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البند ٢ من جدول الأعمال

التقرير السنوي لمفوضية الأمم المتحدة السامية لحقوق الإنسان

وتقارير المفوضية السامية والأمين العام

حالة حقوق الإنسان في كولومبيا

تقرير مفوضية الأمم المتحدة السامية لحقوق الإنسان ***

موجز

تعرض مفوضية الأمم المتحدة السامية لحقوق الإنسان في هذا التقرير حالة حقوق الإنسان في كولومبيا فيما يتعلق بالديمقراطية والأمن والتنمية والمشاركة المدنية والسلام في عام ٢٠١٨، وتسلط الضوء على بعض أنشطة المفوضية السامية في البلد. وتشدد المفوضية السامية بوجه خاص على أهمية ضمان حقوق الإنسان باعتبارها مساراً لتحقيق سلام دائم ومستدام. ويتضمن التقرير أيضاً تقييماً أنجزته المفوضية السامية يتناول السنة الثانية من تنفيذ جوانب حقوق الإنسان من اتفاق السلام المبرم بين حكومة كولومبيا والقوات المسلحة الثورية الكولومبية - الجيش الشعبي.

وتُبرز المفوضية السامية التحديات الخاصة الماثلة أمام الدفاع عن حقوق الإنسان، ومكافحة الفساد والإفلات من العقاب، وتصاعد العنف، وضرورة معالجة التفاوتات في التمتع بالحقوق الاقتصادية والاجتماعية والثقافية، ولا سيما في المناطق الريفية.

* أتفق على نشر هذا التقرير بعد تاريخ النشر الاعتيادي لظروف خارجة عن إرادة الجهة المقدمة له.

** يُعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قُدم بها وبالإسبانية فقط.



الرجاء إعادة الاستعمال

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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, based on the direct monitoring activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) of the situation of human rights in Colombia and submitted to the Human Rights Council pursuant to General Assembly resolution 48/141, covers the period from 1 January to 31 December 2018.

2. In 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), the parties requested OHCHR to include in its annual report on Colombia its findings on the human rights impact of the implementation of the agreement. The present report contains findings on the second year of implementation from a human rights perspective.

3. By fully implementing the peace agreement, the State has a historic opportunity to make positive and sustainable structural changes to the population's access to and enjoyment of human rights. OHCHR calls upon the parties to increase their efforts to advance the implementation of all sections of the peace agreement, as there can be no turning back. Trust must continue to be built between the parties and within society in Colombia, especially for victims.

4. The Government elected for the period 2018–2022 will have the historic responsibility to continue to implement the peace agreement and to build an equitable, peaceful country, where full access to human rights is guaranteed to all Colombians.

5. OHCHR calls upon the Government and the National Liberation Army (ELN) to observe international humanitarian law, and urges ELN to abstain from hostage-taking, which international humanitarian law prohibits. OHCHR also invites the parties to reach a bilateral ceasefire agreement in order to continue to build the trust necessary to resume peace talks. That would improve the human rights situation of communities affected by both the hostilities and the lack of economic, social and political inclusion.

6. It is encouraging that, during the 2018 presidential election campaign, Iván Duque, who was elected President, committed to a social pact for human rights, promoted by OHCHR. The pact reiterates the obligation to protect, respect and guarantee human rights, promoting inclusion especially for people in those areas most affected by the conflict and violence and guaranteeing the effective realization of their civil, political and economic, social and cultural rights.

7. OHCHR recognizes the steps taken by the Government to formulate a national action plan on human rights. The plan should strengthen the Government's preventive approach, incorporate gender and ethnic perspectives and address the regional situation. In order to guarantee the effective implementation of the plan, Colombia should set out indicators based on international standards and a process of evaluation and accountability.

8. OHCHR reiterates its commitment to working with the State and with civil society in Colombia, in accordance with its mandate, and to engaging in continuous dialogue with all of its counterparts to help to prevent human rights violations. OHCHR will maintain its presence around the country to reach the most remote communities affected by the conflict and violence. In 2018, the Office conducted 1,339 field missions. OHCHR recalls that it depends primarily on voluntary contributions and that, despite the additional responsibilities assigned by the peace agreement, 2018 was the second consecutive year it did not receive additional resources.

9. OHCHR appreciates the willingness of the new Government to agree to international oversight, which will allow it to take actions to improve the human rights situation in the

country. It welcomes the visits by the Special Rapporteur on the situation of human rights defenders from 20 November to 3 December 2018, and by the Inter-American Commission on Human Rights from 27 to 30 November.

II. Guaranteeing human rights as a pathway for sustainable peace

10. OHCHR recalls that the majority of the commitments assumed by the State under the peace agreement are contained in the human rights agenda, as set out in many of the treaties, mechanisms, recommendations and guidelines of the United Nations and the inter-American human rights system to which Colombia is a State party. Therefore, effective implementation of the agreement also reflects the willingness of the State to fully comply with its international human rights obligations.

11. Full access to and the realization of human rights form the basis of stable and lasting peace. To that end, taking preventive action that effectively identifies the structural causes of conflict and violence is crucial. Preventing human rights violations requires strengthening the State's capacity at the national and local levels and guaranteeing greater inclusion of civil society and local communities. The participation of women is also essential to prevent violations of human rights, given their decisive role in identifying the causes of violence and in mediating conflicts in their communities.

12. In his most recent report on peacebuilding and sustaining peace (A/72/707-S/2018/43), the Secretary-General found that effective prevention could remove up to 30 per cent of the costs generated by violence and conflict. Despite that, the State defence budget has been increased by more than 5 per cent. OHCHR encourages the Government to prioritize public spending on prevention and to continue to promote development, particularly in remote rural and marginalized urban areas.

13. The plan for implementation of the peace agreement (Plan Marco de Implementación del Acuerdo Final) will, in accordance with the requests of the parties, be the primary instrument for integrating the various components of the peace agreement into future national development plans. In order to comply with the plan and with all sections of the agreement, the Government must allocate sufficient resources and focus on the rural areas most affected by the armed conflict.

A. Situation of human rights defenders

14. In 2018, OHCHR continued to provide technical assistance to all relevant State authorities and civil society by promoting prevention and protection measures, investigating the killing of and attacks on human rights defenders, which led to sanctions against those responsible, and implementing confidence-building measures among State institutions, social organizations and communities by creating space for dialogue.

15. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), anyone who defends human rights is a defender, regardless of the organization to which they may belong. OHCHR notes with concern the high number of killings (110) of human rights defenders during the period under review. Importantly, in 27 per cent of the reported cases, the victims were either indigenous (18) or Afro-Colombian (12), demonstrating that some ethnic communities are more affected than others. There was an increase in other types of attacks, such as threats, attempted killings and violations of the rights to privacy and property.

16. While the killing of 110 defenders registered by OHCHR does not represent the totality of cases, it helps to identify trends in such attacks, which seriously undermine the work of human rights defenders – work that is fundamental for advancing democracy and the rule of law.

17. Human rights defenders were killed in 24 departments of Colombia, primarily in Antioquia, Cauca and Norte de Santander (37 per cent of all cases recorded in 2018). Continuing a trend noted by OHCHR in its three previous reports, a high level of risk

persists in those areas, which the State should address urgently, including through its newly established “timely action plan” (Plan de Acción Oportuna), which, *inter alia*, focuses on the three above-mentioned departments.

18. OHCHR observes that 93 per cent of the cases it monitored were in regions with structural causes linked to a persistent lack of access to rights by the population – primarily to justice and to economic, social, cultural and environmental rights. Such causes generate high levels of multidimensional poverty and engender illegal economic activities, controlled or fought over by criminal groups, hence also generating endemic levels of violence.¹ Most cases persist in rural areas or in those classified by decree No. 1650 (2017) as “areas most affected by the armed conflict”.

19. The above-mentioned structural causes derive largely from the weak or even lack of State presence in certain rural areas, as recognized by the President in his inaugural speech. They also stem from substantial delays in the implementation of the peace agreement, especially regarding comprehensive rural reform and the substitution of illicit crops. In order to mitigate the risks for human rights defenders, the State should maintain its presence, including through civilian authorities, recognize and promote the participation of civil society with full guarantees of association, assembly and expression, and accelerate implementation of the peace agreement in the regions concerned, which would support the work of defenders by expanding civic space.

20. In July 2018, the president of a community action council (JAC) in southern Colombia was killed. The victim promoted the implementation of the Comprehensive National Programme for the Substitution of Illicit Crops (PNIS), which was established under the peace agreement. According to information received, the motives behind the killing were related to that activity. Three months earlier, the families who had signed the voluntary substitution agreements and the community leader received threats, which were reported to the authorities. Like many other people in the same situation, the leader was seeking viable and legal economic alternatives for his community, given the high levels of multidimensional poverty there. The lack of opportunity and the high rates of poverty had led the community to engage in illegal economic activities as a means of survival, exposing them to violence by the illegal or criminal groups who controlled those economies – in this case allegedly involving former members of FARC-EP who did not adhere to the peace process.

21. According to the information gathered on the possible motives for the murders, 66 per cent of them related to complaints about or opposition to criminal activity or the impact of endemic levels of violence on the population, or to support for the implementation of the peace agreement, specifically the illicit crop substitution activities. The murders relating to the latter motive were committed in Cauca and Putumayo.

22. The alleged perpetrators were mostly members of criminal organizations. These organizations include in some cases members of criminal groups that potentially were former members of demobilized paramilitary organizations (40 per cent), individuals not affiliated to any criminal or illegal armed group (18 per cent), members of ELN (8 per cent), members of the People’s Liberation Army (EPL) (4 per cent), members of the security forces (5 per cent), former members of FARC-EP who did not adhere to the peace process (8 per cent) and unknown persons (17 per cent).

23. Women human rights defenders are still being murdered, with at least nine cases over the past year. According to OHCHR and to official data, the majority of the killings were committed in municipalities with a high level of gender-based violence,² in addition to the trends already described.

24. OHCHR expressed its concern at attacks on lesbian, gay, bisexual, transgender and intersex defenders, which, according to Colombia Diversa, included two cases of homicide and six cases of threats being made. The situation of such defenders is exacerbated by the

¹ The World Health Organization (WHO) classifies regions with a homicide rate above 10 per 100,000 inhabitants as suffering from endemic violence.

² According to OHCHR, the risk is based on the convergence of different types of violence against women, including murder, sexual violence, domestic violence and conflict-related violence.

persistence of discriminatory and exclusionary practices that are deeply embedded in Colombian society.

25. According to information obtained from Federación para la Libertad de Prensa, a non-governmental organization, there was an alarming increase in the number of threats and attacks against journalists in 2018 compared with 2017. In the period up to 2 November 2018, three killings, 200 threats and 477 attacks on the freedom of the press were reported. This seriously affects the exercise of the right to freedom of expression and society's right to be informed.

26. OHCHR notes that 59 per cent of killings were committed at the community level. The people most affected were directors of community action councils, those with leadership roles and spokespersons for their communities, particularly those living in precarious conditions and with limited support from public institutions. OHCHR observed how, in Caquetá, Nariño, Norte de Santander and Putumayo, illegal armed groups and criminal organizations pressured community leaders to let them continue their illegal activity. In Norte de Santander, five community action council leaders, all members of the same peasant organization, were reported to have been murdered.

27. In many cases, the protection measures granted to defenders were not suited to the risks and complexities of the context in which they worked. For example, in April 2018, a local public official (*corregidora*) in an area of rural southern Colombia affected by the armed conflict received threats after reporting a microtrafficking gang that was selling drugs at the local school. In September, the National Protection Unit (UNP) provided her with a panic button, a mobile phone and a bulletproof vest. However, not all of that equipment was suitable for such a remote area with limited access to communications.

28. More than a month's delay in the National Protection Unit's implementation of protection measures resulted in the killing of a community leader and a victims' representative in Norte de Santander and Valle del Cauca in July and September respectively.

29. Prevention should therefore be prioritized over the adoption of temporary protection measures. The Intersectoral Commission for Rapid Response to Early Warnings (CIPRAT), the timely action plan (see para. 17 above) and the National Commission on Security Guarantees should be used for that purpose.

30. The Office of the Attorney General should strengthen its criminal investigations into the violence that surrounds most of the killings of human rights defenders, and punish both the perpetrators of crimes and those who plan them. The aim of the regional round tables organized by the Office of the Attorney General – and facilitated by OHCHR – is to identify the structural causes that may lead to attacks on defenders, and they constitute an effective initiative for stepping up prevention.

31. OHCHR engages with the private sector to promote measures that encourage respect for human rights defenders by recognizing their work, condemning the attacks and promoting social dialogue and protective measures, including investigations by the State. OHCHR highlights the “Ni uno más: Alianza civil por la democracia, vida y el pluralismo” joint initiative by social organizations, the private sector and others to reject violence against defenders by protecting the right to freedom of expression and diversity. The Government has launched similar initiatives at the regional and local levels.

32. During his official country visit to Colombia in late 2018, the Special Rapporteur on the situation of human rights defenders highlighted the invaluable work of human rights defenders as actors of change who uphold democracy and the rule of law, and stressed that the Declaration on Human Rights Defenders should be widely adopted without undue restriction. The Special Rapporteur expressed his concern regarding the heightened risks that human rights defenders faced in rural areas. The remoteness of such areas makes defenders more vulnerable to risks, as they are less connected to broader human rights networks.

B. Participation

1. Electoral processes in 2018

33. The first legislative and presidential elections since the signing of the peace agreement were held in the first half of 2018. OHCHR noted a significantly lower number of violent acts during the election campaigns. The signing of the peace agreement has improved the conditions for a secure electoral environment. OHCHR documented, however, the killing of three members of the FARC political party in the run-up to the elections, and another murder in Cauca on the day of the first round of the presidential election.

34. Despite the greater electoral participation witnessed at the national level, there is still a need to improve access to polling stations for isolated rural populations, especially members of indigenous and Afro-Colombian communities. OHCHR observed such a need in Amazonas, Chocó, Guaviare, Putumayo and Santander, among other areas. Certain regulations that restrict the installation of polling stations further impede access.³ The Constitutional Court is reviewing a writ for the protection of fundamental rights relating to the effective exercise of voting rights, which was filed by representatives of indigenous communities in Chocó (file no. T-6.340.286).

35. OHCHR notes that the percentage of women in Congress decreased in the 2018 elections. While the number of women remained the same as in 2014 (56 seats), the total number of seats rose from 268 in 2014 to 279 in 2018. Gender parity has, however, been noted in the Council of Ministers of the current Government. One of the aims of Sustainable Development Goal 5 is to ensure women's full and effective participation at all levels of decision-making.

2. Participation in the context of the implementation of the peace agreement

36. The peace agreement allocated the FARC political party 10 seats in Congress. While those seats were filled, three were occupied by the alternate candidates, including one whose legal situation was under review by the Special Jurisdiction for Peace (JEP). The participation of FARC party legislators in the various legislative committees makes a significant contribution to the reintegration and political participation of former members of FARC-EP.

37. During the presidential election campaign, OHCHR noted that some sectors of society were reluctant to accept the FARC party as a legitimate political actor. The State must make further efforts to guarantee its participation; at the same time, FARC must continue to acknowledge responsibility and make reparations in the regions.

38. OHCHR is concerned to note that Congress has not completed the process for approving the special constituencies for peace within the current legislative period, and the relevant bill must therefore be reintroduced in 2019. That will affect the representation and participation in Congress of victims from the regions most affected by the armed conflict.

39. OHCHR notes that the provisions stipulated in the peace agreement on guarantees for peaceful mobilization and protest are still pending. On 3 August 2018, however, the Ministry of the Interior issued a protocol for the coordination of actions for respect and guaranteeing peaceful protest, developed jointly with civil society and the Government, with guidance from OHCHR.

40. OHCHR welcomes the declarations made by the President of Colombia in support of the right to social protest, and hopes that all State institutions will act accordingly. OHCHR monitored nationwide protests held in November and December, providing preventive technical advice to authorities. Subsequently, the Minister of the Interior issued an instruction to all mayors and governors, stressing the need to guarantee the right to social protest. Thanks to the support provided, the largest demonstration, on 28 November, was also the most peaceful.

41. OHCHR also appreciates the passage of law No. 1909 of 2018, establishing the statute of members of the political opposition, as set out in the peace agreement.

³ Electoral Code, art. 99.

C. Justice and impunity

1. Progress in the truth, justice, reparation and non-recurrence system

42. The full implementation of the integrated truth, justice, reparation and non-recurrence system, in accordance with the terms set out in section 5 of the peace agreement, will be a valuable opportunity to acknowledge past human rights violations and breaches of international humanitarian law, to establish the whereabouts of disappeared persons and to guarantee access to justice for victims. It will promote reconciliation in Colombian society, without forgetting the past, by creating an environment conducive to the transformation needed to ensure greater access to and the enjoyment of human rights.

(a) Special Jurisdiction for Peace

43. OHCHR received information on 1,910 members of the military, including at least three retired generals and several colonels, who made submissions to the Special Jurisdiction for Peace in the context of case No. 003 on alleged extrajudicial executions. Former members of the FARC-EP high command have also come before the Special Jurisdiction for Peace in relation to case No. 001 on illegal detention of people by FARC-EP.

44. OHCHR made recommendations to Congress in relation to the rules of procedure of the Special Jurisdiction for Peace to ensure their compliance with international standards. Appropriate provisions were thus incorporated to promote the participation of victims.⁴

45. Some aspects of law No. 1922, in particular article 11, paragraph 2, are worrying, particularly those provisions that explicitly prevent the Special Jurisdiction for Peace from investigating State agents, especially members of the security forces, when describing the structure and operation of the criminal organization, its patterns and underlying motives, in particular those relating to discriminatory motivations. Those provisions will seriously affect victims' rights and could undermine the State's international obligation to investigate, prosecute and punish serious human rights violations.

46. OHCHR has repeatedly expressed its concern in this regard and with regard to the difficulties faced by the Special Jurisdiction for Peace in guaranteeing the accountability of those most responsible and ensuring the appearance before the special jurisdiction of civilian third parties involved in the armed conflict. It is also concerned about the possibility of unjustified privileges in the prosecution of members of the military. Such issues persist in laws, in bills proposed and in the constitutional reviews.⁵ The current approach risks undermining the positive impact of the integrated system in minimizing impunity for serious human rights violations and war crimes, as it is not compliant with international standards. The situation could lead to a future review by the International Criminal Court, and cases could be brought under universal jurisdiction.

(b) Extrajudicial mechanisms of the integrated system

47. The Special Unit for the Search for Persons deemed as Missing in the Context of the Armed Conflict (UBPD) and the Commission on Truth, Coexistence and Non-repetition (CEV) – must have the financial resources necessary to carry out their mandates fully; efficient mechanisms should be established to allow them to coordinate with all related State institutions, guaranteeing the effective participation of victims and their families at all times.

48. OHCHR recognizes that the selection of commissioners for the Commission on Truth, Coexistence and Non-repetition, which included representatives of victims' organizations and human rights defenders, took into account gender and ethnic background and guaranteed that victims were at the centre of the process. OHCHR acknowledges that the Constitutional Court declared decree 588 of 2017 constitutional in its ruling C-017 of 2018, thus guaranteeing the broadest possible access to information and archives as required to implement its mandate – including information of a reserved and classified nature.

⁴ Law 1922 of 2018, art. 27 D.

⁵ See, for example, ruling C-674 of 2017 of the Constitutional Court.

(c) Participation of victims in the implementation of the integrated system

49. OHCHR provided technical assistance to the Special Jurisdiction for Peace, setting out operational guidelines and the launch of the territorial liaison strategy, which allows communication between the Special Jurisdiction and victims in the regions.

50. OHCHR also received information, however, from families of victims and victims' organizations regarding difficulties that they encountered in participating effectively in the preliminary hearings and in being recognized as victims in proceedings. The effective participation of victims in all proceedings of the Special Jurisdiction is critical to the full satisfaction of victims' rights.

51. OHCHR notes with concern that, on 15 October 2018, the mother of a victim of an alleged extrajudicial execution allegedly received threats to dissuade her from participating in the preparatory hearings against a retired general.

52. OHCHR facilitated 17 regional meetings involving the Commission on Truth, Coexistence and Non-repetition, the Special Unit for the Search for Persons deemed as Missing, victims' groups and social organizations. The meetings provided participants with the opportunity to learn about the expectations of victims in relation to the work of the mechanisms, and allowed officials of the Commission and the Special Unit for the Search for Persons deemed Missing to understand the local realities and to anticipate possible obstacles to the participation of victims.

2. Past extrajudicial executions

53. In June 2018, the Office of the Attorney General presented a report to the Special Jurisdiction for Peace on deaths unlawfully recorded by the military as "killed in combat". The Office identified a total of 2,248 victims of executions who were recorded as having been killed in action between 1988 and 2014, the number peaking between 2006 and 2008.⁶ On the basis of that report and of additional sources, including the Prosecutor of the International Criminal Court, the Truth and Recognition Chamber of the Special Jurisdiction for Peace opened case No. 003 on deaths unlawfully presented by State agents as killed in combat. OHCHR expects that case No. 003 will provide an opportunity to clarify those events and will contribute to reducing the levels of impunity.

54. The Council of State handed down a sentence reiterating the position of the Prosecutor of the International Criminal Court and that of the Special Rapporteur on extrajudicial, summary or arbitrary executions with regard to the responsibility of the State in extrajudicial executions committed by the military during fraudulent operations in order to show operational results. According to the sentence, the acts were committed as part of a concerted policy in military operations.⁷

3. Impunity and access to justice

55. OHCHR observes that the lack of access to justice, especially in rural areas, engenders impunity and facilitates the persistence of cycles of violence. The fight against impunity is therefore a key element of prevention. Rural communities, through their community action councils, play an important role in prevention and conflict resolution before conflicts escalate and serious crimes can be committed.

56. The rate of impunity in homicide cases has historically been very high. According to the information obtained by OHCHR, the rate of impunity ranges between 86.58 per cent and 94.30 per cent in cases of homicide reported to the authorities. OHCHR recognizes the recent efforts made by the Office of the Attorney General to address the problem of impunity, and urges the Office, and other authorities, to increase their efforts to reduce impunity even further.

57. The Office of the Attorney General continues to experience difficulties in extending its activities to rural areas, which affects its investigative capacity and undermines the ability

⁶ Special Jurisdiction for Peace, Truth and Recognition Chamber, order No. 005, case No. 003.

⁷ Council of State, sentence No. 05001-23-31-000-2005-06454-01(45594).

of rural populations to secure effective access to justice. Its presence is limited by a variety of factors, including the lack of material, technical and human resources and, in some regions, a lack of adequate security for the Office to carry out its work. OHCHR has observed such a situation in Arauca, Caquetá, Cauca, Nariño and Tolima, among other areas.

58. The large number of cases handled by the Office of the Attorney General and the lack of criminal investigation police available prevent effective and prompt investigations, which increases the likelihood of impunity. In Cauca, for example, the average workload for each prosecutor is 600 cases.

D. Economic, social and cultural rights, and gender

59. In accordance with the 2030 Agenda for Sustainable Development, Colombia has committed to eradicating poverty and combating inequality, promoting gender equality through equal access to economic resources, and ensuring inclusive education and the availability of water and sanitation as guarantees of health and well-being. According to the Economic Commission for Latin America and the Caribbean, however, Colombia is the second most unequal country in the region:⁸ it is therefore essential that the National Plan for Development 2018–2022 address the issue of inequality with a human rights-based approach.

60. While official data show significant progress in the fight against poverty, they also demonstrate the wide gap between rural and urban areas in the effective enjoyment of economic, social and cultural rights; for example, illiteracy is 3.3 times greater in rural households than in urban households,⁹ and the percentage of rural households without access to drinking water is 13.4 times higher than it is in urban areas.

61. Women account for more than half of the population (50.6 per cent) and contribute significantly to resolving structural problems, strengthening democracy and peacebuilding. Official figures, however, show that significant gaps in gender equality persist. Women's participation in the job market is 20 per cent lower than men's, despite their having greater levels of higher education, while the salary gap is 18.7 per cent. In addition, women dedicate twice the amount of time to unpaid work.

62. OHCHR has observed violations of the right to health in the context of mining activities, which have affected indigenous populations; this is mostly evident in the Miraña and Bora communities in the department of Amazonas, where 450 people living on the banks of the Caquetá River have been seriously affected by illegal gold mining. Research shows that the concentrations of mercury in the people there are 15 to 20 times higher than the limit set by WHO, which is due primarily to fish consumption.¹⁰ The research concludes that such levels of mercury constitute a severe public health problem that affects the neurological, sensory and reproductive functions of the indigenous peoples inhabiting the region, threatening their survival.

63. Such a situation illustrates the need for the State to develop a strategy for effective intervention, with the corresponding budget allocations, so as to fully guarantee the human rights of the population of the region. The Amazon is a geostrategic region, with an abundance of natural resources but with high levels of multidimensional poverty and a large proportion of indigenous peoples, including indigenous communities living in voluntary isolation, and others in danger of physical and cultural extinction. The survival of the indigenous peoples depends on the State complying with its obligations, protecting their lands and strengthening their self-government. Decrees Nos. 1232 and 632 of 2018, which were aimed at boosting prevention and protection measures in favour of isolated indigenous

⁸ See interwp.cepal.org/anuario_estadistico/Anuario_2017/index.asp?anuario=2017&idioma=sp.

⁹ National Administrative Department of Statistics (DANE), "Pobreza Monetaria y Multidimensional en Colombia 2017", Boletín Técnico, 22 March 2018.

¹⁰ See *Informe de resultados del estudio realizado sobre los impactos generados por la minería ilegal en el territorio de la asociación PANI - Parque Nacional Natural Cahuinarí* (Universidad de Cartagena, PANI, Fondo Patrimonio Natural, Bogotá, 2015) and "Exploración de la Situación de Niveles de Mercurio en Muestras de Cabello tomadas a la Población Indígena de la Asociación CIMTAR, del Amazonas Colombiano", FCDS, 2016.

peoples and at strengthening the autonomous administration of indigenous territories, must be promptly and properly implemented. OHCHR will continue to provide technical assistance to local authorities to protect the enjoyment of economic, social and cultural rights by those communities.

64. OHCHR supports the development of protocols on relations between indigenous peoples and Afro-descendant communities and third parties (in the State and business sectors), including on prior, free and informed consent, in accordance with international standards. The protocols are to be based on the right of indigenous peoples to self-determination, and will be used to clarify their system of authority, justice and self-government. Support has been provided to the Arhuaco people of the Sierra Nevada de Santa Marta, to the Nasa people of northern Cauca and also to the Afro-Colombian councils of Buenaventura and Rio Atrato.

1. Economic, social and cultural rights within the framework of the peace agreement

65. OHCHR has observed great differences in access to economic, social and cultural rights in those municipalities most affected by the armed conflict. For example, the municipalities most affected by the conflict, as defined by the Government, have an average multidimensional poverty index of 76 per cent, while the national average is 49 per cent.

66. OHCHR urges the Government to increase its efforts to implement the comprehensive rural reform outlined in the peace agreement, as it is an opportunity to promote development and to guarantee access to rights in territories that have high levels of poverty, have been severely affected by armed conflict, have a weak institutional capacity and where illicit crops and illegal economic activities are present. However, OHCHR has observed difficulties in meeting the proposed deadline¹¹ for the implementation of local development plans, which was due primarily to violence in several municipalities and a lack of institutional coordination.

67. The first report on the implementation of the gender approach in the peace agreement, presented by the technical secretariat of the Commission for the Follow-up, Promotion and Verification of the Implementation of the Final Agreement, indicated that rural women face difficulties due to a lack of space in which to express their specific problems when “only community needs are discussed” in the meetings that are held.¹² OHCHR has also observed a lack of implementation of the ethnic approach, specifically in Cauca, Nariño, Norte de Santander and Valle del Cauca.

68. OHCHR highlights the importance of the section of the peace agreement that sets out a different approach to the illicit drug problem, consistent with advances in the global debate on antidrug policies, with solutions proposed on the basis of development and public health considerations and the obligations of international human rights law. The voluntary substitution of illicit crops, prioritized through a subsidies programme, together with technical assistance, productive projects and the promotion of comprehensive rural reform, contribute to the sustainability of substitution efforts and the effective enjoyment of human rights by the inhabitants of areas where illicit crops are grown.

69. OHCHR observed with great concern the deteriorating security conditions in several regions where the Comprehensive National Programme for the Substitution of Illicit Crops is being implemented, caused by the activities of criminal groups, ELN and groups of former members of FARC-EP who do not adhere to the peace process and who have been retaliating against families and leaders who have participated in the National Programme. Authorities should take appropriate and sustainable measures to protect those families and leaders.

70. OHCHR highlights the efforts made by the Illicit Crop Substitution Division (Dirección para la Sustitución de Cultivos Ilícitos) to expedite the signing of collective agreements. Further efforts are however needed to make progress in the payment of subsidies and the implementation of the subsequent phases of the substitution process

¹¹ All subregions and municipalities were expected to have a local development plan by September 2018.

¹² See cinep.org.co/images/csivi/Final_Primer-Informe-implementacion-enfoque-de-genero_STCVI_junio-2018.pdf.

(food security, technical assistance and productive projects). Leaders and communities in some areas of the departments of Meta, Nariño and Norte de Santander – where implementation of the National Programme has been proceeding for several months – are concerned about the impact on their livelihoods, in view of the possible or actual end to payments and the delays in technical assistance processes and the launch of production projects. According to the United Nations Office on Drugs and Crime, as at 7 December 2018, 92 per cent of the families that signed the substitution agreements had eradicated their coca plants.

71. OHCHR has observed limited intervention by other government agencies in charge of the implementation of comprehensive rural reform, which has affected the sustainability of the National Programme, given that individual projects will not be accompanied by the public investment on roads and infrastructure that are needed to transform conditions in rural areas, by providing small-scale producers with access to rural property and markets.

72. OHCHR was informed that an ethnic-based approach is not being fully incorporated into the design and implementation of the National Programme in Cauca, Norte de Santander, and Putumayo. For example, in the municipality of Tibu, the National Programme was approved through a process that excluded the Bari indigenous peoples.

2. Impact of corruption on human rights

73. Corruption has a negative impact on the enjoyment of human rights and affects the State's duty to allocate the largest possible amount of resources to guarantee economic, social and cultural rights. The Sustainable Development Goals, as assumed by Colombia, cover the fight against corruption. According to the Office of the Comptroller General, the annual cost of corruption in Colombia in 2017 was equivalent to around 21 per cent of the national budget for 2018 (approximately \$16 billion). The assets recovered from corruption could be used to finance the commitments in the areas of comprehensive rural reform and illicit crop substitution, as set out in the peace agreement.

74. The national anti-corruption referendum, held on 26 August 2018, was the result of a positive citizen initiative, which was supported by the presidency. Whereas 10.4 million votes were obtained by the new President of Colombia, more than 11 million people voted in the consultation, 99 per cent of whom supported the initiatives proposed.¹³ Although the vote did not reach the minimum threshold of participation required to make the results legally binding, Colombian society sent a strong message against corruption. Nevertheless, the majority of the anticorruption bills presented to Congress since the referendum (19 out of 24) have not been approved, and five are still pending.

75. OHCHR welcomes the decision of the new Government to make the fight against corruption a strategic priority, and calls for coordinated and definitive action to pursue that objective, including by strengthening State control bodies and ensuring the independence of the judiciary. OHCHR also encourages civil society to continue to exercise its right to participate in public decision-making by monitoring and overseeing the State's efforts to formulate a comprehensive anti-corruption policy.

76. In July 2018, the Office of the Attorney General revealed that its *Bolsillos de Cristal* plan to combat corruption had led to the investigation and prosecution of 2,100 people accused of acts of corruption worth over 4.1 trillion pesos.

77. OHCHR is concerned about the acts of corruption stemming from the 2017 mudslide in Mocoa, Putumayo, which resulted in 328 deaths and the disappearance of another 103. The Office of the Attorney General initiated investigations into acts of corruption related to the public works to reconstruct the aqueduct and to the disaster and risk management contracts of the governor's office of Putumayo.

78. Regarding the resources allocated for the implementation of the peace agreement, the Office of the Attorney General informed OHCHR that it had initiated an investigation

¹³ See id.presidencia.gov.co/Paginas/prensa/2018/180826-Palabras-del-Presidente-de-la-Republica-Ivan-Duque-Marquez-con-motivo-de-la-Consulta-Anticorrupcion.aspx.

into “the contracts executed with post-conflict resources”. The investigation should clarify the alleged irregularities.

3. Collective reparations and land restitution

79. OHCHR observed that, although the Unit for Assistance and Comprehensive Reparations for Victims has recognized 634 collective reparation beneficiary groups, significant progress has been made in the implementation of the plans in only six cases (0.9 per cent). With regard to land restitution for ethnic subjects of collective reparations, sentences ordering the restitution of ethnic territories have been handed down in response to only 14 of the 203 registered requests for restitution.¹⁴

80. Continuing the restitution process in areas of intense conflict and violence requires coordinated action by government institutions, including local authorities. That was evident in some townships in the municipalities of Arboletes, San Pedro de Urabá and Turbo, where technical assistance by OHCHR facilitated coordination, leading to investigations into threats against land claimants, improved protection measures for claimants and a greater commitment by the local authorities, in particular to vulnerable good-faith secondary occupants.

81. The State must increase its efforts to continue the land restitution process, through new legislation or other initiatives that keep victims at the centre of the process without imposing the burden of proof on them with regard to dispossession. Such processes will help to reverse the concentration of land that was facilitated by the internal armed conflict.

E. Peace and security

1. Impact of violence due to lack of access to human rights and limited State presence

82. The integrated presence of the State – which is not limited to State security forces – is essential to guarantee access by the population to human rights, including access to justice and security, and to stimulate economic development. It would break the cycles of chronic multidimensional poverty that are exploited by illegal armed groups (ELN and EPL), groups of former FARC-EP members who did not adhere to the peace process, national and transnational organized crime groups and numerous local crime groups as they develop and profit from illicit economics, generating endemic levels of violence.

83. OHCHR has observed that, despite its efforts, the State has not been able to provide public services to the various territories of the country in a coordinated manner, especially to the remote rural areas most affected by the conflict.

84. According to national police statistics, in 2018, 49.5 per cent of municipalities reported an increase in homicide rates with respect to 2017. For example, in the municipalities of San José de Uré in the department of Córdoba and Barrancas in the department of La Guajira, the homicide rates rose by 1,473 per cent and 880 per cent respectively. OHCHR has observed that, in 2018, the number of massacres increased by 164 per cent with respect to 2017, going from 11 to 29 cases. In 2018, such cases were concentrated in Antioquia, Cauca, Norte de Santander and Caquetá. OHCHR has noted more cases of murder of human rights defenders in the first three of those departments.

85. In 2018, OHCHR received information indicating the continued recruitment and use of children and adolescents by illegal armed groups (ELN and EPL), groups of former FARC-EP members who did not adhere to the peace process and criminal organizations. The cases allegedly arose in rural areas of Amazonas, Caquetá, Chocó, Nariño, Norte de Santander, Putumayo and Valle del Cauca.

2. Security

86. Despite some results achieved in combating criminal organizations in rural areas through the Dirección de Carabineros y Seguridad Rural (police and rural security division),

¹⁴ Unidad de Restitución de Tierras, statistics to 17 October 2018.

OHCHR has observed that the presence of the national police in most of the rural areas concerned continues to be insufficient, which is partially due to the legal restrictions regarding police stations and special units in rural areas, especially those affected by the armed conflict. That situation was observed in Bolívar, Caquetá, Cauca, Chocó, Córdoba and Guaviare, among other areas. Adjustments of regulations to fit the local context, combined with improved operational and material capacity, would facilitate the deployment and operations of the police in rural areas and would substantially improve the capacity of the State to prevent crime and protect the human rights of the inhabitants of those areas.

87. OHCHR continues to note that, in many regions, the presence of the State is limited to the military forces, requiring them to participate in tasks outside their responsibility, such as public safety, fighting organized crime, fostering social harmony and development. Such practices have been observed in Antioquia, Chocó, Guaviare, Huila, Meta and Nariño, among other areas, and do not conform with regional and international human rights standards. OHCHR is concerned about the plans and directives that have been issued by the military forces to justify the participation of the military in tasks relevant to public security, including the fight against organized crime and the application of international humanitarian law, rather than international human rights law¹⁵ to respond to organized criminal groups. OHCHR recalls that various United Nations experts have cautioned against the use of the military in the fight against organized crime, as it is likely to increase the incidence of human rights violations.¹⁶

88. In January 2018, an indigenous human rights defender was killed by soldiers during demonstrations in Carmen de Atrato, Chocó. That same month, a girl was injured during a military operation against the Clan del Golfo criminal group in Cáceres, Antioquia. Both cases documented by OHCHR illustrate the risks of involving the military in public security.

89. The participation of the military in situations for which its training and discipline are not suitable generates risks for the population, given the impact of the use of lethal force and distortions in relation to other State authorities, particularly local and ethnic authorities and the police. It also encourages dependence and, in some cases, the subordination of civilian authority to military power. That has been noted in Antioquia, Cauca, Meta, Nariño, Norte de Santander and Vaupés, among other areas. For example, the public safety and social harmony plan of a municipality in Bolívar specifically calls for the military to intervene in situations relating to social cohesion and public safety.

90. Public safety policy should be designed and applied with a human rights-based approach that includes the participation of communities and effective coordination between national and local State institutions, including ethnic authorities. The policy should also include the active participation of the State entities responsible for providing public services and promoting development.

91. The early warning system of the Office of the Ombudsman faces challenges owing to the insufficient coordination of activities between authorities at the national level and municipalities. OHCHR reiterates its view that lack of access to economic, social and cultural rights should be considered a risk factor. On the basis of its field monitoring, OHCHR participates in the Intersectoral Commission for Rapid Response to Early Warnings (CIPRAT), providing technical assistance for the adoption of suitable risk prevention measures.

92. In 2018, several threats and attacks were made against the staff of the Office of the Ombudsman. The State must establish effective mechanisms to guarantee the safety of civil servants working in high-risk areas.

93. OHCHR expresses its concern at the 11 cases of alleged extrajudicial executions reported in Antioquia, Arauca, Huila, La Guajira, Magdalena and Norte de Santander. This was the third consecutive year in which cases were reported in Arauca and Norte de Santander. Six executions were allegedly carried out by the national police and five by the military. One of the cases attributed to the police occurred during social protests, and one

¹⁵ Ministry of Defence, directives Nos. 015 of 2016 and 037 of 2017.

¹⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22535&LangID=E.

during public safety operations. The others were possibly due to the excessive use of force during routine police procedures. One of the executions allegedly carried out by the military was at a military checkpoint, two in the context of alleged criminal activities attributed to a soldier and the other cases in the context of military operations in rural areas.

94. In January 2018, in Chitagá, Norte de Santander, the police allegedly killed a man who had previously been caught trafficking gasoline. In Arauquita, Arauca, military forces killed a man in a situation that, according to the Office of the Attorney General, did not occur during combat. Eight soldiers are currently facing charges because of that incident.

95. As noted in previous reports, OHCHR once again observed that, in most cases, the factors that might have contributed to the alleged extrajudicial executions include the absence of command and control by the respective commanders, the lack of tactical discipline and a failure to apply protocols on the use of force in accordance with international standards.

96. OHCHR welcomes the willingness of the Ministry of Defence to establish a round table to ensure that its institutional procedures and actions are carried out in compliance with international human rights standards. Such round tables will examine cases of alleged extrajudicial executions, and have contributed to the State's efforts to prevent their reoccurrence. OHCHR has assisted 16 military and police inspections in identifying international human rights standards, including the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the Minnesota Protocol), that are applicable to disciplinary procedures in cases of human rights violations.

3. Reintegration of former combatants

97. In April 2018, a member of the FARC national committee was detained, and faced extradition to the United States of America. That had a significant negative impact on the perception of former members of FARC-EP with regard to legal certainty. OHCHR is concerned that, to date, the Special Jurisdiction for Peace has not had access to evidence that would allow it to determine the date on which the alleged crimes were committed.

98. In addition, the numerous attacks against reintegrated combatants – which, according to the United Nations Verification Mission in Colombia, have caused the death of 85 former FARC-EP members since the signing of the agreement – have put the stability of the peace process at serious risk and have led some former combatants to abandon the process.

99. The situation has contributed to the emergence of groups of former FARC-EP members who did not adhere to the peace process and to the recruitment of former FARC-EP combatants to groups with links to illicit economic activities. OHCHR has observed an increase in the presence of such groups and their impact on the population in their areas of influence, such as Tumaco. The phenomenon is not homogenous and varies, depending on the region.

III. International protection mechanisms

100. Prior to the consideration of the ninth periodic report of Colombia by the Committee on the Elimination of Discrimination against Women, OHCHR, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and other United Nations bodies provided technical support to the State and to women's organizations in the country.

101. Colombia received 211 recommendations at its third universal periodic review. OHCHR welcomes the fact that a high percentage of those recommendations were accepted by the State (see A/HRC/39/6/Add.1).

IV. Technical cooperation and cooperation with the Office of the High Commissioner in 2019

102. OHCHR reiterates its commitment to support the State to improve the situation of human rights in Colombia, and will continue its assistance to the Government in developing the national action plan on human rights. OHCHR also offers technical guidance on the prioritization of resources and programmes in regions at high risk of violence due to the lack of access to human rights.

103. OHCHR offers the Government technical assistance to ensure that rural development initiatives take into account the provisions of the peace agreement on comprehensive rural reform, incorporate a human rights-based approach towards the 2030 Agenda for Sustainable Development and guarantee community participation.

104. OHCHR offers guidance to ensure that constitutional and legislative reforms comply with international human rights standards. It offers guidance also on the design and implementation of suitable measures for investigation into and punishment and prevention of attacks against human rights defenders.

V. Recommendations

105. **The United Nations High Commissioner for Human Rights reiterates the recommendations made in previous reports and makes the recommendations set out below.**

106. **Reiterating that guaranteeing human rights is the way to achieve sustainable peace, the High Commissioner urges the State to accelerate the implementation of sections 1, 3 and 4 of the peace agreement in order to facilitate positive changes and provide lasting solutions for development, poverty reduction and illegal economic activities, especially in the regions most affected by the conflict, thus contributing to a sustainable reduction in violence.**

107. **The High Commissioner furthermore:**

(a) **Calls upon the State to strengthen guarantees for the work of human rights defenders by consolidating and broadening the existing spaces for civic engagement in the regions, thereby shifting the focus of protection and prevention from physical measures to addressing the structural causes that generate risks in the regions, especially in the rural areas affected by the conflict;**

(b) **Encourages the State to follow up on the official country visit by the Special Rapporteur on the situation of human rights defenders by implementing the key recommendations made by the mandate holder;**

(c) **Calls upon the Government to implement the Comprehensive Guarantee Programme for Women Leaders and Human Rights Defenders (Programa Integral de Garantías para las Mujeres Líderesas y Defensoras de Derechos Humanos), and to step up its efforts against impunity in cases of killings and attacks against them;**

(d) **Reiterates to the Government and ELN the need to take all steps to ensure maximum respect for human rights and international humanitarian law in order to build the trust needed to resume the peace talks;**

(e) **Calls upon all State institutions to respect the independence of the integrated truth, justice, reparation and non-recurrence system, and particularly that of the Special Jurisdiction for Peace;**

(f) **Invites the State to continue to pursue the 2030 Agenda for Sustainable Development as a tool for the advancement of economic, social and cultural rights, thereby facilitating the construction of a more equal and inclusive society and the promotion of gender equality;**

(g) Urges the Government to proceed with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(h) Calls upon the Government to maintain a participatory process for the formulation of the national action plan on human rights that addresses local situations and incorporates gender and ethnic approaches; an evaluation process to measure progress through indicators based on international standards is also necessary;

(i) Urges the State and civil society to establish a tripartite commission to monitor the implementation of the recommendations made in the context of the universal periodic review and by the treaty bodies and the special procedures for pursuing a comprehensive and concerted human rights agenda.
