

Short Briefing and Recommendations for the United Nations (UN) Universal Periodic Review (UPR) on Colombia in Geneva, May 2018

Colombia will engage in a second Universal Periodic Review (UPR) process in May 2018, Ireland made some important recommendations to Colombia during the first review process. These covered issues such as women and conflict-related violence, human rights defenders and extrajudicial killings. All of which we have referred to in this document.

ABColumbia welcomes the opening of an Irish Embassy in Bogota which increases the opportunity for greater involvement by the Irish government in the Colombian peace process. Ireland is in a unique position, having lessons that it can share from its own process (both good and bad), this background enables Ireland to act both as honest broker and at the same time to use its legitimacy and diplomatic goodwill to encourage the Colombian government, when necessary, to comply with its commitments on peace building and protecting HRD.

This document is designed to provide Ireland with recommendations, drawn from ABColumbia members following discussions with our partners in Colombia, that can be made to the Colombian government during the UPR process.

Peace Process

Firstly, it is pertinent to highlight the important achievement of a Peace Accord between the FARC Guerrilla and the Colombian Government signed in November 2016, along with, the completion of the disarmament of the FARC and its transition to a political party, both of which constitutes a significant step forward from Colombia's last Universal Periodic Review (UPR) in 2013.

Secondly, on 8 February 2017, the Government of Colombia officially initiated peace negotiations with the ELN, the second largest of the Guerrilla Groups (currently suspended), in Quito, Ecuador. The six agenda items include: societal participation in the construction of peace; democracy for peace; transformations for peace; victims; end of the armed conflict; and implementation. They are also engaged in confidential talks with one of the largest of the neo-paramilitary groups the *Autodefensas Gaitanistas de Colombia (AGC)*.

Conflict, Poverty and inequality

Colombia remains is the most unequal country in the region in terms of access to land, with 81% of land concentrated in the hands of 1% of the population.ⁱ The issue of property distribution is intrinsically linked to the social inequality that persists in the country. In rural areas there are particularly high poverty rates (38.6% live in poverty)ⁱⁱ, inadequate services and limited economic opportunities. Land distribution and social inequality have played a central role in the Colombian conflict.

Poverty levels increased in 2016 after a period of reduction between 2002 and 2015. Although the Government prioritised measures to address poverty, inequality and access to basic services,ⁱⁱⁱ the lack of compliance with commitments in respect of these priorities led to mass protests in 2017 in the Pacific Coastal region e.g. in Chocó and Buenaventura.^{iv} National statistics show 62.8% (2015) of the population of Chocó living below the poverty line in a department where 95% of the inhabitants are ethnic minorities, the lack of action on the part of the State to implement commitments made to address health and education and other basic needs has led to the conclusion that structural racism exists in this region.^v

The sustainability of the Peace Process requires addressing several challenges: addressing social conflicts, particularly related to issues such as social exclusion, unmet basic needs, social and environmental impacts of extractives, lack of local infrastructure, and the concentration of land and disputes over territories. As well as, quick and effective interventions aimed at strengthening the presence of local State institutions.^{vi}

Displacement and Land Restitution

“If we do not have land, we do not have peace.”

Edilia Mendoza, Colombian Rural Women’s Platform for Policy Advocacy,

Forced displacement and land grabs have been a central part of the Colombian conflict: as of 31 December 2016, over seven million people (7,246,000) had been internally displaced. Land remains at the heart of the struggle for peace with 56,000 displaced in the first six months of 2017 due to violence and conflict. In the first two months of 2017, Chocó department saw some of the most intense conflict; clashes between the ELN and neo-paramilitary groups led to the displacement 3,549 people on the Colombian Pacific Coast.^{vii} The Colombian State is seen as largely absent in rural areas like Chocó and failing to provide adequate protection for the civilian population. Other communities are confined in their territory due to hostilities, landmines and other threats. For the possibility of return to their land is obstructed by armed groups fighting for control of areas previously held by the Revolutionary Armed Forces of Colombia (FARC), some land cannot be restituted because it is being used for large-scale agriculture and mining, or has been contaminated by illegal mining and for others the lack of promised resources and security mean they are threatened and newly displaced. In September 2017, the UN Committee on Economic, Social and Cultural Rights (CESCR)^{viii} concluded that there was a lack of guarantees for the application of human rights due diligence in respect to the use of land by businesses; the ILO Convention 169 on indigenous and tribal peoples was not being effectively implemented prior to a large-scale project; and that the government need to be able to guarantee the effective functioning of mechanisms and registers established for land restitution.

People have been displaced and dispossessed of nearly eight million hectares of land (Dec 2016).^{ix} Therefore the Land Restitution Law 1448 (2011) is an important piece of legislation. It has an implementation period of 10-years.^x After over six years of implementation only 3.2 % of land has received a judicial sentence for restitution. Civil Society Organisations are therefore asking that the implementation period be extended. This, and the full implementation of the Agrarian Chapter of the Peace Accord which contains elements that will help to support sustainable returns.

Colombian women lack equality when it comes to land. They play an essential role in agriculture however, this is not matched by equality of access to land. Only 26 percent of landholdings are run by women, these tend to be smaller than their male counterparts (less than 5 hectares), they also have less access to machinery, credit and technical assistance.^{xi} The Agrarian Chapter in the Peace Accord prioritises women in the areas mentioned, however, most of the legislation for enacting the Agrarian Chapter has not been processed through the fast track-mechanism. It will now have to be processed through ordinary procedures, and as such, is unlikely to be enacted before the next elections in March (Congress) and May (Presidential) 2018. This is particularly

worrying given that some of the presidential candidates have stated that they will not enact into legislation all aspects of this chapter.

The CESCR also expressed concern at the limited progress made in applying Constitutional Court decisions in favour of indigenous and Afro-Colombian peoples, that order the implementation of ethnic protection plans (ruled in 200X and still not applied) for indigenous peoples identified as being at risk of physical and cultural extinction, and for Afro-Colombian populations identified as extremely vulnerable. The Government has the opportunity now with the PDETs outlined in the Peace Accord to directly incorporate the protection plans developed by communities into the PDETs and to ensure that these have sufficient resources to be implemented as part of its commitments in the Peace Accord. These plans have been waiting to be implemented and are crucial to the survival of these communities.

Recommendation

- **That the Colombian Government extends the period of time to implement the Land Restitution Law 1448**
- **Colombian Government ensures that the ethnic protection plans for indigenous peoples that are at risk of physical and cultural extinction and populations of African descent that are extremely vulnerable own development plans are incorporated into the PDETs**
- **That the Colombian Government fully implements the Agrarian Chapter of the Peace Accord which prioritise access to land and resources for rural women from marginalised and vulnerable groups.**

Situation of Human Rights Defenders

Even though Colombia accepted 33 recommendations on human rights defenders in the 2013 UPR, including that of Ireland on HRDs, the situation for those who defend human rights has become even more critical. According to the Colombian Human Rights Ombudsman's Office documented the killing of 204 defenders and social leaders, in addition to 5 cases of enforced disappearance, between 1 January 2016 and November 2017, the majority of whom had been killed in areas vacated by the FARC when they demobilised.^{xiii} In the first 11 months of 2017, according to Somos Defensores there was a 32% increase on the number of defenders killed during the same period in 2016.^{xiii}

Since 2013 most of the killings have been concentrated in rural areas of the country and carried out against three groups of defenders:

- (i) land and territorial rights defenders, mega-project opponents and environmentalists;
- (ii) victims and the organisations that accompany them;
- (iii) peacebuilding activists and those who lead processes for social and political capacity-building.

Front Line's 2017 Report documented 312 HRDs killed globally in 2017, Colombia accounts for 30% of these that means almost 1:3 defenders killed worldwide were Colombian; making Colombia the most dangerous country for HRDs to carry out their work.^{xiv} According to a recent presentation to the Inter-American Court of Human Rights impunity for crimes against HRDs is over 90 percent.^{xv} The UN Verification Mission to Colombia 2018 report expresses concern for the growing number of murders of social leaders, human rights defenders, land restitution advocates and promoters of coca substitution programmes.^{xvi}

Just over a year ago the Colombian Government put into place a stabilisation plan called Plan Victoria, this however failed to produce results, therefore in 2017 the Government announced various additional actions, such as, the Horus Plan, which aims to establish a more permanent and visible presence of security forces in some sensitive areas, strengthening of the Early Warning System (Decree 2124 of 2017), collective protection schemes for communities (Decree 2078 of 2017), and the establishment of a special investigation unit of the Attorney General's Office, focussed on killings of HRDs. However, Colombia's downfall has always been implementation. The UN Secretary-General emphasised this when he stated, in reference to these new measures, "[they] will make a difference **if applied with determination and the necessary resources**".^{xvii} Ireland in the last UPR process on Colombia recommended that there should be "...public recognition and support [given] to human rights defenders, [to] sanction those who make unsubstantiated allegations against human rights defenders... [to] strengthen [State] protection programmes, [to] investigate and punish crimes against human rights defenders." If this recommendation is to be fulfilled then **the emphasis must be placed on implementation, sufficient resources and political will to ensure effective implementation** rather than continuously producing new plans.

Unfortunately, we have seen these new mechanisms undermined by statements like that made by the Colombian Minister of Defence Luis Carlos Villegas, who stated in December 2017, that the vast majority of killings of human rights defenders in Colombia was due to "problems in their personal lives" or their "involvement in illegal economic activity", these statements are a denial of reality and amount to nothing less than a smear campaign against HRDs. The Attorney General recognised a "somewhat systematic approach to these killings [of HRDs]," on 19 December 2017, which shows movement, away from the Statement made by the Defence Minister. However, the lack of Government acceptance that these killings are systematic means that the crimes are investigated on an individual basis. Whereas if they were investigated collectively, analysis of the patterns of killings could lead to the identification of the authors as well as the perpetrators. Colombia will need to focus on effective implementation and on bringing to justice not only the perpetrators but also the authors of these crimes, some of whom are powerful politicians and businesses. Only then will an effective deterrent be established.

In addition to the extremely high level of impunity for crimes against HRDs, other examples of high impunity rates include:

Enforced disappearance: this practice in Colombia was wide-spread, to give a sense of the enormity of the crime, Colombia's enforced disappearances between 1970 and 2015 amount to more than Argentina, Chile and Uruguay added together^{xviii} with the Historical Memory Centre in Bogota having documented 60,630 people as enforced disappearances.^{xix} The slowness of the legal process is demonstrated by the Attorney General's Office opened 12,056 cases of enforced disappearance between 2012 and April 2016. As of May 2016, 97.9% were at the preliminary investigation stage and only 0.89% at the prosecution stage.^{xx} Impunity remains extremely high.

The National Centre of Historical Memory reports that the *Autodefensas Unidas de Colombia* (right-wing paramilitaries) and Security Forces are jointly responsible for 74.3% of victims of targeted killings and 80% of the victims of massacres where the responsible actor was identified.¹ This responsibility rises noticeably to 83.9% in cases of enforced disappearance.²

Recommendations

¹ Centro Nacional de Memoria Histórica, ¡Basta Ya! Memorias de Guerra y Dignidad. Resumen. Bogotá: November 2013 p.96 and 98. Cited in Coordination Colombia Europe – United States (CCEEU), El Fuero Penal Militar Frente Al Proceso De Paz, September 2015

² Centro Nacional de Memoria Histórica. Basta Ya. Memorias de Guerra y Dignidad. Bogotá: Julio de 2013 p.33

- **That Colombia invites the UN Special Rapporteur on the Situation of Human Rights Defenders to Colombia on an official visit.**
- **That Colombia recognises the competence of the UN Committee on Enforced Disappearances to receive and examine communications – from or in favour of victims – as well as from other State Parties**

Extrajudicial killings: The Public Prosecutor’s Office registered over 4,000 investigations into cases of extrajudicial killing. However, these cases continue and in 2015 there were 65 new cases, 16 of which were ‘false positives’. Slightly less in 2016 and in 2017 new cases of killings of small-scale farmers during military operations, and 2 FARC guerrillas were killed by the security forces during the Bilateral and Definitive Ceasefire and Cessation of Hostilities. As of December 2016, there were 2,315 open investigations into extrajudicial killings and only 133 persons convicted. This is particularly concerning given that security forces are responsible for the protection of citizens. It will be essential to prosecute and to remove from the security forces, both the executors of the crime and those with command responsibility.

The ICC Office of the Prosecutor (OTP) in their December 2017 report, identified 29 commanding officers reportedly in charge of divisions and brigades between 2002 and 2009 under whose command high numbers of “false positives” killings were allegedly committed. The OTP only focuses on those allegedly most responsible for the most serious crimes. The Colombian authorities have instituted proceedings against 17 of the 29 commanders identified, however, the OTP has yet to receive “any detailed information ... on the cases being reportedly investigated and on whether concrete and progressive investigate steps have been or are being taken”.

Recommendation

- **Ensure that the investigation and prosecution against commanding officers in the Security Forces for “false positive” extrajudicial killings are prioritised.**

Women and WHRDs

On 13 January 2018 Blanca Nubia Díaz, human rights defender, in Bogota was sedated, kidnapped, threatened and her hair cut. The threats were specifically related to her campaigning work. The cutting of her hair was also clearly a gender-based attack.^{xxi}

Over the last five years, the women’s movements have gained visibility, particularly due to their work during the negotiations between the FARC and the Colombian Government, which achieved important results such as, the exclusion of amnesties and pardons in cases of sexual violence committed in the context of the armed conflict and agreements which will address some of the inequalities faced by women. In a society strongly characterised by patriarchy, strengthening of the role of women and greater publicity has contributed to an increase in threats and aggressions against them. Children of WHRDs are also threatened, as was the case with the daughter of Maria Leonilda Ravelo Grimaldo in Colombia, who had a gun pointed at her by two men on a motorcycle^{xxii}

Women and Sexual violence

Despite the Colombian Peace Talks and the reduction of combat violence, women have experienced an increased level of conflict-related sexual violence from 149 (2000-2009) to 400 women per day (2010-2015); every day, 21 girls between the ages of 10 and 14 are victims of sexual violence.^{xxiii} A recent survey indicated that sexual violence towards women and girls was

increasing outside of the conflict. This is concerning, because it suggests a “normalisation” and deeply entrenched level of violence towards women that is likely to continue in post-conflict. The lack of prosecutions of members of armed actors, both legal and illegal, created by Law 975 of Justice and Peace of 2005, means that effectively for this crime there has been legislative immunity which can translate into a “licence to rape”. According to UN Women, ‘[t]ransitional justice can provide an opportunity to transform both inadequate laws and harmful social norms, by ensuring that the gravity of sexual violence is registered on the historical record and in the public memory... For peacebuilding and reconciliation to take root, justice must be done, and be seen to be done, for sexual violence survivors.’^{xxiv} There is concern in Colombia that the impunity created by the Justice and Peace Law will be repeated due to the victims’ fear of reporting and the lack of confessions by the aggressors.

Most concerning are the changes made to the transitional justice system when it was processed through the Congress. Here they removed the right for victims (including women victims of conflict sexual violence) to be accompanied in the hearings by their own lawyers and/or human rights defenders that have been supporting them. This is likely to reduce dramatically the number of women who will be willing to speak out about this crime. A crime that is already sufficiently difficult to pursue.

In addition, Legislative Act 01 of 2017 on Command Responsibility present obstacles for victims of sexual violence to access justice. The standard of knowledge to hold commanders criminally responsible under international humanitarian law is, if they knew or had reason to know and should have known about the crimes. Command responsibility amended by Congress and that is now enacted into law, departs from the definition under international law and as a result could obstruct efforts to hold military commanders accountable to the extent international law requires.

In the report of the Public Prosecutor for the International Criminal Court, there was ongoing investigation into paramilitary commanders in relation to sexual and gender-based violence (SGBV), as well as FARC and ELN, but her report states that, “...there was no specific information on on-going or completed investigations or prosecutions against State agents made available...”^{xxv}. This is particularly concerning since the impact of the State Security Forces’ involvement in sexual violence has a particularly devastating effect, because they are mandated to protect the civilian population. When sexual violence is committed by the Security Forces, the civilian population are left with no authority to whom they can turn for justice.^{xxvi} It is therefore, essential that those in the security forces responsible for this crime, are prosecuted, along with the paramilitaries and the guerrilla.

Recommendations for Ireland to make to the Colombian State during the UPR process:

- **To ensure effective implementation of the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz-JEP) specifically in cases of conflict related sexual violence. By strengthening measures to prevent, sanction and eradicate violence and discrimination against women exacerbated by the armed conflict, including concrete efforts to fulfil the commitments made in the Peace Accord to: investigate, sanction and provide reparation for human rights violations against women who have suffered from conflict related gender-based violence.**

In addition to the UPR recommendations in this document we would like to make a recommendation to the Irish government that they visit the rural regions that are most effected by the conflict. The situation in the cities differs considerably from the situation in the countryside and in rural towns. These visits would demonstrate the commitment that Ireland has to the work of civil society and the protection of HRDs.

Tuesday, 30 January 2018

End notes:

- ⁱ Oxfam, Colombia's challenge: addressing land inequality and consolidating peace, July 2017
- ⁱⁱ Colombia's National Administrative Department of Statistics, 2016
http://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/bol_pobreza_16.pdf
- ⁱⁱⁱ <https://soundcloud.com/lsepodcasts/the-legacy-of-peace-audio>
- ^{iv} <https://colombiareports.com/colombia-poverty-and-inequality-statistics/>
- ^v Comunicado público Respaldamos la movilización del Pacífico por la vida digna y la paz Bogotá, 24 de mayo de 2017
- ^{vi} IACHR Report, 2016, Chapter V1, Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports, Follow-up on Recommendations Made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on The Human Rights Situation In Colombia
- ^{vii} UNHCR, 'Forced displacement growing in Colombia despite peace agreement' (10th March 2017), available at <http://www.unhcr.org/uk/news/briefing/2017/3/58c26e114/forced-displacement-growing-colombia-despite-peace-agreement.html> (accessed 10th July 2017).
- ^{viii} Point 17
- ^{ix} <http://www.internal-displacement.org/countries/colombia/>
- ^x An extension for its implementation is being considered.
- ^{xi} Oxfam, Colombia's challenge: addressing land inequality and consolidating peace, July 2017
- ^{xii} <https://canal1.com.co/noticias/204-lideres-sociales-han-sido-asesinados-en-23-meses-defensoria-del-pueblo/>
- ^{xiii} Somos Defensores cited in https://colombia.unmissions.org/sites/default/files/en_-_n1745936.pdf
- ^{xiv} Annual Report on Human Rights Defenders at Risk in 2017, 22 January 2018
- ^{xv} 165th Session of the Inter-America Commission of Human Rights, *Investigaciones de graves violaciones de derechos humanos y la implementación del Acuerdo de Paz en Colombia: Between 2009 -2016 there was approximately, 90 per cent impunity rate in relation to the crimes against HRDs.*
- ^{xvi} UN Verification Mission to Colombia <https://colombia.unmissions.org/en/90-day-report-secretary-general-security-council-un-verification-mission-colombia>
- ^{xvii} (writer's emphasis)
- ^{xviii} Semana, Informe Especial: 60.630 desaparecidos, 19 Nov 2016
<http://www.semana.com/nacion/articulo/desaparicion-forzada-en-colombia-investigacion-completa/505880>
- ^{xix} Antioquia, la región con más casos de desaparición forzada
- ^{xx} ABColombia, Enforced Disappearances Continue in Colombia, 2016
- ^{xxi} Organizaciones de la Sociedad civil Internacional rechazan los hechos de violencia en contra de la lideresa Blanca Nubia Díaz y exigen al Estado colombiano esclarecer los hechos y sancionar a los responsables, January 2018.
- ^{xxii} Frontline Defenders, Annual Report 2017 p7
- ^{xxiii} Corporación Sisma Mujer: La erradicación de las violencias contra las mujeres: un paso definitivo hacia la paz - Informe Especial, Boletín No. 11, 25 November 2016.
- ^{xxiv} Report of the UN Secretary-general on Conflict-Related Sexual Violence 15 April 2017
- ^{xxv} International Criminal Court, Report on Preliminary Examination Activities, 2017 para142
- ^{xxvi} UN Security Council, Conflict-related sexual violence, Report of the Secretary-General, January 2012.