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Tom Lantos Human Rights Commission

Hearing
on
Peace and Victims' Rights in Colombia

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Statement for the Record

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**Are the Victims No Longer at the Center?
Implementation Problems Facing Colombia's Peace Accord.**

The demobilization and disarmament of the FARC guerrillas was successfully concluded in 2017, offering the tantalizing hope that Colombia could close the book on fifty years of war. That hope remains. However, Colombia's peace accord has been implemented in the last eight months at a sluggish pace with serious gaps in compliance. Three areas should be flagged: the Colombian Congress's slow progress on and substantial rewriting of transitional justice mechanisms included in the peace accords; the state's inability to sufficiently extend its presence into areas vacated by the demobilized guerrillas; and the failure to deliver reintegration programs for the demobilized guerrillas. The Colombian government with international support must make progress in overcoming these implementation challenges if the rights of the victims to truth, justice, reparations, and the guarantee of nonrepetition are to be fulfilled.

Disagreement over how the peace accords should be rolled out is often characterized as a debate in Colombia over how hard or soft to be towards the former FARC guerrillas, understandably despised by much of Colombian society for their brutal actions. But what gets left out of the conversation is that the lackluster implementation of the peace accords hurts most those who have been always been hurt in Colombia's decades of war: the civilian population in the conflict zones, who have suffered violence from all armed actors. They are mainly the poor rural population—often Afro-Colombian or indigenous, or small farmer (*campesino*) families. Most of them are women and children.

The beauty of the peace agreement is that it aims to put “the victims at the center” and offers a holistic vision of who the victims are: all who have experienced the brutality of the armed conflict, whether at the hands of the FARC or ELN guerrillas, the right-wing paramilitary forces,

or Colombian government security forces. Yet, the victims seem to be at the periphery of Colombia's attention once again.

Bringing the State into the Conflict Zones

The peace accords envision an expansion of state services to the historically neglected rural areas. Such an expansion also serves a basic security and governance purpose. Any comprehensive security strategy would entail the state asserting control over areas from which the FARC demobilized to ensure that other illegal armed groups do not fill the vacuum.

Yet, more than a year after the FARC demobilized, the Colombian state has been slow to fill that vacuum. Overall, political violence has been reduced, and some areas are experiencing a welcome calm. But in many areas where the conflict was waged, other illegal armed groups, including paramilitary successor groups and the ELN, are fighting for control over drug routes, mining, extortion rackets, and territory. The UN Office for the Coordination of Humanitarian Affairs (OHCA) notes an [increase](#) in violence in 2017 compared to the previous two years during the peace negotiations, particularly in the Pacific Coast and along the border with Venezuela.

LAWGEF conducted a verification mission to Tumaco, Nariño province, on June 19-23, 2018 with a group of international humanitarian agencies. Tumaco is a port town on the Pacific Coast and a known drug-trafficking corridor. In this area, members of the FARC demobilized, although a dissident faction remains in arms. In Tumaco and the surrounding countryside, local citizens report that violence has increased as a variety of armed groups compete for control of territory and the drug trade. New armed groups—which some residents say they do not recognize—are trying to establish control. These groups are setting curfews, carrying out extortion and other crimes, and controlling and threatening the population. This is occurring despite a now massive police and army presence throughout the city and local countryside. The substantial security presence has led to the [capture](#) of some dissident FARC members, but has failed so far to curb the expansion of new armed groups or protect the local population.

In Tumaco, Afro-Colombians and women are suffering much of the brunt of the renewed violence. Children and youth are at risk of recruitment to armed groups. LAWGEF heard from women in Tumaco: “our government has abandoned us,” “we are alone,” “where is everyone but the army?,” and “where is our government?” While the local government ombudsman (*personero*) offers help, there appears to be little trust in other government officials, members of the justice system, police, or military. For these local community activists, every day brings a new set of risks to navigate. The government's human rights defender protection program is prioritizing Tumaco, but even those who receive protection still feel vulnerable and worry that their communities and families remain unprotected.

Human Rights Defenders in Peril

In these still conflict-ridden areas, local social leaders defending the rights of their communities are in grave danger. According to the Colombian ombudsman's office (*Defensoría del Pueblo*),

311 human rights defenders and social leaders were [assassinated](#) between January 1, 2016 and June 30, 2018. The number is [set even higher](#) by the thinktank INDEPAZ, which registered 419 social leaders killed during the same period, with 123 social leaders killed in 2018 through July 5. Among those most at risk are local leaders working to encourage their communities to implement crop substitution programs and eradicate coca, as well as land restitution leaders.

One recent victim of this rising violence was [Ana María Cortés](#), a local campaign coordinator for Gustavo Petro's presidential campaign and an activist raising concerns about the controversial Hidroituango dam project. She was the third Hidroituango dam activist killed in as many months. Responding to this wave of assassinations, and the lack of a proactive governmental response, human rights activists held [candlelight vigils](#) throughout Colombia. UN High Commissioner for Human Rights representative in Colombia Alberto Brunori [underscored](#) the murders' impact:

“To attack people who defend rights is to attack democracy. The proliferation of these attacks is a symptom of the serious state of affairs in Colombia: it reveals intolerance, causes fear, limits or ends freedom of thought and expression, and what is worse, reveals how violence is imposed, in many places, as a means of social control. The impunity that surrounds these attacks makes the situation worse, given that, in the absence of official sanctions, societal rejection is reduced and violence is seen as justified.”

Transitional Justice: Diverting from the Accord

Approval of the implementing legislation that establishes the Transitional Justice System (JEP) has been stalled for months over disagreements about the treatment of demobilized guerrillas and members of the Colombian armed forces. After the presidential elections, President-elect Iván Duque and conservative congressional leaders pushed the JEP implementing law through the Senate with several disturbing substantive changes. It was subsequently signed into law by President Santos, although it still faces a Constitutional Court [challenge](#).

The law includes a preferential treatment for members of the Colombian military accused of or already sentenced for crimes against humanity—in essence, providing less protection to the rights of victims of state violence. It incorporates the demand of President-elect Duque, Senator Uribe, and other Centro Democrático Party members that the military have “special and differential” treatment—distinct from the treatment of the FARC—in a separate chamber of the transitional justice system. The law sets a delay of 18 months during which the Congress will write the rules for this chamber. According to Centro Democrático Senator Paloma Valencia, the chamber will “[emphasize](#) the presumption of innocence of the military,” and allow them to defend “their good name and honor.” Meanwhile, those military members already freed will remain free and those still in jail can request to be freed.

The military members who have applied to be judged by the JEP are largely those involved in the “false positive” extrajudicial execution scandal, in which soldiers rounded up some 5,000 men one by one (sometimes luring them with promises of day jobs), killed them, and dressed them as guerrillas in order to claim them as insurgents killed in combat. These murders took

place mostly between 2002 and 2009 under the pressure of a body count and in order to receive bonuses, days off, and promotions. To date, some 2300 primarily lower-level army members have applied to the JEP, hoping that a guilty plea there will result in lesser punishments—5 to 7 years of non-prison sanctions rather than a 20-year prison term handed out by the civilian justice system. It is this process that the Colombian Congress has now made even softer for the military.

Interestingly, the head of the Armed Forces, General Alberto Mejía, [expressed opposition](#) to this special treatment for the military, fearing that it will leave the members of the armed forces who have submitted themselves to the jurisdiction of JEP in judicial limbo—and that it will put Colombia on the radar of the International Criminal Court (ICC). Indeed, the ICC’s prosecutor has taken notice of Colombia, [observing](#) the lack of advancement in cases against 23 generals and 6 colonels implicated in the “false positives” cases. The UN Office of the High Commissioner for Human Rights in Colombia (OHCHR) [notes](#) that several high-ranking officers under investigation in relation to “false positive” cases have been promoted in the last two years.

Meanwhile, prosecutions in the civilian justice system against military members for extrajudicial executions have stalled as transitional justice mechanisms are being worked out—even though the civilian justice system is supposed to make progress on cases until the JEP takes action on the cases referred to it.

Removing “gender focus,” and other problems with the new JEP law. The Centro Democrático insisted on [removing](#) many references to gender and LGBTI persons in the law, undercutting the hard-won inclusive nature of the peace accords. The removal of some of these words will have real consequences for victims—for instance, the removal of two provisions guaranteeing the right of victims of sexual violence to private hearings and calling for the JEP to refer such victims to health services. LGBTI organizations [denounced](#) that the removal of the word “LGBTI” throughout once again makes invisible the LGBTI victims of the conflict.

Other problems with the JEP law are that (1) third parties who promoted, financed, and aided and abetted violence (for example, businesses and politicians who funded paramilitaries or civilian government officials complicit in paramilitary violence) are not covered by the JEP; and (2) the composition of the JEP was inexcusably damaged by the decision to exclude any human rights lawyer who had defended victims from becoming a magistrate.

Unit to Search for the Disappeared and the Truth Commission. In addition to the problems with the JEP, there has been little progress in setting up the Unit to Search for the Disappeared (*Unidad de Búsqueda de Personas Desaparecidas*). While an excellent head of the unit has been appointed, the unit lacks resources and personnel to begin its vital work.

On a positive note, the Truth Commission (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*) has been launched and has begun carrying out outreach to victims, and substantial efforts by nongovernmental organizations are already ongoing to help document victims’ testimonies for the commission.

Trouble Ahead for the Comprehensive Rural Development Chapter

The Santos Administration has proposed changes to laws regulating land and development that could prove [problematic](#) to the accords' land tenure provisions. This includes prioritizing turning state-owned land in Colombia's agricultural frontier (known as *baldíos*), over to agribusiness rather than to the Land Fund set up by the accords. The Land Fund, intended to provide small but sustainable plots of land to poor, landless rural families, including victims of violence and demobilized guerrillas, is [barely launched](#) with a limited operating budget and a fraction of the quantity of land envisioned by the accord. This undermining of the rural development pillar of the accords could intensify when President-elect Duque takes office.

The accords committed the Colombian state to: invest in small-scale agriculture; ensure the return of land to those forcibly displaced during the war; provide services such as roads, electricity, clean water, schools, and health clinics in underserved rural areas; and work with farm communities to advance sustainable crop substitution. While these moderate reforms have yet to become reality, local governments have started to develop plans with communities' input. These rural reform proposals are the heart of the peace accords' effort to address the root causes of the conflict—the exclusion of much of the rural population from the benefits of economic growth and the failure of the state to provide basic services to the countryside.

A Surprising Lack of Reintegration Programs

The demobilized guerrillas grouped in 26 special zones and were demobilized with both individual arms and arms caches registered and received by the UN Political Mission. This part of the accord was carried out remarkably efficiently and successfully. However, the Colombian government was slow to provide the demobilized guerrillas with temporary housing, medical care, and potable water. Some of these gaps are finally being addressed. Now, the lack of long-term reintegration services is the sticking point.

As agreed, the Colombian government has supplied a minimal two-year series of payments to individual ex-guerrilla members to help with their transition, which some [87 percent](#) are now receiving. But the government and the FARC never came to an agreement about the reintegration programs contemplated in the peace accords. The government did not want to provide more than individualized programs, while the FARC insisted on cooperative businesses. The National Reintegration Council (*Consejo Nacional de Reincorporación*) was supposed to provide funding for productive projects, but as of March 2018, [only one](#) such project had been approved. While the government is fulfilling its commitment to provide transitional individual payments to the demobilized guerrillas, it has not delivered on promises of land, training, and productive projects to help largely rural former guerrillas build a new life.

As a result, many former guerrillas left the demobilization zones and returned to their places of origins or elsewhere, without the reintegration services that could better ensure they become productive citizens. In an April 2018 communique, the former guerrillas criticized the government's lack of compliance with accord provisions regarding reintegration while

reaffirming their commitment to peace. In August 2019, transitional payments end. Without progress on reintegration, Colombia could face a crisis with more demobilized guerrillas rejoining dissident FARC groups, the ELN, paramilitary successor groups, or criminal gangs.

For example, in the demobilization zone outside Tumaco, former guerrillas and their families have adequate housing and are receiving their individual payments. Potable water was finally established, but medical care is lacking. Colombian army soldiers offer security at the perimeter. The most serious gap is that promises of land, jobs, and productive projects were never fulfilled. Most of the former guerrillas have left for their places of origin or other areas.

Since the U.S. government has chosen not to remove FARC from the U.S. terrorist list despite its demobilization, the United States could not play a role in helping Colombia to implement more successful reintegration programs.

Finally, protection is a critical issue for the demobilized guerrillas. As of April 2018, the UN mission [registered](#) 44 former FARC-EP members and 18 relatives killed, as well as 6 former guerrillas disappeared, since the signing of the peace agreement.

Demining: Real Progress

The Colombian government is committed to fulfilling its goal of having its territory completely free of anti-personnel mines by 2021. With substantial U.S., Norwegian, and other international support, Colombia counts on the [largest](#) demining brigade in the world and [10](#) international and national organizations to support the anti-personnel mine eradication process. According to [official data](#), 227 Colombian municipalities—one third of all the municipalities believed to be contaminated by mines—have been declared free of anti-personnel mines as of May 29, 2018.

There has been a significant [reduction](#) in the number of anti-personnel mine victims in recent years due to the peace process. While in 2006 there were 1,232 victims, in 2016 there were only 89. And in 2017 the number of victims went down to 56, a reduction of 38 percent compared to the previous year. The International Campaign to Ban Landmines' (ICBL) [2017 Landmine Monitor](#) report highlights that there was no new use of anti-personnel mines in Colombia for the first time since the report's launch in 1999.

ELN Peace Process: An Uncertain Future

Peace negotiations between the Colombian government and the Ejército de Liberación Nacional (ELN), the last major remaining guerrilla group in the country, have been advancing slowly and with great difficulty. While these negotiations are hardly easy, they are essential to reach a lasting peace and fulfillment of victims' rights to nonrepetition.

The fourth round of negotiations came to an end on December 1, 2017. Several days later, Juan Camilo Restrepo [resigned](#) as the government's chief negotiator. Restrepo expressed concern over the ELN's violent actions in the Chocó department and referred to the guerrilla's Western Front

as “a stone in the shoe” of the peace process. The Colombian government named [Gustavo Bell](#), then-ambassador to Cuba and a former vice president, as Restrepo’s successor.

As [stipulated](#), the bilateral ceasefire that began in October 2017 came to an end on January 9, when the fifth round of negotiations was [scheduled](#) to begin. Within 24 hours, the ELN guerrillas went on a violent [offensive](#), targeting the country’s oil infrastructure and the armed forces.

Amidst the rising tensions, the UN Verification Mission [encouraged](#) the Colombian government and the ELN to redouble efforts to construct a peaceful solution. Yet, after the ELN attacked the Barranquilla Police Station, President Santos [suspended](#) the start of the fifth negotiation cycle. The ELN then [announced](#) a national “armed strike”—a generalized armed action that limits the mobility of the population. The action did not have a national reach, only affecting [rural areas](#) where the guerrillas had a strong presence. By February 17, 2018, the number of armed actions by the ELN had risen to [52](#) and 23 civilian deaths were attributed to the guerrillas.

The fifth round of negotiations eventually [started](#) in Quito on March 15. Yet, a month later, President Lenin Moreno [announced](#) that Ecuador will no longer serve as guarantor and host for the peace talks. The [official statement](#) tied the decision to the difficult [security situation](#) along Ecuador’s border with Colombia. The fifth round of negotiations was then [moved](#) to Havana, Cuba. The objective of this round was to establish a new ceasefire and devise how civil society participation will be integrated into the construction of the accords. The cycle came to a close on June 15 although a ceasefire agreement was [not reached](#).

The sixth round started on July 2. The Santos Administration’s [failure](#) to implement the peace agreement with the FARC at an adequate pace, and the Colombian Congress’s actions to [undermine](#) the accords, are not encouraging the ELN to stay at the peace table.

Moreover, it is unclear if Colombia’s next president will continue peace talks, leading some to [suspect](#) this may be the last round. President-elect Duque has [voiced](#) his opposition to the current terms of the talks with the ELN and has given the group an ultimatum: either agree to renounce all criminal activities and lay down weapons or expect a full-on offensive by the security forces.

Shortly after Duque’s victory, the ELN’s chief negotiator, Pablo Beltrán, [said](#) that the ELN plans on staying at the peace table and that he hopes that the president-elect continues the peace process initiated by this predecessor. In early July, the government of Juan Manuel Santos [expressed](#) that it wishes to serve as a mediator between the ELN and President-elect Duque.

Conclusion

In the [words](#) of Colombia’s peace negotiator, Humberto de la Calle:

“The accord was constructed thinking about the more than 8 million victims of the conflict. Today there are those who are throwing peace away and who are failing to recognize the millions of Colombians who have been displaced, the millions of families at risk, the sorrow of the widows and the suffering of the mothers who have turned over their children to the war. Mothers of soldiers and mothers of guerrillas.”

As President-elect Ivan Duque prepares to take office, it is critical for the international community to urge him to implement the peace accords fully and with the victims—all of the victims—still at the center. Colombia must fulfill its international obligations to ensure justice, truth, reparations, and guarantees of nonrepetition, and address the roots of the conflict, including political and economic exclusion. Only then will a sustainable peace take hold.

Recommendations for U.S. Policy

- Urge the incoming Duque Administration to commit to the full implementation of the peace accords, maintaining victims of all armed actors at the center. This should include:
 - implementation of the transitional justice system, truth commission, and mechanism to search for the disappeared, as agreed in the accords;
 - implementation of the accord’s rural development provisions, with an emphasis on inclusive development focused on small farmers and extending the civilian presence of the state in post-conflict zones;
 - implementation of the Ethnic Chapter of the accords, in direct consultation with the coordinating body set up to implement this chapter; and
 - rapid improvements in launching reintegration programs for the demobilized guerrillas, focusing on collective and individual productive projects, land, and training.
- Continue U.S. assistance for peace accord implementation, while monitoring to ensure that Colombia’s new administration is vigorously carrying out implementation.
- Urge the incoming Duque Administration to dismantle paramilitary successor groups, dissident FARC, and other illicit armed groups, ensuring that armed forces respect the civilian population and comply with international humanitarian law. Urge the administration to ensure that cabinet and other high-level posts are not held by anyone with a history of abetting or tolerating paramilitary forces.
- Urge the incoming Duque Administration to commit to protecting the rights and lives of human rights defenders and social leaders.
- Declassify and provide relevant U.S. documents if requested by the Truth Commission.
- Ensure that U.S. diplomacy and assistance for counternarcotics adheres to the peace accords, avoiding forced eradication that moves coca from one area to another and emphasizing working with communities to replace coca with sustainable licit alternatives.
- Encourage the incoming Duque Administration to continue the peace talks with the ELN, respecting what has already been agreed to in previous negotiation cycles. Urge the Colombian government and the guerrilla to reach a bilateral ceasefire.

See previous LAWGEF Colombia Peace Updates [here](#).