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# THE YEARS OF SOLITUDE CONTINUE

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**COLOMBIA: THE PEACE AGREEMENT AND**

**GUARANTEES OF NON-REPETITION IN CHOCÓ**



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First published in 2017 by Amnesty International Ltd

Peter Benenson House, 1 Easton Street  
London WC1X 0DW, UK

←  Forcibly displaced Indigenous women and girls, Quibdó, Chocó.  
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Index: AMR23/7425/2017  
Original language: Spanish

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# GLOSSARY

## AUC

Autodefensas Unidas de Colombia, United Self-Defence Forces of Colombia.

## AGC

Autodefensas Gaitanistas de Colombia, Gaitanista Self-Defence Forces of Colombia.

## ELN

Ejército de Liberación Nacional, National Liberation Army.

## FARC

Fuerzas Armadas Revolucionarias de Colombia, Revolutionary Armed Forces of Colombia.

## JEP

Jurisdicción Especial para la Paz, Special Jurisdiction for Peace, a transitional justice mechanism created by the Peace Agreement.

## RUV

Registro Único de Víctimas, Single Register of Victims, official register of victims of the internal armed conflict created by Law 1448 (2011).

## UARIV

Unidad para la Atención y Reparación Integral a las Víctimas, Unit for Victim Assistance and Reparation, created in January 2012, by the Victims and Land Restitution Law (Law 1448), which established measures to ensure assistance and comprehensive reparation for the victims of the internal armed conflict.

## UNP

Unidad Nacional de Protección, National Protection Unit, national security agency attached to the Ministry of the Interior, charged with developing, coordinating and implementing protection measures for people, collectives, groups and communities that may be at particular or extreme risk because of the position they hold or the functions they perform. It is also mandated to support, protect and promote the rights to life, physical integrity, freedom and security of such individuals or groups at risk.

# EXECUTIVE SUMMARY

In December 2016, the Colombian Congress ratified the Peace Agreement between the government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC). The ratification marked the official end of more than 50 years of armed conflict between the two parties and was the culmination of more than four years of negotiations. However, violence has continued in many areas of the country and there has been an increase in killings and attacks against human rights defenders, including Indigenous, Afro-descendant and campesino (peasant farmer) leaders. Unless this grave situation is addressed by the authorities, it risks undermining the chances of a durable and sustainable peace in which human rights of the entire population are at the heart of the policies implemented.

In this context, Amnesty International is publishing this report in order to document the way in which Point Five of the Peace Agreement (Victims Clause) is being implemented in the department of Chocó, one of the areas most affected by human rights violations during the armed conflict. Point Five of the Peace Agreement defines comprehensive reparation for victims and establishes that the parties to the Agreement commit to ensure victims' rights are restored and their living conditions transformed. This report seeks to identify the areas where the state has failed most significantly to fulfil its international obligations to protect the rights to life, physical integrity and security of Indigenous Peoples and Afro- descendant communities in order to put forward recommendations of concrete measures that would ensure a sustainable and lasting peace.

Amnesty International has focused its research on the department of Chocó because it is an area that has been constantly disputed by parties to the armed conflict. This has left in its wake an appalling toll of civilian casualties – most of them members of Indigenous or Afro-descendant communities. The victims are still waiting for their rights to truth, justice, reparation and non-repetition to be guaranteed. The Colombian state has created a context of exclusion, neglect and invisibility in the area, intensifying the risks faced by these communities; there has been no comprehensive institutional response beyond military intervention. This report shows that Chocó is a department that experiences a continuum of human rights violations. This continuum of violence has been reinforced by the weakness of state actions to protect communities after the signing of the Peace Agreement.

Despite the signing of the Peace Agreement, collective forced displacements, deaths or injuries due to antipersonnel mines and targeted killings have continued following the FARC's departure from the territory and as a result of the strong presence of the ELN (National Liberation Army) in the department, and the reorganization of paramilitary structures. Historically, the paramilitary groups in Colombia functioned as one structure with a single mandate (counterinsurgency), which was made up of very diverse regional armed groups with autonomy. In the mid-1990s they attempted to improve their national coordination with the creation of a federated organization called the United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia, AUC). In 2005, Law 975 (also known as the Justice and Peace Law) was passed to facilitate the demobilization of the paramilitary groups, which

resulted in the demobilization of part of the AUC. However, other structures within the AUC did not demobilize and they converted into the Gaitanista Self-Defence Forces of Colombia (Autodefensas Gaitanistas de Colombia, AGC).

The report documents two illustrative case studies of how guarantees of non-repetition have not materialized in practice in the department. The first case analyses the situation of Indigenous victims of forced displaced communities living in Quibdó, the capital of the department of Chocó. In June 2017, Amnesty International visited displaced Villanueva and Wounaan Phubuur Indigenous communities in order to document their human rights situation. Forced displacement is one of the most serious human rights violations committed in the context of the armed conflict and it continues to affect the rights to life, physical integrity, autonomy, identity and territory of Indigenous Peoples and Afro-descendant communities in Chocó.

The second case documents the situation of the survivors of the Bojayá massacre, which occurred on 2 May 2002 in the context of an armed confrontation between the FARC and paramilitaries in this municipality. More than 100 civilians died in the massacre, making it one of the most emblematic and distressing cases in the history of the country's armed conflict. Amnesty International visited the municipality in August 2017 and was able to confirm that the authorities have yet to ensure the right to full reparation, especially regarding guarantees of non-repetition. Some 15 years after the massacre, the civilian population continues to live in a context pervaded by violence and serious human rights violations.

It is clear that Indigenous Peoples and Afro-descendant communities in the department of Chocó require urgent protection measures, both individually and collectively. The national government must, as a matter of urgency, guarantee comprehensive action to provide support, assistance and full reparation to the victims, in accordance with the provisions of Point Five of the Peace Agreement and in line with its human rights obligations.

The Peace Agreement, and especially Point Five, must be implemented urgently in the department, because ensuring the rights of the victims of the armed conflict, with guarantees of non-repetition, is a vital part of building a stable and lasting peace. The "Ethnic Chapter" of the Peace Agreement must also be implemented in order to acknowledge the particular human rights violations faced by Indigenous Peoples and Afro-descendant communities and to recognize their collective rights.

The end of the armed conflict in Colombia will depend on the implementation of the Peace Agreement with the FARC, as well as the progress made towards a Peace Agreement with the ELN. The fundamental legal basis of these must be international human rights standards. The state must also ensure the dismantling of those paramilitary structures that continue to operate, despite their alleged demobilization in 2005.

## METHODOLOGY

This report documents the impact of the signing of the Peace Agreement on the human rights situation in Chocó. The aim is to analyse whether Colombia has effectively fulfilled its obligations to protect the rights to life, physical integrity and security of Indigenous Peoples and Afro-descendant communities, in accordance with its international commitments.

Amnesty International has focused its research on the Department of Chocó, because it is an area that has been constantly disputed by armed groups. Initially, research visits to areas near the municipalities of Riosucio (in the north of Chocó) and Alto Baudó were planned, but for security reasons it was not possible to access these areas. This highlights the underlying armed conflict continuing in this part of the country. Although this analysis reflects the particular situation in the department of Chocó, it may also contribute to a timely consideration of other regions of the country which are experiencing similar scenarios and patterns of violence.

Amnesty International collected the voices of men and women from Chocó who have experienced the ravages of violence and who are calling on the state, society and armed groups to listen to their proposals and commit themselves to not repeating the abuses to which they were subjected. The voices of those on the ground are at the heart of this report in order to highlight the feelings of individuals and communities affected by the armed conflict. Listening to the victims of violence, it became clear that the retelling of their stories was a crucial part of understanding what the Peace Agreement means in this department.

This report is the result of a qualitative research process, based on information obtained through in- depth interviews with leaders of organizations living in Quibdó and in rural areas of the department. Due to security reasons and the risks faced by those who spoke to Amnesty International, in most cases the identity of individuals and the names of the organizations they represent have been withheld. This is one of the indicators of how complex the security situation in the area is and one of the issues on which Amnesty International is calling for urgent action.

Between February and September 2017, Amnesty International carried out extensive research of relevant documentation, including documents from the Ombudsperson's Office and the National Centre for Historical Memory, as well as an analysis of the most relevant Constitutional Court jurisprudence. This research was supplemented by information obtained in four field visits to the department of Chocó -to both urban and rural areas- in which individual interviews were conducted with 34 victims of the armed conflict and their representatives. In addition, Amnesty International representatives held 30 meetings with grassroots organizations made up of members of ethnic groups from the area, victims and the main human rights groups in the country.

In addition, Amnesty International met officials of the Constitutional Court; the Ombudsperson's Office, at both the national and departmental level; the departmental government of Chocó; the Unit for Victim Assistance and Reparation; the Presidential Advisor on Human Rights; and the National Protection Unit. The analysis also includes input from the Diocese of Quibdó and Bojayá, as well as international organizations with a presence in the country, namely the Office of the UN High Commissioner for Human rights, the Office of the UN High Commissioner for Refugees, Peace Brigades Colombia and the International Committee of the Red Cross.

## BACKGROUND

In October 2012 formal negotiations began between the guerrilla group the Revolutionary Armed Forces of Colombia (FARC) and the Colombian government aimed at ending more than 50 years of internal armed conflict between the two parties. The first version of the Peace Agreement was signed on 26 September 2016 and was the subject of a public referendum on 2 October. After weeks of a heated debate by those opposed to it, voters rejected the Peace Agreement by 50.23% to 49.76%. These results temporarily cast doubt on whether the peace process with the FARC would continue and a number of scenarios were put forward on balancing the need to achieve a Peace Agreement with greater emphasis on international obligations in terms of justice and victims' rights.

Following a review of various points in the Agreement, on 24 November 2016 a new version was signed, this time with the proposal that its endorsement rest with the legislature. This revised version was approved by a majority vote in parliament on 1 December of 2016.<sup>1</sup> The Constitutional Court has publicly stated that it will prioritize through a “fast track” procedure the constitutional analysis of the legislative initiatives needed to implement the Agreement.<sup>2</sup> Between 28 January and 18 February 2017, 6,803 guerrillas entered the 26 demobilization zones – known as “Zonas Veredales Transitorias de Normalización” (ZVTN) and “Puntos Transitorios de Normalización” (PTN)<sup>3</sup> – with the support of the UN Monitoring and Verification Mission established by UN Security Council resolution 2261 (2016).

Point Five of the Peace Agreement created the Truth, Justice, Reparation and Non-repetition System (Sistema de Verdad, Justicia, Reparación y No Repetición, SVJR), which included the Special Jurisdiction for the Peace (Jurisdicción Especial para la Paz, JEP) and judicial mechanisms such as the unit for investigating and dismantling the criminal organizations that succeeded the paramilitary groups. Point Five defines comprehensive reparation for victims and establishes that the parties to the Agreement commit to ensure victims’ rights are restored and their circumstances transformed. On several occasions, Amnesty International has reiterated that the effective implementation of the Peace Agreement in areas which have historically been ravaged by violence could contribute to the non- repetition of crimes.<sup>4</sup>

It is in the framework of the implementation of Point Five of the Peace Agreement that the Colombian state has faced the greatest challenges in guaranteeing the rights of victims to truth, justice, reparation and non-repetition. The biggest challenge has been strengthening the rule of law in territories that have historically been controlled by parties to the conflict. The FARC exercised authority and social control in communities in some areas, therefore, when they left, the state, through its institutions, had an obligation to guarantee that inhabitants of those areas were able to exercise their rights.

In addition, the Ethnic Chapter<sup>5</sup> of the Peace Agreement addresses some of the main concerns of Indigenous Peoples and Afro-descendant communities, recognizing that they have been victims of the armed conflict and that this has had a serious impact on their human rights. The Ethnic Chapter specifically sets out the duty of the state to design protection mechanisms that incorporate an ethnic and cultural perspective and that guarantee the role of these communities’ own security systems, recognized at national and international level, such as the Guardia indígena and the Guardia cimarrona. According to data from the Office of the Ombudsperson,<sup>6</sup> around 594,962 people live in the Department of Chocó, including Afro-descendant, Indigenous and mestizo communities. The majority of the population of Chocó is Afro-descendant or Indigenous, making it what is known as an “ethnic department”.<sup>7</sup>

The legislative background to the Peace Agreement is Law 975 of 2005 (the Justice and Peace Law), Law 1448 of 2011 (the Victims and Land Restitution Law) and a large body of constitutional jurisprudence which has emphasized the need to comply with international standards in order to ensure the rights of victims of the armed conflict and has repeatedly called on the state to take effective measures regarding the right to full reparation and land restitution.

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<sup>1</sup> Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, available at

[http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/Changes\\_New\\_Peace\\_Agreement.pdf](http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/Changes_New_Peace_Agreement.pdf)

<sup>2</sup> “Fast track” is a mechanism provided for in the Legislative Act No. 1 of 2016. It reduces the number of debates in Congress that are required for the approval of the laws and constitutional reforms necessary for the implementation of the Peace Agreement with the FARC.

<sup>3</sup> Demobilization zones – known as “Zonas Veredales Transitorias de Normalización” (ZVTN) and “Puntos Transitorios de Normalización” (PTN) – are temporary sites, defined, demarcated and agreed between the National Government and the FARC where weapons can be surrendered and the processes of demobilization and reintegration can be initiated to start the transition to legality. There are two such zones in Chocó.

<sup>4</sup> Amnesty International, Displacements and violence indicate the lack of non-repetition guarantees for Chocó’s Indigenous Peoples and Afro-Colombian communities, 16 August 2017, (Index: AMR 23/6946/2017). En particular, para el análisis desarrollado en este informe se consideró lo estipulado en el artículo 2.2: “Los Estados partes tomarán, cuando las circunstancias lo aconsejen, medidas especiales y concretas, en las esferas social, económica, cultural y en otras esferas, para asegurar el adecuado desenvolvimiento y protección de ciertos grupos raciales o de personas pertenecientes a estos grupos, con el fin de garantizar en condiciones de igualdad el pleno disfrute por dichas personas de los derechos humanos y de las libertades fundamentales”.

<sup>5</sup> National Indigenous Organization of Colombia, “Ethnic Chapter”: <http://www.onic.org.co/comunicados-onic/1414-capitulo-etnico-incluido-en-el-acuerdo-final-de-paz-entre-el-gobierno-nacional-y-las-farc> (in Spanish only).

<sup>6</sup> Ombudsperson’s Office, Problemática Humanitaria en la Región Pacífica Colombiana, 2016, p. 147 (Humanitarian Issues in Colombia’s Pacific Region, in Spanish only).

<sup>7</sup> There are 116 Indigenous reservations made up of the Embera, Dobida, Embera Wounaan, Embera Katío, Embera Chamí and Tule Peoples, who constitute less than 10% of the total population of Chocó. The Afro-descendant population makes up 88% of the total population of the department, according to the census.



Chocó is one of the departments where collective human rights are at greatest risk, particularly those relating to processes to defend land, territory and the environment. In an effort to exercise peaceful resistance to violence, some communities have decided to remain in high-risk areas and to create humanitarian zones, with the aim of stopping armed groups from entering their territories. This has resulted in threats against their leaders, collective forced displacements and confinement of communities by armed groups trying to exercise control in these parts of the department. Displacement has had a grave impact on collective territories. Defenders promoting processes of land restitution or who initiate processes for the return of land that was violently appropriated continue to face threats and assassination. The situation today is critical.

# COLOMBIA'S HUMAN RIGHTS OBLIGATIONS

In terms of international human rights obligations, Colombia is a state party to various instruments which are the legal basis of the analysis in this report. These include the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>8</sup> the International Covenant on Economic, Social and Cultural Rights; the American Convention on Human Rights; the Rome Statute of the International Criminal Court; the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; and the UN Guiding Principles on Internal Displacement, among others. This framework of international law is the analytical basis for understanding Colombia's obligations regarding the rights of people affected by the armed conflict.

In particular, this report focuses on the fulfilment of the state's obligations regarding prevention, and its duty to protect and guarantee the rights to life, physical integrity and security of the civilian population in the context of the armed conflict. These obligations are set out in the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of man and the Universal Declaration of Human Rights.

The state also has an obligation to ensure full reparation for the victims of the armed conflict, in particular by preventing the repetition of actions that resulted in their victimization and by promoting structural changes to end impunity, injustice and structural flaws that can perpetuate violence in the country. These obligations are set out in the Preamble and Articles 2, 29 and 229 of the Colombian Constitution; Articles 1, 8, 25 and 63 of the American Convention on Human Rights; Articles 2, 9, 10, 14 and 15 of the International Covenant on Civil and Political Rights; and the Guiding Principles on Internal Displacement (the Deng Principles).

In addition, given that the analysis focuses on a department with a majority Indigenous and Afro- descendant population, Colombia's obligations regarding the human rights of Indigenous Peoples, as set out, for example, in the International Labour Organization's Indigenous and Tribal Peoples Convention (Convention No. 169) and American Declaration on the Rights of Indigenous Peoples, are also pertinent. For Indigenous Peoples and Afro-descendant communities, the violence has particular negative consequences regarding the enjoyment of fundamental collective rights enshrined in the Constitution, such as the rights to self-determination, autonomy, identity and territory.

<sup>8</sup> In particular, the analysis developed in this report draws on the provisions of Article 2.2: "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."



# 1. CHOCÓ: BETWEEN STATE NEGLECT AND A CONTINUUM OF VIOLENCE

Despite its extraordinary natural resources and cultural diversity, the inhabitants of Chocó, especially those in rural areas, live in conditions of poverty and exclusion with very limited access to public services. Around 80% live in extreme poverty and at 20.9% the illiteracy rate is more than three times the national average. This situation puts the Indigenous and Afro-descendant inhabitants of Chocó at increased risk since it creates a structural barrier to ensuring decent living standards and fundamental rights.<sup>9</sup> In 2009, the Constitutional Court issued two orders – 004 and 00510 – urging the Colombian government to recognize the heightened risk faced by Indigenous Peoples and Afro-descendant communities who are victims of the armed conflict. The orders called for concrete action to guarantee their rights to life, physical integrity, security and cultural heritage, among others. The Ombudsperson has described the situation in Chocó as a humanitarian crisis,<sup>11</sup> owing to the entrenched poverty, exclusion and widespread human rights violations in the area.

“ Indigenous communities in Colombia are particularly vulnerable and exposed to the armed conflict and its consequences, especially displacement. They face the dangers inherent in conflict from a pre-existing position of extreme poverty and institutional neglect. These factors act as catalysts for the serious violations of individual and collective human rights which they have experienced as a result of the incursion of the armed conflict into their territories.<sup>12</sup> ”

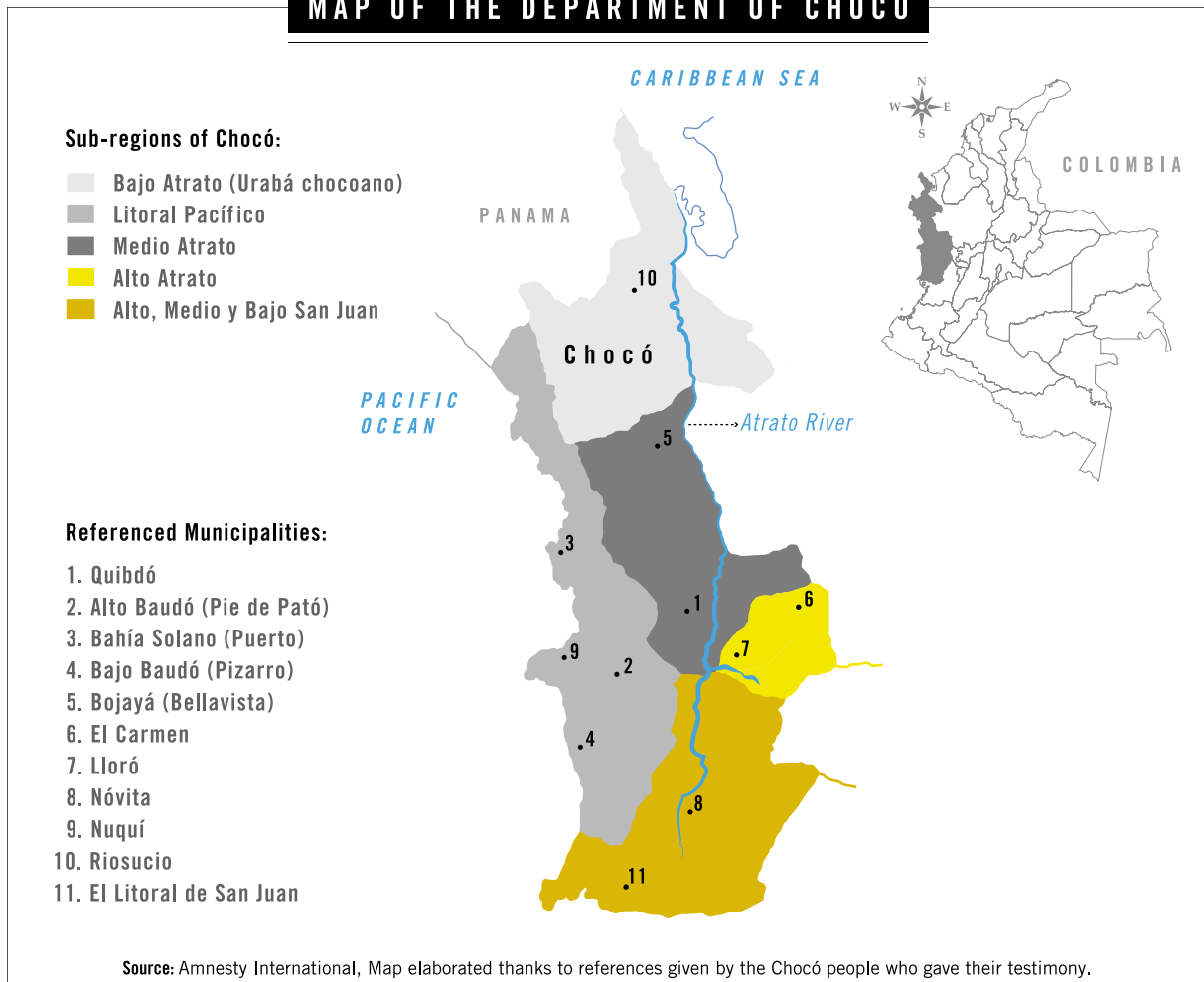
<sup>9</sup> In its recent analysis of the implementation of the International Covenant on Economic, Social and Cultural Rights, to which Colombia is a state party, the Committee on Economic, Social and Cultural Rights in its Concluding observations on Colombia's sixth periodic report of 6 October 2017, issued a strong call to Colombia to guarantee the rights of Indigenous Peoples and Afro-Colombian communities, especially with regard to the high levels of poverty and exclusion that affect them disproportionately and perpetuate violations of their fundamental rights.

<sup>10</sup> These decisions of the Constitutional Court were delivered in the context of the follow-up to Ruling T-025 of 2004, in which it declared an “Unconstitutional State of Affairs” (“Estado de Cosas Inconstitucional”) in relation to support for forcibly displaced people in the country.

<sup>11</sup> Ombudsperson's Office, Problemática Humanitaria en la Región Pacífica Colombiana, 2016. (Humanitarian Issues in Colombia's Pacific Region, in Spanish only).

<sup>12</sup> Constitutional Court, Special Follow-up Chamber to Ruling T-025 de 2004, Order 004 of 2009. [“Los grupos indígenas colombianos están particularmente indefensos y expuestos al conflicto armado y sus consecuencias, particularmente el desplazamiento. Deben soportar los peligros inherentes a la confrontación sobre la base de situaciones estructurales preexistentes de pobreza extrema y abandono institucional, que operan como factores catalizadores de las profundas violaciones de derechos humanos individuales y colectivos que ha representado para ellos la penetración del conflicto armado en sus territorios”].

## MAP OF THE DEPARTMENT OF CHOCÓ



### 1.1 THE HUMAN RIGHTS SITUATION IN CHOCÓ IN THE CONTEXT OF THE ARMED CONFLICT

During the 50 years of armed conflict, the Department of Chocó has been the scene of armed confrontations that have brought in their wake mass human rights violations against the civilian population. According to the figures of the Unit for Victim Assistance and Reparation (Unidad para la Atención y Reparación Integral a las Víctimas, UARIV), 60% of the entire population of the department is registered as victims of the internal armed conflict.<sup>13</sup> The conflict in Colombia has unquestionably had profound consequences for the Indigenous and Afro-descendant inhabitants of Chocó, including killings, forced displacement, anti-personnel mine casualties, sexual violence against women and girls, the forced recruitment of children and adolescents and innumerable other crimes which characterized the conflict and which have had a negative impact on the enjoyment in practice of fundamental rights.

An area with vast natural resources that is difficult to access even for the state authorities, the region has been turned into a source of “war booty” for the parties to the armed conflict since the 1990s, with the civilian population caught in the middle of battles for territorial control. Chocó’s strategic position on the Pacific coast has encouraged the development of illegal activities, such as the drugs trade and the trade in weapons and munitions.

<sup>13</sup> National Register of Victims, figures published by UARIV up to 31 August 2017. According to Article 3 of Law 1448 of 2011, for the purposes of this law, victims are considered to be those who, individually or collectively, have suffered harm since 1 January 1985 as a result of breaches of international humanitarian law or grave and manifest violations of international human rights standards, in the context of the internal armed conflict.

This Pacific corridor is coveted by the warring parties, leading to continuous movements of legal and illegal armed groups across its rivers and river basins.

The arrival and departure of various armed groups in Indigenous Peoples and Afro-descendant territories is the source of the continuum of violence experienced by the civilian population of Chocó in the context of the armed conflict. The presence of guerrillas from the FARC and the ELN, as well as paramilitary groups and state security forces in the department exercising military control over large parts of the territory has led to grave violations of human rights and humanitarian law.

One of the areas that has been most scarred by the violence is the municipality of Riosucio, precisely because of its strategically important position for armed groups. This municipality is located in the middle of a corridor that starts from the Bajo Atrato in Chocó, on the border with Urabá Antioquia, and opens out onto the Pacific coast at Bahía Solano. Its location means it has been continuously disputed by the different armed groups. With the departure of the FARC from some of the territories they occupied near Riosucio, confrontations over the surrounding territories have intensified. Bajo Atrato in Chocó is another area where there was a large armed presence and where for two decades until their demobilization, FARC Fronts 57 and 34 operated and were in constant conflict with the United Self-Defence of Colombia (Autodefensas Unidas de Colombia, AUC), resulting in a high toll of civilian casualties. This history appears to be repeating itself again today for the communities living in the river basins of Truandó, Salaquí, Quiparadó and Domingodó. The realignment of armed groups in the region since the end of 2016 has sparked clashes that have resulted in the collective displacement of Afro-descendant communities. The nature of the armed conflict has varied between the different parts of the department, depending on the interests of the armed groups involved. According to the communities, in the Darién area alliances have been forged between the ELN and the FARC in the area to avoid confrontation. However, in other areas, like the Pacific sub-region, there have been constant clashes between guerrilla groups, the security forces and paramilitary groups.

The department also has become the scene of conflict over territorial rights for the development of economic projects such as palm plantations, timber, mining and livestock farming, among others. In the context these disputes over land, there have been emblematic cases in which -following lengthy judicial proceedings- it has been possible to prove that the security forces and paramilitary groups colluded to gain control and illegally appropriate collective territory for economic gain. Another emblematic case of such joint action was Operation Genesis which was deployed in 1997 in the territories of the Cacarica River Basin. The Inter-American Court of Human Rights<sup>14</sup> declared that the state, through its security forces, was responsible for killings, displacement and theft of the land of more than 100 people. In this case, the state was found guilty of fostering the conditions which facilitated incursions by paramilitary groups into collective territory and of allowing the illegal exploitation of land which was abandoned as a result of these incursions.

The inhabitants of the department who spoke to Amnesty International described this case as the “tip of the iceberg” of a web of violence for land and just one more example of how the security forces and paramilitary groups collaborated in committing and perpetuating human rights violations.

The nature of the armed conflict in Chocó has changed following the signing of the Peace Agreement and the territorial realignment of armed groups. Prior to the signing of the Peace Agreement, Amnesty International highlighted the need for the state to ensure a strong presence in those areas which had historically been most riven by the armed conflict, and in particular those where the FARC had exercised territorial control, in order to prevent the communities at risk from being subjected to new human rights violations.<sup>15</sup> This was undoubtedly the main challenge facing the Colombian state.

<sup>14</sup> Inter-American Court of Human Rights, Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Judgment of November 20, 2013, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_270\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_270_ing.pdf)

<sup>15</sup> Amnesty International, Colombia: The Human Rights Situation In Colombia, Amnesty International's Written Statement to the 34th Session of the Un Human Rights Council (27 February-24 March 2017), (Index: AMR 23/5573/2017).

## 1.2 THE PEACE AGREEMENT IN CHOCÓ: BETWEEN HOPE AND DESPAIR

Victims who shared their experiences with Amnesty International stressed their support for the implementation of the Peace Agreement, despite the difficulties that they face, because for them the departure of the FARC from their territories represents the hope that they will be able to live in peace.

Indeed, official figures<sup>16</sup> point to a decrease in the number of civilians killed in military actions between the FARC and state security forces between the start of the dialogue and the signing of the Agreement. This represents a fundamental achievement in terms of the human rights of the civilians who live in areas marred by violence.

In accordance with the provisions of the Peace Agreement, in January 2017 FARC Fronts 57 and 34, in the Department of Chocó were repositioned and began the move to demobilization zones, known as “Zonas Veredales Transitorias de Normalización” (ZVTN), to begin the process of disarmament and demobilization. The departure following the signing of the Agreement of the FARC from territories where they had exercised territorial control since the 1990s is the main impact highlighted by the Chocó communities interviewed by Amnesty International.

One of the main concerns expressed by both the FARC guerrillas and the communities living in areas previously under FARC control, was that with their departure, paramilitary groups or guerrilla groups of the ELN would start to enter the area. In order to address this situation, the Peace Agreement established that it was the state's duty to regain military and social control of these zones in order to avoid further victimization of the communities. The possible resurgence of the conflict was debated before the signing of the Peace Agreement and the state undertook to provide guarantees of non-repetition and to strengthen its presence in those parts of the territories ravaged by violence.

The communities who spoke to Amnesty International reported that the ELN Western War Front now has a strong presence in the Department of Chocó and that there have been incursions into the area by the paramilitary Gaitanista Self-Defence of Colombia forces. The consequences of these developments for the fundamental rights of the communities in the area are devastating.

“ They are occupying the territories that the FARC once held. This is an alarming development. It's very complicated. In the [Peace Agreement] negotiations in Havana one of the immediate actions following the finalization of the verification process regarding the conflict (...) was that the state would guarantee the presence of its security forces so that new groups in society would not take over control and establish themselves there, which is what is happening now. ”

Diocese of Bojayá, August 2017.

Amnesty International has reiterated on several occasions that the proper implementation of the Peace Agreement could constitute a guarantee of the non-repetition of crimes perpetrated in the context of the armed conflict as well as a way to avoid creating future generations of victims.<sup>17</sup> Both victims' organizations as well as national and international human rights organizations that have supported the signing of the Peace Agreement concur that the state must address with due diligence the challenges in order to implement it, especially given that Colombia remains mired in conflict and that armed combatants are still fighting in rural and remote regions of the country, as is the case in the Department of Chocó.

<sup>16</sup> According to the Institute of Legal Medicine, deaths in the context of the armed conflict, specifically during clashes between the state security forces and the FARC, have fallen by nearly 80%. This decrease has been most marked since the bilateral ceasefire was agreed in June 2016.

<sup>17</sup> Amnesty International, Colombia: Recent Collective Displacements and Violence Indicate the Lack of Non-Repitition Guarantees for Chocó's Indigenous Peoples and Afro-Colombian Communities, (Index: AMR 23/6946/2017).

“ [Despite the Peace Agreement] communities are still at risk. One of the armed groups may arrive and occupy these territories, as is already happening in the headwaters of our rivers where members of the ELN are already arriving and there is the imminent threat that when the paramilitaries want to escalate things and enter the territory (...) we will again face the same level of danger. ”

Afro-descendant leader, Chocó Inter-ethnic Solidarity Forum, *September 2017.*

The Peace Agreement is a huge symbol hope for the communities in Chocó, but implementation on the ground so far has been inadequate. This has created a situation conducive to a repetition of the history of death and destruction described by the victims of the armed conflict, which is why the fact it is important to stress that the armed conflict has continued in some areas of the country as a result of the realignment of armed groups. The failure to promptly implement the Peace Agreement on the ground has resulted in revictimization, human rights violations and fear.

“ The departure of the FARC from the area took place before the institutions of the Colombian state as a whole had been enlisted to enter these areas and take over social, political and territorial control. This is something that concerns us greatly. It has allowed both the ELN as well as the self- defence groups to realign and intensify their presence in these territories. There is a battle for control and the communities are in the middle of all this. So what happened? Firstly, this battle over land has facilitated the killing of Afro-descendant and Indigenous leaders, in other words, revictimization. ”

Afro-descendant leader in Quibdó, *September 2017.*

Organizations and leaders continue to report that the inhabitants of Chocó, particularly Afro- descendant and Indigenous communities are still being subjected to grave violations of human rights and breaches of international humanitarian law in the context of the implementation of the Peace Agreement on the ground. The absence of the state has reinforced the perception that the communities have been abandoned and are at the mercy of the actions of armed groups. Some of those interviewed by Amnesty International asserted that human rights violations persist in the department and expressed the feelings of frustration, abandonment and victimization experienced by the inhabitants of the region.

“ In Chocó every human right is violated every day. ”

Gloria Luna, Chocó Departmental Women's Network, *June 2017.*

One of the most serious violations of human rights that have occurred in the department since the Peace Agreement was signed in November 2016 is the **collective forced displacement of Indigenous Peoples and Afro-descendant communities** as a result of fighting between paramilitaries, the security forces and the ELN triggered by the realignment of the various forces following the departure of the FARC.

Amnesty International has reported various paramilitary incursions into the department which have resulted in mass forced displacements. On 8 February 2017, members of the paramilitary AGC entered the Humanitarian Zone of Nueva Esperanza en Dios in the Cacarica River Basin, searching for several people said to be on a death list.<sup>18</sup> On 6 March, a paramilitary incursion was reported in the town of Peña Azul, municipality of Alto Baudó, which resulted in the mass displacement of families and the confinement of nearby communities.<sup>19</sup> Confinement occurs when, out of fear of armed confrontation, communities are forced to stay in their territories, with limited access to food, drinking water and basic services. On 18 April, residents of Puerto Lleras in the Jiguamiandó collective territory reported that they had received threats and that there had been a paramilitary incursion into the Humanitarian Zone of Pueblo Nuevo exposing all the inhabitants to danger.<sup>20</sup>

Since March 2017, it is estimated that approximately 550 people -around 200 families- belonging to Embera Dóbida and Wounaan communities, as well as Afro-descendant communities in the Truandó River Basin have been displaced in the municipality of Riosucio.<sup>21</sup> The living conditions of these families are poor. According to the Office of the Ombudsperson, they have not received a comprehensive response at the municipal, departmental or national level regarding access to emergency humanitarian aid, access to emergency medical services, food or accommodation following the displacements, which occurred as a result of clashes between the ELN and the AGC who were contending for control of the territory abandoned by the FARC in the Truandó River Basin.

According to reports of the Office in Colombia of the UN High Commissioner for Refugees (UNHCR), between January and September 2017 around 9,544 people were victims of collective displacement in Chocó.<sup>22</sup> In October 2017, 27 instances of displacement were reported affecting 3,115 Afro- descendants and 2,955 Indigenous people. Other sources, such as the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC), have reported that on a national level between 1 November 2016 and 31 July 2017, 3,490 Indigenous people were victims of forced displacement, 827 were subjected to confinement, 115 received death threats and 30 were killed, among them community leaders.<sup>23</sup>

The number of forced displacements recorded a year after the signing of the Peace Agreement is revealing of the everyday reality for communities living in Chocó. However, many cases are not recorded and the true numbers would undoubtedly paint an even more devastating picture. This is the case with collective displacements that have occurred in areas close to where the fighting took place and where communities decided to flee to nearby areas and then return. In such cases, they received no institutional support and therefore do not appear in the Register of Victims (Registro Único de Víctimas, RUV). Such incidents were reported to Amnesty International by Indigenous organizations and Afro-descendant communities in Quibdó.

Displacements have also been caused by **anti-personnel mine explosions in Indigenous and Afro- descendant territories** that injured many civilians and made communities afraid of remaining on their lands. The communities reported through their grassroots organizations,<sup>24</sup> that after the withdrawal of FARC units from their territories, the ELN has planted mines around their territories in order to impede the advance of paramilitary groups. This has put the lives and physical integrity of the civilian population, especially children and adolescents, at risk and effectively confined communities who find themselves forced to remain isolated and makes it difficult for them to access food and health care in conflict zones. The confinements reported in the department affect above all Indigenous reservations<sup>25</sup> where people have decided not to move from their territory even to carry out activities such as hunting, fishing or agriculture, which has exacerbated food insecurity.

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<sup>18</sup> Amnesty International, Colombia: Paramilitary incursion in Humanitarian Zone, (Index: AMR 23/5685/2017).

<sup>19</sup> Amnesty International, Colombia: Over 300 displaced due to paramilitary incursion, (Index: AMR 23/5826/2017).

<sup>20</sup> Amnesty International, Colombia: Further information: continued paramilitary presence in Chocó (Index: AMR 23/6082/2017).

<sup>21</sup> National Indigenous Organization of Colombia, Informe sobre violación de los derechos humanos de los pueblos indígenas en Colombia: del 1 de noviembre de 2016 al 31 de julio de 2017 (Report on human rights violations against Indigenous Peoples in Colombia: 1 November 2016 to 31 July 2017, in Spanish only).

<sup>22</sup> According to UARIV, a mass displacement is defined, in accordance with Law 1448 of 2011, as a single expulsion of two or more families from their territories,.

<sup>23</sup> ONIC, Council on the Rights of Indigenous Peoples, Human Rights and Peace, Informe sobre violación de los derechos humanos de los pueblos indígenas en Colombia: del 1 de noviembre de 2016 al 31 de julio de 2017 (Report on human rights violations against Indigenous Peoples in Colombia: 1 November 2016 to 31 July 2017, in Spanish only).

<sup>24</sup> This information was obtained in bilateral meetings with Indigenous, especially Woundeko and Asorewa, organizations in Quibdó.

<sup>25</sup> Indigenous reservations are special legal and sociopolitical institutions made up of one or more Indigenous communities that have collective property titles with the same guarantees as private property, their own territory and whose internal governance is managed by an autonomous organization under Indigenous jurisdiction and with its own regulatory system.



It was reported that on 19 March 2017, Dirito Rubiano Mecheche, a 14-year-old Indigenous boy, was seriously injured by an anti-personnel mine in the community of Pichindé on the Truandó River. This resulted in the displacement and confinement of 955 people -191 families- from the La Nueva, Dos Bocas, Taparal, Quiparadó, Jagual, Marcial and Mamey Dipurdú communities. Following the anti- personnel mine explosion and the serious injuries sustained by Dirito, the community fled that location, fearing that others would fall victim to anti-personnel mine explosions, as a result their ability to move around within their territory was limited.

In another reported case of victimization, a young Indigenous man, Sebastián Carpio Maheche, from the Juuin Duur community in the Embera Wounaan Katio de Quiparadó Reservation in the municipality of Riosucio sustained serious injuries as a result of a landmine explosion on 11 July 2017.<sup>26</sup> Communities in various parts of the department have reported the presence of anti-personnel mines to their grassroots organizations. The presence of landmines threatens the rights to life, physical integrity and freedom of movement, among other fundamental rights.

“ I am Sebastian, I have a message for the leader of the ELN. Please respect Indigenous People, because look at me, see how I am suffering here. What is all the talking and negotiating for? For us campesinos (...) the land is filling up with mines. We don't want that. We don't want you to lay mines near our communities. We don't want armed groups in our community. We don't want more war. Please, listen to us. We don't want more violence, we don't want more disasters. We want you to make peace. We, the campesinos, the Indigenous Peoples, we want peace. Please. Peace. We are suffering (...) campesinos living on the land, we are the ones who suffer most. ”

Sebastián Carpio Maheche, speech given at an event to present the proposal

Humanitarian Agreement Now, Quibdó, 18 August 2017.

In addition, the arrival of new armed groups in the territory has triggered fears of **forced recruitment of Indigenous and Afro-descendant children and adolescents** by the ELN and paramilitary groups.

One such case occurred following the incursion in August 2017 by more than 200 members of the AGC into the El Brazo Reservation in Bahía Solano, into Buena Vista in Bajo Baudó, into the Tigre Montería Reservation in Novita and into Bojayá, during which the forced recruitment of boys and girls aged between 12 and 14 was reported.

In an Imminent Risks Report (Informe de Inminencia 009-17), the Ombudsperson' Office warned that “communities continue to be put under pressure by both illegal armed groups [the ELN and the AGC] not to resist and to allow their boys, girls, adolescents and young people to join them. Illegal armed groups are attempting to present themselves to the civilian population as a source of money and of income generation in a situation where unemployment is rife”.<sup>27</sup>

According to information gathered by grassroots organizations and reported to Amnesty International, these cases of forced recruitment were carried out by both paramilitary groups and by ELN guerrillas during incursions into collective territories. One of the serious allegations made by the organizations Amnesty International consulted was that young and adolescent Indigenous and Afro-descendant girls were being recruited. This has raised concerns about possible cases of sexual exploitation and gender- based violence in the area.

According the organizations consulted by Amnesty International in Quibdó **targeted killings of leaders** have also been carried out in this context with the aim of undermining collective organization. A particularly distressing case reported was the massacre in the Afro-descendant community of Carrá on 26 March 2017 in which five people

<sup>26</sup> Colombia: Wounaan Indigenous Community in danger, (Index: AMR 23/6774/2017).

<sup>27</sup> Office of the Ombudsperson, Early Warning System, Informe de Inminencia 009-17 (Imminent Risks Report 009-17, in Spanish only) [“las comunidades continúan recibiendo presión de ambos grupos armados ilegales [ELN y AGC] para que permitan la incorporación de sus NNAJ [Niños, Niñas, Adolescentes y Jóvenes] a la ilegalidad sin oponer resistencia. En ese sentido, los grupos armados ilegales pretenden presentarse ante la población civil como una fuente para obtener dinero en un entorno en el cual reina el desempleo y las fuentes de generación de ingresos”.]

were killed and which led to the displacement of at least 14 families. According to the Office of the Ombudsperson, this could have been prevented if the authorities had taken decisive action in response to the Early Warnings it had issued regarding the movements of armed groups in the vicinity of the community.

According to the NGO Somos Defensores, in the first half of 2017 targeted killings were carried out in the Department of Chocó. On 2 March, Ruth Alicia López, a member of the Inter-ethnic and intercultural Agro-ecological Association (Asociación Agroecológica Interétnica e Intercultural, ASOKINCHAS) carrying out community work in Chocó, was killed. On 3 June, Efrén Santo, from village of Campoalegre, Riosucio, an Afro-descendant leader and promoter of the process for the restitution of the lands of the Pedequita Community Council, Mancilla, was killed. On 30 June, Eugenio Rentería, an Afro-descendant leader and supporter of a Civic Strike in Chocó, was killed.<sup>28</sup>

“ Yes, there are killings every day, a few at a time. ”

Woman Afro-descendant leader, *September 2017*.

Indigenous organizations reported on 7 October 2017 that paramilitary groups killed Ezquivel Manyoma, an Embera Dobida leader, former governor and promoter of Indigenous health from the Dabeiba Queracito Reservation in the municipality of Medio Baudó. According to reports, he was abducted from his home and then killed.

The NGO Inter-Church Commission for Justice and Peace (Comisión Intereclesial de Justicia y Paz) reported that on 15 October 2017, the body of Afro-descendant leader José Merlín Trujillo was found in the Cacarica area of Chocó. It expressed regret that this had happened despite constant warnings about the presence of paramilitary groups in the area.

The Dialogue and Consultation Forum of the Indigenous Peoples of Chocó (Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó) reported the killing of Alto Baudó Indigenous leader Aulio Isarama Forastero on the night of 24 October after he was stopped by armed men believed to be members of the ELN. Following this attack, the Catru Dubaza Ancoso Indigenous Reservation was the target of death threats by the armed group which threatened to kill anyone who reported the attack.<sup>29</sup>

In relation to these examples of killings of Indigenous and Afro-descendant leaders, the Committee on Economic, Social and Cultural Rights has expressed concerns in its recent report on the situation in Colombia, in particular highlighting the continuing and increasing number of cases of harassment, violence and attacks against Indigenous and Afro-descendant leaders and campesinos.<sup>30</sup>

Civilians have also lost their lives in the context of clashes between armed groups that occurred in and around the communities. On 22 August, an armed confrontation between the ELN and AGC reportedly took place in Juun Dur (Wounaan Indigenous Reservation) and Quiparalito (Embera Indigenous Reservation), on the banks of the River Truandó in Riosucio. Ana María Mepaquito, a 22-year-old Indigenous woman, was killed in the crossfire. Members of these Indigenous communities said they could not leave their territory for fear of being detained at checkpoints set up along the river by both paramilitary groups and by the Colombian National Army, as well as the anti-personnel mines scattered around their territories.

Amnesty International is also concerned that in this context of realignment of armed groups cases of **gender-based violence, in particular sexual violence against Indigenous and Afro-descendant women and girls, have been reported**. Because of the risks that reporting these crimes entails in an area of armed conflict and the fear or revictimization, official figures give only a partial picture and do not reflect the true situation on the ground. In transitional settings, increases in violence against women have been documented following demobilization,

<sup>28</sup> Somos Defensores, Informe Agúzate, Primer semestre de 2017 (Agúzate Report, First semester of 2017, in Spanish only).

<sup>29</sup> Colombia: Further Information: Risk of Forced Displacement in Chocó, (Index: AMR 23/7356/2017), available at <https://www.amnesty.org/en/documents/amr23/7356/2017/en/>

<sup>30</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on Colombia's sixth periodic report, 6 October 2017.

as was the case in 2005 during the process involving the AUC when official figures recorded a 28% increase in gender-based violence in the areas where AUC members were demobilized. Amnesty International calls on the state to take measures to prevent this pattern from being repeated in the current Peace Agreement implementation process.

The Constitutional Court in its Decree 009 of 2015 expressed concern regarding factors that increase the risk that women, girls, adolescents and elderly women may be subjected to sexual violence in the context of the internal armed conflict. The factors outlined by the Court are the presence of armed groups or their influence on the individual, family, organizational and community life of women, and the absence or weakness of state measures to prevent sexual violence against women by members of armed groups.

“ **A constant factor which has now intensified is the rape of girls, boys and women. That was made clear very early on, you know the risks they face.** ”

Afro-descendant leader in Quibdó, September 2017.

It is important to note that issues of gender-based violence and sexual violence, were only raised in response to specific questions put by Amnesty International in meetings with organizations and leaders. The responses given to these questions pointed to the fact that this is still a serious underlying problem, but that Indigenous and Afro-descendant women consider it dangerous to report these abuses.

According to information submitted by the ONIC Council for Women, the Family and Generations (Consejería Mujer, Familia y Generación de la Organización Nacional Indígena de Colombia), “the principal, most painful and unspoken experiences of Indigenous women are linked to sexual violence. It is a reality that is little documented, unquantified; there is no data that faithfully reflects this reality”.<sup>31</sup>

The Constitutional Court has also pointed out that in contexts of armed conflict, factors such as historical discrimination against the Afro-descendant population in Colombia, its presence in peripheral regions of the country where armed groups are also present, and the poverty and social exclusion to which much of the country's Afro-descendant population is subjected, increase the risks that Afro-descendant women will be targeted for sexual violence.<sup>32</sup>

According to the organization Sisma Mujer, from 1 January 2016 to 31 July 2017, the Ombudsperson's Office issued 51 documents warning about sexual violence. These included six reports and notes relating to women human rights defenders and leaders, highlighting the extraordinary risks they face.<sup>33</sup> It is, therefore, important to stress that in the current context of widespread violence in the department, the state must take measures to prevent an increase in gender-based violence and strengthen its response in terms of care, support, protection and access to justice available to women and girl survivors of sexual violence.

Amnesty International is concerned that in contexts where armed groups are operating in territories inhabited by Indigenous Peoples and Afro-descendant communities there is an increase in reports of violence against women, especially sexual violence. As mentioned above, Indigenous and Afro-descendant women and girls are at heightened risk and so need a comprehensive institutional response which ensures that these crimes are prevented and that survivors have access to the justice, truth and reparation for the harm suffered on equal terms. The state has a duty to investigate with due diligence those responsible for crimes of sexual violence, whether they are non-state actors or members of the state security forces.

<sup>31</sup> ONIC Council for Women, the Family and Generations, “Mujeres Indígenas: Víctimas Invisibles del Conflicto Armado en Colombia”, in *La Violencia Sexual una Estrategia de Guerra* (“Indigenous Women: Invisible Victims of the Armed Conflict in Colombia”, in *Sexual Violence, a War Strategy*, Spanish only). [“la mayor, más dolorosa y silenciada situación que viven las mujeres indígenas está ligada a violencia sexual. Realidad poco documentada, no cuantificada, no existen datos que hablen fielmente de esta realidad”.]

<sup>32</sup>Constitutional Court, Decree 092 of 2008 and 009 of 2015.

<sup>33</sup>Corporación Sisma Mujer, *Análisis comparativo de los asesinatos a líderes, lideresas y defensoras/es de DDHH en Colombia durante el primer semestre de 2016 y 2017* (Comparative analysis of the killings of leaders and human rights defenders in Colombia during the first semester of 2016 and 2017, in Spanish only). 24 August 2017 version.

In addition to the situation of underlying armed conflict, it is important to note that - within the framework of the Negotiation Forum (Mesa de Negociación) established in Quito between the ELN guerrillas and the Colombian government - a bilateral ceasefire was announced on 4 September 2017, to take effect from 1 October 2017 until January 2018. The ceasefire has been agreed for a period of four months, after which the Colombian government and the ELN will begin to discuss a possible peace agreement.

Given the serious situation affecting the Department of Chocó due to the resurgence of military action by the ELN and its effects on the civilian population, a group of civil society organization developed the proposal entitled “Humanitarian Agreement Now” (“Acuerdo Humanitario Ya”). This calls on all armed groups to respect international humanitarian law and to make a firm commitment to make progress towards a negotiated end to the armed conflict.

“ We responded with the proposal 'Humanitarian Agreement Now' because, after all our communiqués calling on the Government to act, we saw that they had no interest in doing so. So what we did was put forward a 10-point proposal. We went to Quito. Eight spokespersons, Afro- descendant and Indigenous men and women developed the proposal. The Government says that the proposal arrived in the Forum at an opportune moment”.

Afro-descendant representative who is promoting the “Humanitarian Agreement Now” proposal with the ELN, Quibdó, August 2017.

The bilateral ceasefire represents a step forward in the negotiations with the ELN guerrilla group. In declarations put forward at the start of October 2017,<sup>34</sup> the ELN affirmed that the national government must ensure the conditions that permit the normal implementation of the ceasefire in Chocó through concrete actions that prevent potential armed confrontations or attacks by paramilitary groups. The state and the ELN face a number of challenges in order to implement what has been agreed in an area that is still disputed and where there is an underlying risk of armed confrontation.

Amnesty International, therefore, considers that an urgent call is needed to all the parties to armed confrontation in the territory to respect the rights to life, physical integrity and security of the civilian population living in collective territories and Indigenous reservations in Chocó. The violence which has victimized generations must not be allowed to continue in the shadow of a Peace Agreement that should, on the contrary, mark an advance towards the effective enjoyment of human rights.

### 1.3 WHAT HAS THE STATE DONE TO ENSURE THE NON-REPETITION OF HUMAN RIGHTS VIOLATIONS IN CHOCÓ?

Amnesty International is drawing attention to this serious human rights situation in the Department of Chocó in order to call on Colombia to take action and ensure the effective implementation of the Peace Agreement on the ground and to fulfil its international human rights obligations.

As this brief overview of the recent history of Chocó shows, the absence of a comprehensive and effective response by all the institutions of the state -not just the military- in territories ravaged by the armed conflict is a direct cause of the current violations of human rights of the Indigenous and Afro-descendant inhabitants of the department. Violations of the right to life, to physical integrity, to freedom of movement, to land and to cultural identity persist. As this report shows, there is still a long way to go to ensure the creation of a stable and lasting peace that respects individual and collective human rights.

<sup>34</sup> ELN, Omar Gómez Western War Front Command, 5 October 2017.



↑ Indigenous woman, Wounaan Phubuor Indigenous community, Quibdó, Chocó. | © Amnesty International 2017

It is regrettable that at this stage in the process communities are reporting ongoing links between paramilitary groups and the state security forces. The Inter-church Commission on Justice and Peace has reported that since November 2016, paramilitary groups have been operating in the Cacarica area and that the state's weak response to their movements has resulted in 17 of the 23 communities in the vicinity reporting an increase in intimidation and threats, which is impacting their freedom of movement.

“ **The absence of the government in these territories (...) that has been the response. There is an obvious relationship between the state security forces and paramilitaries in the area. The communities say this is absolutely clear.** ”

**Afro-descendant leader, June 2017.**

Despite evidence of paramilitary raids, especially by the AGC, the Colombian state continues to deny that these groups are operating in the territory. The Ministry of Defence, in statements issued in January 2017,<sup>35</sup> asserted that there were no paramilitaries in Colombia, ignoring not only the reports of the communities, but also reinforcing the systematic state refusal to acknowledge the existence of these armed groups who are responsible for so many victims. In some parts of the department, communities are reporting that in places where there should be permanent National Navy and Marine posts, paramilitary groups continue to circulate.

<sup>35</sup> Statement published by the national newspaper El Tiempo, “En Colombia no hay paramilitarismo: MinDefensa” 11 January 2017 (“There are no paramilitaries in Colombia: Ministry of Defence”, Spanish only). “No hay paramilitarismo. Decir que lo hay significaría otorgarle reconocimiento político a unos bandidos dedicados a la delincuencia común y organizada” (“There are no paramilitaries. To say that there are, would mean granting political recognition to bandits involved in common and organized crime”).

**“ Who is going to dare go to Baudó or San Juan to talk about Development Programmes with a Territorial-Based Approach<sup>36</sup>...when they have to ask the paramilitaries for permission to enter or leave?<sup>37</sup> ”**

**Afro-descendant leader and victim of the armed conflict, Medio Atrato, August 2017.**

Despite the constant early warnings issued by the Ombudsperson's Office<sup>38</sup> and various national and international human rights bodies, the state has not managed to contain the resurgence of armed conflict in this part of the country. The 2017 Imminent Risks Report 009 (for Riosucio) warned that armed groups (the FARC, the ELN and the AGC) were present in the area. Likewise, the last Follow-up Note states that, as of April 2017, confrontations resulted in the concentration of the ELN in the Truandó River Basin and part of the Domingodó River Basin, while AGC groups are mainly in the Salaquí, Cacarica and part of the Domingodó River Basin.

According to the Office in Colombia of the UNHCR, which has a presence on the ground in the department, despite appeals by Indigenous, Afro-descendant and local organizations, the response of government institutions at the local, regional and national levels has been inadequate in the face of the risks and emergencies linked to displacement that have been reported.<sup>39</sup>

**“ The Colombian state was not prepared for the magnitude of the phenomenon of displacement (...) sometimes we have more than enough energy to criticize, but when we are faced with the reality on the ground, we realize that many things have not been done, not because they have not tried but because of the scale of the challenge. ”**

**Advisor, Government of Chocó, August 2017**

Despite being one of the departments with the highest number of forced displacement in 2017, the reality of the situation has overwhelmed all the efforts of local institutions to respond adequately to needs on the ground.

<sup>36</sup> Development Programmes with a Territorial-Based Approach were established in Point 1 of the Final Peace Agreement in order to ensure prompt implementation of Comprehensive Rural Reform in 11,000 localities in 170 priority municipalities.

<sup>37</sup> El Espectador, interview with Leyner Palacios: <https://www.elespectador.com/noticias/politica/esperamos-que-la-jep-abra-la-puerta-verdades-leyner-palacios-lider-de-las-victimas-de-bojaya-articulo-717116> (Spanish only).

<sup>38</sup> The Early Warning System, in Risk Report 031 of 2009, and its Follow-Up Notes 005 of 2011, 018 of 2012, 001 of 2015, 001 of 2016 and 004 of 2017, as well as the Imminent Risks Report 009 of 2017 (for Riosucio) warned of the presence of illegal armed actors (the FARC, ELN and AGC). The Early Warning System issued Risk Reports 020 in 2010 (for Unguía); 010 in 2011; 012 in 2015 (for Acandí) and 005 in 2016 and Follow-up Note 15 in 2012, which highlighted the main risks and impacts suffered by Afro-descendant, Indigenous and campesino communities as a consequence of the presence of illegal armed groups. Risk report 020 of 2016 warned about this scenario, however, it also highlighted significant dangers in Imminent Risks Report 002 (for Nuquí) and 015 (to Bahía Solano) in 2011 and Imminent Risks Report 014 in 2013. As in the case of Bajo Atrato, this situation affects different groups granted special constitutional protection. The Early Warning System issued Follow-up Notes for the municipalities of Alto, Medio and Bajo Baudó: 015 in 2010, 026 in 2011, 011 in 2012, 008 in 2014 and 013 in 2015. 013 and the Imminent Risks Report 011 in 2009 as well as Risk Report 008 in 2017 and Imminent Risk Reports 010 in 2010 and 001 in 2013 for the San Juan coastline and Imminent Risk Report 017 in 2016 and 011 in 2017.

<sup>39</sup> Amnesty International held a meeting with the representative of the Office in Colombia of the UNHCR in March 2017.

**“ Officials are not trained on how to support ethnic communities so that they can make real decisions. There is an almost complete lack of public policies and a systematic violation of the rights of this section of the population. ”**

**Luis Enrique Abadía, Ombudsperson, Quibdó.<sup>40</sup>**

That is why Amnesty International reiterates the need to strengthen entities such as UARIV (Chocó region) and ensure that they have support, at the departmental and national levels, to take relevant measures to ensure assistance, prevention, protection, restoration of rights, access to justice, reparation and guarantees of non-repetition, in accordance with the provisions of Law 1448 of 2011. On repeated occasions, the Constitutional Court has called for the competent bodies to take comprehensive measures to assist the displaced population, in accordance with the principles of complementarity, subsidiarity and equality of treatment.

**“ We feel there is a lack of commitment from officials regarding the issue of return (...) We provide technical assistance and support, but without the input of the mayors' offices and municipal administrations it is very difficult to formulate plans for return (...) We have had difficulties with the budgets that are handled by the municipal authorities. The state government must support this by providing resources. ”**

**UARIV official, August 2017.**

Amnesty International is concerned that the human rights of Indigenous and Afro-descendant communities who have suffered as a result of armed violence should depend on the political will of those in power. The state as a whole must promote permanent measures at all levels to overcome the serious human rights crisis in Chocó.

Although these abuses have been reported for decades, court rulings that identify those responsible for crimes under international law committed in the context of the armed conflict are rare. The Special Jurisdiction for Peace is responsible for investigating and punishing the perpetrators of crimes such as forced displacement, killings, sexual violence and the forced recruitment of children in the department during the past 50 years. Victims believe that impunity in the courts has been an underlying factor in perpetuating the armed conflict and they are calling on the state to fulfil its obligation to guarantee access to justice, which contributes to the non-repetition of human rights violations. Amnesty International reiterates its belief that building peace in Colombia depends in large part on the ability of the state to ensure that those responsible for serious crimes are held to account in the courts and in particular that they are seen by the victims to be brought to justice.

Amnesty International requested official information on the progress in humanitarian efforts to remove anti-personnel mines, implement preventive measures and provide comprehensive assistance for communities affected by these explosive devices. Apart from some specific progress in other departments, the implementation of prevention and protection plans remains weak given the magnitude of the humanitarian crisis in Chocó. It is regrettable that at this stage, the national government should state that "it is not feasible to proceed with humanitarian de-mining processes owing to the fact that secure conditions have not been established in the Department of Chocó, and the municipality of Buenaventura".<sup>41</sup>

<sup>40</sup> El Espectador, "En busca de un hogar para etnias desplazadas en Quibdó" (Displaced ethnic communities in search of a home in Quibdó, Spanish only) 7 November 2016.

<sup>41</sup> Government of Colombia, Directorate for Comprehensive Action against Anti-personnel Mines, Subject: Response to Amnesty International's Urgent Action "Wounaan people at risk", May 2017, ("al no tener condiciones de seguridad en el departamento del Chocó, como en el municipio de Buenaventura, no es factible adelantar procesos de desminado humanitario").

The response<sup>42</sup> to a request sent in September 2017 to the Post-Conflict Directorate of the Presidential Advisor for Human Rights regarding the implementation of Point Five of the Peace Agreement, with particular reference to the issue of justice, truth, reparation and guarantees of non-repetition, confirmed that the implementation process has not progressed at a sufficient pace to reach the whole country. While developing the legislation is important in order to establish the mechanisms and bodies at the national level created through the Peace Agreement, communities living in the midst of armed conflict require comprehensive and urgent responses to guarantee their fundamental rights.

With regard to measures for the collective protection of communities at risk, the needs in reality seem to have overtaken the measures provided by the state to deal with the resurgence of the conflict. Currently, the protection mechanism in charge of the National Protection Unit faces several challenges as a result of the rise in the number of human rights defenders killed in 2017; that is, after the signing of the Peace Agreement.

“ The reality [of the situation] is surpassing our resources as a state. ”

Senior official of the National Protection Unit, August 2017.

In a report published in May 2017,<sup>43</sup> Amnesty International reiterated the need to strengthen collective protection mechanisms and to guarantee the safety of human rights defenders, especially those working in rural areas and defending the land, territory and the environment, based on consultation with the communities at risk.

Impunity for attacks on human rights defenders remains a major concern for Amnesty International.<sup>44</sup> The Peace Agreement provided for the creation of an internal group responsible for identifying cases of killings of defenders and documenting the status of investigations that fell within the remit of the Attorney General's Office. To date, the number of court judgments has been small, given the scale of reported killings, attacks and threats against human rights defenders.

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<sup>42</sup> Post-conflict Directorate, Presidential Advisor for Human Rights, 19 September 2017.

<sup>43</sup> Amnesty International, América: Situación De Los Mecanismos De Protección Para Los Defensores Y Defensoras De Los Derechos Humanos (Américas: Protection mechanisms for human rights defenders, Spanish only) (Index: AMR 01/6211/2017).

<sup>44</sup> Amnesty International, América: Situación De Los Mecanismos De Protección Para Los Defensores Y Defensoras De Los Derechos Humanos (Américas: Protection mechanisms for human rights defenders, Spanish only) (Index: AMR 01/6211/2017).





THE YEARS OF SOLITUDE CONTINUE

COLOMBIA: THE PEACE AGREEMENT AND GUARANTEES OF NON-REPETITION IN CHOCÓ

AMNESTY INTERNATIONAL



# 2. CASE STUDIES: GUARANTEES OF NON-REPETITION IN THE WORDS OF THE VICTIMS OF THE ARMED CONFLICT IN CHOCÓ

This chapter details two important cases that have marked the history of the Department of Chocó. The first section brings to the fore the voices of the Indigenous victims of forced displacement. The second is an account of the massacre that took place in Bojayá on 2 May 2002 which highlights the extent of the suffering inflicted on civilians living in the midst of armed confrontations.

## 2.1 FORCED DISPLACEMENT OF INDIGENOUS PEOPLES AND AFRO-DESCENDANT COMMUNITIES: THE CURRENT HUMAN RIGHTS SITUATION IN TWO URBAN SETTLEMENTS IN QUIBDÓ

Forced displacement is one of the most serious violations of human rights committed in the context of the armed conflict. According to official figures, published by the UARIV, the total number of registered victims of the conflict is 8,532,636, of whom 7,265,072 are victims of forced displacement.

In 2004, the Constitutional Court issued an “Unconstitutional State of Affairs” (“Estado de Cosas Inconstitucional”, ECI), 45 citing the massive and systematic violations of the fundamental rights of displaced people in the country and the weak institutional response in terms of assistance and comprehensive reparation to the victims of forced displacement. However, 13 years later, this situation does not appear to have changed. On the contrary, there has been little progress as regards institutional responses despite the dramatic situation in which people and communities find themselves when they leave their lands in order to flee armed conflict.

The Constitutional Court has repeatedly recognized the special consequences of forced displacement for Indigenous Peoples<sup>45</sup> and the factors that intensify their victimization. Forced displacement has an impact not only on their physical integrity and freedom of movement, but also puts at risk their customs and cultural survival.

Afro-descendant people and communities who are victims of forced displacement face greater marginalization and vulnerability. Their ancestral territories have become the scenes of violent disputes which has had an enormous impact on their ethnic-territorial processes, their lives and physical integrity and their economic, social and cultural rights.

<sup>45</sup> In 2004, due to the massive and systematic violation of a multiple rights of displaced people in Colombia, including many fundamental rights, and the inadequate response of all the entities responsible for supporting and protecting this group of people, the Constitutional Court declared an “Unconstitutional State of Affairs” regarding forced displacement, see: <http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm>

<sup>46</sup> Constitutional Court, Decree 004 and 005 of 2009.

Amnesty International is concerned that forced displacement was continuing in 2016 and 2017, especially in areas inhabited by Indigenous Peoples and Afro-descendant communities. History appears to be repeating itself in communities historically scarred by the armed conflict, despite the signing of the Peace Agreement with the FARC.

According to the grassroots Indigenous and Afro-descendant organizations, the difference between forced displacement today and what used to happen 10 years ago, is that communities now rarely decide to move to urban areas and choose instead to move to areas near their Indigenous reservations or community councils. This increases the risk that they will be killed or injured in crossfire. According to Indigenous organizations in Quibdó, these decisions are a response, in the majority of cases, to victims' lack of confidence in institutional responses, which makes them wary of moving to the city. This helps explain why, the gravity of the situation of forced displacement along the coast in San Juan, Medio San Juan, Alto Baudó and Riosucio is not reflected in the official figures.

The Ombudsperson's Office maintains that the situation described in the Constitutional Court's ECI persists even after the signing of the Peace Agreement with the FARC and that this is evidenced by the serious humanitarian crisis experienced by people living in Colombia's Pacific region. This is because “the policy of assistance for the displaced people as regards prevention and protection; humanitarian aid, socio-economic stabilization and processes for return in this region have been marked by a series of challenges and complexities that have restricted action.”<sup>47</sup>

“

**The war is still going on in the countryside, in the Indigenous reservations. The Army is also patrolling through the reservations.**

”

**Forcibly displaced Indigenous leader, Quibdó, June 2017.**

In the suburbs of Quibdó, 17 settlements have sprung up of Indigenous people displaced by the armed conflict, with the aim of keeping people together and rebuilding the social and cultural lives of their communities in the place to which they have fled. Some people and families have lived there for several years, others were displaced from different areas in the department such as Riosucio, Bojayá, Alto Baudó, Acandí, Beté, Medio San Juan, Lloró, Nuquí, Bajo Baudó, among others, as a result of the realignment of armed groups in their territories. Seventeen Embera Dovida, Embera Katío, Embera Eyávida and Wounaan settlements have been set up. According to censuses of the communities carried out in 2016, around 297 families, about 1,323 people, live in these settlements.

On 15 June 2017, Amnesty International visited two displaced Indigenous Villanueva and Wounaan Phubuur communities living in the capital of Chocó. The visit provided clear evidence of the poor living conditions of the families. At least three families were living in small houses without access to sufficient drinking water or culturally appropriate food. They also lacked culturally appropriate income-generating possibilities and access to adequate health services. In addition, the community does not have the title to the land where the settlements are located, despite the fact that some people have lived there for more than 10 years. This illustrates that barriers to obtaining land titles persist, as documented Amnesty International in its 2015 report.<sup>48</sup>

Despite the provisions of Article 28 of Law 1448 (2011) and several pieces of jurisprudence on the subject, the conditions to ensure that returns are voluntary and that the safety and dignity of returnees are safeguarded, in order to guarantee the human rights of these communities, are still lacking. Thus, after several years of forced displacement, the communities have stated that they wish to remain in an urban area and do not want to return to a territory where conditions of poverty, armed confrontation and isolation persist.

<sup>47</sup> Ombudsperson's Office: Problemática Humanitaria en la Región Pacífica Colombiana, 2016, p. 147 (Humanitarian Issues in Colombia's Pacific Region, in Spanish only). [la política de atención a la población desplazada en los elementos de prevención y protección; ayuda humanitaria, estabilización socioeconómica y procesos de retorno en esta región ha estado marcada por una serie de retos y complejidades que han limitado su atención”].

<sup>48</sup> Amnesty International, Colombia: Restoring the land, securing the peace: Indigenous and Afro-descendant territorial rights, November 2015 (Index: AMR 23/2615/2015).

For the elderly Indigenous women interviewed by Amnesty International this represents the end of their culture, their traditions and their survival as a people, because according to them, new generations are raised in an environment unfamiliar to that of their ancestors. For them, this is the worst harm inflicted by forced displacement and the violence inflicted on their ancestral territories. In their accounts, older women living in these settlements stress that the armed conflict not only forced them to leave their lands, but also to stop hunting, fishing, living surrounded by animals and nature, essential elements of their culture.

“

I come as a refugee from our territory, looking for a peaceful life and since I am the oldest, I was afraid when they started to bomb. This affects the children, adults, everyone.

”

Forcibly displaced Indigenous woman, Quibdó, June 2017.

Amnesty International has repeatedly stated that for these communities, abandoning their lands means a gradual loss of identity and livelihood and therefore displacement causes a particularly acute harm at the collective level.<sup>49</sup>

In addition, another clear demonstration of the failure of state institutions at the national, departmental and municipal levels to ensure that displaced Indigenous people are able to exercise their rights, is that more than a decade after they were forced to leave their territories, these Indigenous communities do not yet have decent living conditions nor full reparation, including guarantees of non-repetition, for the abuses they were subjected to. In some cases, small groups have decided to initiate a process of returning to their lands without proper support, putting their lives and physical integrity at risk. The conditions of poverty and exclusion of their lives in Quibdó leads these groups to prefer to try to return to see whether their territories are still caught in the crossfire.

“ **We try to return on a voluntary basis as an experiment. They say that there is no repetition, but history is repeating itself once again. We have not been able to return fully to our reservations.** ”

Forcibly displaced Indigenous woman, June 2017.

The context of the armed conflict has not been transformed for these communities and for them the implementation of the Peace Agreement and the guarantee of their human rights it promised have yet to materialize. On the contrary, in their view the state has not assumed its historic obligations regarding guarantees of non-repetition for the violence inflicted on Indigenous Peoples.

“ **I think there will be even greater violence. If it were true, there would be no armed groups in the territory. The Government made a commitment to the FARC. What about the ELN? What about the paramilitaries? In addition, the Army itself, when it enters the territory, inflicts harm on Indigenous people.** ”

Forcibly displaced elderly Indigenous woman, June 2017.

It is vital, given this situation, to reiterate strongly the demand by the victims in the territory that the Colombian state provide the conditions necessary not only for the implementation of the Peace Agreement specifically in the region, but also to overcome the “Unconstitutional State of Affairs” in relation to forced displacement. The history of this territory, which has been ravaged by the armed conflict, and especially its Indigenous Peoples, must be transformed into guarantees of rights and structural conditions that provide for full reparation for the victims.

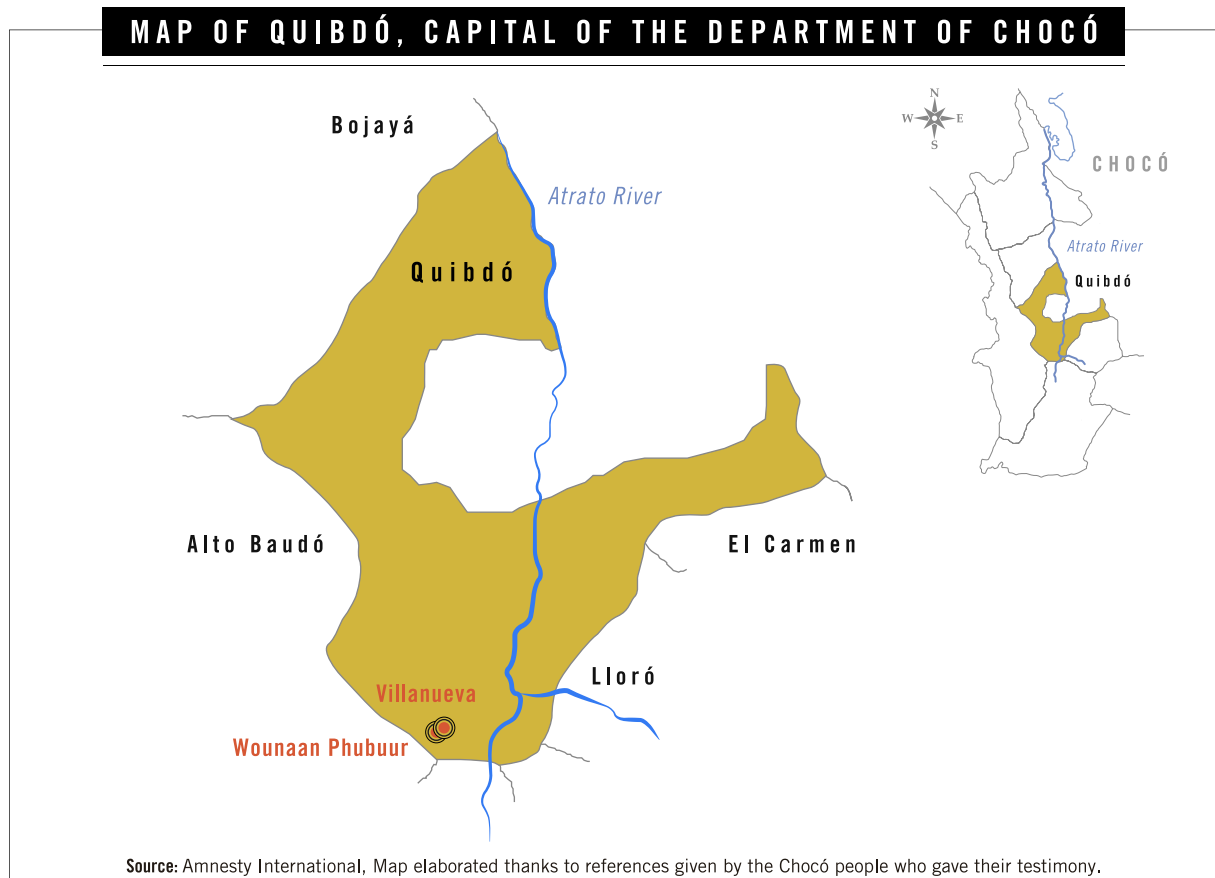
Amnesty International believes that the repetition and resurgence of violence that violates the rights of Indigenous Peoples and Afro-descendant communities illustrates the systematic failure by the state to ensure the security of groups at risk, despite repeated reports from international organizations, grassroots organizations and leaders. It is worrying that communities at risk continue to be the victims of various armed groups while the state fails to fulfil its human rights obligations and take determined action to protect them and the rights it has undertaken to ensure.

<sup>49</sup> Amnesty International, Colombia: Restoring the land, securing the peace: Indigenous and Afro-descendant territorial rights, November 2015 (Index: AMR 23/2615/2015).

“ One group [the FARC] has made peace, but behind these groups, there are other groups which are still operating in those areas. Although the Government has made peace with some groups, the problem remains the same. Violence, extortion and [forced] recruitment by ELN guerrillas still goes on. Fear of this means that displacement continues. ”

Indigenous Wounaan woman, Quibdó, June 2017.

This is a striking example of the persistence of the continuum of violence inflicted in the Department of Chocó on Indigenous Peoples and Afro-descendant communities who have been displaced and are living in cities such as Quibdó or Bogotá. Amnesty International is adding its voice to that of grassroots organizations, which consider that Indigenous Peoples are being exterminated as a result of the armed conflict, forced displacement and neglect by the authorities responsible for ensuring their protection and guaranteeing their fundamental rights.<sup>50</sup> The state must, through its institutions at various levels, adopt measures to ensure that victims of the conflict have access on equal terms to a pathway to care, assistance and reparation, including the components of the right to justice, truth, full reparation and, of course, guarantees of non-repetition.



<sup>50</sup> Departmental Victims' Association of Indigenous Peoples (Asociación de Víctimas de los Pueblos Indígenas del Departamento, ASOVPICH) update to the document describing the violation of rights of Indigenous settlements displaced to the urban setting of Quibdó, drawn up on 30 August 2014 and presented to the national Ombudsperson, Jorge Armando Otálora.



↑ Bojayá church and ruins of the old school, Bojayá, Chocó. | © Amnesty International 2017

## 2.2 BOJAYÁ: GUARANTEES OF NON-REPETITION 15 YEARS AFTER THE 2002 MASSACRE?

2017 saw the 15th anniversary of the Bojayá massacre, undoubtedly a signal event in the country's violent history and the result of the flagrant violation of the norms of international humanitarian law, such as the principle that parties to armed conflict must distinguish between the civilian population and combatants.

The lack of protection afforded Afro-descendant and Indigenous communities in the municipality, despite many warnings issued by the Ombudsperson<sup>51</sup> and other human rights organizations,<sup>52</sup> left the civilian population at the mercy of bullets and cylinder bombs. The exclusion, neglect and invisibility of this ethnic territory by the Colombian state has reinforced the risk faced by these communities in the absence of a comprehensive institutional response that goes beyond military intervention.

According to the residents of Bojayá, the massacre was the result of clashes between the AUC paramilitaries and FARC guerrillas in a dispute over territorial control. This conflict combined with the inadequate response of state security forces in order to prevent these armed groups from entering and establishing themselves in midst of the civilian population were the main causes of the massacre.

<sup>51</sup> Ombudsperson's Office, Early Warning System (Sistema de Alertas Tempranas, SAT), Early Warning 040, 24 April 2002: "La incursión de las autodefensas en estos municipios al parecer consiste en una retaliación o reacción originada en las acciones de las FARC en los últimos meses encaminadas a atacar la retaguardia de las Autodefensas en el Atrato Medio y Alto." (Spanish only) ["The incursion of the self-defence groups in these municipalities apparently consists of retaliation or reaction to the actions of the FARC in the last few months aimed at attacking the rearguard of the Self-defence forces in Atrato Medio and Alto."]

<sup>52</sup> The Office in Colombia of the United Nations High Commissioner for Human Rights issued several warnings about the serious risks in the municipality of Bojayá in the context of fighting between the FARC and the AUC for the control of the territory.



The residents of Bojayá had reported the clashes between armed groups in areas close to the municipality and had denounced violations of human rights in the area since the 1990s. In 1999, in the face of these continuing confrontations and poor state responses, the inhabitants and municipal authorities drafted the Declaration for Life and Peace (Declaración por la Vida y por la Paz) demanding that the parties to the conflict respect the life and physical integrity of the civilian population. In this text, the community of the municipality and the communities of Atrato in Chocó and Antioquia denounced the “worsening of the armed conflict in Medio Atrato; violations of Human and Peoples' Rights and Breaches of International Humanitarian Law by selective killings, disappearances, forced displacements, kidnappings, intimidation, threats and stigmatization”.<sup>53</sup>

“ **This could have been avoided. They could have activated preventive and precautionary mechanisms to ensure that the tragedy that occurred on 2 May could not happen. But instead, it happened.** ”

**Young Afro-descendant victim of the Bojayá massacre, Bojayá, September 2017.**

The residents of Bojayá recalled that days before the massacre, they again reported heavy fighting between paramilitaries and the FARC in the Alto Atrato. This shows that a massacre of this kind was foreseeable and that the authorities did not respond adequately to the repeated complaints from the inhabitants of the municipality or the calls for action from human rights organizations.

On 2 May 2002 the confrontation between these armed actors intensified within the municipality of Bojayá. More than 500 people took refuge in the church and in the houses of the priest and the Missionary Sisters seeking protection from the crossfire. The paramilitaries were firing from inside the village while the FARC were some meters away, throwing gas cylinders. One of these cylinders fell on the church, leading to the deaths of 119 people, mostly children, and leaving countless more injured. The harm, both physical and mental, caused is seared into the memory of the inhabitants of the municipality. They continue to demand from the state, the FARC guerrillas and the paramilitaries, comprehensive reparation of their rights and, above all, the guarantee that they will not repeat such actions in their territory or anywhere else in the country.

Amnesty International denounced at the time<sup>54</sup> the responsibility of the Colombian authorities who failed to intervene to defend the civilian population, despite having been alerted beforehand through the Early Warning System<sup>55</sup> of the grave dangers facing the civilian inhabitants of the Bojayá area. The lack of action by the civil and military authorities was considered evidence of the lack of will on the part of the Colombian state to comply with its obligation to protect a civilian population that had historically suffered the ravages of violence.

In the process of reconstructing the memory of what happened and acknowledging the responsibility of the state, the National Centre for Historical Memory published an official report in which it maintained that “time and time again we see history repeating itself for the civilian population that found itself in the middle of the fighting. That a tragedy like Bojayá has not been repeated does not mean that the civilian population living in Atrato has not been exposed to similar dangers”.<sup>56</sup>

On 20 August 2017, Amnesty International visited Bellavista Nueva, where the inhabitants were relocated after the massacre, in order to document their human rights situation. One of the main findings of this visit was to verify that, 15 years after the events described, the population continues to be engulfed in uncertainty, threats and anxiety as a result of incursions by armed actors into its territory.

<sup>53</sup> Bojayá: National Centre for Historical Memory (CNMH), *Bojayá: la guerra sin límites (Bojayá: War without limits, Spanish only)* p.13. [“agudización del conflicto armado en el Medio Atrato; violación de Derechos Humanos y de los Pueblos e Infracción al Derecho Internacional Humanitario (a través de) asesinatos selectivos, desapariciones, desplazamientos forzados, secuestros, intimidaciones, amenazas, señalamientos”.]

<sup>54</sup> Amnesty International, Colombia: Amnesty International fears the risk of civil war if the population are brought further into the armed conflict (Index: AMR 23/054/2002).

<sup>55</sup> Mechanism of the Ombudsperson's Office through which alerts are issued on imminent risks of human rights violations.

<sup>56</sup> National Centre for Historical Memory (CNMH), *Bojayá: la guerra sin límites*, published 25 February 2014, pp. 21-22(Bojayá: War without limits, Spanish only) [“una y otra vez se repitió la historia de la población civil que quedaba en medio de los combates, que no se haya repetido una tragedia como la de Bojayá no significa que la población civil que habita el Atrato no haya estado expuesta a situaciones de riesgo similar(es)”]

““ My main concern is that I don't see the guarantees of non-repetition in the region. The Bojayá massacre originated in a wave of violence sweeping up from Bajo Atrato, that was in 2002. Today, the violence in the Bajo Atrato is unchanged, as if we were still in 2002. It pains me to see Indigenous communities in Riosucio living the same experiences. It really does raise the question of guarantees of non-repetition. San Juan is another battlefield. And what really makes me sad is that they are the very communities that made the strongest effort for peace. ””

Afro-descendant leader and victim of the Bojayá massacre, *September 2017*.

While they acknowledge that the Peace Agreement represents hope for the communities that have historically suffered as a result of the Colombian armed conflict, the men and women of Bojayá emphasize the need to implement what has been agreed on the ground in the territory, to guarantee the security of their leaders and to create collective protection mechanisms.

““ We recognize that the peace process has brought many benefits. At least people can feel a little less anxious. You can now move a little more freely within your territory. But it's also important to recognize that there are still problems. It's not all rosy here. ””

Woman Afro-descendant leader and victim of the Bojayá massacre, *September 2017*.

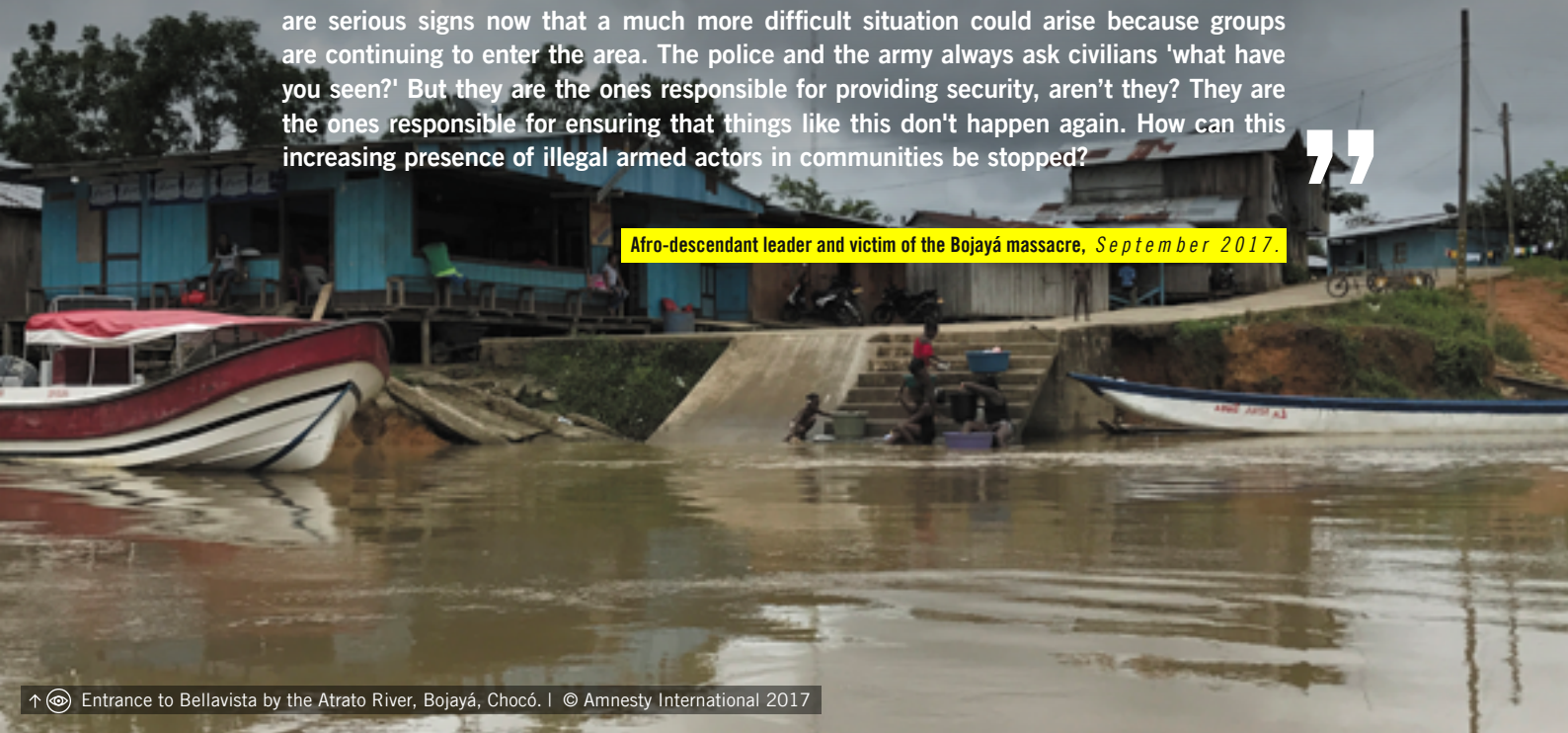
““ There are incursions and warring parties (...) communities still experience a great deal of intimidation. And very near to here, there are ELN guerrillas just half an hour away. Campesinos don't report them, they have them surrounded and they are afraid to go to their plots of land because of the mines. They are confined. These ELN tactics must be denounced: laying mines in the fields and [forced] recruitment. ””

Diocese of Bojayá, *September 2017*.

Communities in Bojayá and neighbouring areas told Amnesty International that, even though the Peace Agreement meant the FARC left their territories, the state has not established a presence in the department to guarantee the fundamental rights of the population. On the contrary, they report that these power gaps have allowed other actors to enter the region and that this has aggravated the human rights situation. Above all, they demand that the government comply with what has been agreed and protect the rights of victims to the guarantees of non-repetition.

“ There were many complaints before 2 May 2002, open letters, many early warnings and yet things happened. Now what we're asking for is that this not be repeated. Non-repetition doesn't necessarily mean non-repetition by the FARC. Another incident like this, and maybe even much worse, can happen with other actors. This cannot be allowed to happen. There are serious signs now that a much more difficult situation could arise because groups are continuing to enter the area. The police and the army always ask civilians 'what have you seen?' But they are the ones responsible for providing security, aren't they? They are the ones responsible for ensuring that things like this don't happen again. How can this increasing presence of illegal armed actors in communities be stopped? ”

Afro-descendant leader and victim of the Bojayá massacre, *September 2017.*



↑ Entrance to Bellavista by the Atrato River, Bojayá, Chocó. | © Amnesty International 2017

The lack of confidence in the actions of the state security forces is evident. The communities living in the Atrato, Baudó and San Juan River Basins have all consistently reported that paramilitary groups are acting in collusion with state forces and this has allowed them realign while the Peace Agreement is being implemented on the ground.

“ Nearly 800 paramilitaries are operating in Bajo Atrato. Is the government going to tell me that it does not know where 800 paramilitaries are? It's not a secret. Also, they've been in certain places for more than four months ago, everyone knows they are there. The organizations have been reporting this, and [the authorities] just turn a blind eyes. ”

Woman Afro-descendant leader and victim of the Bojayá massacre, *September 2017.*

“ In San Juan, in Alto Baudó, the Carrá massacre, these were things that could have been prevented by the armed forces. The killings keep on happening. It seems to me that their behaviour is not consistent with their duty to protect. The reality is very telling...there are phenomena that they have not been able to control. ”

Afro-descendant leader and victim of the Bojayá massacre, *September 2017.*

A common element in the statements gathered by Amnesty International is the demand by communities in this part of the country that the government and the FARC comply with the Peace Agreement, as part of the comprehensive reparation process. The inhabitants of this municipality stressed that, despite being a department where 60% of people are victims of the armed conflict, 96% voted in favour of the implementation of the Peace Agreement in the referendum,<sup>57</sup> in the hope that this would change history and the experience of generations of victims in the area.

“ The outlook is not hopeful. Sometimes when we talk about these issues, people think that we disagree with the peace process, but that's not the case. On the contrary, we are worried that this could turn into another war, because anyone who lived through the conflict doesn't want to see this happen again. All communities in Chocó opted for peace in the hope their rights would be ensured. ”

Afro-descendant leader and victim of the Bojayá massacre, *September 2017.*

“ When we travel along our river, when we walk through our town, when we gather in this temple and remember 2 May 2002, we sing a song of hope so that such things will not happen again and we will one day be able to dance with joy at living in a world without violence; in memory of our brothers and sisters martyred in this temple. ”

Plaque to commemorate the victims of the Bojayá massacre, Bojayá church.



↑ Bojayá church and plaque to commemorate the victims, Chocó. | © Amnesty International 2017

<sup>57</sup> Figures published by the National Registry of Civil Status on the Approval of the Peace Agreement, Colombia, 2 October 2016.

The current situation of the inhabitants of Bellavista and the surrounding areas is one of unremitting danger. There is a constant underlying risk that they will become victims of armed clashes. Indeed, this is not solely an issue of potential dangers in the future; the number of killings, displacements, confinements and other types of violence that have been recorded since the signing of the Peace Agreement are evidence of ongoing revictimization. The call on both the state, as well as the armed groups engaged in continuing conflict, must be emphatic and demand respect for the human rights of the inhabitants of Chocó.

During their visit to the municipality, Amnesty International was able to document continuing activity by armed groups in close proximity to the civilian population. The Ombudsperson's Office has warned of a paramilitary presence in the municipality of Vigía del Fuerte, which is less than 15 minutes by boat from the municipality of Bellavista and five minutes along the Atrato River from a military checkpoint.

Amnesty International is concerned that despite complaints from Indigenous and Afro-descendant organizations about violations of their human rights, the state's response is not yet comprehensive, but rather is confined to a few isolated military actions. Fifteen years after the Bojayá massacre, the reality of the continued violence is much greater than government reports or figures suggest. The communities are demanding not only comprehensive reparation that recognizes the harm caused in their territory by the violence, but also that the conflict not claim any future victims in their Indigenous reservations or Afro-descendant community councils.

The acknowledgment of the state's responsibility to address these serious human rights violations, as well as the implementation of comprehensive reparation measures which include as a fundamental core guarantees of non-repetition, are a key demand voiced by the people of Chocó and directed at the Colombian state.

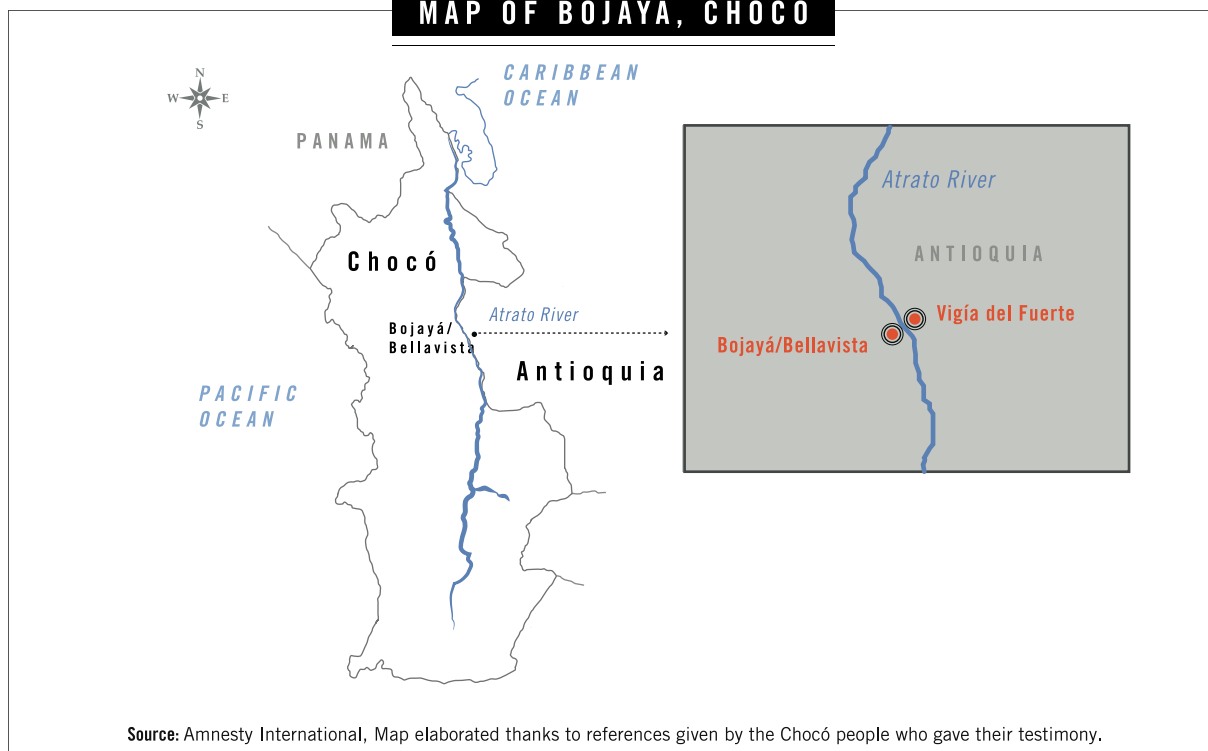
Amnesty International reiterates that it is the duty of the state to take action to prevent these violations from recurring. In addition, decisive progress must be made in ensuring the effective enjoyment of all the human rights of the inhabitants of this department, including the right to truth, justice and comprehensive reparation. Fifteen years after the worst massacre recorded in the context of the armed conflict in the country, the communities demand that their constant victimization, exclusion and invisibility become a thing of the past so that they can move forward and enter a new stage in their history and rebuild their social and cultural lives and traditions.

At this moment, the communities of Bojayá are working with UARIV to devise collective reparation plans. In Bojayá, three items of collective reparation have already been identified, one is the Bellavista municipality, another is made up of 32 Indigenous communities and the last comprises 18 community councils, all victims of the 2002 massacre. They are currently working to define the harm caused in order to determine comprehensive reparation measures. In addition, unlike other emblematic cases, in September 2016, the FARC acknowledged responsibility and issued an apology for what happened in Bojayá.

The communities are still awaiting a similar acknowledgement from the state and the paramilitary groups that contributed to the massacre either by their acts or omissions. They are still waiting for news about the convictions of those responsible, underscoring that impunity for these grave human rights violations must not prevail. The latest progress reported is ruling No. 56 of the Administrative Court of Chocó, issued on 2 May 2015, which ordered the Armed Forces to issue an apology for failing to take the measures that would have protected the community. In June 2017, this order was ratified by the Council of State,<sup>58</sup> which reaffirmed the obligation to recognize the responsibility of the state, through its security forces, as an act of reparation to the victims. This acknowledgment of responsibility has yet to materialize. The communities hope that the Special Jurisdiction for Peace, which is responsible for ensuring justice in the case, will provide clear answers about the facts of the case and who was directly responsible and will set a precedent in order to ensure that the serious crimes committed against the civilian population of Chocó are not repeated in the future.

<sup>58</sup>State Council of Colombia, Administrative Chamber, Fifth Section, Speaker: Carlos Enrique Moreno Rubio Bogotá, D.C., 23 June 2016, File No. 11001-03-15-000-2015-03436-01.

## MAP OF BOJAYÁ, CHOCÓ




In addition, the victims of Bojayá are demanding physical and mental health care to help the healing process for the harm suffered as a result of the massacre. There is a list of 159 survivors who sustained injuries and who are currently living with physical and mental disabilities and in need of quality medical and psychosocial care.

“ They have still not received health care, which is a serious violation of their human rights. After 15 years we have not received health care. Ten people who were in the church and were injured have died [due to lack of health care since the massacre]. ”

Young Afro-descendant victim of the Bojayá massacre, September 2017.

In particular, Amnesty International was able to verify the situation regarding guarantees of the right to health in the municipal capital of Bellavista, Medio Atrato. The health centre serves 32 surrounding Indigenous communities whose inhabitants have to walk for hours or even days to reach the centre in order to seek medical attention. On 20 August 2017, Amnesty International was present at a tragic event: the death of a girl of about ten as she was being taken from Bellavista to Quibdó for medical care. One of the many cases that communities report every day. Interviewees told Amnesty International that the state -both at the national and departmental level- still does not address this as a priority issue, despite their obligation to adopt measures on the right to health of the victims of the armed conflict, in accordance with the provisions of Law 1448 of 2011, repeated jurisprudence and in line with its international obligations.



↑  Atrato River Bank, inhabitants of Bojayá preparing to travel across the river, Quibdó, Chocó. | © Amnesty International 2017

“ What peace is the Government talking about? It's not clear to us. We want a response from the national government, from the regional and municipal authorities. But we are starting to realize that it is the Government itself that is wiping us out. Why? Because if there is a police checkpoint there, if there is an army checkpoint, how can eight or nine canoes carrying paramilitaries get through? How? You live and you learn and I have lived. But how come the paramilitaries arrive and kill and at a location that is an hour, half an hour from where the Army is stationed? We have to keep speaking out, we must continue defending...we are all united, and they cannot shut us all up. (...) There is no armed group near us, which is a good thing. ”

Embera Indigenous leader, Quibdó, July 2017.





# CONCLUSIONS AND RECOMMENDATIONS

This report shows that Indigenous Peoples and Afro-descendant communities in the Department of Chocó require urgent protection measures, both individually and collectively. There is an urgent need for the national, departmental and municipal authorities to adopt comprehensive measures to ensure the full enjoyment of human rights, notably the rights to life, physical integrity and security, in the context of the implementation of the Peace Agreement.

In particular, the implementation on the ground of the Peace Agreement must proceed as a matter of urgency, especially with regard to Point Five, since the rights of the victims of the conflict are an essential core element in building a stable and lasting peace with guarantees of non-repetition. At the same time, the Ethnic Chapter of the Peace Agreement must be implemented in order to recognize the particular human rights violations experienced by Indigenous Peoples and Afro-descendant communities and in recognition of their collective rights.

The end of the armed conflict in Colombia will depend on the implementation of what was agreed in Havana with the FARC, as well as the progress towards a peace agreement with the ELN. The fundamental legal basis of these must be international human rights standards. The state must also ensure the dismantling of those paramilitary structures that continue to operate despite their alleged demobilization in 2005.

The Colombian state must move decisively to reach territories historically ravaged by the armed conflict, ensuring a state presence in all parts of Chocó.

Amnesty International therefore makes the following recommendations:

## **To the Colombian state (at the national, departmental and municipal levels)**

- Dismantle all paramilitary groups promptly and investigate their links with state security forces.
- Comply fully with Colombia's international obligation to guarantee comprehensive reparation, which must include guarantees of non-repetition, to all victims of the armed conflict, in accordance with the provisions of Law 1448 of 2011, constitutional jurisprudence and human rights standards.
- Comply with the international obligation to prevent the displacement of Indigenous Peoples and Afro-descendant communities from their territories and guarantee their rights as victims of the armed conflict, with the objective of overcoming the “Unconstitutional State of Affairs” as set out in Constitutional Ruling T-025 of 2004.
- Guarantee that forcibly displaced Indigenous and Afro-descendant Peoples in Quibdó, Bogotá and other cities, have access to comprehensive care, assistance and reparation, as stipulated in Law 1448 of 2011, constitutional jurisprudence and human rights instruments.

- Develop and implement urgent measures to guarantee the collective protection of Indigenous reservations and Afro-descendant community councils in areas affected by armed conflict, with primary input from consultations with community leaders and representative organizations.
- Guarantee that everyone suspected of criminal responsibility for crimes under international law or serious human rights violations will be brought to justice and, if found responsible, will receive a punishment commensurate with the seriousness of the crime committed.
- Strengthen efforts to prevent and eradicate the socio-economic conditions that continue to put Indigenous Peoples and Afro-Colombian communities at heightened risk. This should include the adoption of measures to ensure the progressive realization of economic, social and cultural rights in the department.
- Prioritize ensuring access to quality physical and mental health care for victims of anti-personnel mines in the Department of Chocó.
- Incorporate effective strategies for mental and physical care and rehabilitation, in order to ensure the right to health and comprehensive reparation for the victims of the Bojayá massacre.

### **To the state security forces, ELN guerrillas and other armed groups involved in conflict**

- Comply fully with international human rights law and standards and international humanitarian law, fully respecting the principle that all parties must distinguish between the civilian population and combatants in order to avoid victimizing communities in high-risk areas.
- Fully comply with the rules of international humanitarian law and implement a total ban on the use of devices such as anti-personnel mines.





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