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человека и доклады Управления Верховного

Комиссара и Генерального секретаря

**Положение в области прав человека в Колумбии****Доклад Верховного комиссара Организации Объединенных Наций  
по правам человека\* \*\****Резюме*

В настоящем докладе Верховный комиссар Организации Объединенных Наций по правам человека описывает положение в области прав человека в Колумбии в 2019 году, уделяя при этом основное внимание положению правозащитников, использованию военнослужащих для целей обеспечения общественной безопасности, борьбе с безнаказанностью и неравенству при осуществлении экономических, социальных и культурных прав. Верховный комиссар также проводит оценку осуществления правозащитных аспектов мирного соглашения, подписанного между правительством Колумбии и Революционными вооруженными силами Колумбии – Армией народа (РВСК-АН). В докладе Верховный комиссар выносит рекомендации, призванные содействовать улучшению положения в области прав человека.

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, который прилагается к резюме, распространяется только на языке представления и на испанском языке.

\*\* Настоящий доклад был представлен после установленного срока с целью отражения событий, имевших место в ноябре и декабре 2019 года.



## Annex

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

## I. Introduction

1. The present report provides an assessment of the human rights situation between 1 January and 31 December 2019 in Colombia. In accordance with the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace – the peace agreement signed between the Government of Colombia and the Revolutionary Armed Forces of Colombia–People’s Army (FARC-EP)<sup>1</sup> – the present report also examines the implementation of human rights aspects of the peace agreement as pertains to transitional justice, security guarantees, comprehensive rural reform and victims’ rights.

2. In 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia conducted 1,151 field missions and 376 capacity-building activities for State institutions and civil society, and followed up on 250 cases of alleged human rights violations.

3. OHCHR provided technical assistance to State institutions at the national, department and municipal levels, notably to the Office of the Ombudsman, the Office of the Attorney General, the Office of the Procurator General, the Ministry of Defence and the National Land Agency. It also collaborated with the special procedures of the Human Rights Council and with the inter-American human rights system.

4. On 30 October 2019, the host country agreement between the Government and OHCHR was renewed until 31 October 2022.

## II. Context

5. OHCHR stresses the importance of continuing the efforts to advance in the implementation of all chapters of the peace agreement, in a comprehensive and sustained manner, especially in rural areas and with a particular focus on victims’ rights and general enjoyment of human rights. As this is a long-term process, continuing support and commitment by Colombian society and the Colombian authorities is necessary, as well as support from the international community. OHCHR recognizes the efforts made by the Government and FARC-EP to advance with the reintegration of ex-combatants. According to the latest report of the United Nations Verification Mission in Colombia, the number of former FARC-EP members who were in academic activities had risen from 2,461 in January 2019 to 5,059 in October 2019.<sup>2</sup> While the vast majority of former members of FARC-EP remained committed to the peace process, OHCHR was deeply concerned that a number of former commanders, including two head negotiators, had returned to arms.<sup>3</sup>

6. OHCHR continued to observe persistently high levels of violence generating serious human rights violations. Of particular concern were attacks against human rights defenders and indigenous peoples, and an increase in the number of cases of alleged arbitrary deprivation of life, as well as of grave human rights violations committed against children in the context of violence and armed conflict. OHCHR consistently highlighted the need to address, especially in rural areas, structural causes of violence, which are linked to lack of access to human rights.<sup>4</sup>

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<sup>1</sup> In the peace agreement, see points 3.4.3; 3.4.7.4.2; and 5.1.2; paras. 60 and 62 read in conjunction with para. 53 (d); and points 6.3.4 and 6.4.2.

<sup>2</sup> S/2019/988, para. 41.

<sup>3</sup> See <https://colombia.unmissions.org/comunicado-de-prensa-de-la-misi%C3%B3n-de-verificaci%C3%B3n-de-la-onu-en-colombia-agosto-292019>.

<sup>4</sup> A/HRC/34/3/Add.3, para. 45; A/HRC/37/3/Add.3, paras. 14–15; and A/HRC/40/3/Add.3, paras. 11 and 18–19 et al.

7. According to the police, the national homicide rate in 2019 was 25 per 100,000 persons, which reflects an endemic level of violence.<sup>5</sup> OHCHR recorded 36 massacres,<sup>6</sup> involving 133 deaths, the highest number that it had recorded since 2014. The departments most affected were Antioquia, Cauca and Norte de Santander, where ongoing disputes to control illicit economies were a major cause of this violence.

8. The National Liberation Army (ELN) operated mainly in Antioquia, Arauca, Cauca, Chocó, Nariño and Norte de Santander, persistently breaching international humanitarian law. On 17 January, ELN perpetrated an attack with improvised explosive devices against a police academy in Bogotá, killing 22 persons and triggering the breakdown of dialogue between the Government and ELN. The United Nations in Colombia condemned this attack.<sup>7</sup>

9. Other violent groups continued to perpetrate threats, homicides and other serious human rights abuses, and to cause displacement. OHCHR observations on the criteria of intensity and organization<sup>8</sup> indicate that such groups, for example the Popular Liberation Army (EPL) in Cauca and Norte de Santander, and groups composed of former members of FARC-EP in Caquetá, Meta and Guaviare, would not currently be categorized as armed groups under international humanitarian law.

10. Criminal groups, such as the Autodefensas Gaitanistas de Colombia (also known as the Clan del Golfo), the Caparros and the Mafia, and transnational criminal organizations, employed extreme violence in disputes over the control of illicit economies. These groups operated mainly in Antioquia, Cauca, Chocó, Córdoba, Guainía, Huila, La Guajira, Magdalena, Nariño, Norte de Santander, Putumayo and Valle del Cauca.

11. Efforts to establish a comprehensive State presence, particularly of civilian authorities, including the Office of the Attorney General and the police, have been insufficient, especially in rural areas. The five strategic zones for comprehensive intervention, established by the Government through Decree 2278 of 2019, were created to address this vacuum. However, OHCHR observed that State presence in these areas remained predominantly military and that the pace of establishing a stronger presence of civilian authorities was slow.

12. On 27 October, regional elections were held to elect departmental governors and assemblies and municipal mayors and councils. During the electoral process, OHCHR documented the killing of seven candidates. Nonetheless, the election day was peaceful compared to previous regional elections. Political parties and social movements other than the currently governing coalition won several important positions, including the mayor's offices in Bogotá and Medellín.

13. OHCHR observed that women and LGBTI persons continued to face difficulties in participating in electoral processes. Women accounted for 37.2 per cent of the candidates,<sup>9</sup> and 2 women were elected as governors (6.2 per cent) and 132 as mayors (12 per cent), compared to 5 and 134 respectively in 2015.<sup>10</sup> LGBTI persons accounted for only 0.06 per cent of the candidates.<sup>11</sup> Nevertheless, the number of LGBTI persons elected increased to 22 (from 6 in 2015) and includes the mayor of Bogotá.

<sup>5</sup> The World Health Organization considers that there is endemic violence when the homicide rate is above 10 per 100,000 inhabitants.

<sup>6</sup> A massacre is said to occur when three or more persons are killed in the same incident (at the same place and time) by the same alleged perpetrators.

<sup>7</sup> See <https://nacionesunidas.org.co/noticias/las-naciones-unidas-en-colombia-repudian-atentado-contra-la-escuela-de-cadetes-de-policia-general-santander/>.

<sup>8</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Boškoski and Tarčulovski*, Case IT-04-82-T, Judgment (Court of First Instance) of 10 July 2008, paras. 199–203; and International Tribunal for the Former Yugoslavia, *Prosecutor v. Haradinaj, Balaj and Brahimaj*, Case IT-04-84-T, Judgment (Court of First Instance) of 3 April 2008, para. 49.

<sup>9</sup> See <https://mlr.vicpresidencia.gov.co/Paginas/prensa/2019/Con-mas-mujeres-elegidas-a-cargos-publicos-se-fortalece-la-democracia-Vicpresidenta.aspx>.

<sup>10</sup> See [https://www.registraduria.gov.co/IMG/pdf/boletin\\_rnec\\_-\\_onum.pdf](https://www.registraduria.gov.co/IMG/pdf/boletin_rnec_-_onum.pdf).

<sup>11</sup> Further information is available from Caribe Afirmativo on the page “Candidatos abiertamente LGBTI de cara a las próximas elecciones regionales” available at <https://caribeafirmativo.lgbt/candidatos-abiertamente-lgbt-cara-las-proximas-elecciones-regionales/>.

14. OHCHR values the efforts of the Government to address the influx of nearly 1.7 million Venezuelan migrants who have arrived in Colombia since 2015. OHCHR also values the adoption of measures and policies, and the allocation of resources, aimed at guaranteeing the human rights of this population.

15. During 2019, mostly peaceful protests occurred in Barranquilla, Bogotá, Cali, Medellín, Neiva, Pasto and Popayán, and in some rural areas. Protesters opposed government policies relating to pensions and labour and tax reforms, and called on authorities to fight corruption, implement the peace agreement and resume dialogue with ELN. OHCHR noted with concern that, in some cases, the police responded disproportionately to isolated incidents of violence.<sup>12</sup>

### III. Situation of human rights defenders

16. Defending human rights continued to be a high-risk activity in Colombia.<sup>13</sup> In 2019, OHCHR documented 108 killings of human rights defenders; this included the killing of 15 women and 2 LGBTI defenders. Although statistics convey the gravity of the problem, reducing the analysis to figures conceals the structural causes of violence against human rights defenders.

17. Of the 108 killings documented by OHCHR, 75 per cent occurred in rural areas; 86 per cent in municipalities with a multidimensional poverty index above the national average; 91 per cent in municipalities where the homicide rate indicates the existence of endemic violence; and 98 per cent in municipalities where illicit economies, and ELN, other violent groups and criminal groups, are present. Fifty-five per cent of these cases occurred in four departments: Antioquia, Arauca, Cauca and Caquetá. The sectors most affected continued to be those defending the rights of communities and ethnic groups – amounting to 65 per cent of all killings and sustaining a trend documented by OHCHR since 2016.

18. The killing of an Embera indigenous human rights defender in April in Riosucio, Chocó, was emblematic. This municipality was marked by a high level of multidimensional poverty, by endemic violence and by the presence of ELN and criminal groups fighting to control drug trafficking, illegal mining and the smuggling of migrants. The defender was killed because his advocacy on behalf of his community clashed with the interests of these groups. His killing exacerbated the marginalization of his community and decreased the likelihood of new leadership stepping forward.

19. The rigorous application of directive 002/2017 of the Office of the Procurator General<sup>14</sup> holds the promise of increasing the protection, and recognition of the legitimacy and importance, of human rights defenders.

20. OHCHR welcomes the recognition by the President, Iván Duque Márquez, of the legitimacy and importance of human rights defenders.<sup>15</sup> Nevertheless, human rights defenders participating in judicial proceedings involving high-level State officials and members of the military continued to be harassed. In September, OHCHR documented a case in Bogotá in which a human rights defender involved in a judicial process regarding an alleged arbitrary deprivation of life had been threatened. Sensitive information concerning the case was later stolen.

21. OHCHR continued to document attacks against representatives of community action councils (*juntas de acción comunal*).<sup>16</sup> Especially in rural areas, such councils serve as the main body for communities' political participation and for the promotion of development and human rights initiatives. While noting a significant reduction from 2018, when it recorded

<sup>12</sup> See paras. 86–91 below.

<sup>13</sup> See <https://www.hchr.org.co/index.php/informacion-publica/comunicados-de-prensa/440-ano-2019/9115-cidh-y-las-presencias-de-onu-derechos-humanos-reiteran-su-llamado-para-la-creacion-de-un-ambiente-propicio-y-seguro-para-quienes-defienden-los-derechos-humanos-en-la-region>.

<sup>14</sup> A/HRC/37/3/Add.3, para. 18.

<sup>15</sup> See <https://id.presidencia.gov.co/Paginas/prensa/2019/190613-No-podemos-dejar-liderazgo-social-sea-estigmatizado-ninguna-forma-estigmatizacion-puede-ser-permitida-ni-tolerada-Pr.aspx>.

<sup>16</sup> A/HRC/37/3/Add.3, para. 43.

46 cases, OHCHR documented 30 killings of representatives of community action councils in 2019.

22. Killings of women human rights defenders increased by almost 50 per cent in 2019, compared to 2018. On 5 January, in Magdalena, an Afro-Colombian woman who was defending land allocation and the rights of forcibly displaced women was killed because she had denounced the presence of a criminal group. Prompt and effective implementation of the Comprehensive Programme of Guarantees for Women Leaders and Human Rights Defenders<sup>17</sup> should serve as an important tool for prevention and protection, and for the investigation of attacks against women human rights defenders.

23. In 2019, the country's Foundation for Press Freedom (Fundación para la Libertad de Prensa) registered 113 threats and 360 attacks against media workers. OHCHR documented the killing of two journalists in Arauca and recorded attacks against journalists in Bogotá, Cesar and Magdalena.

24. In 2019, several mechanisms, such as Round Tables for Life (Mesas por la Vida), the Life Leads campaign (Campaña Lidera la Vida) and the Summit for Social Dialogue, explored how to better protect human rights defenders and build consensus on key challenges. Colombia has a legal framework to prevent and address attacks against human rights defenders. However, coordination among State institutions – particularly between those at the national and the regional levels – to ensure the full implementation of this framework, remained a serious challenge. The Timely Action Plan, initiated by the Ministry of the Interior in December 2018, was developed to improve such coordination. To increase the effectiveness of this plan, broader and more sustained participation of regional authorities and civil society should be prioritized.

25. Colombia maintained other mechanisms relevant to the protection of human rights defenders. The National Commission on Security Guarantees should be more regularly convened in order to fulfil its full role pursuant to the peace agreement, particularly concerning the dismantlement of criminal groups that succeeded the paramilitary organizations and were often responsible for killings of human rights defenders. The Intersectoral Commission for Rapid Response to Early Warnings should sharpen its focus on human rights defenders, especially by defining coordinated and concrete measures to implement actions based on recommendations from the Ombudsman's early warning system.

26. The National Protection Unit, of the Ministry of the Interior, made significant efforts to respond to the extraordinarily high demand for individual protection measures. Still, the measures granted were not always adequate in the rural contexts in which most human rights defenders were killed. In 2019, six human rights defenders were killed in rural areas of Cauca, Chocó, Nariño and Risaralda, despite protection measures. Prevention and early warning should be prioritized over temporary, individual and reactive protection measures, which do not address the structural causes behind the attacks.<sup>18</sup>

27. OHCHR highlights the need to increase collective protection measures. Such measures constitute a prevention mechanism, inasmuch as they seek to address risks faced by communities and organizations, through the coordination of different authorities, in order to advance human rights guarantees. The 2019 budget for collective protection measures represented merely 0.22 per cent of the budget of the National Protection Unit, and even then, the implementation of collective protection measures was often hampered by coordination issues between national, departmental and municipal institutions.

28. OHCHR appreciated the efforts of the Office of the Attorney General to investigate the cases that it had reported, and noted some progress in 55 per cent of those cases, all of which had occurred between 2016 and 2019.<sup>19</sup> However, challenges persisted in regard to the prosecution of intellectual authors of attacks against human rights defenders.

<sup>17</sup> See <https://colombia.unwomen.org/es/noticias-y-eventos/articulos/2018/06/comunicado-programa-garantias>.

<sup>18</sup> See <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23518&LangID=E>.

<sup>19</sup> The accused had been convicted in 16 per cent of the cases, 20 per cent were at the trial stage, indictments had been issued in 7 per cent of the cases, and a valid arrest warrant had been delivered in 11 per cent of the cases.

29. In order to increase their effectiveness, prevention strategies – such as the Comprehensive Public Policy on Guarantees for Human Rights Defenders and the preventive aspects of the current concept for a human rights national action plan – should refocus on the broad, diverse and inclusive participatory processes they had originally envisaged. Furthermore, the authorities should focus on identifying and comprehensively addressing structural causes of violence that affect human rights defenders.

## **IV. Access to justice and the fight against impunity**

### **A. Integrated System for Truth, Justice, Reparation and Non-recurrence**

30. OHCHR observed progress in the implementation of the Integrated System for Truth, Justice, Reparation and Non-recurrence established under the peace agreement. Throughout 2019, the system extended its territorial reach through the establishment of 66 field presences, facilitating victims' participation.

31. The mechanisms of the Integrated System made positive efforts to include an ethnic perspective in their work in order to guarantee prior, free and informed consent, in accordance with international norms and standards. Protocols on relations with indigenous peoples, and for coordination between the special indigenous jurisdiction and the Special Jurisdiction for Peace, were adopted. Furthermore, indigenous peoples had central roles in processes regarding the clarification of truth and the search for disappeared persons.

#### **1. Special Jurisdiction for Peace**

32. OHCHR welcomed the approval of the statute (*ley estatutaria*) on 6 June which provides the Special Jurisdiction for Peace with a firm legal standing. OHCHR provided technical advice to the Special Jurisdiction for Peace that ensure its procedures would comply with international human rights norms and standards, in particular on victims' participation, protection of archives and restorative justice. Key advances were observed in relation to cases of gross human rights violations prioritized by the Special Jurisdiction for Peace (known as macro cases),<sup>20</sup> for example the recovery of victims of alleged arbitrary deprivation of life and enforced disappearance buried in Dabeiba, Antioquia. OHCHR encourages the prioritization of additional macro cases, such as those involving sexual violence and enforced disappearance.

33. On 3 September, the Special Jurisdiction for Peace excluded seven former FARC-EP commanders from its jurisdiction, owing to their non-compliance with prerequisites established in the peace agreement. The Office of the Attorney General has taken on and prioritized investigations into alleged crimes committed by these persons.

34. Threats and attacks against victims and their families, as well as against alleged perpetrators and their representatives involved in proceedings before the Special Jurisdiction for Peace, were reported to OHCHR. Guaranteeing the security of all concerned, particularly through comprehensive protection measures and by systematically and effectively investigating such threats and attacks, remains urgent.

#### **2. Special Unit for the Search for Persons Deemed as Missing in the Context of the Armed Conflict**

35. OHCHR recognizes the efforts of the Special Unit for the Search for Persons Deemed as Missing in the Context of the Armed Conflict to prioritize the participation of families. It commends the participation of victims, including those in exile, and of civil society organizations, LGBTI persons and organizations, ethnic groups and State institutions in the formulation of the National Search Plan.

36. The Special Unit and the National Institute of Forensic Medicine coordinated with each other to locate disappeared victims and address challenges in the identification and custody of unidentified bodies. OHCHR recognizes the collaboration of former members of

<sup>20</sup> See <https://www.jep.gov.co/Infografas/conozcalajep.pdf>.

FARC-EP in the search for disappeared persons and their efforts to contribute to reparations for victims.

### **3. Commission for the Clarification of Truth, Coexistence and Non-Recurrence**

37. During the course of 2019, the Commission for the Clarification of Truth, Coexistence and Non-Recurrence collected approximately 5,500 testimonies from victims and their families, thereby contributing to a deeper understanding of the armed conflict. With the participation of OHCHR, the Commission promoted dialogue to support non-recurrence. The Commission also carried out activities for recognition of victims, with the participation of human rights defenders, of women and LGBTI victims of sexual violence, and, jointly with the Special Unit for the Search for Persons Deemed as Missing in the Context of the Armed Conflict, of families of victims of enforced disappearance.

## **B. Victims and Land Restitution Law**

38. OHCHR welcomed the announcement by the President that the period of implementation of the Victims and Land Restitution Law would be extended.<sup>21</sup> In a public hearing before the Constitutional Court, OHCHR emphasized that any reform to this law should take into account progress made in guaranteeing victims' rights.<sup>22</sup>

39. During 2019, OHCHR facilitated dialogues between, and provided technical advice to, the Land Restitution Unit and indigenous peoples and Afro-Colombian communities, on 14 land restitution processes potentially benefiting 6,647 families. Nevertheless, in some regions, such as Antioquia, Arauca, the south of Bolívar, Catatumbo and Urabá, progress on land restitution was hindered by the dominance of illicit economies on land subject to restitution.

## **C. Access to justice**

40. Access to justice remained a challenge, perpetuating cycles of impunity and violence. The Office of the Attorney General is present in almost half of Colombia's municipalities. Nevertheless, it continued to face difficulties in reaching rural areas, especially in Antioquia, Arauca, Amazonas, Caquetá, Cauca, Chocó, Guaviare, Huila, Meta, Nariño and Vaupés, greatly affecting its capacity to guarantee access to justice for all. This limited presence was attributable to insufficient material, technical and human resources, and especially to a lack of effective protection to allow prosecutors and investigators to safely conduct their work in rural areas. An excessive workload also limited prosecutors' capacity to conduct investigations. An insufficient number of judicial police officers and long delays with forensic support services exacerbated the situation.

41. OHCHR observed instances of authorities in Antioquia, Arauca, Guaviare and Nariño not applying the Office of the Attorney General's protocol regarding situations of alleged enforced disappearance, in particular relating to the immediate initiation of urgent search procedures.

42. OHCHR documented cases of alleged arbitrary deprivation of life by members of the military and the police.<sup>23</sup> In following up on these cases, OHCHR was concerned that the military criminal justice system continued to request jurisdiction over such investigations. In some instances, the Office of the Attorney General even referred cases to the military justice system. In the El Tandil case, in Nariño, the Office of the Attorney General did not take the necessary actions to retain the case within its jurisdiction.

<sup>21</sup> See <https://id.presidencia.gov.co/Paginas/prensa/2019/Presidente-Duque-anuncia-que-presentara-al-Congreso-proyecto-de-ley-con-mensaje-de-urgencia-para-prorrogar-10-anos-191011.aspx>.

<sup>22</sup> See <https://www.hchr.org.co/index.php/informacion-publica/pronunciamentos/intervenciones-de-la-direccion/442-ano-2019/9106-intervencion-de-la-oficina-en-colombia-de-la-alta-comisionada-de-las-naciones-unidas-para-los-derechos-humanos-audiencia-publica-sobre-la-ley-1448-de-2011-d-13170>.

<sup>23</sup> See paras. 49 ff below.

43. According to international norms and standards, the military justice system should not investigate, prosecute and sanction those responsible for alleged human rights violations. Such cases should always remain under the ordinary justice system.<sup>24</sup> OHCHR urges the Office of the Attorney General to retain jurisdiction over cases of human rights violations. OHCHR also urges the Superior Council of the Judiciary to adhere strictly to international norms and standards when determining the competent jurisdiction.

44. OHCHR welcomes the issuance in March 2019 of directive 003/2019 of the Office of the Procurator General prohibiting a statute of limitations on disciplinary investigations into State crimes, crimes against humanity and human rights violations. In addition, OHCHR highlights the need for human rights records to be reviewed in the process of appointing State officials, both civil and military, in order to prevent individuals involved in gross human rights violations from holding public positions.

## V. Security and human rights

45. OHCHR observed increased resort to the military to respond to situations of violence and insecurity. Despite the existence of protocols, norms and public policies regulating the participation of the military in situations related to public security,<sup>25</sup> these were not fully applied in a range of settings,<sup>26</sup> such as in rural areas in Arauca, Antioquia, Caquetá, Cauca, Córdoba, Cesar, Chocó, Meta, Nariño and Norte de Santander. Nor were they fully applied in urban centres, such as Convención, Medellín, Santa Marta and Valledupar, where the military conducted anti-narcotics operations and other law enforcement activities. Military training and equipment and the nature of military duties are inappropriate in such circumstances. According to police statistics,<sup>27</sup> homicides increased in municipalities in Arauca, the north of Cauca, Catatumbo and the south of Córdoba, despite an increased military presence.

46. According to jurisprudence of the Inter-American Court of Human Rights, the police should be responsible for maintaining public order and democratic governance. While the participation of the military may be justified in circumstances of serious threats, such use of the military must be extraordinary, exceptional, justified, temporary, restricted and subordinated to civilian authorities.<sup>28</sup> The oversight provided by civilian authorities must ensure that the military complies with the principles of exceptionality, proportionality and necessity.<sup>29</sup>

47. Directives 015/2016 and 037/2017 had opened the door to the use of the military against groups that did not meet the standards of application of international humanitarian law, and led to serious human rights violations.<sup>30</sup> For example, on 4 February in Ituango, Antioquia, two persons, allegedly members of a criminal group, were killed by the military during an undercover anti-narcotics trafficking operation. OHCHR calls on the authorities to comply strictly with international norms and jurisprudence applicable to criminal groups and other violent groups.

<sup>24</sup> CCPR/C/104/D/1914/2009, 1915/2009 and 1916/2009; CCPR/C/79/Add.74; CCPR/C/79/Add.2; and CCPR/C/79/Add.76. See also the updated set of principles for the protection and promotion of human rights through action to combat impunity; A/68/285; and Inter-American Court of Human Rights, Monitoring of compliance with judgment in the cases of *Radilla Pacheco, Fernández Ortega and others*, and *Rosendo Cantú and others*, v. *Mexico*, resolution, 17 April 2015 (available in Spanish only), see footnote 37, p. 8.

<sup>25</sup> Law 1801 of 2016, art. 170.

<sup>26</sup> See [https://www.esmic.edu.co/recursos\\_user///Disposicion%20002%20RDE%20Uso%20Fuerza%20Bicentenario%202019.pdf](https://www.esmic.edu.co/recursos_user///Disposicion%20002%20RDE%20Uso%20Fuerza%20Bicentenario%202019.pdf).

<sup>27</sup> See <https://www.policia.gov.co/delitos-de-impacto/homicidios>.

<sup>28</sup> See [http://www.corteidh.or.cr/docs/casos/articulos/resumen\\_370\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_370_esp.pdf) and A/HRC/31/66.

<sup>29</sup> Code of Conduct for Law Enforcement Officials, arts. 1 and 3. See also the analysis by special procedures of the Human Rights Council, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22535&LangID=E>.

<sup>30</sup> A/HRC/40/3/Add.3, para. 87; A/HRC/37/3/Add.3, para. 78; and A/HRC/34/3/Add.3, para. 66.



48. The announcement on 15 September by the General Command of the Colombian Armed Forces,<sup>31</sup> establishing anti-riot squads composed of professional soldiers, raised questions concerning Colombia's respect for the guidance of the Inter-American Commission on Human Rights<sup>32</sup> relating to the responsibility of the police, rather than the military, to maintain public order. On 30 September, in Barranquilla, the military intervened during student protests at the University of the Atlantic, using potentially lethal force, when there was no imminent threat to life or of serious injury. Although no serious injuries occurred on this occasion, the use of such force in these circumstances sets a worrying precedent.

49. OHCHR documented 15 cases of alleged arbitrary deprivation of life in Antioquia, Arauca, Bogotá, Cauca, Guaviare, Meta, Nariño, Norte de Santander, Santander and Valle del Cauca. This was the highest number of such cases that OHCHR had recorded since 2016. In 13 cases, the deaths appeared to have been caused by unnecessary and/or disproportionate use of force. According to information documented by OHCHR, in 11 cases the deaths occurred in military operations related to public security involving anti-narcotics and law enforcement activities. In six cases, the deaths were preceded by law enforcement activities that potentially could have allowed for the arrest of the suspects and thus avoided their killing. In one case, OHCHR observed that weak command and control appeared to result in the killing and attempted enforced disappearance of one person. The military was allegedly responsible in 10 cases and the police in 4, while there was alleged joint responsibility for 1 killing. In all 15 cases, the Office of the Attorney General had initiated investigations, but these had not appeared to follow the Minnesota Protocol on the Investigation of Potentially Unlawful Death.<sup>33</sup>

50. On 22 April, in Convención, Norte de Santander, an army corporal killed a former FARC-EP member who had demobilized under the peace agreement. This killing was allegedly perpetrated on the order of a colonel. The corporal and other soldiers attempted to disappear the body by burying it in a clandestine grave. The Office of the Attorney General made significant advances in the investigation, including in regard to the role of the colonel. The corporal directly responsible for the killing was convicted and sentenced to 20 years of imprisonment, while a lieutenant who had collaborated with the investigation was removed from the military.

51. On 27 July, in La Lizama, Santander, a soldier allegedly killed a 17-year-old boy in front of a military base during a search operation related to small-scale drug trafficking. On 28 May, in San José del Guaviare, two former FARC-EP members who had not demobilized under the peace agreement and were allegedly members of other violent groups were found dead after having been arrested by the police. On 19 September, in Toledo, Norte de Santander, the military shot a former municipal councillor, who was a beneficiary of National Protection Unit protection measures, and killed her bodyguard. This occurred during an operation to recover a stolen vehicle. The military reportedly opened fire when the councillor was exiting the car, with her hands up, and after the bodyguard had identified himself.

52. Notwithstanding the zero-tolerance policy of the Ministry of Defence in regard to sexual violence, OHCHR documented three cases of sexual violence allegedly perpetrated by the military, in Arauca, Guaviare and Meta. OHCHR also documented cases of unlawful detentions, in Antioquia, Arauca and Guaviare. In some cases, these unlawful detentions allegedly involved torture and ill-treatment.

53. OHCHR received information documenting that, on 8 April in Valdivia, Antioquia, members of a criminal group and other violent groups not only participated in an official military operation, but did so carrying weapons. Furthermore, these individuals participated in actions falling within the purview of official authorities, such as conducting searches and seizures and detaining persons. In doing so, they illegally detained two farmers, whom they subsequently ill-treated. The detentions were later declared illegal by the judiciary. The responsibility for crimes and human rights violations committed by individuals who are not

<sup>31</sup> See <https://www.cgfm.mil.co/es/blog/nuevos-soldados-profesionales-hacen-parte-de-pelotones-antidisturbios>.

<sup>32</sup> Inter-American Commission on Human Rights, *Annual Report 2015*, chap. IV.A, para. 38.

<sup>33</sup> Available at [www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx](http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx).

State agents, but act as such during official operations, is upon the State.<sup>34</sup> In this case, the responsibility extends to the chain of command responsible for the operation.

54. OHCHR documented cases of alleged torture and ill-treatment by the police in Antioquia, Arauca, Huila and Putumayo, and in Bogotá. In Antioquia, the police allegedly arrested a man and put him in a cell with members of a criminal group, telling them that he was a member of a rival criminal group. The police reportedly let the other detainees beat him before themselves beating him and using electric shocks to obtain information. The investigations of the Office of the Attorney General concerning these cases require the full application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).<sup>35</sup>

55. OHCHR values its ongoing dialogue with the Ministry of Defence on cases of alleged arbitrary deprivation of life and other military and police actions that could constitute human rights violations. Despite differences regarding the analysis and conclusions on these cases, OHCHR reiterates its willingness to continue this dialogue.

56. Police continued to recruit civilians to eradicate illicit crops. This practice exposes civilians to loss of life or injury due to the presence of anti-personnel mines and unexploded ordnance among the crops. Between January and November, 24 civilians and 8 anti-narcotics police officers were affected by such devices in Tumaco, Nariño, while eradicating illicit crops.

57. As far as corruption is concerned, OHCHR received information regarding possible cases involving members of the police and the military in Amazonas, Antioquia, Caquetá, Cauca, Cesar, Chocó, Huila, La Guajira, Magdalena, Nariño, Putumayo and Valle del Cauca. This possible corruption could have compromised the effectiveness of the fight against ELN, criminal groups and other violent groups. One of the most serious cases occurred in Antioquia, where at least 26 members of criminal groups were captured carrying weapons with special permits that only the military can grant.

58. OHCHR noted that the police presence remained insufficient in most rural areas, especially in Amazonas, Antioquia, Arauca, Caquetá, Córdoba, Guaviare, Huila, Meta, Nariño, Norte de Santander and Sucre. The State must strengthen the institutional capacity of the police with the objective of increasing its presence in rural areas, including through the deployment of specialized units. Additionally, effective internal oversight mechanisms and the inclusion of a human rights-based approach in the execution of police duties are essential. OHCHR stands ready to provide additional technical assistance in this regard.

## VI. Economic, social, cultural and environmental rights

### A. Inequality and corruption

59. During 2019, the gross domestic product increased by 3.3 per cent.<sup>36</sup> Since 2016, multidimensional poverty has increased by 1.8 per cent, with radical inequalities between urban and rural areas,<sup>37</sup> thereby affecting access to a range of economic, social and cultural rights. This increase signals a need to redouble efforts to progressively guarantee economic, social and cultural rights. According to the Economic Commission for Latin America and the Caribbean (ECLAC), Colombia is among the three countries with the highest levels of inequality in Latin America, with a Gini coefficient of 0.51. ECLAC determined that, if the average income growth and wealth distribution remained the same from 2008 until 2017,

<sup>34</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, Appeals Chamber IT-94-1-A, Judgment of 15 July 1999, paras. 141 and 144.

<sup>35</sup> Available at [www.ohchr.org/Documents/Publications/training8Rev1en.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf).

<sup>36</sup> See <https://www.dane.gov.co/index.php/estadisticas-por-tema/cuentas-nacionales/cuentas-nacionales-trimestrales>.

<sup>37</sup> See [https://www.dane.gov.co/files/investigaciones/condiciones\\_vida/pobreza/2018/cp\\_pobreza\\_multidimensional\\_18.pdf](https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2018/cp_pobreza_multidimensional_18.pdf).

Colombia would not meet Sustainable Development Goal 1 of reducing extreme poverty to 3 per cent by 2030.<sup>38</sup>

60. Corruption adversely affected the State's ability to fulfil its obligation to allocate the maximum of its available resources to guarantee economic, social and cultural rights. The National Development Plan 2018–2022 recognizes that “corruption has a devastating effect on development in communities and regions”.<sup>39</sup> The Office of the Comptroller General indicated that it only monitored 17 per cent of the national budget and recovered merely 0.4 per cent of funds embezzled annually.<sup>40</sup> The Office of the Attorney General revealed that the cost of corruption in the health sector alone was approximately \$295 million.<sup>41</sup> OHCHR regretted that, as at December 2019, Congress had approved only 4 out of 24 anti-corruption bills that had been considered.<sup>42</sup>

## B. Inequality and discrimination

61. The percentage of people living in multidimensional poverty was three times higher in rural than in urban areas.<sup>43</sup> The percentage of rural households without access to drinking water was nearly 14 times higher than in urban areas and illiteracy was between three and four times higher, representing an increase compared to 2018.<sup>44</sup> Indigenous peoples and Afro-Colombian communities, the majority of whom live in rural areas, are disproportionately affected by such discrimination. The five departments with the highest levels of multidimensional poverty were Chocó, Guainía, La Guajira, Vaupés and Vichada,<sup>45</sup> which have the highest representation of indigenous peoples and Afro-Colombian communities.<sup>46</sup>

62. The Committee on the Elimination of Discrimination against Women expressed concern regarding the gender wage gap in Colombia, as women continued to earn less than men, with a salary gap of 19 per cent.<sup>47</sup> In addition, 13.1 per cent of women were unemployed, compared to 8.1 per cent of men.<sup>48</sup>

63. OHCHR observed huge challenges to fulfilling the right to health in rural areas. The maternal mortality rate in Amazonas, Chocó, La Guajira, Vaupés and Vichada showed a slight decrease in 2019<sup>49</sup> compared to 2018.<sup>50</sup> Nevertheless, this rate was still higher than for the rest of Colombia. In rural areas of Amazonas, Antioquia, Arauca, Caquetá, Guainía, Putumayo and Vaupés, there were no health centres accessible to the populations or facilities were in poor condition, lacking personnel and medication.

<sup>38</sup> Economic Commission for Latin America and the Caribbean, *Panorama Social de América Latina 2018*, LC/PUB.2019/3-P, Santiago, 2019, p. 21.

<sup>39</sup> Bases del Plan Nacional de Desarrollo 2018–2022, p. 5.

<sup>40</sup> See <https://www.eltiempo.com/justicia/investigacion/contralor-carlos-felipe-cordoba-la-contraloria-no-funciona-es-ineficiente-y-obsoleta-404536>.

<sup>41</sup> See <https://www.fiscalia.gov.co/colombia/noticias/el-sector-de-la-salud-ha-perdido-en-billon-de-pesos-por-hechos-de-corrupcion-fiscal-martinez-neira/>.

<sup>42</sup> <https://transparenciacolombia.org.co/wp-content/uploads/veeduria-anticorrupcion-boletin-7.pdf>.

<sup>43</sup> See [https://www.dane.gov.co/files/investigaciones/condiciones\\_vida/pobreza/2018/cp\\_pobreza\\_multidimensional\\_18.pdf](https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2018/cp_pobreza_multidimensional_18.pdf).

<sup>44</sup> A/HRC/40/3/Add.3, para. 60.

<sup>45</sup> See [https://www.dane.gov.co/files/investigaciones/condiciones\\_vida/pobreza/2018/cp\\_pobreza\\_multidimensional\\_18.pdf](https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2018/cp_pobreza_multidimensional_18.pdf).

<sup>46</sup> See <https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/presentacion-grupos-etnicos-2019.pdf>.

<sup>47</sup> CEDAW/C/COL/CO/9, para. 35.

<sup>48</sup> See [https://www.dane.gov.co/files/investigaciones/boletines/ech/ech\\_genero/bol\\_eje\\_sex0\\_may19\\_jul19.pdf](https://www.dane.gov.co/files/investigaciones/boletines/ech/ech_genero/bol_eje_sex0_may19_jul19.pdf).

<sup>49</sup> See [https://www.ins.gov.co/buscador-eventos/BoletinEpidemiologico/2019\\_Boletin\\_epidemiologico\\_semana\\_47.pdf](https://www.ins.gov.co/buscador-eventos/BoletinEpidemiologico/2019_Boletin_epidemiologico_semana_47.pdf), p. 6.

<sup>50</sup> See <https://www.ins.gov.co/buscador-eventos/BoletinEpidemiologico/2018%20Boletin%20epidemiológico%20semana%2047.pdf>, p. 9.

## C. Comprehensive Rural Reform

64. The peace agreement set out an agenda of comprehensive rural reform, stipulating the effective participation of communities at all stages. Its stated objectives are to eradicate extreme poverty, reduce the gaps between rural and urban areas, and promote equality by strengthening rural economies and improving access to land for peasant families and communities. This reform was initiated in 2017 with the adoption of regulations to promote the formalization of land titles and land allocation.

65. In order to achieve its objectives, the Comprehensive Rural Reform envisaged the establishment of a range of plans, entities and mechanisms, including the multipurpose property register (Catastro Multipropósito),<sup>51</sup> Development Plans with a Territorial Approach,<sup>52</sup> a Land Fund<sup>53</sup> and National Plans for Comprehensive Rural Reform.<sup>54</sup>

66. On 30 August in Ovejas, Sucre, 1,158 land titles were provided to local communities, thanks to an initial pilot plan to implement the multipurpose property register.<sup>55</sup> OHCHR hopes that progress will be achieved in the other 22 municipalities included in the pilot plan.

67. In 2018, 16 Development Plans with a Territorial Approach (PDET) were formulated, with high levels of community participation, including by indigenous peoples and Afro-Colombian communities. While this generated significant hope for the effective implementation of Development Plans with a Territorial Approach, during the reporting period OHCHR observed few advances, and minimal coordination with other relevant programmes, such as the Collective Reparation Plan contained in the Victims and Land Restitution Law and the Comprehensive National Programme for the Substitution of Illicit Crops.

68. While two National Plans for Comprehensive Rural Reform were approved in 2018,<sup>56</sup> no advances were observed in 2019.

69. Rural reforms should lead to more equitable access to land and to improvements in the enjoyment of the right to an adequate standard of living. Such advances hold the promise of contributing to resolving the structural causes of violence. In this regard, the Comprehensive Rural Reform should be supported by an adequate budget to fully implement all of the plans, entities and mechanisms established in the peace agreement, rather than there being a limited focus on Development Plans with a Territorial Approach. However, the 2020 budget was reduced for all the institutions responsible for implementing the Comprehensive Rural Reform.<sup>57</sup>

## D. Environmental rights

70. The ratification, on 26 August, of the Minamata Convention on Mercury was a positive development. Mercury contamination persisted, however, including in the basins of the Apaporis, Atrato, Caquetá, Cauca and Nechí rivers. This particularly affected indigenous peoples, Afro-Colombians and farming communities.

<sup>51</sup> A tool designed to establish a clear land registration system and to provide information on the physical, legal and economic aspects of the land.

<sup>52</sup> Known in Colombia by the abbreviation PDET. Its objective is to carry out rural reforms through participatory planning, particularly in 170 municipalities most affected by the conflict.

<sup>53</sup> The Land Fund was created for free distribution of land to rural people without land or with insufficient land.

<sup>54</sup> These plans are aimed at eradicating extreme poverty and reducing rural poverty by 50 per cent, with specific plans being developed that relate to rights such as access to health care, education and housing, and to protection of the environment.

<sup>55</sup> See <https://id.presidencia.gov.co/Paginas/prensa/2019/Ovejas-primera-gran-jornada-masiva-registro-predios-municipio-nuestro-pais-piloto-Catastro-Multiproposito-190830.aspx>.

<sup>56</sup> The national road plan of the transport ministry and the national electrification plan of the mining and energy ministry.

<sup>57</sup> See <https://www.dejusticia.org/column/una-paz-austera/>.

71. In December, Colombia signed the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).<sup>58</sup> Ratification and implementation of this agreement should improve the protection of environmental defenders.

72. In Antioquia, OHCHR documented the negative impact of the Hidroituango dam on the rights to work, water, food, an adequate standard of living and a healthy environment, of the fishing communities in Cáceres, Cauca, Nechí, Tarazá and Valdivia. Indigenous peoples and Afro-Colombian communities were particularly affected. After an emergency related to the construction of the dam, the countermeasures dried the Cauca River, causing fish to die on a massive scale, destroying crops, and causing the disappearance of water sources, affecting communities' rights to work, food and water.

73. On 30 December, the Ministry of Justice published a draft decree to resume aerial fumigation of illicit crops with glyphosate.<sup>59</sup> The Committee on Economic, Social and Cultural Rights had previously noted with concern the "negative consequences of anti-narcotics measures such as the effect of aerial fumigation on food security, adverse health impacts and denial of livelihoods".<sup>60</sup> OHCHR highlights the recent finding, in a joint report by the Government and United Nations Office on Drugs and Crime, that 95 per cent of families participating in the Comprehensive National Programme for the Substitution of Illicit Crops had fulfilled the voluntary eradication requirement, whereas 0.4 per cent had returned to the cultivation of illicit crops.<sup>61</sup>

## VII. Gender, ethnic peoples and persons entitled to special protection

### A. Sexual and gender-based violence

74. According to the most recent information available from the country's National Institute of Forensic Medicine, in 2018 the rate of sexual violence was 52.3 victims per 100,000 inhabitants, which was 4.02 points higher than in 2017, and was the highest in 10 years. Of the total number of victims, 85.6 per cent were female and 14.4 per cent were male. The average age of victims was 12.<sup>62</sup>

75. OHCHR documented 13 cases, involving 15 female victims, including 13 minors, in Antioquia, Arauca, Caquetá, Guaviare, Meta and Nariño. In 10 of these cases, the alleged perpetrators were members of ELN, criminal groups and other violent groups, while members of the military were allegedly involved in 3 cases. OHCHR is aware that the Office of the Attorney General initiated investigations concerning the latter three cases.

76. The authorities' response to sexual and gender-based violence remained insufficient. OHCHR noted that some authorities in Antioquia, Arauca, Guaviare and Nariño were unaware of the Office of the Attorney General's protocol concerning cases of sexual violence. In Arauca, the Office of the Attorney General denied access to justice to a disabled woman who was a victim of sexual violence, specifically by not providing an interpreter who could have allowed her to provide testimony. In Guaviare, the police failed to activate the mandatory urgent search protocol for a disappeared indigenous girl who was a victim of sexual violence.

<sup>58</sup> See [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf).

<sup>59</sup> See <https://www.semana.com/nacion/articulo/con-borrador-de-decreto-el-gobierno-activa-su-ruta-hacia-la-reanudacion-del-glifosato/646647>.

<sup>60</sup> E/C.12/COL/CO/5, para. 28.

<sup>61</sup> See [www.unodc.org/documents/colombia/2020/Febrero/INFORME\\_EJECUTIVO\\_PNIS\\_No.\\_19.pdf](http://www.unodc.org/documents/colombia/2020/Febrero/INFORME_EJECUTIVO_PNIS_No._19.pdf).

<sup>62</sup> Available from [www.medicinalegal.gov.co/documents/20143/386932/Forensis+2018.pdf/be4816a4-3da3-1ff0-2779-e7b5e3962d60](http://www.medicinalegal.gov.co/documents/20143/386932/Forensis+2018.pdf/be4816a4-3da3-1ff0-2779-e7b5e3962d60).

## B. Sexual and reproductive rights

77. Nineteen per cent of children born between January and September 2019 were born to mothers under the age of 19.<sup>63</sup> To avoid such a high incidence of teenage pregnancies, the State should take measures to guarantee full access to sexual and reproductive rights.

78. Legislative bill 11 of 2019, which remained before the Senate in December 2019, was of concern. This bill aims to regulate conscientious objection regarding abortion, euthanasia and same-sex marriage, in particular by allowing health-care workers to invoke moral principles to deny medical assistance. If adopted, it would negatively affect access to legal abortion services and to treatment for complications arising from unsafe abortions.<sup>64</sup>

## C. Rights of indigenous peoples and Afro-Colombian communities

79. On 11 November, after 17 years of efforts and following forensic identification, the remains of 78 Afro-Colombian victims of the church massacre of 2 May 2002 in Bojayá, Chocó,<sup>65</sup> were returned to their families for traditional burial. OHCHR promoted the coordination of State institutions to support this process.

80. Guaranteeing the right to free, prior and informed consent for indigenous peoples and Afro-Colombian communities remained a challenge, in particular as the implementation of the relevant procedures of the Ministry of the Interior did not meet international standards. OHCHR observed this situation in Putumayo with the Nasa and Quicwa peoples, in Guainía with the Piapoco and Sikuni peoples, and in Norte de Santander with the Barí people.

81. Illegal economic activities of criminal groups and other violent groups negatively affected the use of traditional lands. Cases which OHCHR observed in 2019 affected the Wiwa Seyamuke Arimaka indigenous community in La Guajira, the Awá and Eperara-Siapidara peoples in Nariño, and the Afro-Colombian community councils along the Pacific coast of Nariño.

82. OHCHR is deeply concerned by the high number of killings of indigenous people in Cauca. In 2019, the National Institute of Forensic Medicine registered an increase of almost 52 per cent in homicides of indigenous people in Cauca, compared to 2018.<sup>66</sup> Between January and November 2019, OHCHR registered the killing of 66 members of the indigenous Nasa people in northern Cauca, including 13 who were from Nasa authorities or were other Nasa leaders. Urgent, effective and culturally appropriate prevention and protection measures for these communities need to be taken in consultation with the indigenous authorities.

## D. Rights of persons with disabilities

83. OHCHR commends the adoption of Law 1996 of 2019, which recognizes that persons with disabilities above 18 years of age have full legal capacity. This new law complies with the recommendation of the Committee on the Rights of Persons with Disabilities.<sup>67</sup> The challenge remains of guaranteeing respect for the legal capacity provided for in the above-mentioned law, including by facilitating access to legal resources to ensure that persons with disabilities can make their own decisions.

<sup>63</sup> See [https://www.dane.gov.co/files/investigaciones/poblacion/bt\\_estadisticasvitalas\\_IITrim\\_2019pr-27-septiembre-2019.pdf](https://www.dane.gov.co/files/investigaciones/poblacion/bt_estadisticasvitalas_IITrim_2019pr-27-septiembre-2019.pdf).

<sup>64</sup> CEDAW/C/COL/CO/9, paras. 37–38.

<sup>65</sup> In 2002, approximately 104 persons seeking refuge in a church were killed in the explosion of an improvised explosive device fired by FARC-EP during a confrontation with the United Self-Defence Forces of Colombia (a paramilitary group). See <https://www.hchr.org.co/documentoseinformes/informes/tematicos/bojaya.pdf>.

<sup>66</sup> See <https://docs.google.com/viewerng/viewer?url=http://www.wradio.com.co/docs/201911148225997a.pdf>.

<sup>67</sup> CRPD/C/COL/CO/1, para. 31.

## E. Children

84. OHCHR observed an increase in the use of children by criminal groups and other violent groups, as well as their forced recruitment by ELN in Antioquia, Arauca, Caquetá, Chocó, Guaviare, Meta and Norte de Santander. In addition to the abuses and violations these children experienced, this exposes them to grave risks arising from military and police actions against these groups. OHCHR documented the case of a 15-year-old boy who had been killed during an operation against an ELN commander conducted in Antioquia on 29 June. OHCHR also documented the killing of three girls and four boys in the context of military bombings against other violent groups<sup>68</sup> in Caquetá and Guaviare on 30 August. OHCHR also recorded the killing of 19 children (16 boys and 3 girls) by criminal groups in Antioquia, Caquetá, Nariño and Norte de Santander.

## F. Rights of LGBTI persons

85. Despite legislation and jurisprudence protecting their rights, violence and discrimination against LGBTI persons continued. Between January and November 2019, non-governmental organizations reported the killing of 45 LGBT persons.<sup>69</sup> In its 2018 report, the National Institute of Forensic Medicine recorded 45 killings of LGBT persons and 237 cases of sexual violence against individuals belonging to the LGBT community.<sup>70</sup> Over 34 per cent of victims were lesbians, 33.75 per cent were gay men and 22.36 per cent were bisexual women.<sup>71</sup> OHCHR documented the killing of a bisexual woman human rights defender that occurred on 16 May in Ocaña, Norte de Santander. The victim had previously received threats related to her sexual orientation. OHCHR also documented two cases that occurred in Cesar and La Guajira, where a total of seven victims were physically abused, humiliated and threatened with rape, by police officers.

## VIII. Right to peaceful assembly

86. In late November, a campaign of social protests was initiated across Colombia. While these were predominantly peaceful, there were isolated instances of violence against the police, public and private infrastructure, and protesters. Barranquilla, Bogotá, Cali, Medellín, Neiva, Pasto and Popayán saw the largest protests, yet protests also took place in rural areas. The social movements leading the campaign continued as the present report was being finalized; OHCHR presents the following information related to its observation of protests from 21 November to 12 December.

87. Some members of the police's mobile anti-riot squad (ESMAD) did not comply with international norms and standards on the use of force. Previously, OHCHR had explicitly expressed concerns regarding ESMAD rules of engagement.<sup>72</sup> OHCHR documented what appeared to be the arbitrary deprivation of life of an 18-year-old student in Bogotá by an ESMAD agent armed with a 12-gauge rifle loaded with a bean bag. Protesters in Bogotá, Cali and Medellín suffered ocular or cranial injuries owing to beatings or to impacts from projectiles shot by security forces. According to the Ministry of Health, between 21 and 26 November at least 36 protesters and 4 members of the security forces suffered injuries that required hospitalization.

88. Throughout the course of the protests, some police officers also reportedly perpetrated acts that may amount to ill-treatment and torture of protesters, including forced nudity, death threats with racist undertones, and repeated beatings. Some protesters were allegedly arrested and beaten by members of the police, taken to police stations, and forced to admit to violent

<sup>68</sup> See para. 9 above.

<sup>69</sup> Colombia Diversa, Sistema de Información de Violencia contra Personas LGBT – Sin Violencia LGBT. The data do not include intersex persons.

<sup>70</sup> This institution does not take into account intersex persons.

<sup>71</sup> Available from [www.medicinalegal.gov.co/documents/20143/386932/Forensis+2018.pdf/be4816a4-3da3-1ff0-2779-e7b5e3962d60](http://www.medicinalegal.gov.co/documents/20143/386932/Forensis+2018.pdf/be4816a4-3da3-1ff0-2779-e7b5e3962d60).

<sup>72</sup> A/HRC/25/19/Add.3, para. 80.

behaviour and to pay fines. In Bogotá, OHCHR documented a case involving the beating, resulting in severe head injuries, of a young woman by five police officers as she was filming a documentary of the protests. When a formal complaint was filed with the Office of the Attorney General, the treatment of the victim was defined as abuse of authority.

89. OHCHR is concerned that most of the detentions during the protests resulted from the frequent use of an administrative provision called “transfer for protective purposes”.<sup>73</sup> This provision gives extensive discretionary powers to the police to limit the right to liberty. This was observed by OHCHR during a peaceful and silent demonstration on 7 December at Bogotá’s airport. According to the police, 1,662 persons were detained in application of this provision nationwide between 21 November and 12 December.

90. The protests also featured several attacks on journalists and representatives of alternative media outlets. Between 21 and 23 November, Colombia’s Foundation for Press Freedom reported at least 32 cases of alleged physical attacks or obstruction of journalists nationwide. Twenty-three of these cases were reportedly attributed to the police, and nine to protesters. OHCHR documented three cases of alleged excessive use of force and four cases of arbitrary detention affecting journalists.

91. Forty-eight hours prior to the first protests,<sup>74</sup> the judicial police conducted at least 36 searches against alternative media outlets, artists’ associations, non-governmental organizations and students’ houses in Bogotá, Cali and Medellín. These searches were conducted on the instructions of the Office of the Attorney General. Charges were pressed in only two cases and both of the accused were released from custody after their court hearings, because the evidence produced could not be further probed. At the time of finalization of the present report, the judiciary has declared 10 of the searches illegal. Several organizations affected informed OHCHR that they believed the operations were intended to intimidate protesters and hinder the enjoyment of the right to peaceful assembly.

## IX. Recommendations

92. **The United Nations High Commissioner for Human Rights reiterates the recommendations made in previous reports. The High Commissioner furthermore:**

(a) **Calls upon the State to continue making progress in the implementation of all chapters of the peace agreement in comprehensive and sustained manner, with an emphasis on the provisions concerning gender and ethnicity and on the participation of victims, especially to fulfil their rights to truth, justice, reparation and guarantees of non-recurrence.**

(b) **Encourages the State to accelerate the implementation of the Comprehensive Rural Reform contained in the peace agreement in coordination with other planning processes and instruments, such as the Collective Reparation Plan and the Comprehensive National Programme for the Substitution of Illicit Crops.**

(c) **Calls upon the State to increase its efforts to establish a stronger presence of State civilian authorities in rural areas.**

(d) **Encourages the Office of the Attorney General to broaden its investigations into attacks against human rights defenders, especially with respect to identifying and prosecuting the intellectual authors of such attacks.**

(e) **Recommends the increased use of collective protection measures. On the part of the National Protection Unit, this requires allocating sufficient resources and establishing criteria for co-responsibility between national, departmental and municipal authorities to address structural causes of violence. Achieving this increase may require support, including through resources, from the international community. The new regional authorities should prioritize collective protection measures in their**

<sup>73</sup> Art. 155 of Law 1801 of 2016.

<sup>74</sup> See <https://www.hchr.org.co/index.php/informacion-publica/comunicados-de-prensa/440-ano-2019/9121-pronunciamento-sobre-el-paro-nacional-del-21-de-noviembre>.



planning processes, such as the development plans and the Comprehensive Plans for Security and Citizen Coexistence, and allocate sufficient resources for their full implementation.

(f) Calls upon the State to restrict, to the greatest extent possible and in accordance with international norms and standards, the use of the military in situations related to public security, including protests. In line with the need to strengthen the institutional capacity of the police, OHCHR recommends transferring oversight of the police to the Ministry of the Interior.

(g) Urges the State to initiate thorough, independent and effective investigations into cases of alleged excessive use of force by the mobile anti-riot squad (ESMAD) during recent social protests. The High Commissioner also calls for an in-depth transformation of ESMAD, including the review of protocols on the use of force and the use of less lethal weapons and ammunition, to ensure compliance with international norms and standards.

(h) Urges the State to reduce impunity and address the challenges related to access to justice by guaranteeing that all human rights violations are duly investigated and alleged perpetrators are prosecuted.

(i) Calls upon the relevant authorities to ensure compliance with international norms and standards in the investigation of violations of the rights to life and personal integrity where members of the military and/or the police are allegedly involved, and to ensure that the ordinary justice system retains jurisdiction over such investigations.

(j) Encourages the Office of the Attorney General to consistently and comprehensively apply the Minnesota and Istanbul Protocols when investigating violations reportedly involving the military and/or the police.

(k) Urges the Ministry of the Interior to further pursue existing regulatory proposals concerning free, prior and informed consent with indigenous peoples and Afro-Colombian communities.

(l) Calls upon the new regional authorities, in their development plans, to prioritize programmes and projects to guarantee the effective enjoyment of human rights.

(m) Urges national, departmental and municipal authorities to respond swiftly and effectively to the recommendations contained in the Ombudsman's early warnings. To improve responses, the Ministry of the Interior should implement a system of indicators to evaluate the impact of the State's response to the Ombudsman's early warnings.