agreement. He spoke about the JEP, the murdered social leaders and the points of the agreement that have been stopped¹⁸¹.

In the same way, on May 16th 2019, Rupert Colville, spokesman for the United Nations Office on Human Rights, denounced Colombia for serious human rights violations, and the ineffectiveness of the government of President Ivan Duque to guarantee his responsibilities as head of state.

These reactions raise questions about the effectiveness of the implementation of the peace agreement in the country.

2. Status of implementation of the Peace Agreement

The Kroc Institute, in its last report of April 2019, reveals that at this day, 31% of the agreed commitments have not begun their implementation process¹⁸². It says that the main concern continues to be the security guarantees for social leaders and points out that the transitional justice system is in place and in the process of territorial deployment. After two years and a half since the signing of the Final Agreement of La Havana, of the 578 provisions it includes, 400 have begun their implementation, meaning that almost 70% of the agreed commitments are under way.

“As of February 28, 2019, 69% of the commitments identified in the Final Agreement are in the process of being implemented.

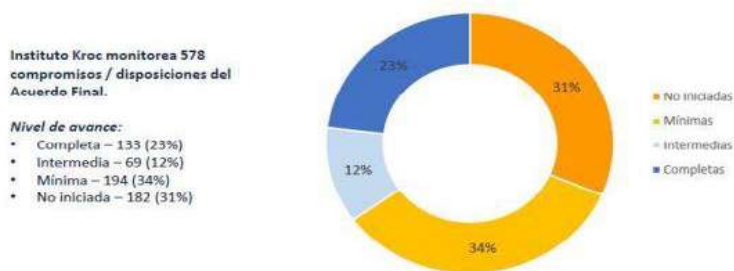
- One third (35%) of these commitments have reached advanced levels of implementation, meaning they have been fully implemented (23%) or are expected to be fully implemented (12%) within the timeframe of the Agreement.
- Thirty-four percent (34%) of the commitments are in a state of minimal implementation. Implementation of these commitments has begun, but given their expected date of completion or the level of progress achieved to date, it is not possible to determine whether they can or will be fully implemented.
- Thirty-one percent (31%) of the total commitments have yet to begin implementation. In some cases, there have been delays and/or significant obstacles that prevented commitments from being implemented. We can see obstacles at play in the non-approval of political and electoral reform and in preventing normative advances to speed up rural reform. In

¹⁸¹ “La mayor incertidumbre para Colombia sería reabrir puntos centrales del Acuerdo de Paz”: ONU, April 12th 2019 <https://www.elespectador.com/colombia2020/pais/la-mayor-incertidumbre-para-colombia-seria-reabrir-puntos-centrales-del-acuerdo-de-paz-onu-articulo-857865>

¹⁸² “Peace Accord Implementation in Colombia Continues to Progress Two Years In Media Advisory: April 9, 2019” https://kroc.nd.edu/assets/316152/190409_pam_media_advisory_final.pdf

other cases, implementation has not proceeded because commitments are dependent on the completion of other commitments that are in the process of being implemented.”¹⁸³

Estado de la implementación, febrero de 2019



184

But although the level of progress is high, the pace of implementation has been slowing down in recent months. From June of last year until February of this year (the effective date of the third report) only 8% progress was made, 47 commitments.

According to the newspaper El Espectador, the slowdown in the pace of implementation coincides with the arrival of Ivan Duque to the Presidency¹⁸⁵. While during 2017 and the first semester of 2018 the implementation of the agreed commitments progressed continuously from one month to another, since July the pace has stabilized and little progress is made month after month.

Borja Paladini, representative in Colombia of the Kroc Institute, explained that it is normal that the pace has slowed basically for two reasons. On the one hand, "it was to be expected that during the first two years after the signing of the Agreement, progress would be faster because everything agreed is being implemented, but from now on, everything is expected to be slower"¹⁸⁶.

On the other hand she explained that with the change of government in the country, almost all the officials in charge of the entities involved in the implementation of the Agreement have changed.

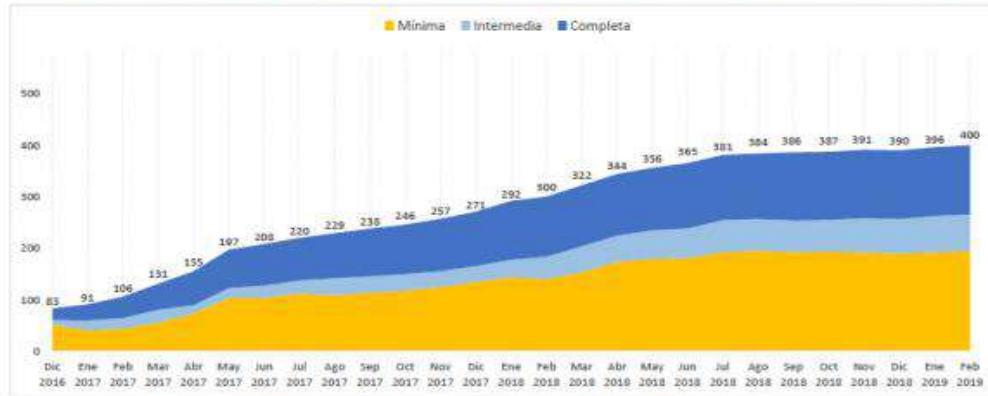
¹⁸³ "Peace Accord Implementation in Colombia Continues to Progress Two Years In Media Advisory: April 9, 2019" https://kroc.nd.edu/assets/316152/190409_pam_media_advisory_final.pdf

¹⁸⁴ Source of the graphic : "El ritmo de implementación del Acuerdo de paz disminuyó en los últimos meses: Instituto Kroc", April 9th 2019 <https://www.elespectador.com/colombia2020/pais/el-ritmo-de-implementacion-del-acuerdo-de-paz-disminuyo-en-los-ultimos-meses-instituto-kroc-articulo-857851>

¹⁸⁵ "El ritmo de implementación del Acuerdo de paz disminuyó en los últimos meses: Instituto Kroc", April 9th 2019 <https://www.elespectador.com/colombia2020/pais/el-ritmo-de-implementacion-del-acuerdo-de-paz-disminuyo-en-los-ultimos-meses-instituto-kroc-articulo-857851>

¹⁸⁶ "El ritmo de implementación del Acuerdo de paz disminuyó en los últimos meses: Instituto Kroc", April 9th 2019 <https://www.elespectador.com/colombia2020/pais/el-ritmo-de-implementacion-del-acuerdo-de-paz-disminuyo-en-los-ultimos-meses-instituto-kroc-articulo-857851>

Resumen estado de la implementación mes a mes: 1 dic 2016 – 28 feb 2019



400 de los 578 compromisos del acuerdo final han iniciado su implementación y tienen algún nivel de progreso (mínimo, intermedio o completo)

187

B. The situation today: between hopes and fears

On March 28th, 2019, the International Committee of the Red Cross has presented an alarming report on the humanitarian situation in Colombia, due to the heightened armed conflict, mass displacement and killings. According to the head of the delegation, Christoph Harnisch, the panorama is even more complex than when the Peace Agreements was signed in 2016. And to point out the executive's inaction: "We continue to insist on the lack of responses to the disappearance. The families of more than 80,000 missing persons are still waiting for information to arrive in droves, more than two years after the announcement of the creation of the Missing Persons Search Unit. On the field, we see communities that are afraid, disoriented and threatened"¹⁸⁷.

On the same day, collectives of Colombians living in France begun a march towards the International Criminal Court. The cortege left the Trocadero "Human Rights Square" in Paris to reach the city of La Haye in the Netherlands with a black flag bearing the names of each of the victims. The Hague marchers have presented a letter to the ICC Prosecutor's Office on 5 April calling for a preliminary investigation into the systematic killing of social leaders. "Colombia has always been a country at risk for those who struggle, but the situation has worsened," says Jorge Gomez of the

¹⁸⁷ Source of the graphic : Image found on the article "El ritmo de implementación del Acuerdo de paz disminuyó en los últimos meses: Instituto Kroc", April 9th 2019
<https://www.elespectador.com/colombia2020/pais/el-ritmo-de-implementacion-del-acuerdo-de-paz-disminuyo-en-los-ultimos-meses-instituto-kroc-articulo-857851>

¹⁸⁸ "Silence, on tue en Colombie" (*Quiet, we're killing in Colombia*), L'Humanité, April 4th 2019
https://www.humanite.fr/droits-de-lhomme-silence-tue-en-colombie-670321?fbclid=IwAR3sqFzUc_PsVACbQlOtkBmxajQXnp6_5nqTaAYenqOIKzX9ZS6C-6DGMA

Colombian Communist Party. The politician believes that "these selective killings hit land reclaimers particularly hard". "During the regime of Alvaro Uribe¹⁸⁹, an invading "army" seized the land, forcing the displacement of their real owners. An alliance with notaries has made it possible to falsify property titles because, in the context of the current transnationals' offensive, the legality of land is an absolute necessity. There was a macabre alliance between the paramilitaries, the government and notaries. Laws of the Santos government have favored land restitution. The real owners of the stolen land who have the courage to claim what belongs to them were the first people to be murdered by gangs who call themselves "against the reclaimers of the land" », explained Jorge Gomez¹⁹⁰.

This deterioration is closely linked to the impunity prevailing in the country, particularly in areas where paramilitary groups have established themselves as absolute masters after the demobilization of the former guerrillas.

Moreover, there is a problem of lack of implementation of the Peace Agreement. Even before his election in June 2018, Ivan Duque, which promised a "total war" against the guerrillas, swore that he would review the pact established between the former insurgency and the Santos government, despite the Colombian State's commitments to the international community. "Ex-combatants are subject to physical insecurity. Nearly 80 of them were murdered. The government is obstructing the implementation of peace agreements. Not even 1% of former FARC members have a productive project. They are condemned to work as day labourers, others have been forced to return to their families," says Jorge Gomez.

The attitude of the General Attorney of the Nation is also worrying. Following Ivan Duque's footsteps, Nestor Humberto Martinez wants to attack the Special Justice for Peace (JEP), which, as seen before, is responsible for judging the main violence perpetrated during the armed conflict by guerrillas but also by the army and civilians. Of the 7,000 former insurgents, more than 4,600 testified before the JEP including Rodrigo Londoño, the former Commander-in-Chief of FARC. As says Jorge Gomez, the JEP is "the backbone of the reintegration of ex-combatants and the implementation of agreements. But the ultra-right is very afraid of it because it includes mechanisms that make it possible to deepen the responsibility of "third parties", what means to

¹⁸⁹ Ultra-right-wing president from 2002 to 2010

¹⁹⁰ "Silence, on tue en Colombie" (*Quiet, we're killing in Colombia*), L'Humanité, April 4th 2019
https://www.humanite.fr/droits-de-lhomme-silence-tue-en-colombie-670321?fbclid=IwAR3sqFzUc_PsVACbQlOtkBmxajQXnp6_5nqTaAYengOIKzX9ZS6C-6DGMA

know who benefited from the war, who financed it. If that were the case, former President Alvaro Uribe would be worried, as would all those around him”, he said¹⁹¹.

According to the report of “Somos Defensores”¹⁹², by not prioritizing this situation and considering it secondary in its concerns, the government of Ivan Duque took a position contrary to its duty to provide security guarantees for leaders and defenders. “Duque is governing in front of the economy and with his back to peace,” says the report, evidencing the exaggerated interest that the president has shown for the orange economy¹⁹³, where he has focused his speech to divert people’s focus.

Furthermore, what is worrying for the program with respect to the current government is that it has stopped or replaced the implementation of the mechanisms stipulated in the Agreement for the Protection of Leaders and Human Rights Defenders. This is the case of the “Sistema Integral de Seguridad para el Ejercicio de la Política” (Sisep) (*Comprehensive Security System for the Exercise of Politics*), the National Security Guarantees Commission and the Special Investigation Unit, among others. According to the Kroc Institute in its last report, to achieve the guarantees provided by the peace agreement, it is necessary to strengthen the mechanisms stipulated in the agreement for this purpose, which are precisely the National Commission on Security Guarantees (which is already under way) and the Comprehensive Security System for the Exercise of Policy (SISEP), which has not yet begun its implementation.

In parallel to these mechanisms, the government has implemented the “Plan de Acción Oportuna (PAO)”, which has already been strongly criticized by human rights platforms for having a primarily militaristic approach. As explained in the report, the reality is that it is an insufficient plan, because it does not consider the dismantling of armed groups in the territories, the structural fight against organized crime and the improvement of the well-being of the communities, which are situations that feed the circle of violence; on the contrary, the PAO uses old formulas from a coercive approach. According to government policy, today the National Guarantees Commission - whose

¹⁹¹ “Silence, on tue en Colombie” (*Quiet, we're killing in Colombia*), L’Humanité, April 4th 2019 https://www.humanite.fr/droits-de-lhomme-silence-tue-en-colombie-670321?fbclid=IwAR3sqFzUc_PsVACbQlOtkBmxajQXnp6_5nqTaAYenqOIIYKzX9ZS6C-6DGMA

¹⁹² “Clockwork orange”, Annual report 2018, Information system on attacks against Human Rights Defenders in Colombia, April 23th 2019 https://somosdefensores.org/wp-content/uploads/2019/04/informe-somos-defensores-2019-ingles_web.pdf

¹⁹³ “Orange economy” is a set of activities that, in a chained fashion, enable ideas to be transformed into cultural goods and services, the value of which is determined by their intellectual property content.

mandate was to create public policy for the dismantling of organized crime and follow it up - "is a minor commission subordinated to the PAO, a consultative body with no clear functions".

The other ineffective response, according to the report, has come from the Attorney General's Office, which, although on a discursive level claims to have reached historic levels of clarification, these do not materialize in practice. For the NGO, the problem is that the investigative body presents as clarified cases those in which there is any kind of progress, while a real clarification implies that a sentence has taken place. In this sense, while the Public Prosecutor's Office speaks of levels of clarification close to 50% of cases¹⁹⁴, for "Somos Defensores" those levels have not exceeded 10%.

For a global view, the EU Director for the Americas, Hugo Sabral, has been asked about the vision he had regarding human rights situation in Colombia in relation to the region, including cases such as Venezuela or Nicaragua. He said that in that comparison there is a very big distinction. "Colombia is a democracy and a rule of law and that differentiates it from Venezuela and Nicaragua. In addition, here there is a recognition from the government that the situation is not desirable, that it needs to be improved. Human rights cannot be seen in a isolated way, they are part of that triptych that is complemented by democracy and the rule of law, and none can exist without the other. In Colombia there is democracy, rule of law and human rights problems, but there is also a recognition that more needs to be done to improve the situation"¹⁹⁵.

In the same way, Ramón Muñoz, director of the International Network of Human Rights, considers that "Colombia is a schizophrenic country that did not manage to get out of the phase of hate, pain, and the wounds of the conflict". According to him, the current government continues to incite polarization around the hate of the FARC, instead of promoting reconciliation between the different actors of the society, leading to a country manipulated by hate and pain. For him, Ivan Duque is not a man of peace, and in a few years if he doesn't change his trajectory, he will be perceived as the man who rekindled the war in Colombia. He also considers that the international community has a big role to play right now, because it can exert significant pressure for the Peace

¹⁹⁴ "2018, el año más violento contra los líderes sociales en Colombia"

<https://www.elespectador.com/colombia2020/pais/2018-el-ano-mas-violento-contra-los-lideres-sociales-en-colombia-articulo-857894?fbclid=IwAR09xKvITzplrRO52CQbkcXC0OyfchQMG0TMVjdqwCgH4tmaizDsWgdWU2g>

¹⁹⁵ "Colombia debe hacer más por los DD. HH.": director de la UE para las Américas", April 13th 2019

<https://www.elespectador.com/colombia2020/pais/colombia-debe-hacer-mas-por-los-dd-hh-director-de-la-ue-para-las-americas-articulo-857871>

Agreement to be respected, although at the moment the Colombian government is a little deaf to international pressure. For him, the way in which international norms are interpreted is inappropriate and in violation of international treaties and protocols¹⁹⁶.

Nonetheless, on its last report, the Kroc Institute shows that the most outstanding advances of what has been implemented so far are in the third point of the Agreement about the end of the conflict, and the sixth about the mechanisms for implementation, verification and endorsement. According to Kroc, the main achievement is the end of the armed conflict between the Government and the FARC, as well as the transformation of the guerrilla into a political party that participates in national politics.

"Comparative studies of other peace processes show that not returning to the armed conflict during the first two years after the signing of the agreement is an important milestone that augurs well for the chances of success," the document states¹⁹⁷.

C. The remaining challenges

At reading the various reports of NGOs, institutions and the press, the main concerns remain on guarantees of security and protection of social leaders, the reincorporation of former FARC combatants and the implementation of the peace agreement. The threats and violence remaining in the country is mainly due to the presence of illegal armed actors in the zones where the Agreement is implemented.

Therefore, a panorama of the important challenges remaining and the situation today has to be done, such as the functioning of the JEP (1), the progress of the reincorporation program of ex-combatants (2) and the remaining attacks against human rights defenders (3).

1. Functioning of the Special Jurisdiction for Peace (JEP)

¹⁹⁶ Interview of Ramón Muñoz, Director of the International Network of Human Rights, United Nations office in Geneva, Switzerland, 18.03.2019

¹⁹⁷ "Peace Accord Implementation in Colombia Continues to Progress Two Years In Media Advisory: April 9, 2019" https://kroc.nd.edu/assets/316152/190409_pam_media_advisory_final.pdf

On March 11th, 2019, the negotiators of the Havana agreement and a group of intellectuals and leaders of diverse political currents accused President Ivan Duque, before the United Nations, of putting "obstacles" to the implementation of Peace.

The influential group of leaders estimated that Duque, his government and his ruling party are making "attempts to seriously injure the implementation of the Agreement, the structure and functioning of the JEP, as well as the system designed to honor the rights of the victims"¹⁹⁸. Moreover, Duke's objections to the statutory law of the JEP were described by the signatories of the document simply as "impediments", that can endanger the full exercise of their powers and scenarios could arise in which the lack of legal tools favours impunity and limits the guarantee of victims' rights"¹⁹⁹.

The UN Head Office in the country, Carlos Ruiz Massieu, highlighted the climate of uncertainty that is being experienced by those who have taken refuge in the justice system, seeking to reconcile the country. "For the victims, for the members of the FARC and for the communities that have suffered the conflict, the greatest uncertainty would be to reopen the central points of the Peace Accord"²⁰⁰, Massieu said, regarding the will of President Ivan Duque to object some points of the Final Peace Agreement. In that respect, he made a strong appeal to President Duque regarding the intention to propose constitutional reforms to articles that support the transitional justice agreed in the peace agreement. "In presenting the first of these proposals, the government assured that they will only operate for the future. Indeed, any such initiative should not be applied retroactively to those who laid down their arms in good faith and on the basis of their commitments under the Agreement. As the Secretary-General has pointed out, the principle of non-retroactivity is fundamental to preserve confidence in the future of the process," he reiterated²⁰¹.

¹⁹⁸ "Acusan a Duque ante ONU de poner 'obstáculos' al acuerdo de paz", El Tiempo, March 11th 2019
<https://www.eltiempo.com/politica/proceso-de-paz/acusan-a-duque-ante-onu-de-poner-obstaculos-al-acuerdo-de-paz-336178?fbclid=IwAR1ZrL7K3ImxtaG9OeGRsiWz-2CBvbqXvc8wudaJkJyrEx0FExBJJCThLAK>

¹⁹⁹ "Acusan a Duque ante ONU de poner 'obstáculos' al acuerdo de paz", El Tiempo, March 11th 2019
<https://www.eltiempo.com/politica/proceso-de-paz/acusan-a-duque-ante-onu-de-poner-obstaculos-al-acuerdo-de-paz-336178?fbclid=IwAR1ZrL7K3ImxtaG9OeGRsiWz-2CBvbqXvc8wudaJkJyrEx0FExBJJCThLAK>

²⁰⁰ "La mayor incertidumbre para Colombia sería reabrir puntos centrales del Acuerdo de Paz": ONU", El Espectador, 12th April 2019
<https://www.elespectador.com/colombia2020/pais/la-mayor-incertidumbre-para-colombia-seria-reabrir-puntos-centrales-del-acuerdo-de-paz-onu-articulo-857865>

²⁰¹ "La mayor incertidumbre para Colombia sería reabrir puntos centrales del Acuerdo de Paz": ONU", El Espectador, 12th April 2019
<https://www.elespectador.com/colombia2020/pais/la-mayor-incertidumbre-para-colombia-seria-reabrir-puntos-centrales-del-acuerdo-de-paz-onu-articulo-857865>

In an interview made by the newspaper El Espectador, the EU Director for the Americas, Hugo Sabral, has been asked for its vision on the Colombian case. On this occasion, he has expressed his concern on this matter. About his view of transitional justice system taking into account the uncertainty over the president's position on the Special Jurisdiction for Peace, he said this was a sensitive issue, and maintained that “transitional justice is one of the central elements of the Peace Agreement and we (i.e. the EU) advocate for the implementation of the Peace Agreement”. “We know that there are now those doubts, those objections presented by the president, but we do not interfere in the domestic debate that has to exist on the issue, what we consider important is that it can be decided quickly to eliminate any uncertainty, not only about the JEP, but about the victims or people who have shown interest in participating in the JEP”. “It is necessary to guarantee legal certainty for all those involved in implementing the process, which is why we think it is important that all this can be decided quickly” he added²⁰².

Therefore, Ruíz Massieu categorically said: "As this Council has insisted, it is still of vital importance that the independence and autonomy of the Special Jurisdiction for Peace be respected and that it receive the necessary support to be able to function effectively"²⁰³. In this way, he highlighted that in the first year the five cases opened by the JEP will examine responsibility for violent acts that affected more than 32,000 victims.

2. Progress on the reincorporation program of ex-combatants

In June 2017, the United Nations political mission in Colombia verified that FARC guerillas who accepted the peace agreement with the government had handed their weapons to the mission. In September 2018, the UN political mission announced that six former FARC commanders in southwest Colombia had abandoned the sites where they were to be re-incorporated into

²⁰² “Colombia debe hacer más por los DD. HH.”: director de la UE para las Américas”, April 13th 2019 <https://www.elespectador.com/colombia2020/pais/colombia-debe-hacer-mas-por-los-dd-hh-director-de-la-ue-para-las-americas-articulo-857871>

²⁰³ “El rechazo a la violencia en Colombia, es fruto de la paz”: jefe de la Misión de la ONU, El Espectador, March 23th 2019 <https://www.elespectador.com/colombia2020/politica/el-rechazo-la-violencia-en-colombia-es-fruto-de-la-paz-jefe-de-la-mision-de-la-onu-articulo-857577>

Colombian society. These include Ivan Marquez, the FARC's second-in-command and chief peace negotiator, whose location remains unknown²⁰⁴.

A minority of dissident guerrilla fighters rejected the terms of the peace agreement, have not disarmed, and continue to commit abuses. Others joined or created new groups after disarming, partly in inadequate reintegration programs. In February, the Government estimated that FARC dissident groups had more than 1,400 members²⁰⁵.

According to Ramón Muñoz, director of the International Network of Human Rights, there is an absolute lack of control by the Colombian government of territories that were abandoned by the FARC and taken back by other armed actors (paramilitaries, FARC dissidents, criminal groups, drug traffickers, ELN, and other emerging armed groups). There was a real lack of action in the implementation to occupy these territories, not only with the army but also with social programs that have been negotiated in the peace accords such as reinsertion plans, rural reforms, rural cadastre, reinsertion projects for the demobilized, that have been slowed down in an evident way by the current government, leading to a large number of former FARC members who were killed, such as their families²⁰⁶.

The head of the UN mission in Colombia, Ruiz Massieu, made on January 2019, in front of the member countries of the United Nations Security Council, a diagnosis of several neuralgic points of the peace agreement, especially the point of reincorporation. He wanted to call the attention of the government in the generation of trust to the more than 10,500 ex-members of the guerrilla, who remain in transit to civilian life. "I call on the government to accelerate the approval of more projects and the disbursement of funds, and also to ensure the application of a gender approach in these projects and that timely decisions are taken on access to land," he said. To date, the Mission revealed, individual and collective projects have been approved for 1,774 former members of the FARC.

According to Ruíz Massieu, "this was one of the most important points, because it is about the stability of the peace agreement with the ex-combatants of the guerrilla". In addition, he

²⁰⁴ Colombia Report 2019, Human Rights Watch, p. 3

<https://www.hrw.org/world-report/2019/country-chapters/colombia#49dda6>

²⁰⁵ Colombia Report 2019, Human Rights Watch, p. 4

<https://www.hrw.org/world-report/2019/country-chapters/colombia#49dda6>

²⁰⁶ Interview of Ramón Muñoz, Director of the International Network of Human Rights, United Nations office in Geneva, Switzerland, 18.03.2019

expressed his concern because the 24 Territorial and Reincorporation Spaces (ETCR) expire on August 15 2019, "which is a cause for concern for the thousands of ex-combatants who inhabit these spaces," he said²⁰⁷. Moreover, "as for political reincorporation, on October 27 the FARC party will participate for the first time in local and regional elections, which represents another step forward in its political participation," he added²⁰⁸.

Nonetheless, Ruiz Massieu said the killing of 87 former FARC combatants since the signing of the peace agreement to date is worrisome.

Finally, in the end, he celebrated that President Duque has convened for next January 30, one of the most important instances to advance the issue of security in post-conflict: the National Security Guarantees Commission, which has the task of defining a strategy to dismantle criminal and illegal armed groups²⁰⁹.

He finally concluded by saying that "what is urgently needed now is for this and other plans to be translated into effective actions that change the reality on the ground"²¹⁰.

3. Remaining attacks against human rights defenders

On November 19th, 2018, President Duque created the Commission of the Timely Action Plan for Prevention and Protection for Human Rights Defenders, Social and Communal Leaders, and Journalists (*Comisión del Plan de Acción Oportuna para Defensores de Derechos Humanos, Líderes Sociales, Comunes y Periodistas*, PAO) to strengthen coordination including efforts to investigate and prevent attacks against social leaders and human rights defenders. Additionally, the Minister of Interior reported to the UN Human Rights Council in May that the government established an elite corps of the National Police, a specialized sub-directorate of the National Protection Unit, a special

²⁰⁷ "El rechazo a la violencia en Colombia, es fruto de la paz": jefe de la Misión de la ONU, El Espectador, March 23th 2019 <https://www.elespectador.com/colombia2020/politica/el-rechazo-la-violencia-en-colombia-es-fruto-de-la-paz-jefe-de-la-mision-de-la-onu-articulo-857577>

²⁰⁸ "El rechazo a la violencia en Colombia, es fruto de la paz": jefe de la Misión de la ONU, El Espectador, March 23th 2019 <https://www.elespectador.com/colombia2020/politica/el-rechazo-la-violencia-en-colombia-es-fruto-de-la-paz-jefe-de-la-mision-de-la-onu-articulo-857577>

²⁰⁹ "El rechazo a la violencia en Colombia, es fruto de la paz": jefe de la Misión de la ONU, El Espectador, March 23th 2019 <https://www.elespectador.com/colombia2020/politica/el-rechazo-la-violencia-en-colombia-es-fruto-de-la-paz-jefe-de-la-mision-de-la-onu-articulo-857577>

²¹⁰ "El rechazo a la violencia en Colombia, es fruto de la paz": jefe de la Misión de la ONU, El Espectador, March 23th 2019 <https://www.elespectador.com/colombia2020/politica/el-rechazo-la-violencia-en-colombia-es-fruto-de-la-paz-jefe-de-la-mision-de-la-onu-articulo-857577>

investigation unit of the Attorney General's Office responsible for dismantling criminal organizations and enterprises, and a unified command post, which the minister stated shared responsibility for protecting human rights defenders from attack and investigating and prosecuting these cases²¹¹. Moreover, the Ministers of Defense and Interior and the High Commissioner for Peace have been given the task of identifying additional measures, and the Attorney General has called for a series of commitments under the Covenant for Life of Human Rights Leaders and Human Rights Defenders, approved by the Government and representatives of civil society in August.

The UN Head of mission in the country, Carlos Ruiz Massieu, regarding these measures said: "I urge that these measures be implemented quickly and combined with broader efforts to ensure an effective State presence in these areas" in front of the UN Security Council members in last January 2019 ²¹².

4. About extrajudicial killings

According to the NGO Coordinación Colombia Europa Estados Unidos (CCEEU), from January 1st through August 2018, there were twenty-seven cases of "intentional deaths of civilians committed by state agents", which includes thirty-four victims.

The country report on human rights practices for the 2018 by the United States Department of State²¹³, has noticed some efforts to hold officials accountable in false positive extrajudicial killings. During 2017 and through May 20, the Attorney General's Office reported that 246 members of the security forces were convicted in cases related to "false positives", 716 cases were in the prosecution phase, and 10 new investigations were opened. In total, the government had convicted 1,176 members of the security forces in cases related to false positives as of May, among them eight colonels, according to the Attorney General's Office. Moreover, the Special Jurisdiction for Peace (JEP) reviewed some investigations related to false positive or extrajudicial killings and more than 1,900 members of the armed forces signed a commitment to participate in the JEP's processes.

²¹¹ Country Reports on Human Rights Practices for 2018, United States Department of State • Bureau of Democracy, Human Rights and Labor <https://www.justice.gov/eoir/page/file/1148416/download>

²¹² "El rechazo a la violencia en Colombia, es fruto de la paz": jefe de la Misión de la ONU, El Espectador, March 23th 2019 <https://www.elespectador.com/colombia2020/politica/el-rechazo-la-violencia-en-colombia-es-fruto-de-la-paz-jefe-de-la-mision-de-la-onu-articulo-857577>

²¹³ Country Reports on Human Rights Practices for 2018, United States Department of State • Bureau of Democracy, Human Rights and Labor <https://www.justice.gov/eoir/page/file/1148416/download>

According to Ramón Muñoz, director of the International Network of Human Rights, “the biggest challenges that Colombia now faces are the same as during the conflict: respect for life, respect for the economic, social and cultural rights in rural areas because it is where we have to invest to implement peace, land restitution, reform the rural cadastre to know who owns each land, the protection of human rights defenders, gender equality, women's rights, the fight against corruption of the State without which it will never respect human rights, the right to health, environmental rights with the mining issue from what the country will suffer a lot of water and pollution issues”²¹⁴.

In terms of conclusion, and while the numbers and information above mentioned remain of great concern, since the signing of the Peace Accord, the Government, the Fiscal, the Procurer, the National Ombudsman Office, the Public Force and other institutions have multiplied their plans and actions to respond to the challenges generated by the transition to a stage of post-conflict in Colombia. Thus, the general panorama of violence has changed positively during the last years, with a considerable decrease of infractions against International Humanitarian Law and acts of violence which have characterized the internal armed conflict in Colombia²¹⁵. Among these acts of violence which seem to decrease, are those of homicides against protected persons, enforced disappearance, torture, kidnapping, and arbitrary detention, forced displacement, extrajudicial executions, sexual violence from armed actors, deaths and injured in combat or victims of anti-personal mines²¹⁶.

Nevertheless, Michelle Bachelet, High Commissioner for Human Rights, in her last report on Colombia on the 20th of March 2019, declared: “We encourage the Colombian Government to implement the provisions of the peace agreement in a comprehensive manner, with the protection of victims’ rights to justice, truth and guarantees of non-recurrence at the core of all State efforts”²¹⁷. She also expressed concerns about the killings of human rights defenders and social

²¹⁴ Interview of Ramón Muñoz, Director of the International Network of Human Rights, United Nations office in Geneva, Switzerland, 18.03.2019

²¹⁵ The current homicide rate in Colombia is 23,07% according to the Legal Medical Institute (Instituto de Medicina Legal).

²¹⁶ INDEPAZ, Revista n°73 « Categorías, patrones y determinantes en los asesinatos y amenazas a líderes sociales » <http://www.indepaz.org.co/8099/categorias-patrones-y-determinantes-en-los-asesinatos-y-amenazas-a-lideres-sociales/Camilo-Gonzalez-Posso>

²¹⁷ “Bachelet briefs States on Colombia, Cyprus, Guatemala, Honduras, Iran, Myanmar, Sri Lanka, Venezuela and Yemen”, GENEVA (20 March 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24377>

leaders, including a report of 27 killed so far this year”²¹⁸. A signal that the path to peace is still far to be achieved...

Conclusion:

Considering the data mentioned above and the topics discussed, it is possible to note a global improvement of the situation in Colombia.

While this country was severely troubled by a complex conflict, with many areas controlled by guerrillas, narco traffickers, paramilitarism and dissident armed groups, generating massacres and mass violations, resulting in more than 8 million deaths over fifty-two years, Colombia has now established an official status of peace in its territory, through an unprecedented Peace Agreement considered as an example of transitional justice and post-conflict process on the international stage. As seen above, this model of transitional justice is almost the first in the world that effectively guarantees justice, truth and reparation instead of sacrificing one in exchange for another.

Regarding human rights, the situation has improved overall since the Peace Agreement. The thematic of their protection has been inserted in the agenda of the government and put in the center of the negotiations as a cornerstone of the Peace Agreement, to design the portrait of a new Colombia, concerned about the respect of the fundamental rights of its civilians. Even if the situation remains preoccupying on several points, it is important to note the tremendous efforts made to guarantee their protection, through the creation of many institutions aiming at their enforcement.

The condition of women has also been improved, by the insertion of a gender focus on the government agenda and the opening of minds through society, leading to their empowerment. Yet, violence continues across the country and even if civilians are less affected than during the armed conflict, the main targets today are those fighting for the Peace Agreement to be fully implemented and efficient, struggling for their rights and the rights of their communities, i.e. social leaders and human rights defenders. The obstacles put by the government for the full implementation of the agreement, lack of resources and delays are also of a great concern. Nonetheless, comparative studies of other peace processes show that not returning to the armed conflict during the first two years after the signing of the agreement is an important milestone that

²¹⁸ “Bachelet briefs States on Colombia, Cyprus, Guatemala, Honduras, Iran, Myanmar, Sri Lanka, Venezuela and Yemen”, GENEVA (20 March 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24377>

augurs well for the chances of success²¹⁹, and it is precisely the case in Colombia where the country struggles for peace and the majority of ex-combatants have not returned to fight.

In conclusion, even if the country has not returned to peace yet, many indicators show that the most important issues have been identified and that the remedies for their resolution have been settled. Indeed, it is reasonable to consider that it is too early to assess what will be the long-term effects for peace in Colombia, but that the efforts made will probably be rewarded at a certain point.

²¹⁹ “Peace Accord Implementation in Colombia Continues to Progress Two Years In Media Advisory: April 9, 2019”
https://kroc.nd.edu/assets/316152/190409_pam_media_advisory_final.pdf

- Map of Colombia²²⁰:



²²⁰ <http://annamapa.com/colombia/>

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