

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Peace and Victims' Rights in Colombia

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Statement for the Record

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The Peace Agreement signed in November 2016 between the Colombian government and the FARC raised the hopes of millions of Colombians for a future free from violence, where the rights of all citizens would be respected and where those most affected by poverty and neglect could achieve better lives. Although some progress has been made with implementation over the past 18 months, there have been significant delays as well as weakening of provisions in some key aspects of the Agreement that raise concerns about the potential for full compliance and effective implementation of the entire Agreement.

Oxfam fully supports the peace process in Colombia and has chosen to focus attention on two important aspects of the Agreement: the rights of women, in particular victims of sexual violence, and the democratization of access to land as part of a comprehensive rural reform.

1. Women's rights and addressing sexual violence

The Peace Agreement includes important protections for women's rights. Full implementation of the Agreement is an opportunity to address the problem of sexual violence, if obstacles and challenges are overcome.

Sexual violence¹ against women and girls in Colombia occurs continuously both in the context of armed conflict as well as in other contexts. It is present in both public and private domains, often persisting in the silence of the victims themselves and society at large. Sexual violence, whether in times of war or in peace, is one of the most difficult forms of violence to measure. Yet direct data from case reports and surveys demonstrate that sexual violence is a generalized practice that threatens the wellbeing, life and autonomy of women and girls.

The magnitude of sexual violence against women and girls can be seen through the alarming statistics from both government institutions and women's and human rights organizations. In the context of the armed conflict, the Survey on the Prevalence of Sexual Violence against Women in the period 2010-2015 reveals this stark reality, suggesting that 875,437 women were victims of sexual violence such as rape, social control of their lives, forced pregnancy and forced abortion, among other forms of sexual violence over six years in the regions of the country mired in conflict.² And the problem continues. According to official data, the year 2017 recorded the greatest increase in crimes of sexual violence in the last decade, and nearly six of every seven victims were young or adolescent girls.³

1.1 Women's participation and incorporation of gender differentiation

During peace negotiations between the government of Colombia and the FARC, feminist and women's organizations mobilized to influence the content of each chapter agreed upon by the two parties to form the agenda of the negotiations.⁴

The fact that organized women from civil society participated in the process of peace negotiations was historic. A Gender Sub-commission of negotiators was created, and a strategic group of women civil society leaders representing broad networks were invited to meet with and present their demands to negotiators. As a result, essential issues for women were included in each of the six chapters of the Final Peace Agreement. Importantly, the Agreement specifically affirms that “the conditions in order for equality to be real and effective will be guaranteed in its implementation and affirmative measures will be adopted in favor of groups that are discriminated against or marginalized, taking a territorial-based, equity-based and gender-based approach into consideration.”⁵

The “Victims of the Conflict” chapter of the Agreement highlights that the armed conflict has not had the same impact on women and girls as it has had on the population generally, as the crimes and violations of human rights and of international humanitarian law have had gender-differentiated impacts on their lives. Thus, the Peace Agreement establishes that the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence shall have a “territorial-based, equity-based and gender-based approach, through the differentiated treatment of territories and populations, in particular of women and children victims, and of the most deprived and most vulnerable populations and communities, and therefore those most affected by the conflict.”⁶

All components of the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence, including the transitional justice system – the Special Jurisdiction for Peace (SJP), are obligated to take into account the equal participation of women and men. Another component, the Truth, Coexistence and Non-Recurrence Commission (TCNRC), will have to promote an environment that strengthens equal opportunities between women and men. The TCNRC has the obligation to take a gender-differentiated approach that is transversal in all its work, giving special attention to the victimization suffered by women and the impact of the armed conflict on their lives, coordinating with organizations of women and LGBTI without compromising their autonomy. It will also include a gender working group.

Furthermore, it is made explicit that certain crimes are ineligible for an amnesty or pardon and cannot receive special judicial treatment, in accordance with the Rome Statute. These include rape and other forms of sexual violence, as well as crimes against humanity, genocide, serious war crimes, serious deprivation of freedom, torture, extrajudicial executions, forced disappearances, child abduction, forced displacement and the recruitment of minors.

1.2 Challenges to realizing the rights of women and victims

Yet implementation of the Peace Agreement faces serious challenges with regard to fulfilling the rights of victims for truth, justice, reparations and guarantees of non-recurrence. This raises major concerns for women and victims, who believe the Agreement advances and protects their rights. Its comprehensive and inter-related provisions make it more than the sum of its parts; weakening of or failure to comply with some measures can jeopardize the effectiveness of the entire Agreement. This is particularly the case with the chapter on Victims, which addresses redress through the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence.

Changes made to the transitional justice system – the SJP – are already cause for concern. Reforms to the rules for the SJP passed in recent months mean that those responsible for the rape of minors under 18 years of age during the armed conflict can be judged under the SJP but will be sentenced under the ordinary justice system. As a result, the perpetrators will have no motivation to tell the truth and confess their crimes since they will not be able to receive a lesser sentence under the SJP. This will only reinforce the silence maintained by ex-combatants and public forces.

Furthermore, Colombia's Congress recently passed a reform that creates a special chamber in the SJP charged with investigating and judging members of public security forces responsible for crimes committed in the armed conflict. As a result, victims of grave violations of human rights – such as sexual violence against women, extrajudicial executions and kidnapping – may never know the truth if the perpetrators were from public security forces. These changes contravene the principle that all victims of such crimes should be treated the same in the transitional justice system.

It is of particular concern that violence and threats against local civil society leaders have escalated significantly alongside the peace implementation process. Official sources indicate that at least 311 civil society leaders were murdered in Colombia from January 1, 2016 through June 30, 2018, though others cite even higher numbers. This reality has generated an environment of insecurity for civil society leaders and their organizations, which limits their mobility and participation and weakens citizens' trust in institutions, contributing to further weaken the social fabric and sowing mistrust among residents at the territorial level. That the government has been incapable of guaranteeing the lives and personal security of human rights defenders and civil society leaders precisely at the same time it is in the midst of implementing the Peace Agreement, does not generate confidence that it will fulfill its commitment to full compliance with all provisions agreed to protect and guarantee the effective enjoyment of rights by all.

1.3 Actions needed to advance women's rights in Peace Agreement implementation

The reality of sexual violence against women and girls in Colombia must be transformed, and the Peace Agreement is an important opportunity to make progress toward that end. The following aspects will be key in order to ensure full implementation and effective compliance with the Peace Agreement.

- **Promote the participation of women and their organizations:** It is not possible to build a stable and lasting peace without the active participation of women, including in decision-making processes. Equal participation of women is needed in the enforcement of the mechanisms established by the Peace Agreement and in the design, oversight, monitoring and evaluation of public policies emanating from the Agreement as well as the policies developed after its implementation.

International assistance should provide resources to women's organizations in order to strengthen their capacity and their ability to exercise leadership at the national level and at the territorial and local level. This will help facilitate the monitoring process of Peace Agreement implementation and enable greater representation of women in civic and political arenas. International donors should also press the Colombian government to coordinate closely with women's organizations as well as LGBTI organizations to ensure that the Agreement's provisions on their rights are fulfilled.

- **Guarantee women's access:** The Comprehensive System for Truth, Justice, Reparations and Non-Recurrence must overcome the obstacles for access to justice and must guarantee truth and reparations. This requires appropriate mechanisms and research methodologies that help to investigate crimes against women, as well as protection programs that guarantee personal safety and security for victims and their families, psychological and legal support and mechanisms to overcome economic, cultural, social and family barriers both during and after the judicial process.

International assistance and support for strengthening the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence should include as a requirement that at least 35 percent of funding be dedicated to ensuring women's access to justice.

- **Guarantees of Non-Recurrence:** It is necessary to ensure the non-recurrence of violations of women's rights, both those that occurred in the context of the armed conflict and those unrelated to the conflict. The guarantee of non-recurrence and the right to a life free from violence for women must begin by identifying the diversity and complexity of the violations of women's rights. Progress must be made in eliminating the inequalities and injustices that inhibit women from participating in the political and social life of the country under conditions of equal opportunity with men. In addition, policies and programs must be oriented to remove barriers and conditions that place women in situations of greater vulnerability.

The international community should ensure that at least 35 percent of the resources dedicated to implement the Peace Agreement be directed to generate guarantees for the non-recurrence of acts of victimization.

- **Guarantee security for women:** A security policy that enables peace building must be centered in the protection of all citizens and in the guarantees and conditions that enable the effective enjoyment of the human rights of all people. A thorough evaluation should be undertaken of the training of public security forces in order to eliminate the reproduction of stigmas against women, their bodies, and their sexuality, and in order to modify behavioral patterns within the security forces.

The international community should press the government of Colombia to: review security force training in order to ensure respect for women's equality and rights; improve the human rights situation affecting women; and direct adequate resources to protection programs for women.

2. Comprehensive Rural Reform and access to land

The first chapter of the Peace Agreement is focused on "Comprehensive Rural Reform", with land being a central component. The fact that this was the first point on the negotiating agenda affirms the importance of land and rural development issues and their relationship with the armed conflict. Exclusion and inequality in the countryside are historical problems in Colombian society that have yet to be resolved.

Concentration in the distribution of land, and particularly lack of access to land by Afro-Colombian, small farmer and indigenous communities is a central problem that has grown worse over the last several decades. The largest 1 percent of agricultural holdings now concentrates 81 percent of the land, making Colombia the most unequal country in Latin America in terms of land distribution.⁷ This inequality affects rural women the most, as women control barely 26 percent of properties.

Within the framework of the Comprehensive Rural Reform, the Peace Agreement created a Land Fund of properties for distribution free of charge. Its purpose is to “achieve the democratization of access to land, to the benefit of small-scale farmer communities and especially rural women without land or with insufficient land and the rural communities most affected by poverty, neglect and the conflict, regularizing property ownership rights and as a result reversing concentration and promoting fair distribution of land”.⁸ This Fund will consist of 3 million hectares to provide access to land, and an additional 7 million hectares of small and medium-size rural properties will be formalized during its first 12 years of operation.

Yet there are more than 800,000 rural households dedicated to agricultural activities that have no land at all.⁹ So even if the Land Fund were fully implemented and its 3 million hectares allocated to landless families, it would be unable to meet the demand for land in Colombia, as the approximately 3.75 hectares that would be available to each family is insufficient to undertake economically viable agricultural activities in most parts of the country.

2.1 The Land Fund: challenges in implementation

Analyses indicate that even in the best of cases, it will not be possible for the Land Fund to acquire the 3 million hectares anticipated from the sources stipulated in the Agreement. Currently, the Land Agency has a total of 277,099 hectares for the Land Fund, which is 9.2% of the total agreed to by the government and the FARC. A review of each source for the Land Fund reveals problems in its implementation.

- The legal cessation of land ownership in favor of the state is a procedure that already existed in Colombia, though seldom used, and the Peace Agreement stipulated that the government would undertake reforms to make the procedure more flexible. Yet nothing has been done to strengthen the procedure, and only 33 properties of an unknown size have been transferred to the Land Agency resulting from legal cessation of ownership.
- Land acquired through recovery of unduly appropriated or occupied *baldíos* (land that is, or has previously been, property of the state) is a key source for the Fund. The Agreement stipulated the creation and updating of a rural cadaster, which would facilitate recovery of this land, but legislation required to begin work on the cadaster has yet to be taken up by Congress. There is differing information regarding available *baldíos*: the National Land Agency has indicated that 68,614 hectares could be transferred to the Fund, but others believe over a million hectares of *baldíos* could be recovered.¹⁰
- Land can be made available to the Fund by revising the parameters of Forest Reserve Areas, which cover 48 million hectares, much of which has been occupied by small farmer communities. The Agreement stipulates that land can be removed from forest reserves to be allocated to those small farmer communities occupying the land, as long as there is a participatory plan that ensures social and environmental sustainability. But the legislative reform needed to facilitate the process has yet to be passed by Congress. According to the Land Agency, 47,938 hectares have been removed from forest reserves since 2012 and are already part of the Land Fund, and another 193,000 hectares are in process, but this source could potentially contribute a much larger area to the Fund.¹¹
- Unused land can be expropriated in the public interest under the law, with compensation, for non-compliance with the property’s social and ecological function. Yet the existing procedure has seldom been used and has not been reformed to render it more effective. There is no information on the quantity of land that this could contribute to the Fund.

- The Agreement commits the government to facilitate procedures for donation of land to the Fund. Yet no regulations exist for the mechanism, and there is no estimate of how much land could be made available through this means.

To date, the Land Fund has not been able to distribute a single property, and thus has made no progress toward reversing concentration and promoting fair distribution of land to benefit small-scale farmer communities, as stipulated by the Peace Agreement.

2.2 Full implementation of the Land Fund faces additional risks

First and foremost, many provisions agreed to as part of the Comprehensive Rural Reform have not been put into practice as required through new legislation or regulations, or through reforms to existing procedures. For example, no laws have been passed for defining and governing the multipurpose cadaster or for the procedure needed to assign land removed from Forest Reserve Areas to the small farmer communities who have occupied it.

Even worse, some new laws and regulations, whether already in effect or proposed, include provisions that contravene or undermine the Agreement. For example, Government Decree 902 of 2017, which set out the regulations for the Land Fund, expanded potential beneficiaries of the Fund to others not included in the Agreement, which specifies the Fund will distribute land to “small-scale farmer communities and especially rural women without land or with insufficient land and the rural communities most affected by poverty, neglect and the conflict”. In addition, a proposed new land law put forward by the government would legalize further concentration of land and enable land concessions for extractive activities rather than for comprehensive rural reform, and would also obstruct rather than facilitate the procedure for legal cessation of ownership. These measures flout the spirit and letter of the Peace Agreement.

A second risk involves the budget allocation. Compared to the overall national budget, the resources dedicated to agriculture (1 percent of the total) and, specifically, to access to land (0.1 percent) are quite small. Of all the issues in the Peace Agreement, Comprehensive Rural Reform is the most costly one to implement, estimated at 85.4 percent of the total implementation cost. This is a factor that could impair its implementation, given the fiscal limitations of the Colombian government.

A third risk and a serious obstacle for the Fund’s implementation is Colombia’s predominant rural development model, characterized by expansion of agroindustry and the concentration of land.¹² This development focus is poorly aligned with the principles affirmed in the Peace Agreement’s chapter on Comprehensive Rural Reform. There is a sharp ongoing debate in Colombia about the destiny and use of *baldíos*, which are an important source of land for the Fund. Until now, *baldíos* have only been allowed to be assigned to agrarian reform beneficiaries – in other words, to people who own no other land and have little wealth.

Historically, *baldíos* have been the agrarian reform instrument most used in Colombia. Yet the government has been promoting the allocation of *baldíos* to businesses for the development of large-scale agro-industrial projects, which would exacerbate land concentration. This is the trend marked by the ZIDRES (Zones of Interest for Economic and Social Development in Rural Areas) law, passed in 2016. Although it has not yet been implemented, the government recently advanced in its regulation. ZIDRES permits the concession of *baldío* properties in specific areas to companies for long periods. It also enables private plots of land, including those allocated under agrarian reform processes, to contribute to large-scale agro-industrial projects without any restrictions. According to the government, there are 7.2 million hectares in the country suitable for ZIDRES, including in regions prioritized for implementation of the Peace Agreement.

Since *baldíos* are an essential source of land for the Fund, it is of serious concern that those properties would be unavailable for the Land Fund – either because they are unduly occupied and cannot be recovered by the state, or because they are given to large companies instead of the beneficiaries of the Peace Agreement. Rather than addressing the problem, legislation and regulations approved as part of the peace process have further undermined the use of *baldíos* as intended by Colombia’s constitution, agrarian reform law and the Peace Agreement.

As the new government takes office in Colombia, these risks and challenges will need to be addressed. Consolidation of peace requires progress in access to land for historically marginalized rural communities and especially for women, who have been the most excluded. Implementation of the Peace Agreement to date has been insufficient in terms of the regulatory, institutional and financial reforms needed to ensure full compliance with the important programs for access to land that are part of the comprehensive rural reform, in particular the Land Fund.

3. Conclusion

Full compliance with and effective implementation of the Peace Agreement is essential to achieve a definitive end to the violence and to build a stable and lasting peace in Colombia.

Recognizing that social and economic inequality, in particular the extreme concentration of land, has been at the root of the armed conflict, it is critical to ensure full compliance with all provisions agreed as part of the comprehensive rural reform, especially those involving access to and control over land.

To fulfill the commitment by the Colombian government and the FARC to place the victims at its core, it is essential to ensure full compliance with all provisions regarding the Comprehensive System for Truth, Justice, Reparations and Guarantees of Non-Recurrence. This is particularly critical to address the problem of sexual violence and fulfill the rights of women and victims. It is especially important to address lack of compliance and challenge all efforts to weaken or undermine the Agreement.

Women’s groups and organized civil society, particularly at the territorial level, play a key role in monitoring the peace process and in holding the government to account for its commitments. The international community should provide financial, technical and political support to enable civil society organizations to fully and effectively participate in the peace process, and should urge the Colombian government to ensure full compliance with and effective implementation of all aspects of the Peace Agreement.

¹ Sexual violence is a category that includes rape, sexual assault without penetration, mutilation, sexual enslavement, forced prostitution, forced sterilization and forced pregnancy. See: Elizabeth Jean Wood, Variation in Sexual Violence during War, Politics and Society, Vol. 34, No. 3, September 2006.

² See *Encuesta de prevalencia de violencia sexual en contra de las mujeres en el contexto del conflicto armado Colombiano 2010-2015*. <http://humanidadvigente.net/wp-content/uploads/2017/08/Encuesta-de-prevalencia-de-violencia-sexual-CSCG.pdf>

³ The data is from the National Institute of Legal Medicine and Forensic Science (*Instituto Nacional de Medicina Legal y Ciencias Forenses*), a public entity of a technical and scientific nature that directs and oversees the system of legal medicine and forensic sciences in Colombia. The Institute attended 23,798 cases of sexual violence in 2017, representing an 11.21 percent increase over 2016. In the previous decade it attended to an average of 21,385 cases annually. The victims were children and adolescents in 86.83 percent of the cases, and 85.4 percent of the victims were female. www.medicinalegal.gov.co/documents/20143/262076/Forensis+2017+pdf+interactivo.pdf/e3786e81-8718-b8d5-2731-55758c8ac7ff

⁴ The organizations that participated in meetings held between December of 2014 and March of 2015 were: Mujeres Arte y Parte en la Paz de Colombia, Asociación de Mujeres de Colombia - ASODEMUC-, Casa de la Mujer, Cumbre de Mujeres por la Paz, Red Nacional de Mujeres, Ruta Pacífica de las Mujeres, Consejo Regional Indígena del Cauca -CRIC-, Asociación Campesina del Catatumbo - ASCAMAT-, Asociación de Mujeres Araucanas Trabajadoras - AMART-, Colombia Diversa, Federación de Estudiantes Universitarios, Red Nacional de Mujeres Excombatientes de la Insurgencia, Asociación de Mujeres Indígenas y Campesinas de Colombia - ANMUCIC-, Mariposas de Alas Nuevas, Alianza Departamental de Mujeres de Putumayo, Corporación Afirmativo, Departamento de Mujeres de la Coordinación Nacional de desplazados - CND

⁵ Final Peace Agreement text, p. 6 - <http://www.altocomisionadoparalapaz.gov.co/Prensa/Documentos%20compartidos/Colombian-Peace-Agreement-English-Translation.pdf>

⁶ Final Peace Agreement text, p. 137 - <http://www.altocomisionadoparalapaz.gov.co/Prensa/Documentos%20compartidos/Colombian-Peace-Agreement-English-Translation.pdf>

⁷Oxfam. *Snapshot of Inequality*. Bogotá: 2017. <https://www.oxfam.org/en/research/snapshot-inequality>

⁸ *Final Agreement to end the armed conflict and build a stable and lasting peace*, p.14.

<http://www.altocomisionadoparalapaz.gov.co/Prensa/Documentos%20compartidos/Colombian-Peace-Agreement-English-Translation.pdf>

⁹ See the Preamble of Government Decree 902 of 2017, which set out the regulations for the Land Fund.

<http://es.presidencia.gov.co/normativa/normativa/DECRETO%20902%20DEL%2029%20DE%20MAYO%20DE%202017.pdf>

¹⁰ One estimate indicates 1,096,518 hectares of *baldíos* could be recovered <https://ideas.repec.org/p/col/000089/015630.html>. INCODER (now the National Land Agency) had been ordered by the Constitutional Court in its Ruling T-488 of 2014 to undertake an inventory of *baldíos*, which identified 1,774,389 hectares of possible *baldíos*. The Land Agency affirms there are 583 properties that could possibly become part of the inventory of *baldíos* - which is independent of the Land Fund but could enable the recovery of *baldíos* unduly appropriated to be allocated through the Land Fund mechanism.

¹¹ Potentially 563,435 hectares – see <https://ideas.repec.org/p/col/000089/015630.html>

¹² See <http://www.semillas.org.co/es/liberar-bald>