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Technical assistance and capacity-building

Technical assistance and capacity-building in Colombia

Report of the international human rights expert, Antonia Urrejola*

Summary

In the present report, the international human rights expert, Antonia Urrejola, identifies obstacles to the implementation of the Peace Agreement of 2016, in particular those reported by the Special Jurisdiction for Peace in March 2023. She also highlights the progress made thus far and makes recommendations on the need to implement the Peace Agreement as a State policy, put an end to violence, uphold the human rights of the signatories of the Agreement, improve inter-institutional coordination, combat corruption and expedite the implementation of the chapter on ethnicity and the provisions relating to gender.

* This report was submitted after the deadline in order to reflect all the information gathered by the mandate holder until December 2023.



I. Introduction

A. Mandate

1. The present report is submitted pursuant to Human Rights Council resolution 53/22, in which the Council requested the United Nations High Commissioner for Human Rights to appoint an international human rights expert tasked with:

Identifying the obstacles to the implementation of the 2016 peace agreement, in particular those announced publicly by the Special Jurisdiction for Peace in March 2023, and identifying the consequences of these obstacles for the full enjoyment of human rights under international law, as well as the domestic right to peace as enshrined in the Political Constitution of Colombia, and making recommendations that would help to overcome them.

2. Although it is specifically stated in the resolution that the expert should identify “in particular” the obstacles complained of by the Special Jurisdiction for Peace in March 2023,¹ the mandate is not to investigate potential criminal responsibility.

3. Moreover, the mandate is not to conduct an exhaustive analysis of the implementation status of the Peace Agreement. The report identifies the main structural obstacles to implementation from a human rights perspective and contains recommendations aimed at contributing to peacebuilding in Colombia.

B. Methodology

4. The report is based on information gathered by the expert, including information obtained through 80 individual and group interviews with State actors and institutions and civil society. The expert visited Colombia twice, in August and November 2023,² and met civil society organizations and representatives of the diplomatic service in Geneva in December 2023.

5. In Colombia, the expert met different bodies of the executive branch responsible for the implementation of the Peace Agreement: the Attorney General’s Office, the Ombudsman’s Office, the Counsel General’s Office, the Comptroller General’s Office, the Constitutional Court and the Comprehensive System of Truth, Justice, Reparation and Non-Repetition. She also met Members of Congress, ex-members of the former Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP), persons in the process of reintegration, civil society organizations, academics, representatives of the diplomatic service and various regional and international organizations.

6. The expert also met government officials who had participated in the negotiations with FARC-EP and the implementation of the Peace Agreement, including two former Presidents, the former Attorney General of the Nation and two former Commissioners of the Commission for the Clarification of Truth, Coexistence and Non-Repetition.

7. With support from the United Nations Verification Mission in Colombia, in the village of El Berlin (Meta), the expert interviewed persons in the process of reintegration who had been displaced from the former territorial areas for training and reintegration in Mesetas and Vista Hermosa and inhabitants of the new reintegration area, “El Diamante.”

8. The expert issued her preliminary observations on 14 December 2023.³

¹ See <https://www.jep.gov.co/Sala-de-Prensa/Paginas/jep-pide-a-fiscal%C3%ADa-que-investigue-conductas-de-antiguos-servidores-del-ente-acusador.aspx>.

² See <https://www.ohchr.org/es/statements/2023/09/colombia-un-expert-antonia-urrejola-concludes-first-official-visit> and <https://www.ohchr.org/es/statements/2023/11/colombia-un-expert-antonia-urrejola-concludes-second-official-visit>.

³ See <https://www.hchr.org.co/comunicados/observaciones-preliminares-de-la-experta-internacional-en-derechos-humanos-antonia-urrejola/>.

C. Context

9. On 24 September 2016, the Government of Colombia concluded the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (Peace Agreement) with FARC-EP, ending an armed conflict that had lasted for more than 50 years and to which over 9 million persons had fallen victim.⁴

10. On 2 October 2016, a referendum was held on the Peace Agreement, which was rejected by the majority of voters, forcing the signing parties to renegotiate the text to accommodate objections from the opposition. On 24 November 2016, the revised Agreement, currently in force, was signed.

11. The Peace Agreement is innovative for its comprehensive human rights content and its local and ethnicity- and gender-based approach. In order to uphold victims' rights, the Agreement provides for the establishment of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, comprising the Commission for the Clarification of Truth, Coexistence and Non-Repetition (Truth Commission), the Unit for the Search for Persons Deemed Missing in the Context of and Due to the Armed Conflict and the Special Jurisdiction for Peace.

12. The Special Jurisdiction for Peace was tasked with investigating and clarifying cases of serious human rights violations and breaches of international humanitarian law committed during the armed conflict and prosecuting and sanctioning those responsible. In the framework of its functions, the Special Jurisdiction for Peace was also granted the power to decide on the application of the guarantee of non-extradition in respect of individuals appearing before the Jurisdiction when, inter alia, the facts and conduct in question had occurred before the signing of the Peace Agreement.⁵

13. In March 2023, the Special Jurisdiction for Peace filed a complaint with the Attorney General's Office concerning alleged acts and omissions by some of the Office's officials that it claimed had obstructed its work between 2018 and 2019, when it had been required to decide whether to apply the guarantee of non-extradition in respect of Seuxis Pausias Hernández Solarte, alias "Jesús Santrich", one of the main FARC-EP negotiators during the peace talks.⁶

II. Progress made in the implementation of the Peace Agreement

14. As noted by the Special Representative of the Secretary-General and Head of the United Nations Verification Mission in Colombia, less than half of all peace agreements in the world reach their fifth year of implementation, but the Peace Agreement in Colombia has already surpassed that milestone.

15. One indisputable achievement is the continued commitment of most signatories (former members of FARC-EP who signed the Peace Agreement) to the reintegration process and the increasing political participation of the Comunes (Commons) political party and new political voices from among the reintegrated population.⁷ The oversight of civil society, human rights defenders, ethnic peoples, women's and lesbian, gay, bisexual, trans, intersexual, queer and other non-binary identity (LGBTIQ+) groups and the international community has been fundamental to progress in the implementation of the Peace Agreement.

16. Other advances worth noting include the adoption of legislation required to implement the Peace Agreement, the operation of the transitional justice mechanisms and the measures taken to expedite the implementation of the first chapter of the Agreement.

⁴ See <https://datos.paz.unidadvictimas.gov.co/registro-unico-de-victimas/>.

⁵ Peace Agreement, point 5.1.2.III.72.

⁶ See <https://www.jep.gov.co/Sala-de-Prensa/Paginas/jep-pide-a-fiscal%C3%ADa-que-investigue-conductas-de-antiguos-servidores-del-ente-acusador.aspx>.

⁷ See <https://www.pares.com.co/post/144-reincorporados-de-farc-se-lanzan-a-la-pol%C3%ADtica-como-candidatos-para-las-elecciones-regionales> and <https://delcapitolioalterritorio.com/hacia-donde-va-el-acuerdo-de-paz/>.

A. Regulatory compliance

17. Since 2016, Colombia has passed into its legislation 73 of the 107 norms required for the implementation of the Peace Agreement. It has established transitional justice mechanisms,⁸ enacted laws to open up the democratic process and a statute on the political opposition⁹ and established 16 congressional seats in regions seriously affected by the conflict¹⁰ and an agrarian court to address inequality in land access.¹¹ It also developed the Framework Plan for Implementation of the Peace Agreement¹² and adopted a public policy on dismantling criminal organizations that undermine peacebuilding, including the so-called paramilitary successor groups and their support networks.¹³ In addition, Congress is expected to approve a draft law – currently under discussion – that would bring victim reparation and support programmes into line with the Peace Agreement.¹⁴

B. Transitional justice

18. The Comprehensive System of Truth, Justice, Reparation and Non-Repetition has made significant progress, with achievements including the opening of 11 macrocases by the Special Jurisdiction for Peace, the adoption of the search strategy of the Unit for the Search for Persons Deemed Missing and the conclusion of the work of the Truth Commission.

19. The final report of the Truth Commission, published in June 2022, contains key recommendations for addressing the structural causes of the conflict and advancing in upholding the right of victims and society to truth, recognizing the multiple legacies of violence and the factors that contribute to its persistence. The report’s findings show that the violence of the armed conflict was compounded by other forms of violence, such as racism, classism and patriarchy.¹⁵

20. This report should serve as a guide for finding solutions to the armed conflicts that persist in the country. The dissemination and implementation of its 67 recommendations are crucial to ensuring non-repetition. The expert suggests multiplying initiatives to disseminate the report and its recommendations among the public and State institutions, following the example of the initiative taken by the Ministry of Defence to raise awareness of the recommendations among the security forces.¹⁶

21. In July 2023, the Follow-up and Monitoring Committee tasked with following up on the Truth Commission’s recommendations issued a critical assessment of the first year of implementation of the recommendations, partly based on the fact that Congress had neglected to include the recommendations in the National Development Plan 2022–2026 adopted in May 2023.¹⁷ However, the expert learned that the Office of the High Commissioner for Peace was implementing a strategy to coordinate efforts aimed at the progressive implementation of the recommendations in 40 departments of the executive branch.

22. The expert also recognizes the efforts of the Special Jurisdiction for Peace to identify a considerably high number of victims within the framework of its 11 macrocases and to establish dialogue-based restorative justice mechanisms. This has led to both former members of FARC-EP and members of the security forces publicly acknowledging responsibility for serious crimes committed during the armed conflict. It is also notable that, in 2023, the Special Jurisdiction for Peace charged a general and former commander of the

⁸ Legislative Act No. 01 of 2017.

⁹ Act No. 1909 of 2018.

¹⁰ Legislative Act No. 02 of 2021.

¹¹ Legislative Act No. 03 of 2023.

¹² See <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3932.pdf>.

¹³ See https://portalparalapaz.gov.co/wp-content/uploads/2023/10/Documento-comision-nacional-de-garantias-de-seguridad_02.pdf.

¹⁴ Ministry of Justice and Law, “Presentation of the bill amending and supplementing Act No. 1448 of 2011 and Act No. 975 of 2005 and enacting other provisions”, 26 September 2023.

¹⁵ See <https://www.comisiondelaverdad.co/hallazgos-y-recomendaciones/recomendaciones-if>, p. 542.

¹⁶ Ministry of Defence, Decision No. 0028 of 2022.

¹⁷ See <https://www.camara.gov.co/aprobado-y-conciliado-el-plan-nacional-de-desarrollo>.

Army and members of the former FARC-EP secretariat with war crimes and crimes against humanity.

23. However, challenges remain to be overcome in terms of victims' participation in the proceedings of the Special Jurisdiction for Peace, in particular with respect to the determination of future restorative sentences, as pointed out by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in his preliminary observations after his visit to Colombia in September 2023.¹⁸

24. Moreover, the fact that the Special Jurisdiction for Peace does not have compulsory jurisdiction over third-party civilians (civilians or State officials who are not members of the public security forces) limits the possibility of uncovering the judicial truth about networks involving third-party civilians that enabled the atrocities to occur. This affects the way the macrocases are structured, as they will not include a complete investigation of these third-party civilians during the proceedings. Therefore, it is critical that the ordinary justice system, which has *rationae personae* jurisdiction, prioritize the investigation and prosecution of third-party civilians involved in the conflict.

25. Regarding the members of the State security forces appearing before the Special Jurisdiction for Peace, the expert listened to their concerns about delays in resolving their legal situation by the Jurisdiction and their growing dissatisfaction with possible restrictions to their liberty in military facilities where they would serve the restorative sentences imposed upon them.

26. The expert also gathered observations about limitations to the symmetry principle in the judicial proceedings of the Special Jurisdiction for Peace.¹⁹ According to this principle, proceedings before the Special Jurisdiction for Peace must ensure the equal, balanced and simultaneous treatment of those who participated in the armed conflict, in particular between members of the security forces and former members of FARC-EP appearing before the Jurisdiction.²⁰ According to some victims' representatives, the current prioritization of macrocases by the Special Jurisdiction for Peace does not reflect the range of crimes committed by State security forces, in particular with regard to enforced disappearance. On this matter, the expert urges the Special Jurisdiction for Peace to redouble its efforts to uphold the rights of all victims equally.

27. The expert also received information about delays in the search for and identification of disappeared persons and endorses the observations and recommendations of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on this issue.²¹

C. Rural development

28. The expert highlights the efforts made to promote comprehensive rural reform, including the establishment of the development programmes with a territorial focus, the land restitution policy and the agrarian court,²² the recognition of the campesino population as rights holders entitled to special protection,²³ and the enactment of the law approving the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) (Act No. 2273 of 2022). The expert also observed a significant increase in the budget allocated to

¹⁸ See <https://www.ohchr.org/sites/default/files/documents/issues/truth/statements/20230929-eom-stm-colombia-sr-truth-es.pdf>.

¹⁹ Peace agreement, point 5.1.2.II.32.

²⁰ Legislative Act No. 01 of 2017, transitional art. 17. See also Special Jurisdiction for Peace, *Criterios y Metodología de Priorización de Casos y Situaciones* (Criteria and Methodology for the Prioritization of Cases and Situations), 28 June 2018, para. 38.

²¹ See <https://www.ohchr.org/sites/default/files/documents/issues/truth/statements/20230929-eom-stm-colombia-sr-truth-es.pdf>.

²² Legislative Act No. 03 of 2023.

²³ Legislative Act No. 01 of 2023.

the agriculture sector in 2023 to implement the Peace Agreement,²⁴ advances in the dialogue with key social stakeholders, including campesinos and ethnic peoples, with a view to implementing the rural reform and a strong land formalization policy.²⁵

III. Obstacles to the implementation of the Peace Agreement

A. Lack of implementation of the Peace Agreement as a State policy

29. The Peace Agreement is a road map to address the structural causes of the conflict and ensure non-repetition. It includes human rights obligations that should be implemented progressively by the State, regardless of political dynamics, with an emphasis on measures aimed at upholding economic, social, cultural²⁶ and environmental rights. Its implementation was envisioned over at least three presidential terms. However, successive governments' commitment to sustained and comprehensive implementation of the Agreement has varied.

30. Following the signing of the Peace Agreement, between 2016 and 2018, the Government and the legislative branch focused on the issuance of regulations required to implement the Agreement, in particular with regard to the legal treatment of amnesties and pardons for the signatories, the functioning of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition and the development of guidelines for the implementation policy.²⁷

31. Between 2018 and 2022, the Government of Colombia was openly opposed to the Peace Agreement, as was most of Congress. Although progress was made on some points, such as the establishment of the development programmes with a territorial focus, many aspects of the Peace Agreement were neglected,²⁸ and the Government's approach to implementation was based on a restrictive interpretation of the Agreement, framed by its "Peace with Legality" policy. During this period there were also attempts to delegitimize or eliminate some of the institutions established pursuant to the Peace Agreement, which will be discussed later in this report (see paras. 38 to 43 below).²⁹ For example, the Commission for the Follow-up, Promotion and Verification of the Implementation of the Final Agreement, the National Commission on Security Guarantees and the Technical Committee on Security and Protection, three forums established for the implementation of the Peace Agreement that required the presence of the Colombian President or a representative of the executive branch, were unable to meet or advance their work for four years due to a lack of government participation at the required level.

32. The current Government, elected in 2022, has repeatedly reiterated, including before the United Nations,³⁰ its commitment to comprehensively implementing the Peace Agreement as part of its "total peace" policy, reactivating crucial entities, such as the Commission for the Follow-up, Promotion and Verification of the Implementation of the Final Agreement and the National Commission on Security Guarantees. Likewise, dialogue between the Government and the National Council for Peace, Reconciliation and Coexistence, the Special Women's Agency for a Gender Approach in Peace and the Special High-Level Forum of Ethnic Peoples has been strengthened.³¹ These forums should continue to operate on a regular and uninterrupted basis.

²⁴ See [https://www.minagricultura.gov.co/noticias/Paginas/Sector-de-la-agricultura-ha-ejecutado-\\$2.1-billion-your-budget-for-this-a%C3%B1o.aspx](https://www.minagricultura.gov.co/noticias/Paginas/Sector-de-la-agricultura-ha-ejecutado-$2.1-billion-your-budget-for-this-a%C3%B1o.aspx).

²⁵ S/2023/1033, paras. 35 and 37.

²⁶ E/C.12/COL/CO/CO/6, para. 7.

²⁷ See https://www.reincorporacion.gov.co/es/Documents/conpes_finlal_web.pdf and <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3932.pdf>.

²⁸ See <https://curate.nd.edu/show/41687h17d1g>; A/HRC/40/3/Add.3; and A/HRC/43/3/Add.3.

²⁹ A/HRC/46/76, para. 39.

³⁰ See <https://www.cancilleria.gov.co/newsroom/news/comunicado-prensa-25> and the statement of Colombia during the universal periodic review, 7 November 2023.

³¹ See <https://peaceaccords.nd.edu/wp-content/uploads/2023/12/191223-Trimestral-Plantilla-Jul-Sep.pdf>, p. 7.

33. The National Commission on Security Guarantees has made significant progress, including the adoption of a policy to dismantle criminal organizations and prevent criminal conduct in September 2023. Also worth noting again is the progress made by the current Government in the area of rural development (see para. 28 above) and the commitment made to promoting the implementation of the chapter on ethnicity.

34. The Peace Agreement should be a core element of the State's peace policy in the medium to long term. The verification and monitoring mechanisms established pursuant to the Peace Agreement should play a key role in ensuring that implementation continues regardless of changes in government.

35. It is also critical that the Peace Agreement steer State actions at all levels. Many local and departmental authorities remain unaware of the content of the Agreement and the importance of implementing its provisions simultaneously. This will require inter-institutional coordination and stronger State intervention in the regions, especially those most affected by continuing violence.

36. Oversight bodies have warned that the information contained in the platform used to monitor indicators relating to the Framework Plan for Implementation of the Agreement, known as the Integrated Post-Conflict Information System, has not been properly updated by national institutions, making it difficult to monitor compliance with indicators on the implementation of the Agreement.³²

37. Lastly, the lack of implementation of the Peace Agreement as a State policy could undermine trust in efforts to carry out other peace processes. It is important that other dialogues and negotiations conducted under the "total peace" policy do not interfere with the need to continue implementation of the Peace Agreement as a key aspect of the State's peace policy. Total peace cannot be achieved without the full implementation of the Peace Agreement of 2016.

B. Adverse political context post-Peace Agreement and the "Santrich" case

38. The initial years after the signing of the Peace Agreement were crucial to moving forward with its implementation and consolidating public trust in the Agreement and its peacebuilding mechanisms. However, a significant obstacle to implementation was the adverse political context that existed after it was signed. The actions of the Attorney General's Office complained of by the Special Jurisdiction for Peace in March 2023 in relation to the "Santrich" case cannot be viewed in isolation, but rather must be framed within the context of attacks against the Peace Agreement and the Comprehensive System of Truth, Justice, Reparation and Non-Repetition.

1. Adverse political context post-Peace Agreement

39. The result of the October 2016 referendum for peace – in which 50.21 per cent of voters voted no, with 49.7 per cent in favour – demonstrated the influence of political groupings opposed to the Peace Agreement on public trust in the latter.

40. In August 2017, in its fight against third-party ownership (*testaferrato*), the Attorney General's Office began to publish the results of investigations that implied that several peace signatories had used money laundering to hide assets that should have been handed over as reparations to victims. However, most of these investigations concluded in judicial rulings releasing or absolving those involved and/or the denial of asset forfeiture.³³ Yet, the message

³² Ombudsman's Office, *Cuarto Informe de Seguimiento a la Implementación del Acuerdo de Paz* (Fourth Follow-up Report on the Implementation of the Peace Agreement), and Counsel General's Office, *Quinto Informe al Congreso* (Fifth Report to Congress).

³³ See, inter alia, Neiva-Huila Criminal Court of the Specialized Circuit for Termination of Ownership, 10 October 2023, file No. 20210008200.

conveyed in the media cast doubts in the public opinion as to the compliance of former members of FARC-EP with the Peace Agreement.³⁴

41. In 2018, the election of a President opposed to the Peace Agreement, whose party had led the “No” campaign in the referendum, resulted in the cratering of political will to implement the Agreement (see para. 31 above). Moreover, recurrent public statements by State authorities at the highest level calling into question the legitimacy and work of the transitional justice mechanisms, in particular the Special Jurisdiction for Peace,³⁵ undermined public trust in those mechanisms and the Peace Agreement. These attacks occurred not only during legitimate public debates, but also in the form of excessive recourse to criminal prosecution.

42. In September 2018, the Attorney General’s Office opened an investigation against members of the Executive Secretariat of the Special Jurisdiction for Peace for allegedly granting peace signatories authorization to leave the country, which resulted in a media scandal. However, the persons involved were acquitted in 2022.³⁶ It has also been alleged in the media that one official of the Special Jurisdiction for Peace obtained her position through influence peddling, solely because her husband was a Member of Congress who had supported the peace talks with FARC-EP.³⁷ These situations contributed to the stigmatization of the staff of the Special Jurisdiction for Peace.

43. The executive branch presented a constitutional reform bill³⁸ to prevent the Comprehensive System of Truth, Justice, Reparation and Non-Repetition from gaining access to public information relating to national security. Later, in March 2019, the President filed a veto against the statutory law on the Special Jurisdiction for Peace. His veto was overridden by the legislature, whose decision was later upheld by the Constitutional Court.³⁹ However, the more than year-long wait for the law to come into effect caused considerable delays in the work of the Special Jurisdiction for Peace, as it limited the legal tools available to its various divisions to carry out judicial proceedings.⁴⁰ Moreover, between 2019 and 2022, the annual budgets submitted by the executive branch significantly reduced the resources allocated to the Comprehensive System.⁴¹ For example, in 2019, the Unit for the Search for Persons Deemed Missing and the Truth Commission received only 32 per cent and 56 per cent, respectively, of the resources they had requested.⁴²

2. The “Santrich” case

44. In this context, on 9 April 2018, the Attorney General’s Office arrested Seuxis Pausias Hernández Solarte, alias “Santrich”, for extradition purposes, pursuant to a red notice issued by the International Criminal Police Organization (INTERPOL)⁴³ after the Federal Court for

³⁴ See, for example, <https://www.eltiempo.com/archivo/documento/CMS-16713176>.

³⁵ See, for example, <https://edition.cnn.com/videos/spanish/2019/06/21/marta-lucia-alvaro-uribe-maradiaga-john-kirby-chyno-miranda-piero-seg-pkg-lo-dijo-gabriela-matute.cnn>; <https://www.elespectador.com/colombia-20/jep-y-desaparecidos/dos-anos-de-duque-estos-han-sido-los-choques-entre-el-gobierno-y-la-justicia-transicional-articulo/>; <https://www.france24.com/es/20190807-ivan-duque-paz-colombia-acuerdos>; and <https://verdadabierta.com/duque-el-presidente-que-saboteo-la-ilusion-de-la-paz/>.

³⁶ Bogotá Criminal Circuit Court No. 45, acquittal, 21 June 2022, file No. 11001600010220180030100.

³⁷ See, for example, <https://costanoticias.com/a-la-mujer-de-ivan-cepeda-le-pagan-casi-17-millones-para-que-perfile-en-la-jep-los-casos-de-abusos-y-violencia-sexual-de-las-farc/>.

³⁸ See <http://leyes.senado.gov.co/proyectos/images/documentos/Textos%20Radicados/Ponencias/2018/gace>.

³⁹ Constitutional Court, order No. 282/19.

⁴⁰ Technical Secretariat of the International Verification Component, “*Sexto informe trimestral de verificación de la implementación del Acuerdo Final de Paz*” (Sixth Quarterly Verification Report on the Implementation of the Final Agreement) 20 June 2019, p. 208.

⁴¹ See <https://icj2.wpenginepowered.com/wp-content/uploads/2019/06/Colombia-Jurisd-para-la-paz-PUBLICATIONS-Reports-Fact-finding-mission-report-2019-SPA.pdf>.

⁴² *Ibid.* and <https://www.camara.gov.co/sites/default/files/2020-08/Respuesta%20Comisi%C3%B3n%20de%20la%20Verdad.pdf>.

⁴³ INTERPOL, Red Notice No. A3648-4-2018.

the Southern District of New York, United States of America, indicted Mr. Hernández Solarte on 4 April 2018 for alleged drug trafficking.

45. The arrest took place following investigations and intelligence operations conducted by the Colombian Army and Attorney General's Office and the United States Drug Enforcement Administration.⁴⁴ In 2017, the organized crime expert of the Attorney General's Office authorized the use of special investigative techniques, namely, the deployment of an undercover agent and the controlled delivery of cocaine. This operation allegedly revealed judicial information about Santrich's alleged involvement in drug trafficking. The legal framework governing international judicial cooperation⁴⁵ allowed for the use of an undercover agent and controlled delivery. However, according to information gathered by the expert and her team, the operation may have involved the use of an agent provocateur, which is not recognized as a special investigative technique in international judicial cooperation and is prohibited in Colombia.⁴⁶

46. Additionally, according to information gathered by the expert, during this period of judicial cooperation between the Attorney General's Office and the Drug Enforcement Administration, several members of the Special Jurisdiction for Peace received requests from foreign nationals to meet outside of official premises to discuss issues related to former members of FARC-EP appearing before the Jurisdiction.

47. Between April 2018 and May 2019, the Special Jurisdiction for Peace, which was empowered under the Peace Agreement to decide on the application of the guarantee of non-extradition in respect of individuals appearing before the Jurisdiction for crimes committed prior to the signing of the Agreement, requested unsuccessfully on three occasions that the Attorney General's Office provide evidence allowing for the determination of the date on which the criminal activity in question had allegedly been committed by Santrich so that it could, on that basis, decide whether the guarantee of non-extradition should be applied to him.⁴⁷

48. In May 2018, the Ambassador of the United States of America to Colombia suggested in the media that the facts may have occurred after the signing of the Peace Agreement and, therefore, fell within the jurisdiction of the ordinary justice system. He added that the actions of the Special Jurisdiction for Peace with respect to Santrich's extradition were not consistent with the Peace Agreement and its role as an institution.⁴⁸ On 25 May 2018, the President of the Special Jurisdiction for Peace published a letter to the Ambassador in which she noted, *inter alia*, that the actions of the judges of the Special Jurisdiction for Peace were in strict compliance with the Constitution and legislation of Colombia and that she trusted that the Ambassador and his Government would respect judicial independence and autonomy.⁴⁹

49. On 27 June 2018, the Constitutional Court resolved the jurisdictional conflict raised by the Attorney General's Office. It decided that the Special Jurisdiction for Peace was competent to determine the exact date of the facts⁵⁰ and ordered the Attorney General to immediately transfer the file to the Jurisdiction; however, no such transfer was made.

50. On 26 July 2018, the Attorney General's Office sent information to the Special Jurisdiction for Peace that was insufficient to determine the exact date of the facts. For this reason, on 12 September 2018, the Special Jurisdiction for Peace reiterated its request; in

⁴⁴ See <https://www.comisiondelaverdad.co/caso-los-obstaculos-para-la-continuidad-de-los-procesos-de-paz-en-colombia> and <https://cambiocolombia.com/articulo/poder/la-dea-la-fiscalia-y-un-coronel-entramparon-el-proceso-de-paz>.

⁴⁵ Act No. 906 of 2004, arts. 484–489, and Attorney General's Office, Manual on International Cooperation in Criminal Matters.

⁴⁶ The Constitutional Court has ruled that, when using undercover agents, the State may not induce those investigated to perform illegal activities they would not ordinarily perform, because this would constitute a violation of the fundamental rights contained in international human rights treaties (judgments No. C-176 of 1994 and No. C-962 of 2003).

⁴⁷ The guarantee of non-extradition as established in the peace agreement does not apply, for the signatories, to crimes committed after the agreement.

⁴⁸ See <https://www.youtube.com/watch?v=ne0Ij7LH8Nc>.

⁴⁹ See https://twitter.com/JEP_Colombia/status/1000120647039815688/photo/1.

⁵⁰ Constitutional Court, order No. A401/18.

response, it received the same information from the Attorney General's Office. On 23 October 2018, the Special Jurisdiction for Peace again requested the necessary information from the Attorney General's Office. On 3 December 2018, the Attorney General's Office sent information from a file pertaining to someone other than Santrich.

51. As it had not received the requested file from the Attorney General's Office and given that it was impossible to determine the exact date of the facts, on 15 May 2019, the Special Jurisdiction for Peace decided to apply the guarantee of non-extradition to Santrich. That same day, the Attorney General's Office published a video of Santrich in a meeting, allegedly engaging in drug trafficking activities. On 17 May 2019, Santrich was released and immediately re-arrested by the Attorney General's Office, on the grounds that it had new evidence and had opened a criminal case against him in Colombia. Santrich was ultimately released again on 29 May 2019 by order of the Supreme Court of Justice.⁵¹

52. In August 2019, Santrich announced that he was taking up arms again and establishing a new armed group, to be known as the Segunda Marquetalia.⁵² In September 2019, the Special Jurisdiction for Peace ruled that Santrich was manifestly an armed deserter of the peace process and that it therefore had neither the competence nor the jurisdiction to process, concede or maintain any transitional justice benefit deriving from the Peace Agreement with respect to him, rescinding its decision to grant him the benefit of the guarantee of non-extradition.⁵³

53. Ultimately, while the decisions of most high courts upheld the rights of the petitioner, the Attorney General's Office lack of collaboration with the Special Jurisdiction for Peace, the delays in responding and the other facts presented are indicative of an obstruction of the procedure followed by the Special Jurisdiction for Peace in applying the guarantee of non-extradition. According to information received by the expert, up to November 2023, the Review Panel of the Special Jurisdiction for Peace had ruled on 72 requests for guarantees of non-extradition. In all other cases, the Attorney General's Office had shared in a timely manner the information sought by the Special Jurisdiction for Peace to process the requests.

54. The announcement of Santrich's detention for allegedly engaging in drug trafficking activities, the lack of collaboration by the Attorney General's Office with the Special Jurisdiction for Peace and the accusations of corruption against staff of the Jurisdiction led to the stigmatization of the judiciary and the Jurisdiction in its role as an institution and the backbone of the transitional justice system. These events also contributed to the stigmatization of the signatories of the Peace Agreement and persons appearing before the Special Jurisdiction for Peace. They also aggravated doubts around compliance with the Peace Agreement and contributed to internal divisions⁵⁴ and undermined the trust of victims and society in general in the transitional justice system and the implementation of the Peace Agreement.

55. In March 2023, the Special Jurisdiction for Peace filed the previously mentioned complaint against members of the Attorney General's Office for fraudulent evasion of a court order and concealment, alteration or destruction of evidence (see para. 13 above). Four months later, the Attorney General's Office assigned the case to a prosecutor delegated to the Supreme Court and, in September 2023, asked the Special Jurisdiction for Peace to resubmit the complaint, indicating that they had lost the legible version of the document. At the date of submission of the present report, a year has passed since the complaint was filed and there is no information on progress made in the investigation, which is still in the preliminary stage.

⁵¹ See [https://www.cortesuprema.gov.co/corte/wp-content/uploads/relatorias/pe/b2may2019/AP1989-2019\(55395\).PDF](https://www.cortesuprema.gov.co/corte/wp-content/uploads/relatorias/pe/b2may2019/AP1989-2019(55395).PDF).

⁵² See <https://www.elcolombiano.com/colombia/paz-y-derechos-humanos/ivan-marquez-jesus-santrich-y-el-paisa-reaparecen-y-anuncian-en-video-retoma-de-armas-CF11507072>.

⁵³ See <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-excluye-a-Santrich-y-a-El-Paisa.aspx>.

⁵⁴ See https://multimedia.ideaspaz.org/media/website/FIP_Infome_SegundaMarquetalia_Final_V7.pdf and <https://www.comisiondelaverdad.co/caso-los-obstaculos-para-la-continuidad-de-los-procesos-de-paz-en-colombia>.

C. Continuum of violence

56. As stated in the Peace Agreement, deploying State institutions and services to the regions is crucial to ending violence, promoting peacebuilding and upholding human rights. However, this deployment did not take place after the Agreement was signed, and the areas left by FARC-EP came to be occupied by other non-State armed groups that are now fighting for control of territory and illegal economies and continue to expand, engendering more violence.⁵⁵

57. This situation constitutes one of the biggest obstacles to the implementation of the Peace Agreement and is one of the principal causes of continuing threats, homicides, forced displacements, recruitment of children and adolescents, sexual violence and other human rights abuses and violations against the population, especially those who live furthest from urban areas.⁵⁶ This situation particularly affects human rights defenders promoting the implementation of the Peace Agreement, as well as campesino communities, ethnic peoples and peace signatories.⁵⁷ Another concern noted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is the co-opting of the community movement by non-State armed groups.⁵⁸

58. This violence also makes it difficult to advance transitional justice, as it places at risk the lives and safety of victims, their families, persons appearing before the Special Jurisdiction for Peace, judges and the staff of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition and limits their access to the most affected regions of the country, where the conflict persists.

59. In 2022, the Constitutional Court declared a State of unconstitutional affairs owing to the limited implementation of the security-related commitments set out in the Peace Agreement and the “systematic violation of the fundamental rights of the peace signatories, their families and members of the Comunes political party”.⁵⁹ In 2023, the Court again declared a State of unconstitutional affairs “owing to the lack of coherence between the persistent, serious and widespread violation of the fundamental rights of leaders and human rights defenders and the lack of institutional and budgetary capacity to ensure respect for and guarantees and protection of these rights.”⁶⁰ Human rights defenders play a crucial role in monitoring and reporting on the situation in the regions and in building a lasting peace. The State must urgently adopt the measures needed to ensure a protective environment for human rights defenders⁶¹ and reach humanitarian agreements to mitigate the effects of the violence on the public.⁶²

60. To address the causes of violence, the State must urgently increase its presence in the most affected regions.⁶³ The National Commission on Security Guarantees must also ensure the implementation of the policy to dismantle criminal organizations and prevent criminal conduct adopted in September 2023. The comprehensive implementation of this policy in coordination with other relevant security policies in the regions, such as the national drug policy and the security, defence and citizen coexistence policy, together with measures to address the structural causes of violence will create the security conditions needed to advance the implementation of the Peace Agreement.

⁵⁵ A/HRC/55/23, para. 10. See also https://www.hchr.org.co/informes_tematicos/violencia-territorial-en-colombia-recomendaciones-al-nuevo-gobierno/, paras. 19–24.

⁵⁶ A/HRC/55/23, paras. 14–16. See also https://www.hchr.org.co/informes_tematicos/violencia-territorial-en-colombia-recomendaciones-al-nuevo-gobierno/, paras. 16 and 25.

⁵⁷ A/HRC/52/25, para. 10. See also https://www.hchr.org.co/informes_tematicos/violencia-territorial-en-colombia-recomendaciones-al-nuevo-gobierno/, pp. 13–15.

⁵⁸ A/HRC/55/23, para. 59.

⁵⁹ Constitutional Court, judgment No. SU-020-22.

⁶⁰ Constitutional Court, judgment No. SU-546-23.

⁶¹ A/HRC/43/51/Add.4 and A/HRC/43/51/Add.1, para. 69.

⁶² A/HRC/49/19, para. 71 (g), and A/HRC/43/51/Add.4.

⁶³ A/HRC/49/19, paras. 32 and 71 (a), and A/HRC/46/76, para. 81 (b).

61. OHCHR has pointed out that the current Government's switch to a human security-centred security policy is positive but notes that it should be accompanied by action on the part of the security forces aimed primarily at protecting the communities most at risk.⁶⁴

62. The Special Investigative Unit of the Attorney General's Office, established pursuant to the Peace Agreement, plays a crucial role in addressing the causes of violence.⁶⁵ It was designed to contribute to ending the conflict by dismantling criminal organizations and their support networks, which entails identifying and prosecuting the instigators of crime.

63. In October 2023, the Special Investigative Unit adopted a methodology for the investigation of cases involving human rights defenders and peace signatories.⁶⁶ However, the results thus far⁶⁷ suggest that the Unit has focused on investigating individual cases of the homicide of peace signatories and human rights defenders, limiting itself to identifying and prosecuting the principal perpetrators.⁶⁸ To achieve results that address the structural violence and effectively dismantle criminal organizations, the Unit must adopt a multidimensional investigative approach that focuses on the entire criminal structure, as foreseen in the Peace Agreement.⁶⁹ The expert also reiterates the importance of ensuring that the ordinary justice system investigate the third-party civilians involved, given the direct link between the continuum of violence and the impunity of third-party civilians who continue to finance criminal organizations.

D. Lack of human rights guarantees for peace signatories

1. Right to life and personal safety

64. Violence is seriously affecting the right to life and safety of peace signatories, who must live with the presence, or under the control of, non-State armed groups. They are falling victim to homicides, attacks, disappearances, forced displacement and threats, among other human rights violations and abuses.

65. The expert was able to corroborate the forced displacement of more than 420 families⁷⁰ from the former territorial areas for training and reintegration in Mesetas and Vista Hermosa and the new area for reintegration known as "El Diamante", as well as the human rights violations that this had caused, the families having received threats from dissidents belonging to the "Estado Major Central" of the former FARC-EP.⁷¹ The Ombudsman's Office has been issuing warnings about this risk since 2020.⁷²

66. The Ombudsman's Office has issued 117 early warnings since 2017, identifying risks for the peace signatories,⁷³ but the State has been unable to address these risks. More than 400 peace signatories have been killed since the signing of the Peace Agreement and they are regularly subjected to threats, attacks and stigmatization.

67. As of 28 February 2024, the United Nations Verification Mission had confirmed the killing of 413 peace signatories, including 50 Indigenous persons, 57 Afro-Colombians and

⁶⁴ [A/HRC/52/25](#), para. 51.

⁶⁵ Decree Law No. 898 of 2017.

⁶⁶ Attorney General's Office, directive No. 0008, 9 October 2023.

⁶⁷ The expert noted the information provided by the Attorney General's Office about two cases in which convictions had been secured and sentences handed down against the planners and principal perpetrators. However, it is unclear whether these results were obtained by applying the methodology adopted in October 2023.

⁶⁸ [S/2023/1033](#), para. 69.

⁶⁹ [A/HRC/49/19](#), para. 71 (k), and [A/HRC/46/76](#), para. 81 (f).

⁷⁰ Ombudsman's Office, comments on the expert's report.

⁷¹ See <https://www.defensoria.gov.co/-/defensor%20del-pueblo-acompa%20bar%20AI-traslado-de-firmantes-de-paz-a-predio-que-entreg%20B3-el-gobierno-en-acac%20ADas-meta#:~:text=La%20Defensor%20del%20Pueblo%20acompa%20bar%20AI,el%20municipio%20de%20Acac%20ADas%20C%20Meta>.

⁷² See <https://alertastempranas.defensoria.gov.co/Alerta/Details/91738>.

⁷³ Ombudsman's Office, comments on the expert's report.

11 women. The expert received information indicating that the main perpetrators were members of non-State armed groups.

68. This scenario is compounded by the structural impunity enjoyed by the perpetrators, in particular the instigators of the murder of and threatening and harassing behaviour against peace signatories. According to the Verification Mission, only 71 convictions have been secured in over 400 cases of homicide recorded since the Peace Agreement was signed.⁷⁴ These results are directly related to the serious delays in dismantling criminal organizations.

69. The State must adopt an intersectoral strategy to comprehensively protect peace signatories and uphold their right to life and physical safety. According to the United Nations Verification Mission, 81 peace signatories have been killed while awaiting protection from the National Protection Unit since the Peace Agreement was signed.⁷⁵ For this reason, beyond the protection schemes that the Unit can provide, local and national authorities must step up their efforts to address risks and establish protective environments. Preventive plans and actions must be established jointly between the military and police forces, the competent institutions and the peace signatories.

70. The expert highlights the adoption on 2 November 2023 of the strategic security and protection plan by the Technical Committee on Security and Protection, established pursuant to the Peace Agreement,⁷⁶ as an important step forward.

71. With respect to the role of the National Protection Unit, the expert also received information about inadequacies in its protection system owing to a lack of resources set aside for implementing protection measures, shortcomings in integrating a gender-, ethnic-, and local-based approach in risk assessments, the assigning of bodyguards with unsuitable profiles and corrupt practices reported by the Director of the Unit to the offices of the Attorney General and the Counsel General.⁷⁷

72. The expert also received information about shortcomings in the work of the specialized subdirectorate of the National Protection Unit provided for in the Peace Agreement.⁷⁸ These include the fact that an acting director has not yet been appointed, which has affected leadership within the directorate and the effective implementation of security guarantees for peace signatories.

73. Additionally, during her visits, the expert noted the ongoing stigmatization of peace signatories, which has become an obstacle to their security and a barrier to their enjoyment of the rights to political participation and other social and cultural rights.⁷⁹ In this respect, in 2022, the Constitutional Court noted that the concept of human security includes the right to live free from stigmatization and recalled the State's obligations to prevent stigmatization in the public discourse.⁸⁰ The Court also noted that this stigmatization is maintained through attempts to delegitimize the Peace Agreement, to justify violence against peace signatories and to discredit the Comprehensive System of Truth, Justice, Reparation and Non-Repetition.⁸¹

⁷⁴ S/2023/1033, para. 69.

⁷⁵ S/2023/1033, para. 67.

⁷⁶ According to point 3.4.7.4.4.2 of the Peace Agreement, the Committee must work together with the Government and FARC-EP to develop, coordinate, monitor and make suggestions for the implementation of a strategic security and protection plan.

⁷⁷ Constitutional Court, order No. 481/23, para. 17. Available at: <https://www.procuraduria.gov.co/Pages/tres-Investigaciones-escandalos-de-corrupcion-en-unp.aspx>.

⁷⁸ According to point 3.4.7.4.1 of the Peace Agreement: "The Government shall establish a subdivision within the [National Protection Unit], specializing in security and protection, for members of the new party or political movement that arises from the transition of FARC-EP to legal activity, activities and offices, as well as former members of FARC-EP that reintegrate into civilian life and the families of all those previously mentioned, according to risk level".

⁷⁹ See S/2021/1090, S/2023/701 and S/2022/715.

⁸⁰ Constitutional Court, SU-020-22, para. 7.6.19.

⁸¹ *Ibid.*, para. 8.8.41.

2. Economic and social rights

74. Regarding the right to education, the school placements and scholarships offered to peace signatories are underused and there is a high drop-out rate.⁸² The Government must implement policies and take action to mitigate the causes of this problem, which, according to the Counsel General's Office, include drug use, the presence of anti-personnel mines and non-State armed groups, teenage pregnancy, distance from educational facilities and children's having to both attend school and work jobs.⁸³

75. Although the Peace Agreement does not set out measures to uphold the right to housing, in 2017, the Framework Plan for Implementation of the Peace Agreement and Decree No. 890 include commitments to formulate a national plan for the construction and renovation of rural social housing. However, no new contracts for housing projects were signed in 2022,⁸⁴ and current formal, excessive and inflexible prerequisites are obstacles for the reintegrated population and their ability to gain access to mortgages.⁸⁵ Moreover, current housing subsidies do not satisfy existing needs and limited resources are available for them.⁸⁶ According to the Ombudsman's Office, there are persistent obstacles to the individualization of land parcels for the allocation of rural housing subsidies to individuals in the process of reintegration. The Ombudsman's Office has recommended including habitability solutions in the land access procedure and developing procedures to ensure effective access to rural housing subsidies in respect of land allocations to associations and organizations of cooperatives formed by peace signatories.⁸⁷

76. The expert welcomes the fact that nearly 80 per cent of peace signatories are participating in productive projects.⁸⁸ However, there is evidence of the unsustainability of these collective and individual projects over time and a lack of technical assistance from the State.

77. With respect to the right to start a family, the Family Reunification Programme was adopted in November 2023, but the State has yet to carry out an analysis of the target population, approve the budget or begin implementing the Programme.⁸⁹ Also, given the limited childcare services offered in several reintegration areas⁹⁰ and the lack of effective policies to alleviate the excessive burden of unpaid care work,⁹¹ caregiving mothers continue to face difficulties in gaining access to the institutional services foreseen in the Peace Agreement.

3. Legal certainty

78. A large number of peace signatories have been granted administrative amnesties for political and related offences ("de iure amnesties"⁹²). However, the expert was informed that the recipients of amnesties granted more than six years ago had not yet been notified. Many peace signatories who are currently in the process of reintegration lack information about their legal situation, which impedes their access to the guarantees set out in the Peace Agreement and to jobs and services. Several signatories stated that they continue to be detained by the security forces because of extant court orders that should have been annulled by the amnesties granted to them.

79. Additionally, there is evidence of substantial delays in granting judicial amnesties. As of 31 December 2023, the Special Jurisdiction for Peace had granted 685 "chamber" amnesties and denied 3,741, resolving more than 600 cases per year. It is concerning that

⁸² Counsel General's Office, *V Informe al Congreso* (Fifth Report to Congress), pp. 25 and 263–265.

⁸³ *Ibid.*, p. 265.

⁸⁴ *Ibid.*, pp. 281–285.

⁸⁵ *Ibid.*

⁸⁶ *S/2023/1033*, para. 51.

⁸⁷ Ministry of Foreign Affairs, comments on the expert's report.

⁸⁸ *S/2023/1033*, para. 48.

⁸⁹ Counsel General's Office, *V Informe al Congreso*, pp. 288 and 289.

⁹⁰ See <https://peaceaccords.nd.edu/wp-content/uploads/2023/12/191223-Trimestral-Plantilla-Jul-Sep.pdf>, p. 34.

⁹¹ Counsel General's Office, *V Informe al Congreso*, p. 602.

⁹² Act No. 1820 of 2016, art. 15.

over 1,948 of the 9,879 former members of FARC-EP appearing before the Special Jurisdiction for Peace are still awaiting a decision regarding judicial amnesties.⁹³ The Amnesty and Pardons Division of the Special Jurisdiction for Peace informed the expert that these judicial delays were caused by the filing of unsubstantiated claims, which were unrelated to the Peace Agreement and had to be resolved as a matter of priority.

80. With respect to pardons and conditional releases recognized by the State, the legal situation of the 615 former members of FARC-EP who are deprived of their liberty is unclear.⁹⁴ Of these, 112 peace signatories remain deprived of their liberty for acts committed before the signing of the Peace Agreement, according to information provided to the expert by representatives of the former FARC-EP.

81. To address these issues, the Special Jurisdiction for Peace, the Office of the High Commissioner for Peace and the Agency for Reintegration and Normalization are consolidating and sharing all information about administrative amnesties and pardons granted before the Jurisdiction began operating.⁹⁵

E. Shortcomings in inter-institutional coordination

82. To fully implement the Peace Agreement, it is necessary to comprehensively interpret each of its chapters and integrate the Agreement into other public policies, including transitional justice policies. The transformational and ambitious goal and purpose of the Agreement is to address the structural causes of the conflict and the historical injustices suffered by different groups, such as women, campesinos and ethnic peoples; addressing these structural causes holistically will require real and effective inter-institutional coordination. The development of a strategy for coordination between State institutions at the national level and the offices of the governors and mayors elected in October 2023 is particularly important. According to the information gathered, such inter-institutional coordination is currently insufficient.

83. Problems owing to a lack of coordination, some related to the institutional framework and others to the absence of a unifying leadership, hinder the effective implementation of the Peace Agreement. This situation has led to the duplication of resources for the same objectives and makes it difficult for the State to effectively reach all regions and have a greater transformative impact. In accordance with the United Nations Security Council,⁹⁶ the expert believes that the establishment of a high-level State body with the competence to convene all relevant institutions, with budgetary capacity and autonomy, dedicated exclusively to leading and ensuring institutional and inter-jurisdictional coordination, cannot be postponed; this entity should be different from the institution responsible for new dialogue with armed groups.

84. In addition, there should be a strategy to coordinate all public policies related to the transitional justice system relevant to victims and their implementation. For example, victims currently perceive a lack of coordination between the Victims and Land Restitution Act (No. 1448 of 2011), which sets out measures to provide care, assistance and comprehensive reparation to victims, and the Peace Agreement of 2016, which provides for the Comprehensive System of Truth, Justice, Reparation and Non-Repetition.

85. The recent adoption of a cooperation agreement between the Special Jurisdiction for Peace and the Attorney General's Office and the joint actions by different State institutions and bodies to locate and identify disappeared persons, as reflected in the establishment of the

⁹³ The number 1,948 was provided by the Special Jurisdiction for Peace in its comments on the present report. See <https://www.jep.gov.co/Planeacion1/Planeaci%c3%b3n%20estrat%c3%a9gica/2024/Bases%20PEC%202023-2026.pdf>.

⁹⁴ [S/2023/1033](https://www.jep.gov.co/S/2023/1033), para. 84.

⁹⁵ See <https://www.jep.gov.co/Sala-de-Prensa/Paginas/-jep-comunica-decretos-de-amnistia-a-mas-de-9600-firmantes-del-acuerdo-final-de-paz.aspx>.

⁹⁶ See <https://colombia.unmissions.org/comunicado-de-prensa-del-consejo-de-seguridad-de-las-naciones-unidas-sobre-colombia-1>.

National System for the Search for Persons Deemed Missing are good examples of the sort of coordination that is needed to advance the implementation of the Peace Agreement.

F. Use of resources for the implementation of the Peace Agreement and corruption

86. Further obstacles to the effective implementation of the Peace Agreement include the availability of resources, corrupt practices and impunity.

87. For example, according to information received, resources for the development programmes with a territorial focus were allocated to only 5 of the 16 subregions. The unequal capacity of the subregions to compete for these resources, combined with a lack of any clear prioritization criteria for the allocation of funds, has been a factor contributing to inequality in the implementation of the Peace Agreement. With respect to the Comprehensive National Programme for the Substitution of Illicit Crops, OHCHR reports that the Comptroller General's Office has expressed concerns regarding the management of the Programme's resources, problems with which include the limited implementation of productive projects.⁹⁷

88. Persons interviewed by the expert repeatedly mentioned the mismanagement of funds. In that regard, the Counsel General's Office has noted a lack of planning, low implementation of funds and irregularities in the execution of projects approved by the Collegiate Unit for Administration and Decisions.⁹⁸ However, it has not been possible to obtain more information about the results of the investigations into cases of corruption in relation to the granting of these funds.⁹⁹ Despite this, there is awareness that this corruption is the result of factors such as lack of governance, the shortcomings of oversight and investigation bodies, including the offices of the Counsel General, the Comptroller General and the Attorney General, and scant citizen participation.

89. Corruption significantly impacts the effective enjoyment of human rights and disproportionately affects the most socially disadvantaged populations.¹⁰⁰ The diversion of peace resources intended for programmes that address the structural causes of the conflict has, first and foremost, affected the victims, most of whom belong to groups that have historically faced discrimination.

90. In addition to alleged acts of corruption in the use of the peace resources, it is important to note that the Peace Agreement (points 3.4.11 and 4.3.4) and the final report of the Truth Commission recognize that drug-trafficking-related corruption contributed to the armed conflict and to impunity for the human rights violations committed. Corruption must be firmly combatted as one of the structural causes of the conflict in order to ensure non-repetition. To this end, the Attorney General's Office must strengthen efforts to combat impunity and dismantle criminal networks engaged in corruption and co-opting the State.

91. Strengthening the capacities of the Attorney General's Office will require reinforcing inter-institutional coordination to effectively address drug-trafficking-related corruption. This coordination would enable the identification of patterns of criminal behaviour, the analysis of information about different cases of corruption and the design of coordinated strategies to combat corruption and dismantle the structures that foster it. Thus, collaboration among institutions such as the Attorney General's Office, the Counsel General's Office, the Comptroller General's Office, the Financial Information and Analysis Unit and the National Tax and Customs Authority may help build the authorities' capacity to investigate and sanction corruption offences.

⁹⁷ A/HRC/52/25, para. 18.

⁹⁸ Counsel General's Office, *V Informe al Congreso*.

⁹⁹ According to information submitted by the Counsel General's Office, two disciplinary procedures have been opened and are in the investigative stage and four preventive actions have been taken. See <https://www.lasillavacia.com/silla-nacional/el-escandalo-de-ocad-paz-en-que-consiste-que-evidencia-hay-y-que-huecos-tiene/>.

¹⁰⁰ General Assembly resolution S-32/1; United Nations Convention against Corruption; and Inter-American Commission on Human Rights, resolution 1/18.

G. Delays in the implementation of the chapter on ethnicity and the gender-related provisions

92. As previously mentioned, the Peace Agreement seeks not only to end the armed conflict but also to address the structural causes of injustices, exclusion and discrimination. From this perspective, the implementation of the chapter on ethnicity and the gender-related provisions is crucial for transforming the lived experience of the population.

93. It is concerning that the chapter on ethnicity and the gender-related provisions show lower percentages of implementation. According to the Joan B. Kroc Institute for International Peace Studies, in September 2023, implementation of 17 per cent of the gender-related provisions had yet to begin, 52 per cent had been implemented to a minimum degree, 19 per cent had been implemented at an intermediate level and only 12 per cent had been fully implemented.¹⁰¹ In 2022, the Vice President was tasked with coordinating the implementation of the chapter on ethnicity.¹⁰² However, as of September 2023, implementation of 13 per cent of the provisions had yet to begin, 61 per cent had been implemented to a minimum degree, 14 per cent had been implemented at an intermediate level and only 13 per cent had been fully implemented.¹⁰³ Additionally, the inclusion indicators in this area are not designed to ensure the effective inclusion of women and ethnic peoples.

94. The expert welcomes the adoption of the normative instrument for the implementation of the multipurpose land register in Indigenous territories within the framework of the activities of the Standing Committee for Consultation with Indigenous Peoples and Organizations. In addition, the Agency for Reintegration and Normalization has presented its special harmonization programmes, which will be implemented gradually in 2024.

95. The expert welcomes the signing of the political pact for the implementation of the chapter on ethnicity of the Peace Agreement and the reactivation of the Government High-level Forum on Gender in late 2023. The pact proposes measures to reduce gaps between rural and urban areas by effectively incorporating an ethnicity-based approach into the comprehensive rural reform initiative and ensuring the political participation and collective and individual security of ethnic peoples.¹⁰⁴

IV. Conclusions and recommendations

96. **The comprehensive implementation of the Peace Agreement is the pathway to inclusively upholding the rights of the entire Colombian population and to the non-repetition of serious human rights violations and breaches of international humanitarian law.**

97. **The expert identified some obstacles that can be overcome with political will, the allocation of sufficient resources and the adequate use of these resources, along with better inter-institutional coordination targeted at comprehensively implementing the Peace Agreement. It is also necessary to strengthen efforts to combat corruption, one of the structural causes of the conflict.**

98. **Urgent measures must be taken to expedite an end to violence and the implementation of the Agreement's chapter on ethnicity and gender-related provisions and to end discrimination against groups that have historically faced discrimination, such as ethnic peoples, women and LGBTIQ+ persons.**

¹⁰¹ See <https://peaceaccords.nd.edu/wp-content/uploads/2023/12/191223-Trimestral-Plantilla-Jul-Sep.pdf>, p. 10.

¹⁰² Decree No. 1874 of 2022.

¹⁰³ See <https://peaceaccords.nd.edu/wp-content/uploads/2023/12/191223-Trimestral-Plantilla-Jul-Sep.pdf>, p. 10.

¹⁰⁴ [S/2023/1033](#), para. 4.

99. The expert highlights the importance of the continued commitment to peace of most signatories, despite the risks to their lives and safety, as well as the current Government's political will to consolidate peace.

100. The expert also recognizes the tireless efforts and support of civil society and victims' organizations to advance the implementation of the Peace Agreement. The international community's continued support for national efforts to comprehensively implement the Agreement is also crucial.

101. With respect to the complaint filed by the Special Jurisdiction for Peace in March 2023, the information gathered by the expert indicates a possible obstruction by the Attorney General's Office to the Jurisdiction's procedure to grant Santrich the guarantee of non-extradition.

102. The expert considers it necessary to promptly advance in the investigation and clarification of the facts, given the adverse impact of the foregoing on confidence in the Peace Agreement and the transitional justice process, not only among the peace signatories but also within the society more generally.

103. The Santrich case is an example of abuse of the criminal prosecution process aimed at undermining public trust in the Peace Agreement and the transitional justice system. It contributed to the stigmatization of the peace signatories, aggravated internal divisions amongst them and may have undermined their reintegration as envisioned in the Peace Agreement. It also cast doubt on the suitability and impartiality of the staff of the Special Jurisdiction for Peace.

104. The expert has the following recommendations for the Colombian authorities:

Comprehensive implementation of the Peace Agreement

(a) Make every effort to ensure the comprehensive implementation of the Peace Agreement, in particular the chapter on ethnicity and the gender-related provisions, in line with the recommendations made in OHCHR reports and by the United Nations human rights mechanisms;

(b) Ensure that the Peace Agreement is implemented as a State policy at the national and local levels and that it is central to peace policies. Moreover, ensure that all dialogue and negotiations with non-State armed groups are conducted in accordance with a human-rights-based and victim-centred approach;

(c) Establish an entity at the highest government level with the authority to take the lead on implementation, convene all institutions and ministries and ensure adequate inter-institutional coordination and the harmonization of different transitional justice policies, and provide it with the human and financial resources it needs to fulfil its mandate;

(d) Take measures to uphold the economic, social, cultural and environmental rights of the peace signatories, in particular their rights to education, housing and work through productive projects. Their full enjoyment of these rights is essential to ensure that the reintegration process is not undermined;

Right to truth, justice, reparation and non-repetition

(e) Redouble efforts to implement the recommendations of the Truth Commission through State policies, in particular at the local and departmental levels, and ensure that the authorities integrate them into their development plans;

(f) Implement strategies to disseminate the recommendations of the Truth Commission throughout the country and increase the financial and technical resources set aside for the Follow-up and Monitoring Committee tasked with following up on those recommendations;

(g) Respect and protect the independence and autonomy of the Special Jurisdiction for Peace, as the judicial authority responsible for prosecuting the most serious and symbolic crimes committed during the armed conflict, and ensure the protection of its staff, victims and all those appearing before it;

(h) **To the High Commissioner for Peace, the Agency for Reintegration and Normalization and the Special Jurisdiction for Peace: Consolidate information on the legal situation of the peace signatories and take measures to ensure that decisions on amnesties, pardons and conditional releases are properly communicated to the beneficiaries and the relevant entities. These institutions should publicly report on the results of their consolidation efforts within six months;**

(i) **To the Special Jurisdiction for Peace: Prioritize the prompt clarification of the legal situation of the peace signatories, in particular with respect to the “chamber” amnesties of at least 1,948 former members of FARC-EP appearing before the Jurisdiction. To quickly conclude this stage of the procedure, the expert suggests increasing the technical capacity of the Amnesty and Pardons Division. Pursuant to the principle of disclosure in court proceedings, the expert recommends the public disclosure, within a year, of the results of the strategic plans undertaken to resolve the question of these “chamber” amnesties;**

(j) **To the Special Jurisdiction for Peace: Prioritize and urgently carry out institutional arrangements to design, develop and successfully execute future restorative sentences, ensuring secure conditions for all those appearing before the Special Jurisdiction for Peace and the victims and their participation throughout the process in conformity with international human rights standards. In particular, the Jurisdiction should expedite the work of the body responsible for coordination between the Jurisdiction and the Government with a view to the execution of restorative sentences and contributions to reparation;**

Investigation of the “Santrich” case

(k) **To the Attorney General’s Office: Prioritize the investigation of the complaint filed by the Special Jurisdiction for Peace in March 2023 and determine the existence of possible criminal responsibility within a reasonable time by establishing a group of independent experts to assist and provide technical support during the investigation. This group of experts could perform technical analyses and recommend measures to ensure that all levels of responsibility and lines of investigation are explored. Given the relevance of the case, the Attorney General’s Office should publicly report on the progress and results of this investigation within one year of the issuance of the present report, without prejudice to legal confidentiality and deadlines;**

(l) **To the State: Review and amend legal procedures to ensure that the extradition of Colombian nationals complies with its international human rights obligations, including the rights of victims to truth, justice and reparation and the right to peace;**

Public policies on security and protection

(m) **Ensure the comprehensive, participatory and coordinated implementation of the policy to dismantle criminal organizations that undermine peacebuilding, including the so-called paramilitary successor groups and their support networks, the security, defence, and civic coexistence policy, the national drug policy and the transitional justice mechanisms, to achieve a sustained reduction of violence and establish secure conditions throughout the country that allow for the comprehensive implementation of the Peace Agreement;**

(n) **Adopt the comprehensive protection plan for leaders and human rights defenders whose development was ordered by the Constitutional Court in its judgment No. SU 546-23, ensuring coordination with the mechanisms set out in the Peace Agreement for the security of peace signatories;**

(o) **Allocate the budgetary and human resources necessary to implement the Strategic Security and Protection Plan and ensure effective inter-institutional coordination for the protection of peace signatories, in accordance with Constitutional Court judgment No. SU 020-22;**

Strengthening the fight against impunity and corruption

(p) In accordance with recommendation (m), prioritize the implementation of the policy to dismantle criminal organizations that undermine peacebuilding, including the so-called paramilitary successor groups and their support networks, and the associated action plan according to a territorial and participatory approach, ensuring that sufficient resources are set aside to that end. The dismantling of macrocriminal structures and the fight against corruption are key to peacebuilding and the implementation of the measures set out in points 3.4.11 and 4.3.4 of the Peace Agreement;

(q) Establish a standing body for coordination between the Attorney General's Office, the Counsel General's Office, the Comptroller General's Office, the Financial Information and Analysis Unit and the National Tax and Customs Authority to allow for the identification of patterns of criminal behaviour, the analysis of information about cases of drug-trafficking-related corruption and the design of coordinated strategies to combat corruption and dismantle the structures that foster it;

(r) To the Attorney General's Office: Implement recommendation 32 of the report of the Truth Commission in order to establish, with the support of OHCHR, an independent mechanism to make recommendations for strengthening the Office's integrity, autonomy and independence. This mechanism should also conduct an analysis of the work of the Specialized Investigation Unit of the Attorney General's Office in prosecuting and sanctioning criminals and its contributions to dismantling criminal organizations and provide recommendations for improving compliance with its mandate, as defined in point 3.4.4 of the Peace Agreement;

(s) Strengthen and focus the local presence of the Attorney General's Office, the criminal investigation police and forensic medicine experts to facilitate the investigation of local corruption and drug-trafficking-related offences and the killing of human rights defenders and peace signatories and the punishment of their perpetrators;

(t) Adopt and strengthen measures to ensure transparency in the use of resources set aside for the implementation of the Peace Agreement and continuously update the Integrated Post-Conflict Information System, in accordance with point 2.2.5 of the Peace Agreement.

105. The expert has the following recommendations for the international community:

(a) Continue to support efforts to comprehensively implement the Peace Agreement and the recommendations made in the report of Truth Commission, ensuring the participation of victims, their central role and a gender- and ethnicity-based approach in all cooperation programmes and actions;

(b) States must ensure that the implementation of international judicial cooperation mechanisms, such as extradition, are carried out with full respect for applicable international law, including international human rights law, and in particular victims' rights.