

# **VIOLATIONS OF AFRO-COLOMBIANS' GENDER-BASED HUMAN RIGHTS**

**A REPORT FOR THE UNITED NATIONS COMMITTEE ON THE  
ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

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**In response to the  
NINTH PERIODIC REPORT OF COLOMBIA**

*Co-Sponsors:*  
(written by)

PROCESO DE COMUNIDADES NEGRAS (PCN)  
Cali, Colombia

MADRE  
New York City, USA

HUMAN RIGHTS AND GENDER JUSTICE (HRGJ) CLINIC  
CUNY SCHOOL OF LAW  
New York City, USA

(supported by)

EL MOVIMIENTO DE MUJERES NEGRAS, AFROCOLOMBIANAS, RAIZALES Y  
PALENQUERAS EN SUS IDENTIDADES DIVERSAS  
Colombia

WASHINGTON OFFICE ON LATIN AMERICA (WOLA)  
Washington, D.C., USA



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## **List of Acronyms**

ART	Land Renewal Agency
CEDAW	Convention on the Elimination of Discrimination Against Women
CONPA	Afro-Colombian National Peace Council
CSIVI	Commission for Monitoring, Verifying and Furthering Implementation of the Final Accord
JEP	Special Jurisdiction for Peace
PCN	Proceso de Comunidades Negras
PDETs	Territorial Development Plans
SGBV	Sexual and Gender-based Violence
UNP	National Protection Unit

# Colombia - Political Map



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Figure 1: Colombia – Political Map. Reprinted from: University of Texas at Austin Library. Available at: [http://www.lib.utexas.edu/maps/americas/txu-oclc-256488229-colombia\\_pol\\_2008.jpg](http://www.lib.utexas.edu/maps/americas/txu-oclc-256488229-colombia_pol_2008.jpg)

## **I. Introduction**

Just over two years since passing its peace accord with the Revolutionary Armed Forces of Colombia (FARC), the Colombian Government has successes to report, including significant disarmament of the FARC and its transformation into a political party. Afro-Colombian women human rights advocates played a critical role advocating for inclusion of the groundbreaking racial and gender justice provisions of the peace accord. However, the Government's failure to fully implement the accord, including its racial and gender justice provisions, means that Afro-descendant and Indigenous women and their communities continue to live disproportionately in conflict-ridden areas and to be at high risk for displacement and other violence, including sexual and gender-based violence (SGBV). 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. The viability of key transitional justice and monitoring mechanisms under the peace agreement appear at risk as a result of actions by the new presidential administration.<sup>1</sup> With National Liberation Army (ELN) peace talks stalled, it is more important than ever for these communities to be meaningfully included in peace building and implementation as required under the accord with the FARC.

This report,<sup>2</sup> written by Proceso de Comunidades Negras (PCN), MADRE and the HRGJ Clinic at CUNY Law School, is intended to supplement the Colombian Government's report to the Committee on the Elimination of All Forms of Discrimination Against Women ("the Committee"). It offers specific recommendations aimed at ensuring the Colombian State adequately complies with the Convention with regard to protecting Afro-Colombians' gender-based human rights.

## **II. PEACE ACCORD COMPLIANCE: INCLUSION OF AFRO-COLOMBIAN WOMEN (ARTS. 1-3, 7, 8 AND 15)**

### ***A. Colombia's Failure to Comply with Gender and Racial Justice Provisions of the Peace Accord***

Due to historic and systemic racism in Colombia, Afro-Colombians, and in particular Afro-Colombian women, have been disproportionately harmed by Colombia's decades-long conflict.<sup>3</sup> Through the creation of Afro-Colombian National Peace Council (CONPA) Afro-Colombian organizations, with strong leadership from Afro-Colombian women, developed a vision for the peace process that recognized and remedied historic injustices and discrimination against Afro-

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<sup>1</sup> *Gobierno suspende temporalmente reuniones de la CSIVI*, Caracol Radio, (2 Feb. 2019); *Ruben Acevedo es el nuevo director del centro nacional de la memoria histórica*, Contagio Radio, (4 Feb., 2019).

<sup>2</sup> Human rights reports, news sources, interviews, and documentation of personal testimonies conducted in Colombia inform this report.

<sup>3</sup> Roosbelinda Cardenas, *The Anti-Racist Horizon in Colombia's Peace Process*, NACLA (Mar. 23, 2017); Proceso de Comunidades Negras, *Derrotar la Invisibilidad: Un Reto para Las Mujeres Afrodescendientes en Colombia, El Panorama de la Violencia y la Violación de los Derechos Humanos Contra las Mujeres Afrodescendientes en Colombia, en el Marco de Los Derechos Colectivos*, pp. 5-7 (Apr. 2012).

Colombians, including gender discrimination, in order to ensure an inclusive and lasting peace.<sup>4</sup> Afro-Colombians, however, were excluded from the negotiating table during the Havana peace talks with the FARC until the last minute. Thanks to the rapid mobilization of Indigenous and Afro-descendant Peoples via the Ethnic Commission to guarantee the vision for a just peace, the "Ethnic Chapter" was included in the final agreement, although the government only accepted four pages of the more than 40 proposed pages.<sup>5</sup> The Ethnic Chapter acknowledged the disproportionate impact of the conflict on Afro-Colombian communities, and included key safeguards for Indigenous and Afro-Colombian territorial and individual rights, including an intersectional rights-based approach that incorporates ethnicity, gender, women, family and generation.<sup>6</sup>

A lack of political will and funding from the State have prevented full implementation of both the Ethnic Chapter and other gender justice provisions,<sup>7</sup> hindering Afro-Colombian women's participation in national institutions and mechanisms for peace. As of May 2018, seven of the 13 dispositions of the Ethnic Chapter had not been implemented, and the remaining were only minimally or partially implemented.<sup>8</sup> While initial peace implementation framework (*Plan Marco*) drafts excluded mention of the Ethnic Chapter, after substantial civil society advocacy, the Special High Level Body for Ethnic Peoples (*Instancia Étnica*) negotiated directly with the Government to include ethno-racial- and gender-responsive indicators –jointly developed by Afro-descendant and Indigenous authorities and organizations, including women's organizations.<sup>9</sup> Afro-descendant human rights defenders remain concerned, however, that the government has not dedicated funding to follow through on the *Plan Marco* indicators that would implement the Ethnic Chapter and gender provisions of the Peace Accord.<sup>10</sup> Of the 130 gender provisions in the Accord, 51% have not been initiated compared to 37% of the 578 total provisions.<sup>11</sup> Recent public statements by President Duque repeating campaign pledges to change aspects of the Peace Accord, particularly regarding the transitional justice processes, indicate a

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<sup>4</sup> CONPA, *Agenda de Paz Afrocolombiana*, p. 53.

<sup>5</sup> Cardenas, *supra* note 3.

<sup>6</sup> Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, article 6.2.3 (Nov. 24, 2016).

<sup>7</sup> Cardenas, *supra* note 3; *see also generally* Kroc Institute for International Peace Studies, *Segundo Informe Sobre El Estado Efectivo de Implementación del Acuerdo de Paz en Colombia* (Aug. 2018), available at [https://kroc.nd.edu/assets/284864/informe\\_2\\_instituto\\_kroc\\_final\\_with\\_logos.pdf](https://kroc.nd.edu/assets/284864/informe_2_instituto_kroc_final_with_logos.pdf).

<sup>8</sup> Kroc Institute for International Peace Studies, *supra* note 7 at 245.

<sup>9</sup> *Id.* at 245-246; PCN and MADRE, *Open Letter to Colombian President Manuel Santos and Members of the Commission for Monitoring, Furthering and Verifying Implementation of Colombia's Peace Accord* (Oct. 3, 2017), available at <https://www.madre.org/press-publications/statement/open-letter-colombian-president-manuel-santos-and-members-commission>; CUNY School of Law, MADRE, and PCN, *Afro-Colombians' Human Rights: A Call for Racial and Gender Justice in Peacebuilding* (April 2018), available at <https://www.madre.org/sites/default/files/PDFs/Colombia%20UPR%20Report%20ENGLISH%20Updated.pdf>.

<sup>10</sup> Interview, Afro-Colombian woman human rights defenders (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>11</sup> Kroc Institute for International Peace Studies, *Special Report of the Kroc Institute and the International Accompaniment Component, UN Women, Women's International Democratic Federation, and Sweden, on the Monitoring of the Gender Perspective in the Implementation of the Colombian Final Peace Accord*, p. 15-16 (Oct. 2018), available at [https://kroc.nd.edu/assets/297624/181113\\_gender\\_report\\_final.pdf](https://kroc.nd.edu/assets/297624/181113_gender_report_final.pdf).

lack of willingness to implement the Peace Accord,<sup>12</sup> further imperiling gender and racial justice provisions.

The *Instancia Étnica* is meant to serve as a first-order consultant on peace implementation in Indigenous and Afro-descendant territories.<sup>13</sup> However, insufficient funding and lack of political recognition have limited its members' ability to carry out this function.<sup>14</sup> Moreover, the Commission for Monitoring, Verifying and Furthering Implementation of the Final Accord (CSIVI), the body tasked with monitoring implementation of the Peace Accord, failed to establish an ongoing communication mechanism with the *Instancia Étnica*, further complicating the question of the *Instancia*'s authority and mandate, and contributing to exclusion of Afro-descendant and Indigenous women.<sup>15</sup>

As one advocate points out, onerous participation criteria, a hasty timeframe in which to declare participation and under-funding of Afro-descendant women's organizations made it so they could not mobilize to attend assemblies in order to vote in significant enough numbers to ensure that Afro-Colombian women would be represented on the Special High Level Body on Gender for peace implementation.<sup>16</sup> As a result, after appointing the body, Afro-Colombian women had to mobilize nationally in order to ultimately secure one representative of Afro-Colombian women's organizations on the Gender Body.<sup>17</sup> While this was an important success, it may be undermined by decisions that limit the influence of both the Gender Body and the *Instancia Étnica*. In March 2018, Colombia's Highest Administrative Court, the State Council, suspended the regulatory authority of the CSIVI,<sup>18</sup> and later key FARC and government representatives withdrew their participation from the CSIVI and were replaced by specially appointed government officials.<sup>19</sup> More recently, CSIVI has failed to meet for two months due to the Government representatives' unwillingness to meet.<sup>20</sup> Moreover, the lack of fluid communication between the *Instancia Étnica* and the Gender Body prevents intersectional analysis and limits inclusion of Afro-descendant women's voices in peace implementation.<sup>21</sup> Another barrier, according to one Afro-Colombian women's human rights advocate observing the process, is the structural racism that limits the feminist vision within the Gender Body,

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<sup>12</sup> Lally Weymouth, *Colombia's President on a Wobbly Peace with the FARC*, The Washington Post (Sept. 27, 2018); El Espectador, *Duque insiste en necesidad de modificar el Acuerdo de Paz* (Sept. 24, 2018); Forrest Hylton and Aaron Tauss, *Change and Continuity in Colombian Politics*, NACLA (June 29, 2018).

<sup>13</sup> Kroc Institute for International Peace Studies, *supra* note 7, at 245.

<sup>14</sup> *Id.* at 245; Kroc Institute for International Peace Studies, *Special Report*, *supra* note 11 at 30.; Organización Nacional Indígena de Colombia, *Pronunciamento de la Instancia Especial de Alto Nivel con Pueblos Étnicos*, (Aug. 2, 2018).

<sup>15</sup> Kroc Institute for International Peace Studies, *supra* note 7 at 245-246.

<sup>16</sup> Interview, Afro-Colombian woman human rights defender, (June, 2017) (on file with MADRE) (name omitted for safety reasons).

<sup>17</sup> Contagio Radio, *Mujeres Afro Se Sienten Excluidas de la Instancia de Genero de la CSIVI* (July 27, 2017); Commission for Monitoring, Advance, and Verification of the Final Accord (CSIVI), *Joint Communique #21* (Dec. 18, 2017).

<sup>18</sup> El Espectador, *Freno del Consejo de Estado a la Comisión de Seguimiento al Acuerdo de Paz*, (Mar. 7, 2018).

<sup>19</sup> Kroc Institute for International Peace Studies, *State of Implementation of the Colombia Peace Agreement: Report Two Dec 1, 2016 – May 31, 2018*, p. 62 (Aug. 2018).

<sup>20</sup> *De la corte al capitolio: la demorada ley estatutaria de la JEP*, Semana (Feb. 7, 2019).

<sup>21</sup> Kroc Institute for International Peace Studies, *supra* note 7 at 246.



affecting the participation of women with an ethnic-racial identity, and excluding their intersectional feminist theories and knowledge.<sup>22</sup>

The Government has failed to ensure Afro-descendants' right to free, prior and informed consent (FPIC) with regard to a number of key peace implementation laws and programs, as required under Colombia's constitution and the Peace Accord. In the fast track context, only the law forming the Special Jurisdiction for Peace (JEP) was subject to consultation by Afro-descendant people, and that occurred with serious limits to time for reviewing and influencing the legislation.<sup>23</sup> As a result, while the statutory law for the JEP, has 10 articles defining Indigenous participation, which are important to include, the proposals that Afro-descendants presented in that regard were ignored.<sup>24</sup>

The Government likewise continues to fail to fully and adequately consult Afro-descendant authorities on other legislative initiatives within the framework of the Final Accord. For instance, the Government e-mailed four of the six remaining legislative initiatives to Afro-descendant authorities, attempting to limit FPIC to a mere email consultation with a limited group and only with regard to those four initiatives. The representatives of the National Consultation Space, the entity charged with formalizing the FPIC process for Colombia's Afro-descendant population, rejected receipt of the proposals and the idea that they were expected to develop input solely via email.<sup>25</sup> This impossible process resulted in the Colombian Government's failure to meaningfully include Afro-descendant women's input in the consultation process and subsequent fast-track legislation.

Though a number of measures implementing security and protection guarantees under the Peace Accord have passed,<sup>26</sup> the Government has failed to meet obligations under the Accord to ensure Afro-descendant and women's participation in this aspect of implementation. For example, while Afro-Colombians remain targets of widespread violence and displacement by armed groups,<sup>27</sup> the government has failed to coordinate directly with Afro-descendant authorities regarding collective security and self-protection as required under the Accord.<sup>28</sup> In addition, measures incorporating a gender perspective have not been fully implemented.<sup>29</sup> For example, the Commission on Security Guarantees has only one woman civil society representative, despite repeated requests to incorporate women's civil society.<sup>30</sup>

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<sup>22</sup> Interview, Afro-Colombian women human rights defender, January 18, 2019 (on file with MADRE) (name omitted for safety reasons).

<sup>23</sup> Kroc Institute for International Peace Studies, *supra* note 7 at 246.; Interview with Afro-Colombian woman human rights defender (June 10, 2018) (on file with MADRE) (name omitted for safety reasons).

<sup>24</sup> Interview with Afro-Colombian women's human rights defender (June 10, 2018) (on file with MADRE) (name omitted for safety reasons).

<sup>25</sup> Kroc Institute for International Peace Studies, *supra* note 7 at 344.

<sup>26</sup> Kroc Institute for International Peace Studies, *Special Report*, *supra* note 11 at 32-36.

<sup>27</sup> Defensoría del Pueblo, *Con narcotráfico y minería ilegal, ELN, AGC y disidencias de las Farc violan derechos humanos* (Apr. 6, 2018).

<sup>28</sup> Interview with Afro-Colombian woman human rights defenders (June 10, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>29</sup> Kroc Institute for International Peace Studies, *Special Report*, *supra* note 11, at 32.

<sup>30</sup> *Id.* at 34-35.

## ***B. Recommendations***

We encourage the Committee to call on the Colombian Government to:

- Recognize the role of the *Instancia Étnica* in implementation of the Ethnic Chapter and devote the necessary political and financial support to ensure its continued operation and collaboration with implementing racial and gender justice mechanisms of the Peace Accord and its implementation plan (Plan Marco);
- Commit technical and financial resources to support implementation of the Ethnic Chapter and commit the necessary financial resources for its implementation in accordance with Plan Marco indicators, particularly the ethnic-racial gender indicators contemplated therein;
- Consult meaningfully with Afro-descendant women's organizations and Afro-descendant authorities to develop and implement collective security and protection mechanisms;
- Ensure continued operation of CSIVI, and continued participation and consultation between Afro-Colombian and Indigenous authorities, including women representatives and organizations, and the CSIVI in peace implementation; and
- Ensure that Afro-descendant authorities and individuals, including Afro-descendant women, are guaranteed the right to free, prior and informed consent as individuals and as a collective on all aspects of Peace Accord implementation.

## **III. THREATS AGAINST AND ATTACKS ON AFRO-COLOMBIAN WOMEN HUMAN RIGHTS DEFENDERS (ARTS. 1, 2 AND 7)**

### ***A. The Colombian Government's Failure to Provide Adequate Protective Measures to Prevent Threats and Attacks on Afro-Colombian Woman Human Rights Defenders***

Colombia has seen a spike in the killing of social leaders and human rights defenders since signing the Peace Accord two years ago.<sup>31</sup> Violence against Colombia's human rights defenders has escalated such that a murder of a defender is reported every three days, according to the Ombudsperson's office.<sup>32</sup> Since the beginning of the peace process on December 1, 2016 until late October 2018, 417 community leaders have been assassinated.<sup>33</sup> Over half (212) of them have been killed in 2018 alone, making it the highest number of killings per year since passing the Peace Accord.<sup>34</sup> Afro-descendant and Indigenous leaders, as well as victim's rights advocates

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<sup>31</sup> Edinson Arley Bolaños, *Agresiones contra líderes sociales antes y después del acuerdo de paz*, *El Espectador*, (Sept. 24, 2018).

<sup>32</sup> Amnesty International, *Colombia: Killings of human rights defenders continue under a cloak of impunity and the silent complicity of the state* (July 9, 2018).

<sup>33</sup> Instituto de Estudios para el Desarrollo y la Paz., *¡Sin garantías, no hay derechos!* (Oct. 26, 2018).

<sup>34</sup> *Id.*

are most impacted, and the killings are especially rampant in regions where the armed conflict continues and implementation of the Peace Agreement remains slow.<sup>35</sup> In July 2018, 10 activists were killed in eight different provinces within 48 hours.<sup>36</sup> Seven defenders were killed in the first seven days of 2019 alone, including Maritza Quiroz Leiva,<sup>37</sup> despite multiple warnings from the Ombudsman about the threats social leaders in her region faced.<sup>38</sup> In the words of one Afro-Colombian human rights defender, “[b]eing a Human Rights Defender in Colombia is equivalent to a death sentence.”<sup>39</sup> The threats, killings, lack of protection measures and impunity have prompted repeated condemnation from UN human rights monitors and experts.<sup>40</sup>

The unabated violence against human rights defenders and community leaders continues largely with impunity.<sup>41</sup> The Attorney General’s Office failed to investigate the overwhelming majority of cases reported in 2017.<sup>42</sup> In December 2017, Minister of Defense Luis Carlos Villegas publicly denied the existence of a systematic pattern of killings of human rights defenders, and claimed the assassinations are the result of petty local squabbles.<sup>43</sup>

Afro-Colombian women human rights defenders find the level of protection they do receive from the government, via its National Protection Unit (UNP) is inadequate, and may place them at greater risk.<sup>44</sup> When the UNP grants individual protection, Afro-Colombian women human rights defenders have expressed apprehension about being assigned mestizos (or white) UNP bodyguards that increase their vulnerability by making them more visible. In addition, with the growing environment of criminalization of social leaders and human rights defenders, there is a concern that UNP bodyguards are being assigned to monitor their political activities.<sup>45</sup> The UNP has reportedly regularly refused to accept Afro-Colombian organizational proposals for security measures and bodyguards.<sup>46</sup> When women human rights defenders report death threats, they find that Colombian authorities fail to provide adequate confidentiality and follow-up.<sup>47</sup> According to

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<sup>35</sup> Amnesty International, *supra* note 32.

<sup>36</sup> Nicholas Casey, *Peacetime Spells Death for Colombia’s Activists*, The New York Times, (Oct. 13, 2018).

<sup>37</sup> Instituto de Estudios para el Desarrollo y la Paz, 566 Líderes Sociales y Defensores de Derechos Humanos Han Sido Asesinados Desde el 1 de Enero de 2016 – al 10 de Enero de 2019 (Jan. 11, 2018).

<sup>38</sup> El Espectador, Defensoría había advertido riesgos en zona donde fue asesinada Maritza Quiroz, (Jan. 11, 2018).

<sup>39</sup> Interview with Afro-Colombian women’s human rights defender (Oct. 1, 2018) (on file with MADRE) (name omitted for safety reasons).

<sup>40</sup> UN Verification Mission in Colombia. *The UN rejects and condemns the murders of human rights defenders and leaders in Colombia*. (July 5, 2019).

<sup>40</sup> El Espectador, *Medidas para proteger a líderes sociales no han dado resultado: Alberto Brunori* (Nov. 22, 2018).

<sup>41</sup> UN High Commissioner for Refugees, *UNHCR concern at increasing murders of local leaders in Colombia*, (Nov. 17, 2017); UN Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, ¶ 9 U.N. Doc. A/HRC/37/3/Add.3 (Mar. 2, 2018).

<sup>42</sup> Somos Defensores, *Piedra en el zapato: Informe Anual 2017 Sistema de Información sobre Agresiones contra Defensores y Defensoras de DD.HH. en Colombia SIADDHH*, pp. 26-28 (Jan. 2018).

<sup>43</sup> El Espectador, *Asesinatos de líderes son por “líos de faldas”*: Ministro de Defensa (Dec. 17, 2017).

<sup>44</sup> El Espectador, *Denuncian desprotección de mujeres y minorías en el proceso de paz* (Nov. 14, 2017); Somos Defensores, *supra* note 42 at 33.

<sup>45</sup> Interview with Afro-Colombian women’s human rights defenders, (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>46</sup> *Id.*

<sup>47</sup> Interview with Afro-Colombian women’s human rights defenders, (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons).

an Afro-Colombian woman human rights defender, after leaving the prosecutor's office, she received an anonymous call on her mobile phone with a man's voice telling her to "be careful" because they were watching her.<sup>48</sup>

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Testimony from an Afro-Colombian Women's Human Rights Defender

*"I cannot go anywhere without the two, armed, male body guards assigned by the UNP to protect me. It is uncomfortable, I know very little about them and their political agenda, while these men know where I live, and can identify my family. They watch my every move even when I am in my own home. Protection should be given to our entire community, that way I would not need to have individual protective measures and I would feel safer than I do now."*<sup>49</sup>

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Over the last eight years the Colombian Constitutional court has issued various rulings urging the State to implement a plan for collective protective measures, specifically for Indigenous and Afro-Colombian communities most affected by the conflict.<sup>50</sup> In 2017, Colombia's State Council also called on then President Santos to protect social leaders.<sup>51</sup> That same year, the Ministry of Interior issued Decree 2078 of 2017 which provided a theoretical outline of how the State could address these collective protection measures, but the Decree falls short of ordering their implementation.<sup>52</sup> As a result, Afro-Colombian Community Councils who have sought collective protection from the UNP have seen their community leaders assassinated while the UNP continues to evaluate their requests.<sup>53</sup>

President Duque recently publicly pledged a set of policies to address the killings of human rights defenders and social leaders,<sup>54</sup> which represents an important first step towards stemming the impunity. On August 23, the President and the Attorney General announced the adoption of the Pact for Life and the Protection of Social Leaders and Human Rights Defenders.<sup>55</sup> However, the Pact will live solely on paper unless UNP can articulate protection mechanisms at the local community level and develop self-protection measures with Afro-Colombian and Indigenous leaders.<sup>56</sup> Additionally, the Plan should be implemented in conjunction with campaigns that diminish the stigmatization of social leaders and educate Colombian society on the importance of

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Somos Defensores, *supra* note 42 at 33.

<sup>51</sup> *Id.* at 17.

<sup>52</sup> Republic of Colombia, Decree 2078 of 2017 (Dec. 7, 2017).

<sup>53</sup> Somos Defensores, *supra* note 42 at 33.

<sup>54</sup> Washington Office on Latin America, *Colombia's Pledge to Protect Human Rights Defenders Must Include Full Implementation of Historic Peace Deal* (Aug. 27, 2018).

<sup>55</sup> Ministerio del Interior de Colombia, *Pacto por la Vida y la Protección de los Líderes sociales y las personas defensoras de derechos humanos* (Aug. 23, 2018).

<sup>56</sup> CONPA, *Report on the Ethnic Chapter and the Framework Plan for the Implementation of the Peace Accords*. (forthcoming, 2019).

Afro-Colombian and Indigenous institutions and leaders.<sup>57</sup> In November, Duque's government proposed the creation of a Timely Action Plan for Human Rights Defenders Commission.<sup>58</sup> However, Afro-Colombian human rights activists report minimal civil society consultation in its development.<sup>59</sup>

### ***B. The Colombian Government's Criminalization of Afro-Colombian Women Human Rights Defenders***

While failing to adequately respond to or investigate violence against human rights defenders, the Government has devoted resources to criminalizing social leaders, particularly targeting rural Indigenous and Afro-descendant leaders, including women, defending environmental and territorial rights.

Since April 20, 2018, Afro-descendant women human rights defenders, Sara Liliana Quiñonez Valencia and her mother, Tulia Marys Valencia Quiñonez have been detained on baseless charges of narcotics trafficking and ties to the ELN.<sup>60</sup> In March 2017, Sara was issued Precautionary Measures by the Inter-American Commission on Human Rights (IACHR) and is a recipient of protective measures from Colombia's UNP, following death threats against her due to her advocacy in defense of her community's land and in support of crop substitution programs.<sup>61</sup> Both were denied bail and as of this report's submission remain in maximum security detention without an indictment, a violation of their right to due process.<sup>62</sup>

The arrests and lengthy administrative imprisonment follow a familiar pattern in Colombia. On March 22, 2017, for example, police arrested Afro-Colombian social leader and human rights defender, Milena Quiroz, in the Sur de Bolívar department. They accused her of being part of the ELN support network and charged her with crimes such as conspiracy to commit a crime and / or rebellion.<sup>63</sup> Four months later, the prosecutor who ordered the arrests was arrested for conspiracy to commit a crime, for allegedly belonging to a corruption network within the Prosecutor's Office that benefited drug traffickers and paramilitaries. Despite this, Ms. Quiroz was imprisoned until November 2017 when her order for preventative detention was revoked based on a finding that the investigation by the Prosecutor's Office focused more on what was being reported by mass media outlets and not on "more reasonable" charges.<sup>64</sup>

### ***C. Recommendations***

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<sup>57</sup> *Id.*

<sup>58</sup> El Tiempo, *La estrategia del Gobierno para proteger a los líderes sociales* (Nov. 16, 2018).

<sup>59</sup> Interview with Afro-Colombian women's human rights defenders, (Nov. 16, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>60</sup> Verdad Abierta, *Fiscal apelo a tratos discriminatorios para acusar a dos lideresas sociales de Tumaco* (Apr. 27, 2018).

<sup>61</sup> *Id.*

<sup>62</sup> See, PCN, *Boletín # 8 Una Navidad sin Sara y Tulia Maris*, (Dec. 12, 2018).

<sup>63</sup> José David Escobar Moreno, *El caso judicial de la líder social Milena Quiroz*, El Espectador, (Aug. 2, 2017).

<sup>64</sup> El Espectador, *Ordenan libertad a cinco líderes sociales señalados de pertenecer al Eln*, (Nov. 7, 2017).

We encourage the Committee to call on the Colombian Government to:

- ensure that all attacks on Afro-Colombian women human rights defenders and leaders are promptly and properly investigated and prosecuted;
- stop the targeting of Afro-Colombian human rights defenders with arrest and administrative imprisonment;
- ensure that Afro-Colombian women human right defenders are able to report death threats made against them in a secure and confidential manner;
- guarantee the financial and institutional resources to ensure Afro-descendant authorities' and organizations' participation in creating and implementing the Security and Protection Program, in accordance with Articles 3.4.8 and 6.2.c of the Peace Accord;
- guarantee security conditions for Afro-descendant communities to address ongoing armed actor violence in their territories;
- in consultation with Afro-descendant authorities and organizations, ensure careful screening of all security personnel who are assigned to protect Afro-descendant human rights defenders; and
- consult with Afro-Colombian authorities and organizations to improve the UNP's criteria for risk assessment to account for specific security needs of Afro-Colombian leaders and human rights defenders, particularly women advocates, and to establish collective and preventive security measures.

#### **IV. SEXUAL AND GENDER-BASED VIOLENCE COMMITTED AGAINST AFRO-COLOMBIANS (ARTS. 1-3, AND 14)**

##### ***A. The Colombian Government's Failure to Effectively Address and Prevent Sexual and Gender-Based Violence against Afro-Colombians***

In areas that heavily overlap with Afro-Colombian territories, other illegal armed actors have filled the security vacuum left in the wake of FARC demobilization.<sup>65</sup> The Government's failure to consult with Afro-descendant authorities on security measures has led to a rise in kidnappings, threats and other violence that have triggered increased forced displacement,<sup>66</sup> and contributed to

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<sup>65</sup> UN Security Council, *Report of the Secretary General of the United Nations Mission in Colombia*, ¶¶ 23-24, U.N. Doc. S/2017/252 (2017); Tobias Franz, *Sabotaging Peace*, Jacobin Magazine (Mar. 9, 2017).

<sup>66</sup> Defensoría del Pueblo, *Defensoría alerta por incremento de la violencia en Tumaco* (Jan. 9, 2018). RCN Radio, *Más de mil desplazados en el país dejó la violencia en solo cuatro días: Defensoría* (Jan. 22, 2018); UN Security Council, *Report of the Secretary-General on conflict-related sexual violence*, U.N. Doc. S/2018/250, (Mar. 23, 2018).

a heightened risk of sexual violence.<sup>67</sup> Afro-Colombians comprised 70 percent of those displaced in the first half of 2017 alone,<sup>68</sup> and human rights advocates have reported increased incidences of sexual violence where armed groups are operating in Afro-Colombian and Indigenous territories.<sup>69</sup> Sexual violence continues to be a driving factor behind the displacement of Afro-descendant and Indigenous women.<sup>70</sup>

As of October 2018, 2,300 documented cases of conflict-related sexual and gender-based violence (SGBV) were brought to the JEP,<sup>71</sup> although reports estimate that over 15,000 people were victims of conflict-related SGBV,<sup>72</sup> a number that likely is unrepresentative given under-reporting.<sup>73</sup> The lack of data disaggregated by race or ethnicity in the Victim's Registry Unit and in the National Institute of Health also makes it difficult to determine the impact of SGBV on Afro-descendant communities and impedes their communities' access to justice.<sup>74</sup> In 2017, the national victims' unit registered 24,576 victims of conflict related sexual violence, of which one third received reparative compensation.<sup>75</sup> The Ombudsperson's Office registered 361 cases of conflict-related sexual violence from January-October 2017,<sup>76</sup> and warned communities throughout the year of a heightened risk of sexual violence as a result of the demobilization of former combatants,<sup>77</sup> noting the extraordinary risks that women human rights defenders and leaders face.<sup>78</sup>

By the end of 2017, the Office of the Attorney-General had issued indictments in 17 per cent of cases of sexual violence, however only 5 per cent resulted in convictions.<sup>79</sup> Exemplifying the impunity with which armed actors are able to target Black women, in February 2017 several men

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<sup>67</sup> 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.

<sup>68</sup> Minority Rights Group, *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement*, p. 3 (Dec. 2017).

<sup>69</sup> Amnesty International, *The Years of Solitude Continue: Colombia: The Peace Agreement and Guarantees of Non-Repetition in Chocó*, p. 19 (Nov. 2017).

<sup>70</sup> Office of the Special Representative of the Secretary General for Sexual Violence in Conflict, *Country Report: Colombia* (2018).

<sup>71</sup> Beatriz Valdés Correa, *Así se contrastará la verdad de la violencia sexual en la JEP*, *El Espectador* (Oct. 14, 2018).

<sup>72</sup> Centro Nacional de Memoria Histórica, *La Guerra Inscrita en el Cuerpo*, p. 474 (Nov. 2017).; *Dirección de Vigilancia y Análisis del Riesgo en Salud Pública*, Instituto Nacional de Salud y Boletín Epidemiológico Semanal: Semana epidemiológica 21, p. 2. (May 16, 2018).

<sup>73</sup> UN Human Rights Council, *Annual Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia*, U.N. Doc. A/HRC/37/3/Add.3, ¶ 85 (Mar. 2, 2018); Sisma Mujer, *Comportamiento de la violencia sexual contra mujeres y niñas en Colombia durante 2017 y 2018*, p. 6-7, (May 25, 2018).

<sup>74</sup> Instituto Nacional de Salud [www.ins.gov.co](http://www.ins.gov.co).

<sup>75</sup> UN Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, U.N. Doc. S/2018/250, *supra* note 66 at ¶ 32.

<sup>76</sup> Defensoría del Pueblo, *Persiste violencia sexual en zona del conflicto armado en Colombia* (Dec. 4, 2017).

<sup>77</sup> UN Security Council, *Report of the Secretary General on Conflict-Related Sexual Violence*, ¶ 28 U.N. Doc. S/2017/249 (Apr. 15, 2017).

<sup>78</sup> Amnesty International, *The Years of Solitude Continue*, *supra* note 69 at 18.

<sup>79</sup> UN Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, U.N. Doc. S/2018/250, *supra* note 66 at ¶ 32.

reportedly raped a woman in public in Tumaco and no police came to her aid.<sup>80</sup> According to Afro-Colombian advocates, 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,<sup>81</sup> 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.<sup>82</sup> Women in Tumaco also report that they face a heightened risk of sexual violence at the hands of drug traffickers and armed groups, with little recourse to protection and justice.<sup>83</sup> Despite efforts to institutionalize Law 1257,<sup>84</sup> it remains largely unimplemented while violence against women continues to increase.<sup>85</sup> In addition, the Government has failed to directly consult with Afro-descendant authorities and women's organizations in order to implement effective security measures and support establishment of local community self-protection mechanisms, as required under the Accord.<sup>86</sup>

### ***B. Recommendations***

We encourage the Committee to call on the Colombian Government to:

- implement measures in compliance with Law No. 1257 (2008) that will ensure access to justice and reparations for Afro-Colombian women victims of sexual violence with a differentiated approach that takes into account the additional discrimination experienced by these women;
- simplify and adopt a unified procedure for accessing support measures under Law 1257 (2008), and make support measures more accessible to Afro-Colombian women;
- collaborate with Afro-Colombian women's organizations and authorities to increase community self-protection and halt sexual violence in territories experiencing ongoing conflict, while ensuring victims have easy access to confidential reporting mechanisms as well as justice and reparations; and
- ensure that victims' services are accessible to rural women and that, where necessary, special services are provided for isolated communities.

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<sup>80</sup> Interview, Afro-Colombian women's human rights defender, (Feb. 13, 2018), (on file with MADRE) (name omitted for safety reasons).

<sup>81</sup> Fundación Mundubat and PBI Colombia, *No peace in the territories, but there is still hope*, p. 23 (Dec. 2017), available at <https://pbicolombia.org/wp-content/uploads/2018/01/WEBENGLISHdossierTerritoriosPazEsperanzaColombia.pdf>.

<sup>82</sup> Interview, Afro-Colombian Woman Human Rights Defender, (Feb. 13, 2018), (on file with MADRE) (name omitted for safety reasons).

<sup>83</sup> Fundación Mundubat and PBI Colombia, *supra* note 81 at 23.

<sup>84</sup> Colombia's Law 1257 of 2008 guarantees the right of women to live free from violence, including sexual violence. Colombia Law No. 1257 of 2008

<sup>85</sup> Andrea Catalina León Amaya & Linda María Cabrera Cifuentes, *Ley 1257 Ocho años de obstáculos en la protección integral para las mujeres víctimas de violencias*, 73 (Nov. 2016).

<sup>86</sup> Final Agreement *supra* note 6 at Art. 6.2.2.



- recognize, promote and support mechanisms, treatments and strategies of psychosocial attention based on Afro-Colombian ancestral collective practices that Afro-descendant women practice throughout the country.

## V. ACCESS TO JUSTICE FOR VICTIMS OF SEXUAL AND GENDER-BASED VIOLENCE (ARTS. 2-3 AND 15)

### A. *The Colombian Government's Failure to Provide Afro-Colombian SGBV Survivors with Access to Justice*

Afro-Colombian women face pervasive discrimination, based not only on their gender, but also on their race or ethnicity and socio-economic status, preventing them from accessing justice for SGBV against them.<sup>87</sup> In rural areas inhabited by Afro-Colombians, victim services are severely lacking,<sup>88</sup> despite heightened vulnerability to sexual violence for Afro-descendant women living outside urban centers.<sup>89</sup> Moreover, the continued presence of armed actors and a lack of adequate security measures prevent many victims from reporting attacks. State authorities often fail to investigate threats against victims or ensure victims' safety,<sup>90</sup> and judicial authorities do not always preserve victims' confidentiality,<sup>91</sup> making it particularly dangerous for them to speak out in areas where armed groups are still active.<sup>92</sup> This contributes to persistent impunity.<sup>93</sup>

Afro-Colombian advocates report that in many places of continued conflict gender-based violence survivors lack safe, accessible, and confidential reporting mechanisms.<sup>94</sup> Existing reporting mechanisms and practices have not been developed with input from Afro-descendant authorities and women's groups, and thereby fail to adequately preserve their confidentiality and

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<sup>87</sup> Inter-American Commission on Human Rights, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, p. 38 (Oct. 18, 2006); Mesa de Trabajo Mujer y Conflicto Armado, *XII Informe sobre violencia sociopolitical contra mujeres, jóvenes y niñas en Colombia*, pp. 53-54 (Feb. 2015). available at <http://www.clam.org.br/uploads/arquivo/XII%20Informe%20Mesa%20Mujer%20y%20Conflicto%20Armado.pdf>

<sup>88</sup> UN Office for Coordination of Humanitarian Affairs, *2017 Humanitarian Needs Overview: Colombia*, p. 6 (Nov. 2016).

<sup>89</sup> *Id.* at 8.

<sup>90</sup> European Center for Constitutional and Human Rights (ECCHR), Sisma Mujer, Colectivo de Abogados José 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).

<sup>91</sup> Interview, Afro-Colombian women's human rights defender, (Dec. 8, 2017) (on file with MADRE) (name omitted for safety reasons).

<sup>92</sup> Centro Nacional de Memoria Histórica, *supra* note 72 at 389-390.

<sup>93</sup> Mesa de Seguimiento a los Autos 092 de 2008 y 009 de 2015 de la Corte Constitucional – Anexos reservados, *La Impunidad de la Violencia Sexual Asociada al Conflicto Armado en Colombia – Resumen Ejecutivo*, p. 2 (Nov. 2015).

<sup>94</sup> Interview, Afro-Colombian women's human rights defenders, (Feb. 13, 2018), (on file with MADRE) (names omitted for safety reasons); Interview, Afro-Colombian women's human rights defender, (Oct. 2018), (on file with MADRE) (name omitted for safety reasons).

account for their precarious security circumstances. For example, police and prosecutors have initiated investigations without redacting names or other personal information from claims, revealing claimants' identities to the general public.<sup>95</sup> Those who report human rights violations, including sexual violence, to police or military are at high risk of retaliation from armed groups,<sup>96</sup> and brutal practices that stem from the armed conflict, including mutilation of women, continue to haunt survivors and their advocates.<sup>97</sup> Afro-descendant women also face severe stigmatization when reporting sexual and gender-based crimes and risk isolation, loss of income, or further threats and violence from the community for speaking out.<sup>98</sup> In addition, Government agencies often do not have trained professionals such as nurses, psychiatrists, and social workers to handle cases of SGBV.<sup>99</sup>

As of 2017, only two percent of the 634 court-documented cases of conflict-related sexual violence have resulted in convictions.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup>

Continual modifications to the JEP, the mechanism assigned to handle cases of conflict-related sexual violence within the transitional justice process, risk jeopardizing its credibility and authority as a transitional justice mechanism for victims of conflict-related SGBV. A November 2017 Constitutional Court decision hinders the ability of the JEP to prosecute third-party perpetrators of conflict-related sexual violence by removing language that would compel such actors to appear before the court.<sup>103</sup> Third-party actors such as landowners or drug-traffickers were among some of the worst perpetrators of violence in Colombia during the conflict,

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<sup>95</sup> Interview, Afro-Colombian women's human rights defender, (Sept. 29, 2018) (on file with MADRE) (name omitted for safety reasons).

<sup>96</sup> Interview, Afro-Colombian women's human rights defender, (Sept. 29, 2018) (on file with MADRE) (name omitted for safety reasons); Proceso de Comunidades Negras, *Derrotar la Invisibilidad: Un Reto para Las Mujeres Afrodescendientes en Colombia, El Panorama de la Violencia y la Violación de los Derechos Humanos Contra las Mujeres Afrodescendientes en Colombia, en el Marco de Los Derechos Colectivos*, p.18 (Apr. 2012).

<sup>97</sup> Enric Llopis *Buenaventura: Desarrollo y resistencias de la población negra*, Radio Macondo (Aug. 22, 2018), (detailing violence against women in Buenaventura); Interview, Afro-Colombian women's human rights defender, (Oct. 2018) (on file with MADRE) (name omitted for safety reasons).

<sup>98</sup> Interview, Afro-Colombian Woman Human Rights Defender, (Colombia) (Sept. 29, 2018) (on file with MADRE) (name omitted for safety reasons); Inter Press Service, *Las mujeres afro de Colombia en busca de justicia*, (Oct. 14, 2018), available at <http://www.ipsnoticias.net/2018/10/las-mujeres-afro-colombia-busca-justicia/>; Juan Camilo Maldonado Tovar, *El costo de denunciar a un agresor sexual*, El Espectador (Oct. 14, 2018).

<sup>99</sup> Ana Carolina Bucheli Olmos and María Fernanda Vargas Jiménez, *Violencia sexual en el marco del conflicto armado colombiano caso: Chocó*, Thesis for the Universidad de Rosario, Facultad de Jurisprudencia, p.25 (Jan. 2018), (on file at MADRE).

<sup>100</sup> United Nations Security Council, *Report of the Secretary General on Conflict-Related Sexual Violence*, ¶ 27 UN Doc. S/2017/249, (Apr. 15, 2017)

<sup>101</sup> Mesa de Seguimiento, *supra* note 93.

<sup>102</sup> UN High Commissioner for Human Rights, *Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, ¶ 98 (Mar. 14, 2017).

<sup>103</sup> Washington Office on Latin America, *Rescuing Colombia's Post-Conflict Transitional Justice System* (Nov. 29, 2017).

including violence against Afro-descendant communities.<sup>104</sup> In August 2018 the Constitutional Court upheld modifications to the JEP which include a definition of “command responsibility” for war crimes that may exonerate military commanders.<sup>105</sup> Proposals by the current administration to eliminate article 213, which contains provisions obligating JEP to refer victims of SGBV to healthcare systems, threaten to diminish its ability to address the needs of survivors of SGBV and would eliminate any references to LGBTI persons.<sup>106</sup> On November 1, 2018 Colombia’s National Congress came to an agreement to add fourteen magistrates to the JEP in order to try cases of military and state agents.<sup>107</sup> A prosecutor of the International Criminal Court warned that if this proposal passed it could hinder the work of the JEP and transitional justice in Colombia.<sup>108</sup>

Furthermore, in early October the Attorney General’s Office ordered an inspection of the first case heard by the JEP and collected confidential information regarding the case.<sup>109</sup> The President of the JEP, Patricia Linares, viewed this as an act of intimidation,<sup>110</sup> and the UN Verification Mission in Colombia released a statement requesting that public officials respect the independence of the JEP to guarantee the rights of victims.<sup>111</sup> Duque supported the Attorney General’s actions, claiming it conformed with the law and served to correct errors of the JEP.<sup>112</sup> Threats to the confidentiality of cases heard by the JEP could discourage Afro-descendant women and other victims from reporting, and hinder their ability to access justice and reparations for the violence committed against them and their communities. Meanwhile, illegal armed actors continue to commit widespread abuses, such as killings, disappearances, and sexual violence with impunity, while the Colombian government ignores reports of continued violence from Afro-Colombian and Indigenous communities.<sup>113</sup>

Colombia explains that it has adopted protocols to prevent SGBV and combat impunity,<sup>114</sup> and designed a methodology in consultation with women’s groups to develop advocacy plans focused on preventing GBV against Indigenous and Afro-descendant women.<sup>115</sup> Colombia further states that it created an easily-accessible judicial framework to better assess gender-based

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<sup>104</sup> *Id.*

<sup>105</sup> Washington Office on Latin America, *Last Week in Colombia’s Peace Process: Week of August 12-18* (Aug. 23, 2018).

<sup>106</sup> La Silla Vacía, *Cambios a la JEP confirman miedos de feministas y Lgbt frente a Duque*. (July 6, 2018).

<sup>107</sup> USAID and International Organization for Migration, *Peace Mail: Weekly Update: Implementing the Peace Accords* (Nov. 2018).

<sup>108</sup> El Espectador, *Las preguntas de la fiscalía de la CPI sobre la JEP* (Nov. 1, 2018); Contagio Radio, *Cuatro Preocupaciones de la Corte Penal Internacional Sobre Cambios a la JEP* (Nov. 2, 2018).

<sup>109</sup> Semana, *Sube tensión entre Fiscalía y JEP por inspección al expediente madre del secuestro*, (Oct. 4, 2018).

<sup>110</sup> *Id.*

<sup>111</sup> Análisi Urbano, *ONU pidió respeto de todos los poderes públicos a la independencia y autonomía de la JEP* (Oct. 7, 2018).

<sup>112</sup> Caracol Radio, *Presidente respalda actuaciones de Fiscalía en caso JEP* (Oct. 5, 2018). El País, *Duque respalda a la Fiscalía en caso de intromisión en la JEP* (Oct. 5, 2018).

<sup>113</sup> Amnesty International, *The Years of Solitude Continue*, *supra* note 69 at 21.

<sup>114</sup> CEDAW, Ninth periodic report of Colombia under article 18 of the Convention, due in 2017, at 4-11 (UN Doc CEDAW/C/COL/9 (Nov. 10, 2017)).

<sup>115</sup> CEDAW, *Lista de cuestiones y preguntas relativas al noveno informe periódico de Colombia – Respuestas de Colombia*, ¶¶ 13-14, U.N. Doc. CEDAW/C/COL/9 /Add.1 (Nov. 12, 2018); CEDAW, Ninth periodic report of Colombia, *supra* note 114 at 4-11.

crimes.<sup>116</sup> However, this framework has been in place since 2011,<sup>117</sup> and human rights defenders report that police who receive reports of cases often fail to take subsequent action and that prosecutions do not occur.<sup>118</sup> Colombia has additionally failed to adequately address victims' barriers to justice. Recent data collected by the Ombudsperson's Office found that a majority of women feel re-victimized by government officials when reporting sexual and gender-based crimes.<sup>119</sup>

## ***B. Recommendations***

We encourage the Committee to call on the Colombian Government to:

- consult with Afro-Colombian women's organizations and authorities to establish safe and anonymous ways to report conflict-related sexual violence and ensure that victims are able to do so without fear of retaliation;
- ensure meaningful access for Afro-Colombian victims of conflict-related sexual violence to both the JEP, and the Commission for the Clarification of Truth, Coexistence, and Non-Repetition, to ensure that these bodies prioritize cases of SGBV. The Colombian government should further dedicate funding to the operation of these bodies in such a manner that permits wide civil society participation;
- direct the Office of the Attorney General (*Fiscalía*) to analyze intersections of race, ethnicity, poverty and gender in order to understand the disproportionate impact of SGBV on Afro-descendants, and to ensure this data is reflected in information that the Attorney General's office submits to the JEP;
- provide 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 JEP mechanisms; and
- consolidate and improve steps for reporting gender-based violence that avoid re-traumatizing survivors.

## **VI. ACCESS TO HEALTHCARE FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE (ARTS. 12 AND 14)**

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<sup>116</sup> CEDAW - *Respuestas de Colombia*, *supra* note 115 at ¶¶ 15-17.

<sup>117</sup> UNFPA, *Criterios de equidad para una administración de justicia con perspectiva de género* (2011).

<sup>118</sup> Interview, Afro-Colombian women's human rights defenders, (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>119</sup> Defensoría del Pueblo, *Un alto porcentaje de mujeres víctimas de violencia son agredidas en su propia casa según informe de casos atendidos por la Defensoría* (Nov. 25, 2018).

### ***A. The Colombian Government's Failure to Provide Afro-Colombian SGBV Survivors with Access to Affordable and Local Healthcare***

While Afro-descendant SGBV survivors face substantial stigma-related barriers to healthcare, this problem is exacerbated by the fact that Afro-Colombian communities overwhelmingly lack adequate access to physical and mental 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.<sup>120</sup> Inadequate, outdated health centers, patient mistreatment, and lack of services has caused countless deaths in Buenaventura and surrounding areas, including, for example, that of a nine-months pregnant woman who died in 2016 after being denied fulfillment of prescriptions for a sudden illness.<sup>121</sup> The health infrastructure in the majority-Black department of Chocó is woefully inadequate to meet the needs of a population facing high levels of poverty-induced health issues, such as child malnutrition.<sup>122</sup> 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 announced the liquidation of the crumbling St. Francis de Asís Hospital in Quibdó.<sup>123</sup>

Victims of SGBV face additional 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 by health professionals, and victims' and practitioners' lack of knowledge of requisite health services.<sup>124</sup> These barriers disproportionately impact Afro-Colombian victims, who face multiple layers of discrimination when seeking care,<sup>125</sup> in addition to a lack of adequate health infrastructure in their communities and high rates of displacement.<sup>126</sup>

Access to basic health care in certain majority populated Afro-Colombian regions is so scarce that women have to walk for hours or even days to the nearest health center, and women's advocates report that many have died in the process.<sup>127</sup> Afro-Colombian women have coined this the "The Path of Death."<sup>128</sup> In Nóvita, Chocó, Afro-Colombian women survivors of sexual violence must travel over 30 miles (52.9km) through difficult and often dangerous terrain to Chocó's capital, Quibdó, to receive specialty care such as mental health services.<sup>129</sup>

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<sup>120</sup> Publimetro, *S.O.S. al sistema de salud en Buenaventura*, (Jul. 27, 2017).

<sup>121</sup> Publimetro, *Caminando hacia Bogotá por la salud de Buenaventura*, (Aug. 17, 2017).1

<sup>122</sup> *Semana Sostenible*, *La terrible situación de salud in Chocó*, (Jul. 14, 2016).

<sup>123</sup> *Id.*

<sup>124</sup> Human Rights Watch, *Country Report: Colombia*, p. 6 (Jan. 2018); Médicos Sin Fronteras - Colombia, *A la sombra del proceso Impacto de las otras violencias en la salud de la población colombiana*, p. 23 (Aug. 2017).

<sup>125</sup> Interview, Afro-Colombian women's human rights defenders (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>126</sup> 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*, *supra* note 66; RCN Radio, *Más de mil desplazados*, *supra* note 66.

<sup>127</sup> Interview, Afro-Colombian women's human rights defenders (Oct. 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>128</sup> *Id.*

<sup>129</sup> Bucheli Olmos, *supra* note 99 at 31.

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.<sup>130</sup> While in 2015 the Constitutional Court ruled that victims of sexual violence must be provided comprehensive medical and psychosocial care with dignity under Law 1719 of 2014,<sup>131</sup> at the end of 2016 Congressional Representative Ángela Robledo reported that there was no evidence of advance in the commitments under the law.<sup>132</sup> Human rights reporters find that in rural areas of Chocó, Afro-Colombian women SGBV survivors lack access to healthcare necessary in the wake of sexual assault or rape, including post-HIV exposure prophylaxis.<sup>133</sup>

Victims are often unaware of the process for seeking care or do not seek care at public health entities following sexual assault because they have experienced re-victimization and stigmatization.<sup>134</sup> According to Afro-Colombian activists, doctors who have treated Afro-Colombian SGBV survivors have referred to the rape as “an act of passion”, or “a problem between a husband and wife.”<sup>135</sup> A doctor once asked an Afro-Colombian woman who had been raped to describe the moment her attacker “made love” to her.<sup>136</sup> These experiences deter Afro-descendant women from following up with medical providers and from reporting these incidents to police.<sup>137</sup> As of 2017, advocates reported that in both Tumaco and Buenaventura there is a false belief, reinforced by attitudes in public institutions, that in order to receive medical attention, a victim must file a complaint with the authorities.<sup>138</sup> This runs contrary to Law 1719 and means that untold numbers of victims are unlawfully denied necessary emergency care in these majority Afro-descendant areas.

The Government asserts that it promulgated a healthcare model (MIAS - *Modelo Integral de Atención en Salud*) in 2016, which seeks to improve access to health.<sup>139</sup> However, departmental and municipal health secretariats and academics involved in the implementation of this regulation in Eastern Colombia have expressed concern about the scope of the program's implementation, as it “does not represent a structural change in the health system.”<sup>140</sup> They also report a lack of institutional and organizational capacity necessary for the model's effective

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<sup>130</sup> Amanda Klasing, *Dispatches: Broken Promise to Colombia's Women*, Human Rights Watch, (Jul. 6, 2015).

<sup>131</sup> Constitutional Court of Colombia, Sentencia C-754/15, (2015).

<sup>132</sup> El Nuevo Siglo, *Ley contra la violencia sexual no avanza*, (Nov. 16, 2016).

<sup>133</sup> Bucheli Olmos, *supra* note 99 at 36.

<sup>134</sup> Médicos Sin Fronteras – Colombia, *supra* note 124 at 23.

<sup>135</sup> Interview, Afro-Colombian women's human rights defenders, (Sept 29, 2018) (on file with MADRE) (names omitted for safety reasons).

<sup>136</sup> *Id.*

<sup>137</sup> Interview, Afro-Colombian women's human rights defenders, (Sept 29, 2018) (on file with MADRE) (names omitted for safety reasons); Bucheli Olmos, *supra* note 99 at 36.

<sup>138</sup> Médicos Sin Fronteras – Colombia, *supra* note 124 at 23.

<sup>139</sup> CEDAW - *Respuestas de Colombia*, *supra* note 115 at ¶ 104.

<sup>140</sup> Ruiz-Rodríguez M, Hormiga-Sánchez CM, Uribe Rivero LM, Cadena Afanador LP, Mantilla Uribe BP, Solano Aguilar S. *Voces de la academia y los tomadores de decisiones del Oriente Colombiano ante la implementación del Modelo Integral de Atención en Salud*. Rev Univ Ind Santander Salud, 49(2): 320-329, at 323, (2017).

implementation.<sup>141</sup> In addition, the current administration's proposal to eliminate important provisions of the JEP that would refer victims to healthcare systems,<sup>142</sup> raises questions regarding its commitment to providing needed healthcare services to survivors of conflict-related SGBV. For Afro-descendant SGBV survivors, proper medical and mental healthcare remains largely out of reach.

### ***B. Recommendations***

We encourage the Committee to call on the Colombian Government to:

- ensure Afro-Colombian SGBV 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;
- ensure the full compliance with requirements under Law 1719, including in Afro-descendant territories, specifically ensuring that no SGBV victim is required to produce a police report to receive proper treatment;
- provide access to quality healthcare facilities and services in majority Black and Indigenous communities, in line with post-civil strike agreements the government made with communities in Buenaventura, Chocó and Norte de Cauca; and set aside specific funds to meet its obligations under those agreements;
- provide education and training to all medical personnel at public and private facilities on the prohibition against torture and CIDT, especially regarding reproductive rights violations and sexual violence; and
- require additional qualifications and provide ongoing support to medical professionals with a focus on capacity to respond to cases of sexual assault in a comprehensive manner.

## **VII. PROTECTION OF AFRO-COLOMBIAN WOMEN'S LAND RIGHTS (ARTS. 2 AND 14)**

### ***A. The Colombian Government's Failure to Protect Afro-descendant Women's Land Rights***

The Colombian government's failure to consult with Afro-descendant women on laws, policies, and projects affecting their collective territories and its failure to implement laws governing collective territory for Afro-descendant communities violates Afro-descendant women's right to

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<sup>141</sup> Ruiz-Rodríguez M, Hormiga-Sánchez CM, Uribe Rivero LM, Cadena Afanador LP, Mantilla Uribe BP, Solano Aguilar S. *Voces de la academia y los tomadores de decisiones del Oriente Colombiano ante la implementación del Modelo Integral de Atención en Salud*. Rev Univ Ind Santander Salud, 49(2): 320-329, at 323, (2017).

<sup>142</sup> La Silla Vacía, *supra* note 106.

be free from discrimination and to participate in the development of policies and projects affecting their land. Afro-descendant women's identities are tied to their ancestral territories and access to those territories provides them with the means to support their families and connect with their communities.<sup>143</sup> Years of conflict and violence forcibly displaced Afro-descendant women at disproportionate rates from their ancestral territories.<sup>144</sup> Afro-descendant communities continue to be at risk of displacement due to increased violence between armed groups vying to fill the power vacuum left by the FARC<sup>145</sup> and violence related to exploitation by extractive industries.<sup>146</sup> These security threats also exacerbate SGBV against women.<sup>147</sup>

While Law 70 of 1993 guarantees Afro-descendant Peoples' rights to their historic collective territories, departmental and national officials have used administrative hurdles to prevent Afro-descendant communities from officially registering collective title to their lands.<sup>148</sup> As of 2015, while Afro-descendant communities represented about 25% of the total population of Colombia, only 170 collective land titles covering less than 5% of Colombia's territory had been granted to Afro-descendant communities.<sup>149</sup> Afro-Colombian communities have at least 271 pending collective land titling claims that have yet to be fulfilled.<sup>150</sup>

The State's failure to comply with Law 70 not only impedes Afro-descendant communities' effective enjoyment of the right to development, but has exacerbated conditions that produce disproportionate impacts of the internal armed conflict on these communities.<sup>151</sup> Law 70 requires the State to consult with Afro-descendant communities before carrying out development or mining activities in their territories.<sup>152</sup> However, the Government invites large scale mining and development projects into Afro-descendant territories and does little to protect Afro-descendant communities defending their territorial rights against these activities.<sup>153</sup> The Government has

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<sup>143</sup> Interview, Afro-Colombia women's human rights defenders, (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons); Liga Internacional de Mujeres por la Paz y la Libertad (LIMPAL), *Informe de Mesa 2014 – Violencia Sociopolítica Contra Mujeres, Jovenes y Ninas de Colombia*, 65 (2014).

<sup>144</sup> Norwegian Refugee Council, *New wave of violence threatens Colombia's peace prospects* (Aug. 8, 2017); Sibylla Brodzinsky, *Colombia's City of Women: A Haven from Violence*, *The Guardian*, (Apr. 20, 2016).

<sup>145</sup> Amnesty International, *The Years of Solitude Continue*, *supra* note 69 at 34.

<sup>146</sup> Defensoría del Pueblo, *Informe Especial: Economías Ilegales, Actores Armados, Y Nuevos Escenarios de Riesgo en el Posacuerdo*, p. 225 (Sept. 2018), available at <http://defensoria.gov.co/public/pdf/economiasilegales.pdf>.

<sup>147</sup> *Id.* at 224.

<sup>148</sup> Observatorio de Territorios Étnicos y Campesinos, *Derechos territoriales de las comunidades negras: sistema de información sobre la vulnerabilidad de los territorios sin titulación colectiva*, p. 11 (2017), available at <http://etnoterritorios.org/index.shtml?apc=c-xx-1-&x=1299>

<sup>149</sup> Amnesty International, *Colombia: Restoring the Land, Securing the Peace, Indigenous and Afro-Descendant Territorial Rights*, p. 5 (Nov. 2015).

<sup>150</sup> Observatorio de Territorios Étnicos y Campesinos, *Derechos territoriales de las comunidades negras: sistema de información sobre la vulnerabilidad de los territorios sin titulación colectiva*, p. 11 (2017), available at <http://etnoterritorios.org/index.shtml?apc=c-xx-1-&x=1299>

<sup>151</sup> Conferencia Nacional de Organizaciones Afrocolombianas, *25 años de la Ley 70 de 1993* (Aug. 27, 2018), available at <http://convergenciagnoa.org/25-anos-de-la-ley-70-de-1993/>.

<sup>152</sup> Colombia Law 70 of 1993, Arts. 17, 26.

<sup>153</sup> Stephen and Elizabeth Ferry, *Mining and the Defense of Afro-Colombian Territory: The Community of Yolombó, Colombia*, *Revista Harvard Review of Latin America* (Winter 2018). Taula Catalana per la Pau & Oficina Internacional de Derechos Humanos, *Acción Colombia, Cómo Protegemos A Quienes Defienden Los Derechos Humanos en Colombia: Aportaciones de Voces Expertas en el Marco de la Implementación del Acuerdo de Paz*, p.



signed 739 mining titles with multinational corporations and 17 Free Trade Agreements with foreign governments that negatively impact Afro-descendant ancestral territories.<sup>154</sup> This repeated failure to consult with Afro-descendant women and their communities about development within their territories leads to forced displacement, threats, and forced disappearances.<sup>155</sup> The proliferation of illegal mining in Afro-descendant territories has also led to increased levels of violence against Afro-descendant community leaders advocating to protect their land rights.<sup>156</sup>

The Colombian government has failed to adequately protect and provide land restitution to Afro-Colombian victims of the conflict. Of the 18 elements in the Peace Accords meant to provide reparations to victims, only one is complete, while 16 elements either remain unimplemented or at a level of minimal implementation.<sup>157</sup> The Government has yet to fully implement the Victims and Land Restitution Law (Law 1448) of 2011 and decree-law 4635 for Afro-Colombians.<sup>158</sup> In December 2017, a Commission tasked with monitoring implementation of Law 1448 and other decrees relating to Indigenous and Afro-Colombian communities found that the Government has no clear strategy for implementing the land restitution process. It found specifically that the reparation process for claims submitted by Afro-descendant and Indigenous communities was lagging seriously behind, with none of the 522 claims processed.<sup>159</sup> Moreover, laws developed under the Peace Accords, such as the Zones of Interest for Economic and Social Development in Rural Areas (ZIDRES), favor large agro-industrial development projects while undermining the rights of rural communities, including Afro-descendant communities.<sup>160</sup>

The fast track legislation process under the Peace Accord systematically discriminated against and excluded Afro-descendants, impacting their collective rights and access to land. For instance, vague language in Decree-law 902/2017, which outlines who can access the land fund stipulated by the Peace Accord, guarantees Indigenous Peoples and peasant farmers (*campesinos*) access through a specific account, but does not explicitly mention how Afro-

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34-35 (May 2018); Interview, Afro-Colombian women's human rights defender, (Oct. 1, 2018) (on file with MADRE) (name omitted for safety reasons).

<sup>154</sup> Taula Catalana per la Pau & Oficina Internacional de Derechos Humanos, *Acción Colombia, Cómo Protegemos A Quienes Defienden Los Derechos Humanos en Colombia: Aportaciones de Voces Expertas en el Marco de la Implementación del Acuerdo de Paz*, p. 34 (May 2018); Tatiana Naverrete y Mongabay Latam, *La lucha de un consejo comunitario contra la minería ilegal en Chocó* (June 23, 2017), available at <https://sostenibilidad.semana.com/medio-ambiente/articulo/mineria-ilegal-en-choco-la-lucha-de-un-consejo-comunitario-contra-la-mineria/38094>.

<sup>155</sup> Taula Catalana per la Pau & Oficina Internacional de Derechos Humanos, *Acción Colombia, Como Protegemos A Quienes Defienden Los Derechos Humanos en Colombia: Aportaciones de Voces Expertas en el Marco de la Implementación del Acuerdo de Paz*, p. 34 (May 2018).

<sup>156</sup> Defensoría del Pueblo, *Informe Especial: supra* note 146 at 224-225; Naverrete, *supra* note 154.

<sup>157</sup> Kroc Institute for International Peace Studies, *supra* note 7, at 209.

<sup>158</sup> Amnesty International, *Colombia National Development Plan Threatens to Deny the Right to Land Restitution to Victims of the Armed Conflict and Allows Mining Firms to Operate on Illegally Acquired Lands*, (July 17, 2015).

<sup>159</sup> Defensoría del Pueblo, *Comunicado de prensa: Comisiones de seguimiento y monitoreo a Ley 1448 y decretos leyes étnicos* (Dec. 6, 2017).

<sup>160</sup> Amnesty International, *Amnesty International Report 2016/17- Colombia, Land Rights*, 4-5, (Feb. 22, 2017); Semillas, *Las Zonas de Interés de Desarrollo Rural, Económico y Social (ZIDRES), en contra del campo colombiano*, 28-29 (Apr. 2016).

descendant communities will access the fund.<sup>161</sup> In addition, Afro-descendant authorities were not properly consulted on Decree 893 of May 28, 2017,<sup>162</sup> which has no specific provisions to ensure rights and participation of Afro-descendant women and their communities in the formulation of the Territorial Development Plans (PDETs).<sup>163</sup> Under Point five of the Accord, PDETs are meant to play a vital role in restoration and reparations for victims of the internal armed conflict.<sup>164</sup> Though the Land Renewal Agency (ART) reached an agreement in March with Afro-descendant communities about routes for PDET implementation,<sup>165</sup> the ART did not substantially engage the High-Level Body for Ethnic Peoples or national Afro-descendant and Indigenous organizations.<sup>166</sup> Implementation remains stalled due to a lack of funding<sup>167</sup> and inadequate information provided at the local level.<sup>168</sup>

Pending legislation risks further undermining Afro-descendant communities' rights to free, prior and informed consent as well as the integrity of their territory. In July 2018 the Ministry of Agriculture proposed draft Law 003-2018 to amend Law 160 of 1994 on land reform,<sup>169</sup> without adequately consulting with Afro-descendant and Indigenous communities through agreed-upon procedures.<sup>170</sup> Afro-descendant and Indigenous organizations, as well as expert academics and the Solicitor General for Land Restitution Issues, fear this law will be used to legitimize the use of Afro-descendant and Indigenous territories for agro-industrial and extractive projects, given that it prioritizes them as public interest projects.<sup>171</sup> Advocates are further concerned about the Government's failure to consult Afro-descendant and Indigenous authorities to fully and effectively implement illicit crop substitution programs,<sup>172</sup> fearing the Duque administration's renewed war on drugs will lead to increased violence, dispossession and displacement in their territories.<sup>173</sup>

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<sup>161</sup> Decreto-Ley Número 902 de 2017, Art. 18 (May 29, 2017).

<sup>162</sup> Kroc Institute for International Peace Studies, *Segundo Informe Sobre El Estado Efectivo de Implementación del Acuerdo de Paz en Colombia*, p. 344 (Aug. 2018).

<sup>163</sup> Decree 893 of 2017, Article 14 (May 28, 2017).

<sup>164</sup> Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, 5.1.3.3.1 (2016), available at <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf>.

<sup>165</sup> Kroc Institute for International Peace Studies, *Segundo Informe Sobre El Estado Efectivo de Implementación del Acuerdo de Paz en Colombia*, p. 249 (Aug. 2018); Organización Nacional Indígena de Colombia, *Pronunciamiento de la Instancia Especial de Alto Nivel con Pueblos Étnicos* (2 Aug. 2018).

<sup>167</sup> Organización Nacional Indígena de Colombia, *Pronunciamiento de la Instancia Especial de Alto Nivel con Pueblos Étnicos* (2 Aug. 2018)

<sup>168</sup> Kroc Institute for International Peace Studies, *Segundo Informe Sobre El Estado Efectivo de Implementación del Acuerdo de Paz en Colombia*, p. 249-250. (Aug. 2018).

<sup>169</sup> Verdad Abierta, *Proyecto de ley sobre tierras es lesivo para comunidades rurales vulnerables*, (9 Aug. 2018);

<sup>170</sup> Organización Nacional Indígena de Colombia, *Pronunciamiento de la Instancia Especial de Alto Nivel con Pueblos Étnicos* (2 Aug. 2018); Verdad Abierta, *Proyecto de ley sobre tierras es lesivo para comunidades rurales vulnerables*, (9 Aug. 2018); Kroc Institute for International Peace Studies, *Segundo Informe Sobre El Estado Efectivo de Implementación del Acuerdo de Paz en Colombia* p. 249. (Aug. 2018).

<sup>171</sup> Organización Nacional Indígena de Colombia, *Pronunciamiento de la Instancia Especial de Alto Nivel con Pueblos Étnicos*, (Aug. 2, 2018); Verdad Abierta, *Proyecto de ley sobre tierras es lesivo para comunidades rurales vulnerables* (Aug. 9, 2018).

<sup>172</sup> Kroc Institute for International Peace Studies, *supra* note 7 at 249-250.

<sup>173</sup> Interview, Afro-Colombian women's human rights defenders, (Sept 29, 2018) (on file with MADRE) (names omitted for safety reasons); Interview, Afro-Colombian women's human rights defenders, (Colombia) (Oct. 1, 2018) (on file with MADRE) (names omitted for safety reasons).

## ***B. Recommendations***

We encourage the Committee to call on the Colombian Government to:

- finalize the regulation of Law 70 of 1993 as a way to guarantee Afro-descendant women and their communities their collective rights, in particular access to their urban and rural ancestral and collective territories.
- develop a plan, in consultation with Afro-descendant women and their communities, and dedicate adequate funding, to implement the Victims and Land Restitution Law (1448) of 2011 and Decree-Law 4635/2011, to ensure Afro-descendant women conflict victims receive land restitution required under the law;
- guarantee Afro-descendant women's right to free, prior, and informed consent for any administrative actions, laws, programs, projects, and activities that may affect them and their communities, ensuring the inclusion of an ethnic-racial gender approach in the measures and projects that affect the integrity of the Afro-descendant People;
- follow the Ombudsperson's Office recommendation to develop a comprehensive formal policy to fight against illegal mining, in collaboration with territorial entities, that provides them with the necessary resources to effectively implement the policy.<sup>174</sup>
- ensure that the National Development Plan for the Black, Afro-Colombian, *Raizal* and *Palenquero* peoples is integrated into the National Development Plan with the allocation of all the necessary specific resources to guarantee its effective implementation.

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<sup>174</sup> Defensoría del Pueblo, *Informe Especial*, supra note 146 at 226.