Afro-Colombians’ Human Rights: A Call for Racial and Gender Justice in Peacebuilding

Published in Advance of the U.N. Human Rights Council Universal Periodic Review of Colombia at the UPR Working Group’s 30th Session 7-18 May 7-18, 2018

The Human Rights and Gender Justice (HRGJ) Clinic of the City University of New York (CUNY) School of Law
MADRE
Proceso de Comunidades Negras (PCN)

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I. Introduction

This report, published in advance of the UN Human Rights Council’s review of Colombia’s human rights record in May 2018, documents human rights violations against Afro-Colombian Peoples and communities, including threats to and violations of their gender-based human rights. Black, Afro-Descendant, Palenquera and Raizal1 Peoples in Colombia have been historically discriminated against and disproportionately victimized by Colombia’s decades-long armed conflict.2 Due to systemic government neglect, in the majority Afro-Colombian city of Buenaventura, for example, also home to Colombia’s most important port, the official unemployment rate is at 62%, while 64% live in poverty.3 The majority Afro-Colombian department of Chocó has the least coverage of potable water of all Colombia’s 32 departments, and a majority of homes have no sewerage service.4 While the signing of the peace accord with the FARC in 2016 represented an important step towards ending armed conflict in Colombia, unfortunately the violence, with its disproportionate impact on Afro-descendant Peoples, has continued. In the first half of 2017, 94% of all displaced people were Afro-Colombian or Indigenous,5 and over half of displaced people are women.6 In December, for example, at least 138 people fled the community of Magüi Payán in Nariño in the wake of a November massacre, with the local government claiming it had no resources to help the victims meet basic needs.7 Afro-Colombian women and girls, who face longstanding multifaceted discrimination and oppression based on gender and race, have also disproportionately suffered conflict-related human rights violations, including displacement, murder, torture, sexual violence, and forced labor.8

Publication of this report comes at a particularly fragile time in Colombia’s peace implementation process. The government’s failure to implement multiple provisions of the peace accord with the FARC, including its Ethnic Chapter, contravenes

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1 Afro-Colombian human rights and social justice movements use this terminology in order to be inclusive of people from prominent cultural and demographic centers, with Palenquera referring to Palenque, Bolivar and Raizales referring to the San Andres and Providencia Archipelago. Observatorio De Discriminación Racial, El Derecho A No Ser Discriminado, p.14 n.1 (2008), available at http://www.odracial.org/files/r2_actividades_recursos/269.pdf. For brevity, this submission will also use the terms “Afro-Colombian” or “Afro-Descendant.”

2 Id. at 7-9, 25-28.


its human rights obligations and poses significant risks to Afro-Colombian and Indigenous communities’ security and wellbeing. As a result of this failure and of a lack of meaningful consultation with Afro-Colombian and Indigenous authorities on security planning, armed actors continue to commit violence with impunity in their territories, with particularly harmful impacts on women and girls. In a move that further threatens meaningful civil society participation in peacebuilding, Colombia’s Council of State (Consejo de Estado) recently suspended the regulatory authority of the Commission for Monitoring, Verifying and Furthering Implementation of the Final Concern (CSIVI), which is the body tasked with oversight of implementation of the Accord. The suspension violates the terms of the Peace Accord and eliminates routes of influence for the Special High-Level Body for Ethnic Peoples and the High Level Body on Gender, which were both meant to serve as first-order consultants to CSIVI on peace implementation, and are important means for civil society to ensure an inclusive peace in Colombia. These failures to comply with the Peace Accord also place future dialogues with the Ejercito de Liberación Nacional (ELN) at risk, potentially leaving peace further out of reach for all Colombians.

Meaningful peace in Colombia requires promotion and protection of human rights, including the right to be free from discrimination. In many ways, the Peace Accord between the Government and the FARC recognizes this. The Accord includes and emphasizes significant gender and racial justice protections, specifically in its Ethnic Chapter, and it recognizes that social and economic disparity are significant drivers of conflict. At this critical moment, the international community must remind the Colombian government of the importance of upholding its commitments under the Peace Accord, and of meeting its human rights obligations overall.

This report begins with an analysis of the Government’s compliance with its obligations to meaningfully include Afro-Colombian and Indigenous Peoples, including women and girls, in peace implementation. The following section focuses on sexual and gender-based violence (SGBV) committed against Afro-Colombians and the barriers these survivors confront when seeking justice. The third section describes the danger that Afro-descendant human rights defenders and social leaders in Colombia face, and the failures of the government to work with Afro-descendant or Indigenous authorities to devise effective security and protection plans. A discussion of threats to Afro-descendant Peoples’ land rights comprises the fourth section. Following that section is a description of human rights violations against children forced into armed groups, as well as threats to the rights of demobilizing former child soldiers. The final section describes the profound lack of access to healthcare services in Afro-Colombian communities, and the particular barriers to necessary care that Afro-Colombian sexual and gender-based violence survivors face. Each section concludes with a set of recommendations that members of the UN Human Rights Council can make to the Colombian government.

The areas of focus of this report were determined in the context of a conference of Afro-Colombian women leaders of Proceso de Comunidades Negras and Consejo Nacional
Afro-Colombiano para la Paz. Its sources include published human rights reports, news articles, and direct interviews with Afro-Colombian activists and service providers. Sources have been kept anonymous in certain cases for their safety. PCN, CONPA, MADRE, Student volunteers at Columbia University, and the Human Rights and Gender Justice Clinic at CUNY School of Law collaborated to draft this report.

II. Peace Accord Compliance - Consultation with Afro-Colombian and Indigenous Peoples

The Colombian government has fallen short of adhering to its obligation to ensure meaningful participation of Afro-descendant and Indigenous Peoples, including women and girls, in peace implementation as required by the Ethnic Chapter and other provisions of the Peace Accord, as well as by UNSC Resolution 1325 and ILO Convention 169. The Ethnic Chapter of the Accord, which was only included after persistent mobilization by groups representing Afro-descendant and Indigenous Peoples, reaffirms their right to free, prior and informed consent regarding policies and projects that affect their territories, including all of those proposed under the Accord. As the UN High Commissioner on Human Rights recently observed, however, Colombian officials often fail to recognize Afro-descendant and Indigenous self-governance authorities in practice, and a number have publicly stated their view that self-governance and the principle of free, prior and informed consent are hindrances to agro-industrial and mining projects. This discriminatory approach has borne out at an institutional level in peace implementation. Strenuous advocacy by Afro-Colombian and Indigenous organizations, which mobilized international allies, was necessary to convince the Government to take initial steps to carry out the type of consultation required of it to meet its obligations under the Ethnic Chapter.

For over half a year, the Government had ignored requests from the Special High Level Body for Ethnic Peoples, meant to serve as a first-order consultant on peace implementation in Indigenous and Afro-descendant territories, to meet with the Commission for Monitoring, Advance, and Verification of the Final Accord (CSIVI). It was cause for hope when the Government and CSIVI, after extensive civil society advocacy, finally came to an agreement late last year with the Special High Level Body for Ethnic Peoples to include ethno-racial- and gender-responsive indicators –jointly developed by Afro-descendant and Indigenous authorities and organizations, including women’s organizations – in the peace implementation framework plan. These indicators are designed to measure the progress and outcomes of peace implementation policies and programs in Afro-descendant and Indigenous territories. The Government, however, has yet to allocate resources to the implementation of this plan, and failed to provide the enabling conditions for meaningful participation of Afro-descendant communities, including Afro-Colombian women, in peace implementation. With the suspension of CSIVI’s powers as of publication of this report, it is unclear what government entity will ensure that these indicators are monitored, and their correlating initiatives funded and implemented alongside the

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remainder of the framework plan. It is also alarming that the Government has failed to implement a significant number of provisions of the Peace Accord, many of them related to security guarantees, placing Afro-Colombian communities at constant risk of violence, as described in Section IV, infra.

It is commendable that CSIVI responded to persistent protests and calls from Afro-Colombian women’s groups, and in December 2017 appointed an Afro-Colombian women’s advocate to the High Level Gender Body,14 which previously had no representative from Afro-Colombian women’s organizations. However, this welcome step towards ensuring meaningful participation of Afro-descendant women in peace implementation may also be undermined by the suspension of CSIVI’s powers, a suspension that circumvents the influence of both the High Level Gender Body and the Special High Level Body for Ethnic Peoples. Colombian advocates are hopeful that CSIVI’s power will be restored, and that the Representative of the UN High Commissioner for Human Rights, which has helped to visibilize violations of gender and racial justice obligations under the Accord, will remain a fixture in the peace implementation process, despite the tenure of the new Representative having been only approved through August.

**Recommendations to the Colombian Government:**

- The Colombian Government should ensure continued operation of CSIVI, and continued collaboration and consultation between Afro-Colombian and Indigenous authorities including women representatives and organizations, and the CSIVI in peace implementation.

- The Government must commit the legal, institutional and financial resources necessary for implementing the peace implementation framework plan within Afro-descendant and Indigenous territories and in accordance with the framework plan indicators developed by the Special High Level Body for Ethnic Peoples.

- The Government must ensure full implementation of the Ethnic Chapter of the Peace Accord by allocating a specific and adequate fund for it, and by working with the Special High Level Body for Ethnic Peoples to ensure meaningful participation of and consultation with Afro-descendant and Indigenous authorities and communities in implementation.

- The Colombian Government should ensure ongoing approval of the Office of the Representative of the UN High Commissioner for Human Rights in Colombia.

- Ensure that the instruments, mechanisms, and competencies implementing the Peace Accord, have routes for the exchange of information on territorial progress, with the High Level Gender Body and Special High Level Body for Ethnic Peoples, and especially with the institutions that operate mechanisms for truth, justice, reparation and guarantees of non-repetition, in order to facilitate the territorialization of the Ethnic Chapter’s women, family, and generation approach.

- Ensure implementation of the Afro-Colombian Statistic Information System requiring documentation of ethnic identity, gender, and sexual orientation in institutions related to access to justice and those related to access to economic, social and cultural rights from an Afro-descendant perspective.

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III. Sexual and Gender-based Violence Committed Against Afro-Colombians

Over the course of the five-decade long conflict, all warring parties, including State military and police forces, paramilitaries, and guerrilla groups, have used sexual and gender-based violence as a weapon of war, terrorizing communities to achieve military aims, including control over populations. Afro-Colombian women and girls have suffered disproportionate rates of conflict-related gender-based violence, and encounter myriad obstacles to full and effective access to justice and reparations. 17

While underreporting 18 and differing statistical criteria make precise measurement of rates of sexual violence difficult to measure, it is clear that sexual violence has been pervasive in Colombia’s conflict. 19 Conflict-related sexual violence has continued in Colombia, including during peace negotiations and after achievement of a peace agreement with the FARC. The Ombudsperson’s Office registered 361 cases of conflict-related sexual violence from January-October 2017, 20 and repeatedly warned communities of a heightened risk of sexual violence as a result of the demobilization of former combatants, 21 noting the extraordinary risks that women human rights defenders and

15 State forces were identified as the aggressors in more than 50% of all conflict-related sexual violence reported between 2004 and 2012. A study examining cases of sexual violence committed by State forces revealed that conflict-related sexual violence constituted a military strategy, rather than being isolated incidents. European Center for Constitutional and Human Rights (ECCHR), Sisma Mujer (Sisma), Colectivo de Abogados Jose Alvear Restrepo (CAJAR), ICC Communication on Sexual Violence in Colombia: Executive Summary, pp. 3, 6 (Apr. 2015).


19 The Instituto Nacional de Medicina Legal y Ciencias Forenses (Institute for Legal Medicine and Forensic Sciences), which solely counts the limited cases that have been reported to authorities or where the victim has undergone a legal medical exam, recorded 21,339 cases of sexual violence in 2016, of which 625 occurred in relation to armed confrontations, and 4,825 in relation to displacement. Instituto Nacional de Medicina Legal y Ciencias Forenses, 2016 Forensis Datos Para La Vida: Herramienta para la interpretación, intervención y prevención de lesiones de causa externa en Colombia, pp. 357, 362, 396, Vol. 18, No. 1 (June 2017). A 2010-2015 survey found that approximately 875,437 women were victims of conflict-related sexual violence. Oxfam et al., Encuesta de Prevalencia de Violencia Sexual en Contra de Las mujeres en el Contexto del Conflicto Armado Colombiano 2010-2015, p. 1 (Aug. 2017). The National Center for Historical Memory in Colombia, based on stricter criteria that eliminated cases it believed not detailed enough or not sufficiently related to the conflict, found that between 1958 and 2016 there were 15,076 victims of conflict-related sexual violence. Centro Nacional de Memoria Historica, La Guerra Inscrita en el Cuerpo, p. 474 (Nov. 2017).

20 Defensoría del Pueblo, Persiste violencia sexual en zona del conflicto armado en Colombia (Dec. 4, 2017).

leaders face.\textsuperscript{22} Studies find the presence of armed groups in Colombia increases women’s overall vulnerability to gender-based violence, with perpetrators in these areas consisting of armed actors, as well as family and community members.\textsuperscript{23}

**Sexual and Gender Based Violence Against Afro-Colombian Women**

Afro-Colombian women and girls suffer from disproportionately high rates of conflict-related sexual and gender-based violence.\textsuperscript{24} Racist stereotypes about Afro-Colombian women, coupled with economic insecurity resulting from systemic neglect of Afro-Colombian communities contribute to this heightened vulnerability to sexual and gender-based violence.\textsuperscript{25} Illegal actors and State actors have used the armed conflict to usurp Afro-Colombian territories to develop agro-industrial or mining projects, stripping Afro-Colombian women of their physical, cultural and spiritual integrity in connection to their land.\textsuperscript{26} The use of sexual violence against Afro-Colombian women constitutes a systematic strategy by armed groups to exercise power over women and their territory.\textsuperscript{27} Moreover, ongoing armed actor violence has led to mass forced displacement of Afro-Colombian communities.\textsuperscript{28} Once displaced from their ancestral lands, Afro-Colombian women are particularly vulnerable to sexual violence, being burdened by the loss of resources, the disruption of their communities and families, and disorientation in new surroundings.\textsuperscript{29} In 2016, Médicos Sans Frontières reported treating 645 sexual violence survivors in Tumaco and Buenaventura alone, 90\% of whom were women.\textsuperscript{30} These two regions are the site of concentrated displacement,\textsuperscript{31} and have majority populations of Afro-descendant Peoples.\textsuperscript{32}

For Indigenous women in Colombia as well, sexual violence continues to be the “most painful

\textsuperscript{22} Amnesty International, The Years of Solitude Continue: Colombia: The Peace Agreement and Guarantees of Non-Repetition in Chocó, p. 18 (Nov. 2017).

\textsuperscript{23} Constitutional Court, Decree 009 of 2015; Oxfam et al., Encuesta de Prevalencia de Violencia Sexual en Contra de Las Mujeres en el Contexto del Conflicto Armado Colombiano 2010-2015, p. 21 (Aug. 2017).


\textsuperscript{26} Forthcoming report: Proceso de Comunidades Negras, Violencia cultural: despojo de prácticas y valores culturales de las mujeres negras del norte del cauca y buena ventura en el marco de las dinámicas del modelo de desarrollo patriarcal capitalista, pp. 36-37 (Mar. 2018).

\textsuperscript{27} Centro Nacional de Memoria Histórica, La Guerra Inscrita en el Cuerpo: Informe Nacional de Violencia Sexual en el Conflicto Armado, p. 294 (Nov. 2017).

\textsuperscript{28} United Nations Office for the Coordination of Humanitarian Affairs, Humanitarian Needs Overview: Colombia, p. 12 (2018); Defensoría del Pueblo, Defensoría alerta por incremento de la violencia en Tumaco (Jan. 9, 2018); Defensoría del Pueblo, Más de mil desplazados en el país dejó la violencia en solo cuatro días: Defensoría (Jan. 23, 2018).

\textsuperscript{29} Andrea L. Wirtz, et al. “Gender-based violence in conflict and displacement: qualitative findings from displaced women in Colombia.” Conflict and Health 2014, 8:10, pp. 1-14.


and unspoken” indignity they suffer. Indigenous women are often singled out for sexual violence by armed groups, an outcome related, similarly to Afro-descendant women, to the multiple forms of discrimination they face based on gender, race, ethnicity, and socioeconomic status. The armed conflict and related territorial and socioeconomic problems have perpetuated the violence and discrimination Colombian Indigenous women continue to experience. Many of the violations are committed against women who are part of Indigenous Peoples with numerically small membership as a result of a legacy of anti-Indigenous genocide, with these violations being a further stressor on their already fragile communities.

Continued Risks of Conflict-Related Sexual and Gender Based Violence

As FARC demobilized, other illegal armed groups filled the security vacuum in areas that heavily overlap with Afro-Colombian territories. Kidnappings, threats and other violence have led to increased forced displacement, and contributed to a heightened risk of sexual violence. Afro-Colombians comprised 70 percent of those displaced in the first half of 2017 alone. Human rights advocates have raised alarm about reports of increased sexual violence where armed groups are operating in Afro-Colombian and Indigenous territories. In 2016 the National Victims’ Unit registered 85 cases of conflict-related sexual violence, 31% of which were targeted against Afro-Colombian women. Exemplifying the impunity with which armed actors are able to target Black women, a woman reportedly was raped by several men in public in Tumaco on February 13, and reportedly, no police came to her aid. According to some Afro-Colombian organizations, the presence of armed actors means homicides are a daily occurrence in both rural and urban areas of Tumaco, despite the presence of two military bases, and bodies are found on river banks nearly every day, with sex workers found increasingly among the dead, alongside young men also killed by armed groups. Women in and around Tumaco report feeling particularly impacted by ongoing pervasive insecurity, finding that it prevents

33 Defensoría del Pueblo, Defensoría alerta por incremento de la violencia en Tumaco (Jan. 9, 2018); Defensoría del Pueblo, Más de mil desplazados en el país dejó la violencia en solo cuatro días: Defensoría (Jan. 23, 2018).
38 Id. at 815.
39 Id. ¶ 815.
43 Anonymous Interview, Feb. 13, 2018 (on file with MADRE).
them from moving about and earning a living. They also report that women and girls face heightened risk of sexual violence at the hands of drug traffickers and armed groups, with little recourse to protection and justice.\(^{46}\)

Lack of protection for Afro-Colombian women human rights defenders leaves them susceptible to conflict-related sexual violence and exacerbates the vulnerabilities of their communities to sexual violence. From January-August 2017 the Ombudsperson’s Office registered 118 cases of women human rights defenders that were threatened or at risk because of their work as defenders.\(^{47}\) In 2016 an Afro-Colombian community leader was forced to flee from her home after militants abducted and raped her for speaking out against sexual violence.\(^{48}\) Similar transition stages in Colombia have previously led to increased sexual violence against women and girls, as after the 2005 demobilization of AUC paramilitary forces,\(^{49}\) making it all the more critical that the state ensure services and justice for victims, and that it consult with Afro-Colombian and Indigenous authorities and communities to address these risks.

**Access to Justice**

Victims of conflict-related sexual violence face an array of barriers to accessing the justice system, which contributes to a culture of impunity for perpetrators. Shame and stigma associated with sexual violence often prevent victims from reporting the attacks.\(^{50}\) The Colombian justice system further perpetuates gender stereotypes and prejudices by discrediting and blaming victims, and dismissing crimes of sexual violence as crimes of passion.\(^{51}\) Victims frequently suffer re-victimization at the hands of authorities, undergoing unnecessary physical examinations and questioning about their past sexual behavior.\(^{52}\) Procedural delays and State authorities’ failure to communicate with victims perpetuates mistrust of the justice system and prevents women from reporting sexual violence.\(^{53}\)

For survivors living in poverty and in remote areas, practical considerations can also make it nearly impossible for them to pursue justice.\(^{54}\) While the Colombian government has taken


\(^{47}\) Defensoría del Pueblo, *Defensoría rechaza cualquier acto de amenaza o violencia en contra de las mujeres* (Nov. 28, 2017).


\(^{51}\) Id.

\(^{52}\) European Center for Constitutional and Human Rights (ECCHR), Sisma Mujer (Sisma), Colectivo de Abogados Jose Alvear Restrepo (CAJAR), Special Newsletter, *When Women Become Targets: Sexual and Gender-Based Violence in Colombia’s Conflict, A Matter for the International Criminal Court*, p. 9 (Apr. 2015).

\(^{53}\) Id.

steps to minimize exorbitant costs associated with seeking redress for conflict-related sexual violence, this expense remains prohibitive for most victims.55

Moreover, the continued presence of armed actors and a lack of adequate security measures provided by the State prevent many women from coming forward. An eight-year survey in Colombia found that eighty percent of victims of sexual violence perceive the presence of armed actors in their communities as an obstacle to denouncing crimes of sexual violence.56 State authorities often fail to investigate threats against victims or ensure victims’ safety,57 and judicial authorities do not always preserve victims’ confidentiality,58 making it particularly dangerous for them to speak out in areas where armed groups are still active.59 Afro-Colombian activists report that in many places of continued conflict, such as Tumaco, gender-based violence victims lack safe, accessible, and confidential reporting mechanisms.60 Existing reporting mechanisms and practices have not been developed with input from community members, and thereby fail to adequately preserve their confidentiality and account for their precarious security circumstances. Those who report human rights violations, including sexual violence, to police or military are at high risk of retaliation from armed groups.61 This contributes to persistent impunity.

For Afro-Colombian women victims, barriers to justice include pervasive discrimination, based not only on their gender, but also on their race or ethnicity and socio-economic status.62 Indigenous women also face similar, intersecting forms of discrimination, and the vast majority of human rights violations committed against them are never punished.63 Furthermore, Afro-Colombian and Indigenous women often don’t have access to information about the resources and procedures available for reporting gender-based violence.64 In rural areas inhabited by Afro-Colombians, victim services are severely lacking,65 despite heightened vulnerability to sexual violence for Afro-Colombian women living outside urban centers.66

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55 European Center for Constitutional and Human Rights (ECCHR), Sisma Mujer (Sisma), Colectivo de Abogados Jose Alvear Restrepo (CAJAR), Special Newsletter, When Women Become Targets: Sexual and Gender-Based Violence in Colombia’s Conflict, A Matter for the International Criminal Court, p. 10 (Apr. 2015).


57 European Center for Constitutional and Human Rights (ECCHR), Sisma Mujer (Sisma), Colectivo de Abogados Jose Alvear Restrepo (CAJAR), Special Newsletter, When Women Become Targets: Sexual and Gender-Based Violence in Colombia’s Conflict, A Matter for the International Criminal Court, p. 11 (Apr. 2015).

58 Duque, Stella. (Executive Director of MADRE’s sister organization Taller de Vida, Bogotá). Personal Interview. New York City, USA: 08 December 2017.


60 Anonymous Interview, Feb. 2018 (on file with MADRE).


66 Id. at p. 8.
Over the past few years, the Colombian government has made significant progress in constructing a legal framework to help victims of conflict-related sexual violence access justice. It has also ratified a number of international and regional instruments safeguarding the rights of victims of sexual violence to have equal and effective access to justice, remedies, and reparations under international human rights law. As a State Party to these instruments, Colombia has the duty to prevent, protect, investigate, and prosecute sexual and gender-based violence, and to provide reparation to victims, without exception.

Through Judicial Decision 092 the Colombian government implemented programs to provide for protection and redress to women and girls victims of sexual violence in conflict, including assistance for Indigenous and Afro-descendent displaced women. In 2011, the Colombian government created a “referral pathway” to help guide victims to the government’s multi-sector response programs and passed the Victims and Land Restitution Law (Law 1448), providing recognition to victims of conflict-related sexual violence by safeguarding their right to reparations through land restitution. In 2014, the Colombian Congress passed Law 1719, which eliminated the statute of limitations for crimes of sexual violence, and defined crimes that were not originally included in Colombia’s penal code. Moreover, Law 1719 defined sexual violence as a crime against humanity, which ought to be tried by civilian Courts, instead of military tribunals. In recognition of sexual violence being attributable to members of the security forces, military and judicial authorities have made further efforts to ensure accountability through directives that commit to fight impunity and establish a zero tolerance policy towards sexual violence.

Despite this legal framework and the government’s acknowledgement of the need to review the systems and protocols for dealing with cases of sexual violence, it has

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69 Oficina del Alto Comisionado para la Paz, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (El Acuerdo de paz en inglés) Government of Colombia, (2017).


71 Klasing, Amanda, Colombia: Obstacles to Care for Abused, Displaced Women, p. 1, HUMAN RIGHTS WATCH (Nov. 14, 2012)


74 Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, Press Statement by the Special Representative of the Secretary-General on Sexual Violence in Conflict Zainab Hawa Bangura (June 24, 2014).


nonetheless failed to adequately address the obstacles victims face in achieving justice. As of 2017, only two percent of the 634 court-documented cases of conflict-related sexual violence have resulted in convictions. In 2015, Colombia’s Constitutional Court issued a follow-up decision to Auto 092 and noted “persistent failures” on the part of the government to provide adequate care, protection and access to justice for victims of sexual violence. In some cases, implementation of laws has caused further harm and re-victimization where the necessary resources were not made available and the response systems were poorly activated. Moreover, implementation of the JEP and the transitional justice process has been further delayed due to the addition of amendments that threaten to distort key components of the Peace Accord and deny victims of human rights abuses their right to justice. The amendments, which must be reviewed by the Constitutional Court, would strip human rights defenders, including most Afro-Colombian members, from the JEP panel of judges, and would increase impunity for landowners, businesses or other third party civilians who funded or ordered the commission of human rights violations by other actors. Meanwhile, illegal armed actors continue to commit widespread abuses, such as killings, disappearances, and sexual violence with impunity, while the Government of Colombia ignores reports of continued violence from Afro-Colombian and Indigenous communities.

Recommendations to the Colombian Government:

- Immediately provide security in Afro-Colombian territories, in consultation and collaboration with Afro-Colombian Community Councils and women’s organizations, in order to prevent violence against them, and to ensure that paramilitaries and other armed actors are investigated and held fully accountable for violence, including gender-based violence. This should include providing resources for training and strengthening Afro-Colombian traditional security forces, the Cimarrona guard.

- With input from Afro-Colombian and Indigenous women’s organizations, develop and carry out measures to ensure that Afro-Colombian and Indigenous women are able to conveniently access justice and reparations for gender-based violence. This should include enforcement of existing laws, training of local responders and judiciary personnel, infusion of resources for adequate access to justice and for compliance monitoring of legal protections.

- In consultation with Afro-Colombian women’s organizations and authorities, establish safe and anonymous ways of reporting conflict-related sexual violence to ensure victims are able to access the justice system and report violence in their communities.

- Ensure there is a line of direct communication between Afro-Colombian victims of sexual violence in the conflict, and both the Special Jurisdiction for Peace (JEP), and the Commission for the Clarification of Truth, Coexistence, and

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80 Washington Office on Latin America, Rescuing Colombia’s Post-Conflict Transitional Justice System (Nov. 29, 2017).

81 Id.

Non-Repetition; and ensure that these bodies prioritize these cases.

- With participation of Afro-descendant women’s and victims organizations, and respecting free, prior and informed consent processes, create a policy directed to providing reparations in all cases of conflict-related crimes committed against Afro-Colombian women and girls, in a manner that ensures truth, justice and non-repetition; and that serves as a guide for the mechanisms of the Special Jurisdiction for Peace.

- Allocate and expend the necessary financial resources to support Afro-descendant organizations’ autonomous research on impacts of the internal armed conflict so as to secure reliable information and recommendations that ensure accountability and overcome impunity.

- Simplify procedures required for Afro-descendant women and girls to access all victims’ services, and justice and reparation mechanisms; as well as their access to rural development initiatives and political participation.

- Government entities must coordinate with Afro-Colombian and Indigenous organizations and authorities, including women’s organizations, to develop strategies to overcome sexist and racist stereotypes, with a view to reinforcing positive images of Black, Afro-descendant and Indigenous women, in public and private sectors, in the media, and in employment and education settings.

IV. Threats Against & Assassinations of Afro-Colombian Human Rights Defenders

In 2016, observers found that Colombia had the highest rate of assassinations of human rights defenders globally, and killings of human rights defenders continued to spiral in 2017, with more than 160 social leaders and human rights defenders killed that year. Afro-Colombian and Indigenous human rights defenders are disproportionately represented among victims of this dramatic uptick in killings and other violence. For example, in January 2017, Afro-Colombian activist Emilsen Manyoma and her husband, Joe Javier Rodallega were beaten, stabbed and shot to death. In June 2017, Bernardo Cuero Bravo, member of the National Association of Displaced Afro-Colombians (AFRODES), was murdered after having survived prior attempts on his life and multiple death threats. His repeated requests to the state, and particularly to its National Protection Unit UNP) for greater security measures had gone unanswered.

83 Concern About the Murder of Human Rights Defenders in Colombia, PBI COLOMBIA (May 9, 2017), available at https://pbicolombia.org/2017/05/09/6519/#_ednref6
On March 19 of this year, Bernardo Cuero Bravo’s sons, Javier Bernardo Ortiz and Silvio Duban Ortiz, were killed, not long after a public hearing on their father’s assassination, around which Bravo’s family members and Afro-descendant organizations mobilized to ensure justice. In Tumaco, at least six Afro-Colombian leaders were killed in the last few months of 2017, and several leaders and their families had to be urgently relocated due to death threats. Among those killed in Tumaco were community leader Jose Jair Cortez, killed October 2017, and community leader Luz Jenny Montaño, assassinated November 2017.

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90 Lider Comunal Luz Jenny Montaño fue asesinada por sicarios, NOTICIAS CARACOL, (Nov. 13, 2017), available at https://noticias.caracoltv.com/co...
Killings of social leaders and human rights defenders continued into 2018, with twenty killed across the country in January 2018 alone. On January 27th, Afro-Colombian leader Temístocles Machado was assassinated in Buenaventura. Machado, a leader within Black Communities Process (PCN), was a prominent land defender and community leader. He played an instrumental role in a 10-year struggle of seven neighborhoods against the port administrator company, TC-BUEN, that threatens to displace more than 7,000 families with large-scale port expansion and tourist development projects; and in the 2017 civic strike in Buenaventura, protesting a lack of basic services such as water, and health and education infrastructure, and the failure of the state to adhere to obligations to address insecurity. On February 1st, Yolanda Maturana, a well-known environmental leader, was shot and killed by several armed men in her house in the department of Risaralda. Maturana led efforts to protect natural resources in the region between the departments of Risaralda and Chocó. Eighty-seven per cent of homicides against human rights defenders carried out between 2009 and 2016 in Colombia remain unpunished. Killings of women human rights defenders have an impunity rate of over 90 percent. In addition to a culture of impunity, Afro-Colombian women human rights defenders who have had to flee their homes report a lack of resources and support services, including safe family reunification, to facilitate their relocation.

In the context of peace implementation, as Afro-Colombian communities, which have been disproportionately affected by displacement, attempt to reclaim their ancestral lands, armed groups, particularly paramilitaries, use violence to terrorize people and prevent them from returning. In late 2017, two Afro-Colombian land claimant leaders, Hernán Bedoya from the collective Piedeguía Mancilla territory and Mario Castaño Bravo from Curvaradó, were killed in the span of less than two weeks by paramilitary groups. Both leaders were engaged in activities related to collective land restitution and the rights of displaced communities. The Justice and Peace Commission, which has been working on collective land processes in these areas, maintains that the killings were carried out with the aim of disrupting the collective land claim processes and return of families displaced from these areas in the 1990s. The assassinations took place despite the fact that the UNP had provided both leaders with some

96 Id.
97 Anonymous Interview, February 2018, (on file with MADRE).
100 Id.
protection measures, which solely consisted of bulletproof vests and cell phones.  

The Ombudsman’s Office confirms that the Colombian government has failed to respond adequately and in a timely manner to its issued warnings on threats against human rights defenders. Protection measures provided by the National Protection Unit (UNP) often lack a differential and gender-responsive approach and human rights defenders consistently report that measures by the National Protection Unit (UNP) not only fail to keep them safe, but can actually make them more of a target.

Afro-descendant advocates in areas of continued conflict report that the government has not provided a safe means to report attacks and threats, and that those who report human rights violations to police or military become targets of armed groups. This is because reporting mechanisms and practices have not been developed with input from community members, and therefore do not preserve their confidentiality or account for their precarious security circumstances. Police and military additionally fail to account for the fact that their surveillance strategies put community members at risk of attacks by armed groups.

Evidence indicates that key government officials fail to take these attacks seriously. In mid-December the Minister of Defense publicly dismissed assassinations and death threats against social leaders as the fruit of petty disputes or retributions among neighbors or romantic partners. The Office of the Inspector General, however, after meeting with community leaders in Chocó, recognized the ongoing disproportionate impact of conflict on Afro-Colombian and Indigenous Peoples, and warned of likely mass displacement due to threats by armed actors against community leaders struggling to reclaim their collective territory. He called for the Ministers of Defense and Interior, among other government agencies, to provide security to communities in Chocó and to their social leaders, and to stop stigmatizing rights defenders whose lives are threatened.

The Government’s failure to comply with the Peace Accords, including its Ethnic Chapter, contributes to overall insecurity and facilitates conditions that lead to threats against and killings of human rights defenders. Despite safeguards under the Peace Accord that mandate meaningful consultation with Afro-Colombian authorities to establish security measures in their territories, the government has failed to carry out this consultation or to support Afro-descendant People’s efforts to design and implement community-based self-protection plans with an ethno-racial gender perspective. Furthermore, as of November, over 90 per cent of the Peace Accord provisions pertinent to establishment of the National Commission of Security Guarantees (CNGS) – the body tasked with implementing

101 Id.  
105 Anonymous Interview, February 2018, (on file with MADRE).  
106 Id.  
security measures to dismantle criminal organizations and protect social leaders and human rights defenders, and 70 per cent of security guarantees for social leaders and human rights defenders had yet to be implemented.\textsuperscript{110} Forty-four per cent of dispositions to establish the Special Investigative Unit of the Prosecutor General’s Office have not been implemented,\textsuperscript{111} and the entity is not fulfilling its mission to investigate criminal and neo-paramilitary groups, including their potential political and economic backers.\textsuperscript{112} Additionally, the CNGS failed to meaningfully consult with authorities and organizations to develop its two pilot plans in the majority Black cities of Tumaco and Buenaventura.\textsuperscript{113} It also lacks a plan to propose public policies for dismantlement of criminal and neo-paramilitary groups, and lacks appropriate resources to visit territories and consult with communities on security.\textsuperscript{114} The government moves at a glacial pace to meet obligations to provide alternative economic opportunities for coca growers, while still conducting forced eradications.\textsuperscript{115} These failures to comply with the Peace Accord contribute to escalated violence and impunity in regions where FARC has demobilized, including, for example, the massacre in October of campesinos in Tumaco protesting forced eradication of coca crops, who were shot by police.\textsuperscript{116}

**Recommendations to the Colombian Government:**

- In consultation with Afro-Colombian authorities and organizations, improve UNP’s criteria for risk assessment to account for specific security needs of Afro-Colombian leaders and human rights defenders, particularly women advocates, and establish collective and preventive security measures.

- Immediately provide security in Afro-descendant territories, in consultation with their respective authorities and organizations, particularly women’s organizations, to prevent violence against them. Support Afro-Colombian community councils to establish gender-responsive community-based self-protection plans and early warning and response mechanisms to effectively address individual and collective security threats in their territories.

- Eliminate stigmatization of human rights leaders on the part of high-level government officials and implement the recommendations of the Inspector General

\textsuperscript{109} Presidencia de la República, Creada Comisión Nacional de Garantías de Seguridad que velará por desmantelamiento de estructuras de crimen organizado (Feb. 3, 2017), available at http://es.presidencia.gov.co/noticia/170203-Creada-Comision-Nacional-de-Garantias-de-Seguridad-que-velara-por-dismantelamiento-de-estructuras-de-crimen-organizado

\textsuperscript{110} Kroc Institute for International Peace Studies, Informe Sobre El Estado Efectivo de Implementación del Acuerdo de Paz en Colombia, p. 33 (Nov. 2017).

\textsuperscript{111} Id. at p. 31.


\textsuperscript{113} Id. at p. 20.

\textsuperscript{114} Id. at 45.


\textsuperscript{116} Oscar Montes, ¿Qué hay detrás de la masacre de Tumaco?, EL HERALDO (Oct. 8, 2017), available at https://www.elheraldo.co/politica/analisis-ley-del-montesesque-hay-detrás-de-la-masacre-de-tumaco-409963

\textsuperscript{117} paz/farc/6783-la-frustracion-con-la-implementacion-de-la-paz-es-explosiva-todd-howland
(Procurador de la Nación) calling for protections for Afro-Colombian and Indigenous communities and leaders that are under threat.

V. Land Rights

On paper, Afro-Colombians enjoy protections of their lands, including a right to collective territory under Colombian law, and a right to free, prior and informed consent regarding laws, policies and development projects that impact them and their territories—a right that the Peace Accord reaffirmed. In reality, these rights go unfulfilled or are at risk as a result of an array of threats, including the extractive industry, arbitrary administrative hurdles, forcible displacement in a context of impunity, and the government’s failures to recognize protections or comply with the law.

For example, government officials in many instances have failed to permit Afro-descendant Peoples to register their Community Councils in order to access collective territorial rights, including land title. An array of similar administrative hurdles and arbitrary delays means that Afro-Colombian communities have at least 271 pending collective land titling claims that have yet to be fulfilled. Continued violence also prevents Afro-Colombian communities from enjoying access to their territory. Paramilitary groups, such as Autodefensas Gaitanistas de Colombia (AGC), and other armed groups such as the Ejército Nacional de Liberación (ELN) have resurfaced in areas vacated by the FARC. Between January and September 2017, 9,544 people were collectively displaced in Chocó. In October 2017, 27 instances of displacement were reported in Chocó, affecting 3,115 Afro-descendants and 2,955 Indigenous people. Anti-personnel mines planted recently by resurgent groups threaten the lives of those living in these areas and those who seek to return to land from which they were forcibly displaced.

Colombia has failed to adequately protect and provide reparations for Afro-Colombian victims under existing transitional justice mechanisms. The first significant analysis of the implementation of the Peace Accord found that of the 18 provisions that focus on reparations to victims, 61% of these provisions had not been implemented. Law 1448 of 2011, meant to provide reparations, including land restitution to conflict victims has been poorly implemented. Furthermore, it does not apply to cases that took place before January 1, 1985, which excludes all victims who suffered during the first half of the conflict and disregards the long-term, systemic discrimination that Afro-descendant Peoples have experienced since their enslavement several centuries ago.

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122 Id.
123 Id.
127 Inter-American Commission on Human Rights (IACHR), Truth, Justice and Reparation - Report on the
Extractive industries are also responsible for leaving many Afro-Colombian communities, and particularly women, unable to access resources on their own land. \(^{128}\) Illegal mining in some places has caused environmental degradation to such an extent that Afro-Colombian communities can no longer subsist off the land through traditional practices. \(^{129}\) In addition, an estimated 8 million hectares of land was illegally acquired from or forcibly abandoned by primarily Afro-descendant, Indigenous and peasant farmers throughout Colombia’s decades-long conflict. \(^{130}\) Much of this stolen land was then used for “illegal” corporate mining, agro-industrial, oil or infrastructure projects, without being subject to free, prior and informed consent processes. \(^{131}\) An example is the centuries-old Afro-descendant community of La Toma, in Cauca, which relies on artisanal gold mining and small scale agriculture and fishing, and which had not been granted collective title as of 2015. La Toma became a site of paramilitary consolidation in the early 2000s, and soon after corporate mining companies received titles to significant areas of La Toma, with no free, prior and informed consent process. Amidst death threats for their resistance and facing ongoing illegal mining in their community, women from La Toma marched to Bogotá in 2014 to demand protection for themselves and their territories. As of 2015, illegal mining was still occurring in areas overlapping with mining company applications in La Toma, in a manner corrosive to the community’s ability to have a meaningful consultation process or to otherwise assert their rights to the territory. \(^{132}\)

Afro-Colombian communities continuously struggle to achieve meaningful recognition of their rights to free, prior and informed consent and to protect their rights to as-yet untitled territories in the context of recent proposed and adopted laws, including those related to Peace Accord implementation. As of August 2017, of thirty-six laws signed in connection with Peace Accord implementation, not one had undergone a free, prior and informed consultation process with Afro-Colombian authorities. \(^{133}\) The Land Renewal Agency (ART) – tasked with implementing rural development programs under the Peace Accord – has also fallen short of meaningfully consulting with Afro-descendant and Indigenous communities in the design and implementation of the Programs for Development with a Territorial Approach (PDETIs), a component of the Peace Accord. After persistent advocacy by Afro-Colombian and Indigenous organizations, however, ART did ultimately sign an agreement with the Special High Level Body for Ethnic Peoples on March 6th, to establish a proper methodology

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and approach to PDETS for their territories. In the months prior, Afro-descendant Community Council leaders had indicated ongoing challenges to integrating essential elements of their self-devised Ethno-development plans – Community Council plans that articulate rural development and sustainability from the perspective of Afro-descendant and Indigenous communities and are grounded in their culture, history, knowledge, and organizational policies, among others – into the plans for PDETs. Making this consultation particularly important is the fact that 188 Afro-descendant Community Councils within municipalities prioritized for PDETs have long-pending applications for legal recognition and titling of their registered collective land claims, leaving their territorial rights vulnerable in the context of PDET implementation. This is in addition to 100 Community Council claims coinciding with areas designated vacant that the government intends to provide for rural development and reform provisions of the Accord. As PDETs are expected to be completed by May 2018, it is critical that ART adheres to its agreement with the Special High Level Body and ensure proper funds to carry it out. Otherwise, the PDETs risk undermining the territorial and collective land rights of Afro-descendant communities and infringing upon their right to free, prior and informed consent.

**Recommendations to the Colombian Government:**

- Colombia’s National Land Agency (ANT) must assist Afro-Colombian authorities and organizations to advance the at least 271 pending collective land titling claims in their
territories, beyond the 78 ANT has initially agreed to advance.¹³⁶

- Colombia’s Land Renewal Agency (ART) must ensure all the conditions required to fulfill the agreement recently signed with the Special High Level Body for Ethnic Peoples to develop PDETs with an ethnic perspective, ensuring the participation of Indigenous and Afro-descendant women.

- The Colombian government must adhere to Afro-descendant and Indigenous Peoples’ right to free, prior and informed consultation (FPIC) regarding laws or development proposals that impact them or their territories, ensuring that FPIC processes are developed with and determined by Afro-descendant and Indigenous authorities.

- The Colombian government must provide the financial and participatory conditions for the design of Afro-Colombians’ development plan and ensure its integration into the Colombian National Development Plan, guaranteeing a specific CONPES and the allocation of specific resources.

**VI. Child Soldiers**

Armed actors have targeted marginalized Afro-Colombian and Indigenous children in Colombia for conscription and recruitment into armed conflict, through force, coercion or by otherwise exploiting their daily hardships and lack of opportunity.¹³⁷ In 2015, estimates of the number of child soldiers

¹³⁶ Id.
participating in the Colombian conflict ranged from 5,000 to 14,000, with an average age of recruitment of twelve years old. In the last five years, armed groups recruited more than 1,000 children. Despite provisions in the Peace Accord protecting their rights, former child soldiers who are attempting to reintegrate into society face challenges accessing psychological care, reintegration programs designed specifically for youth, appropriate employment and educational opportunities, and protection from criminal prosecution.

About 1 out of every 6 child soldiers that ran away from or were released from armed groups since 1999 are from Afro-Colombian or Indigenous communities. Often facing high exposure to conflict-related abuses in communities that have long been denied adequate health, education and other infrastructure, impoverished Afro-Colombian children are particularly vulnerable to recruitment by armed groups. In addition to utilizing kidnapping or other direct force, armed groups manipulate youths’ vulnerabilities and lack of educational and employment opportunities to pressure them to join, making promises of monetary gain, food, or other benefits for youth and families, as well as protection from violence and potentially an escape from hardships faced at home. From 2011-2016, the Early Warning System of the Office of the Ombudsman government issued 105 alerts for recruitment risks pertaining to children. To avoid their children being lured into joining armed groups, families are often forced to relocate, becoming displaced and leaving behind assets or livelihoods.

In armed groups such as the FARC, children were trained to use rifles and grenade mortars, and to plant homemade landmines. Children have also been used as messengers, informants, and porters for armed actors, including by the Colombian armed forces. Youth generally have been impacted by Colombia’s conflict, with children having been killed in clashes.

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144 Adriana Marcella Dail, “Access to health services and health seeking behavior among former child soldiers in Manizales, Colombia,” p. 16 (Order No. 10241493), available from ProQuest Dissertations & Theses Global.
148 Id.
between armed actors, and killed or crippled by landmines.\textsuperscript{151} They have also been victimized when their parents, caretakers, and relatives were killed, threatened, or displaced.\textsuperscript{152} Many children were born as a result of sexual violence and many children, including child soldiers, were themselves sexually abused.\textsuperscript{153} The Colombian government has failed to protect children and youth from the armed conflict, and those who have suffered sexual violence in Colombia face stigma and rejection.\textsuperscript{154}

An estimated 30 percent of all Colombian child soldiers who ran away from or left an armed group since 1999 are girls.\textsuperscript{155} While their decision to join an armed group is often based on vulnerability and a lack of opportunity, female child soldiers also aim to escape traditional gender roles and seek greater gender equality.\textsuperscript{156} Sadly, many girls who join armed groups are then subject to sexual and gender-based violence, including forced sex trade involvement,\textsuperscript{157} forced abortion, and sexual slavery.\textsuperscript{158}

**Barriers to Healing and Reintegration**

Point 3.2.2.5 of the Peace Accord specifies that “any children who have left the FARC EP camps since the start of the peace talks, . . . will be placed under special care and protection measures . . . to ensure restitution of their rights under a differential approach, prioritizing their access to health care and education.”\textsuperscript{159} It calls for those children to be “granted all the rights, benefits and provisions established for the victims of the conflict . . . prioritizing their family reunification whenever possible,” and for their “definite return to their communities of origin” with an emphasis on the best interest of the child.\textsuperscript{160} The agreement calls for government agencies and the National Reintegration Council to monitor child reintegration programs.\textsuperscript{161} The Peace Accord also guarantees psychological and counseling services to former child soldiers to help them reintegrate into civilian life.\textsuperscript{162} Under the Victim’s Law (Law 1448 of 2011), children recruited by all armed groups, including in post-demobilization contexts, are recognized as victims entitled to reparations.\textsuperscript{163} In addition to

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\textsuperscript{152} Id.

\textsuperscript{153} Id.

\textsuperscript{154} Id.


\textsuperscript{157} Id.


\textsuperscript{159} Oficina del Alto Comisionado para la Paz, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (El Acuerdo de paz en inglés), article 3.2.2.5, Government of Colombia, (2017)

\textsuperscript{160} Id.

\textsuperscript{161} Id.

\textsuperscript{162} Id.

\textsuperscript{163} Inter-American Commission on Human Rights, Chapter V Follow-Up on Recommendations Made by the IACHR in
these domestic protections, Colombia ratified the Convention on the Rights of the Child on January 28, 1991 and the Optional Protocol on the involvement of children in armed conflict on May 25, 2005, the latter of which sets the minimum age of recruitment of youth at 18 years. UN resolution 2250 adopted in December 2015 calls upon member states to include youth in peacebuilding and conflict resolution processes, particularly related to disengagement and reintegration, and to protect youth during armed conflict.

Unfortunately, the lack of a coordinated response from the government regarding age limits for programs, and inadequate funding for implementing programs under the Peace Accord have left former child soldiers without access to psychological support or educational and employment opportunities, particularly in Afro-Colombian communities. Furthermore, Afro-Colombian children require assurances of nondiscrimination in reintegration policies if they are to effectively address their heightened marginalization. The Colombian government treats former child soldiers under the age of 18 as minors and affords them special resources in the form of transitory homes and specialized care centers, which eases the transition to youth homes, foster care, or to their relatives. However, the average age of child soldiers is 17.5, and under current government policy, former child soldiers who reach the age of 18 are no longer eligible for services designed to help them adjust to civilian life. They may even be categorized as ex-combatants.

Former child soldiers face significant stigma, including being treated as perpetrators of violence instead of victims who deserve justice. Youth are often reluctant to seek assistance due to this stigma. Female former child soldiers often face gender-based stigma for contravening traditional female gender roles in a patriarchal society. This creates additional burdens on victims of sexual and gender-based violence who seek justice against perpetrators. Weak economic conditions, lack of state presence, threatening security contexts, and proximity to criminal armed actors increase youths’ vulnerability to re-recruitment by armed actors and threaten reintegration programs. These factors must be addressed if child soldiers are to be reintegrated into society and heal from trauma.

Recommendations to the Colombian Government:

- The Colombian government must strengthen its efforts to prevent recruitment and use of children and youth by illegal armed groups, and address the root causes of child recruitment. The Colombian government must ensure that parties responsible for recruiting children are held

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169 Adriana Marcella Dail. “Access to health services and health seeking behavior among former child soldiers in Manizales, Colombia.” p. 23 (Order No. 10241493). Available from ProQuest Dissertations & Theses Global.
170 Id.
171 Id.
175 United Nations Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Colombia, ¶ 41 U.N. DOC. CCPR/C/COL/CO/7 (Nov. 17, 2016).
accountable and that child victims have their rights restored.  

- The Colombian government must follow its constitutional directives (Law 782 of 2002) to treat all children who have been used or recruited by illegal armed groups as victims. Accordingly, the justice system needs to recognize that youth are not adults and child victims need to be given access to education, and psychological and physical health services.

- The Colombian government must address the needs of female former child soldiers, assuring access to justice for sexual and gender-based violence and other abuses.

- Affected Afro Colombian and Indigenous communities, especially in Tumaco and other municipalities that lack state investment in infrastructure, need capitation centers with treatments that focus on providing adequate physical and psychological care to children and youth former soldiers; and free or low cost educational facilities so that they can effectively reintegrate back into the Colombian society.

VII. Barriers to Healthcare, Including for Survivors of Conflict-Related Sexual Violence

Afro-Colombian communities overwhelmingly lack adequate access to healthcare. A significant driver of the weeks-long civil strike in Buenaventura in 2017 was the government’s failure to ensure adequate health infrastructure in this majority-Black port city. Inadequate, outdated health centers, patient mistreatment, and lack of services has caused countless deaths in Buenaventura and surrounding areas, including that of an eight-months pregnant woman who died in 2016 after being denied fulfillment of prescriptions for a sudden illness. Only as of late last year did a mid-level hospital finally re-open in Buenaventura after its liquidation was announced in 2013. The hospital, which lacks an intensive care unit, will not only serve Buenaventura’s 500,000 residents but will also end up serving residents of neighboring departments who also lack convenient access to a hospital. The majority-Black department of Chocó similarly suffers a health infrastructure that is woefully inadequate to meet the needs of a population facing high levels of poverty-induced health issues, such as child malnutrition.

The government has failed to meet deadlines imposed by the Constitutional Court to improve health services in Chocó and in July 2016, the National Health Superintendent

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176 See generally, United Nations Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Colombia, ¶ 41 U.N. DOC. CCPR/C/COL/CO/7 (Nov. 17, 2016).

177 Anonymous Interview, Cali, Colombia, Oct. 17, 2017, On file with MADRE.

178 Id.; United Nations Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Colombia, ¶ 41 U.N. DOC. CCPR/C/COL/CO/7 (Nov. 17, 2016).


announced the liquidation of the crumbling St. Francis de Asís Hospital in Quibdó.\textsuperscript{183}

Other forms of state negligence and lack of investment in infrastructure worsen Afro-Colombians’ health outcomes. For example, the department of Chocó has the least coverage of potable water of all Colombia’s 32 departments, and a majority of homes have no sewerage service.\textsuperscript{184} Overall poverty and lack of access to health infrastructure rob Afro-Colombians’ of multiple years of life. Afro-Colombian women live eleven years less than the remainder of Colombian women while Afro-Colombian men live five less, according to the 2005 census.\textsuperscript{185} The 2005 census also\textsuperscript{186} found Afro-Colombians’ infant mortality rate roughly double that of the rest of Colombia’s. As of 2003, only 49% of Afro-Colombians were linked with the national health system, compared to 65% of the mestizo population.\textsuperscript{187} Rates of health subsidy coverage appear lowest among the poorest. A 2013 study by the Administration of Planning of the Valle Department, where Buenaventura is located, found that over half of those in poverty or extreme poverty have no health service affiliation.\textsuperscript{188} The problem of statistics is critical; there is still very little disaggregated data that would fully reveal the disproportionate lack of access to healthcare that Afro-Colombian communities endure, and inform solutions.\textsuperscript{189}

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\textsuperscript{183} Id.
\textsuperscript{184} Id.
\textsuperscript{186} This is the most recent census data analysis available.
\textsuperscript{188} Violencia y salud, las dos 'enfermedades' de Buenaventura, COLOMBIA PLURAL (Oct. 23, 2016), available at https://colombiaplural.com/violencia-salud-las-dos-enfermedades-buena

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Sexual and Gender Based Violence Survivors’ Barriers to Health Care

In Colombia, victims of sexual and other gender-based violence face multiple barriers to medical care. These include social stigma, shame, fear of retribution, delays and other failures by health care facilities to implement relevant policies and protocols, mistreatment of victims by health professionals, victims’ and practitioners’ lack of knowledge of requisite health services, and victims’ lack of accessible transport to or information about health facilities.\textsuperscript{190} These barriers disproportionately impact Afro-Colombian victims, who face multiple layers of discrimination when seeking care, in addition to a lack of adequate health infrastructure in their communities and high rates of displacement.

Colombia’s 2011 Victims and Land Restitution Law (Ley de Víctimas y Restitución de Tierras, Law 1448), harmonized Colombia’s gender-based violence legal framework with international human rights law, and mandated creation of a national program of psychosocial and health assistance aimed at survivors of conflict-related sexual violence in urban and rural areas.\textsuperscript{191} Victims organizations reported that between 2012-2014, over 48,000 victims of suspected sexual violence sought

\textsuperscript{191} Law 1448 of 2011 (June 10, 2011).
assistance at forensic medical sites, but about 40% of them received no medical attention, and those who did, received inadequate care. In 2014, Colombia’s Congress enacted Law 1719, which originally aimed at improving implementation of a binding 2012 protocol for health providers on providing adequate post-rape care to victims, but instead signaled that the protocol for post-rape care was optional. In response, Colombian women’s organizations filed a case in the Constitutional Court, which ruled that victims of sexual violence must be provided comprehensive medical and psychosocial care with dignity. At the end of 2016, however, Congressional Representative Ángela Robledo reported that there was no evidence of advance in the commitments under Law 1719.

Barriers to health care for survivors of sexual violence in the context of the Colombian conflict remain. Victims are often arbitrarily denied or delayed essential medical care by health care providers, resulting in unwanted pregnancies or otherwise preventable infections. In other instances, victims are denied access to medical care because they have not reported the crime to the police, despite clear legal protocols that victims are not required to have a police report to receive health care with dignity. There is a lack of trained medical providers to provide vital medical care for rape victims, including pregnancy prevention, legal termination of pregnancy, and protection against HIV or other sexually transmitted infections. Local and national health care facilities rarely conduct awareness campaigns about the fact that victims of sexual violence must receive emergency medical care within 72 hours of a sexual assault. Victims often remain silent due to fears of being re-victimized and stigmatized.

Afro-Colombian survivors of gender-based violence confront invisibilization and minimization when navigating services, linked to the persistence of negative stereotypes that stem from a history of enslavement, conquest and racist discrimination. In spite of the legal

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framework mandating adequate medical care for survivors, Afro-Colombian victims have difficulty accessing these services due to the absence of personnel, medicines and adequate infrastructures in their communities. Buenaventura, for example, lacks a robust mental health system. Victims who are prescribed psychotherapy are often referred to health facilities in Cali, which implies a trip of three hours at their own cost.  

According to Médecins Sans Frontières (MSF), which is treating survivors in Tumaco and Buenaventura, victims have reported that they don’t seek care at public health entities following sexual assault because survivors have often experienced re-victimization and stigmatization. MSF furthermore observed that in both cities there is a false belief, reinforced by the attitude in public institutions, that in order to receive medical attention, a victim must file a complaint with the authorities, meaning that untold numbers of victims are unlawfully denied necessary emergency care in these majority Afro-descendant areas.

**Recommendations to the Colombian Government:**

In line with CEDAW’s concluding observations on the sixth periodic report of Colombia, the government should:

- Ensure Afro-Colombian victims’ access to comprehensive medical treatment, mental health care and psychosocial support, provided by health professionals appropriately trained to detect sexual violence and to treat its consequences; and ensure that the victims of sexual violence are promptly provided access to forensic testing.

- Intensify efforts to allocate sufficient resources to the health sector and re-double efforts to ensure the accessibility, availability, affordability and quality of health care, paying special attention to the needs of the most disadvantaged and marginalized groups, including Indigenous Peoples and Afro-Colombians; take the necessary measures to ensure the effective implementation of the National Plan for Rural Health, which provides for, inter alia, improvement of public health facilities, goods and services in rural areas, in order to ensure that areas where Afro-descendant communities are located have qualified medical personnel and scientifically approved drugs and hospital equipment.

- Implement suitable mechanisms to enable self-identification of Afro-descendant populations so that there is reliable data, indicators, and periodic measurements to assess the extent of Afro-Colombian communities’ ability to access healthcare services.

The Government of Colombia should also:

- Complete the construction of a new, well-resourced hospital in Chocó.

- Ensure the presence of National Health Superintendents’ offices in Buenaventura, Chocó and other Afro-Colombian territories, as part of an overall strategy to increase oversight and civil society input into management of health services.

- Focus future health ministry conferences and trainings on Afro-Colombian women’s barriers to health services.

- Ensure health officials are trained to prioritize sexual violence cases and provide timely and appropriate treatment, in compliance with laws that prevent requirements of police reports. Ensure that

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all health staff and officials, as well as appropriate local, national and regional authorities are trained, in consultation with Afro-descendant organizations and authorities, in ethno/racial- and gender-informed realities and rights in the context of healthcare.

- Educate civil society about the need for emergency care following sexual assault and about available services.

- Enforce accountability when health officials mistreat victims and/or deny necessary medical services.