

# THIRD PARTY AT THE TABLE: AFRO-COLOMBIAN WOMEN’S STRUGGLE FOR PEACE AND INCLUSION

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## I. COLOMBIA'S HISTORIC PEACE ACCORD

August 24, 2016 marked the end of the nearly sixty-year-long conflict between the Colombian government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, “FARC”). A month later, the Government of Colombia and the FARC signed a peace deal. In November 2016, they signed what came to be called the final Peace Accord. Years-long struggles by Afro-Colombian and other human rights advocates helped infuse human rights discourse into the peace negotiations and initial accord. Nonetheless, events during the two months after the signing of the original Accord, which led to passage of the revised Accord, permanently weakened Colombia's peace process.

Colombia's initial Peace Accord is historic, not only for ending the longest armed conflict in the Western hemisphere, but also for its inclusion of progressive provisions regarding the rights of women Afro-Colombians, Indigenous Peoples, LGBTIQ,<sup>1</sup> and non-binary and gender non-conforming persons. The agreement provided a gendered lens to all the Peace Accord provisions, from rural reform and poverty alleviation, to political participation and access to justice. It explicitly named rights for LGBTIQ persons and acknowledged discrimination based on sexual orientation and gender identity. It also reaffirmed Afro-Colombian and Indigenous Peoples' collective rights, recognizing the disproportionate impact of the conflict on their territories.

In October 2016, in a surprise twist, the draft of the Peace Accord narrowly failed in a national referendum, with 50.2% voting against it and 49.8% voting in favor, a marginal difference of less than half of one percent.<sup>2</sup> Led by former Colombian President and current Senator Álvaro Uribe, Conservative party voters opposed the peace process.<sup>3</sup> While the majority of Colombians favored peace, the opposition, comprised of evangelical leaders and conservative members

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1. While the acronym LGBTIQ is inclusive of a broad range of people, it is not exhaustive, nor is it the universally standard acronym.

2. See Greg Grandin, *Did Human Rights Watch Sabotage Colombia's Peace Agreement?*, THE NATION (Oct. 3, 2016), <https://www.thenation.com/article/did-human-rights-watch-sabotage-colombias-peace-agreement> [<https://perma.cc/BS4G-BCXB>]; see also Int'l Crisis Group [ICG], *In the Shadow of "No": Peace After Colombia's Plebiscite*, Latin Am. Rep. N°60, 1 (Jan. 31, 2017), <http://www.refworld.org/docid/589345514.html> [<https://perma.cc/S36F-6NFZ>] (stating that in October 2016, the “no” vote for the proposed accord won by less than half of 1%).

3. Grandin, *supra* note 2; see also ICG, *supra* note 2, at 3 (stating the majority of “no” voters were Conservative party voters).

of the Colombian Congress, launched a media campaign claiming that the FARC had gained too many concessions and that President Santos was “delivering the country to terrorism.”<sup>4</sup> Among their issues, conservatives held that the Accords were a front to impose a “gender ideology,” which they understood as efforts to “convert” children to homosexuality and attack traditional family values.<sup>5</sup> A month later, the parties produced a revised Peace Accord, stripped of its references to the gender, racial, and ethnic inclusion it once reflected. This essay discusses how Colombia arrived at a new Accord stripped of its historic language in just two short months. It also discusses how the harbinger of conservative opposition to human rights viewed justice for women, as well as LGBTIQ, Afro-Colombian, and Indigenous people as a threat to their grip on power and therefore sought to undermine their rights during the peace negotiations process and now in the implementation process.

## II. THIRD PARTY AT THE TABLE

Colombia remains mired in the aftermath of the Western Hemisphere’s longest internal armed conflict.<sup>6</sup> With over seven million displaced,<sup>7</sup> Colombia is home to one of the world’s largest population of internally displaced persons, second only to Syria.<sup>8</sup> Another 340,000 Colombian refugees live abroad.<sup>9</sup>

Justice for Afro-Colombian women is difficult to achieve in a context where violence, discrimination, and historical inequities are

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4. Grandin, *supra* note 2; see also ICG, *supra* note 2, at 3 (describing that Uribe’s conservative supporters feared Colombia would turn “into chavista Venezuela”).

5. ICG, *supra* note 2, at 3 n.3.

6. Thomas Power, *Massacres in Colombia Lay Bare Next Phase of the Conflict*, NACLA (Sept. 2020), <https://nacla.org/colombia-massacres-duque> [<https://perma.cc/8VMD-JMWD>].

7. See U.N. High Comm. for Refugees (UNHCR), *Colombia Situation Update* (Feb. 2017), <http://www.refworld.org/docid/58b6d1604.html> [<https://perma.cc/6MJL-4FXV>]; see also Refugees International, *A Battle Not Yet Over: Displacement and Women's Needs in Post-Peace Agreement Colombia*, 17 (Dec. 12, 2016), <http://www.refworld.org/docid/584eae0d4.html> [<https://perma.cc/TBK5-5PGN>] (describing the extent of displacement in Colombia, particularly internally displaced women and girls).

8. HUMAN RIGHTS WATCH [HRW], *World Report 2017 – Colombia* (Jan. 12, 2017), <http://www.refworld.org/docid/587b584fa.html> [<https://perma.cc/ZPU8-4BUV>].

9. U.N. High Comm., *supra* note 7.

still met with impunity.<sup>10</sup> Armed violence, displacement, rape, torture, disappearances, and other human rights violations are still everyday occurrences. Land grabs by businesses exploiting Colombia's rich natural resources have been neither reversed nor resolved.<sup>11</sup> Large Afro-Colombian communities and Indigenous Peoples displaced by conflict and corporations have been barred from resettling on their ancestral lands, despite laws mandating land restitution.<sup>12</sup> Thousands have struggled for decades to build new lives in ramshackle settlements lacking water, electricity, schools, and basic health and social services.<sup>13</sup> The root causes of violence in the country—state neglect of Afro-Colombian and Indigenous peoples' needs and interests, inequitable land rights, and poverty—remain barriers to a just society.<sup>14</sup> Brutal violence perpetrated by paramilitaries, guerilla groups, Colombian security forces, and drug cartels; and lingering impunity continue to lead to mass-scale human rights violations.

Despite the challenges they face, Afro-Colombian women's rights advocates played a critical role advocating for inclusion of the groundbreaking racial and gender justice provisions in the Peace Accord between the Colombian government and the FARC. However, the failure to fully implement the accord, particularly its ethnic, racial and gender justice provisions, means that Afro-Colombian and Indigenous women and their communities continue to be subject to

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10. Julie Goldscheid, *Gender Violence Against Afro Colombian Women: Making the Promise of International Human Rights Law Real*, 4 COLUM. HUM. RTS. L. REV. ONLINE 250, 259–60 (2020).

11. See Rebecca Bratspies, 'Territory Is Everything': Afro Colombian Communities, Human Rights and Illegal Land Grabs, 4 HRLR ONLINE 290 (May 2020).

12. Rebecca Bratspies, 'Territory Is Everything': Afro Colombian Communities, Human Rights and Illegal Land Grabs, 4 COLUM. HUM. RTS. L. REV. ONLINE 290, 297–98 (2020); U.N. Comm. on the Elimination of Racial Discrimination (CERD), *Concluding Observations on the Combined Seventeenth to Nineteenth Periodic Reports of Colombia* (Jan. 2020), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCOL%2fCO%2f17-19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCOL%2fCO%2f17-19&Lang=en) (on file with the *Columbia Human Rights Law Review*).

13. Inter-American Commission on Human Rights, *Preliminary Observations of the Inter-American Commission on Human Rights After the Visit of the Rapporteurship on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia*, ¶ 35 (2009), <http://www.cidh.oas.org/countryrep/ColombiaAfrodescendientes.eng/ColombiaAfros2009cap3-4.eng.htm> [<https://perma.cc/MFD3-PQ5T>].

14. International Crisis Group, *Calming the Restless Pacific: Violence and Crime on Colombia's Coast*, 1–2, 34 (Aug. 2019), [https://d2071andvip0wj.cloudfront.net/076-calming-the-restless-pacific\\_0.pdf](https://d2071andvip0wj.cloudfront.net/076-calming-the-restless-pacific_0.pdf) [<https://perma.cc/6UHB-3BLU>].

armed actor violence, displacement, sexual and gender-based violence, and killings and threats against their human rights defenders.

Among the more remarkable achievements of the Colombian Peace Accord are the recognition of racial, ethnic, and gender discrimination as underlying forces in the conflict, and the inclusion of provisions to directly address them. This was a hard-fought accomplishment of civil society, notably women's, LGBTIQ, Afro-Colombian, and Indigenous organizations. Afro-Colombian organizations, with strong leadership from Afro-Colombian women, developed a vision for the peace process that recognized and remedied historic injustices and discrimination committed against them, including gender discrimination, in order to ensure an inclusive and lasting peace.<sup>15</sup>

In their initial negotiations in late 2012, the FARC and the Colombian government did not include race, ethnicity, gender, or other intersectional analyses in their six-point agenda, which included a broad range of topics.<sup>16</sup> Most Afro-Colombians and other minorities, however, were excluded from the negotiating table during the Havana peace talks until the last minute. The absence of women in the early stages of the Havana Peace negotiations caused consternation among the women's movement and other social organizations in light of international and domestic progressive normative frameworks for gender equality in peacemaking.<sup>17</sup>

After the release of the six-point agenda, Colombian social movements advocated for nearly two years, using advances under international and domestic law to build awareness and support for the integration of a gender component in the Peace Accord.<sup>18</sup> They successfully advocated for the creation of a "Sub-Commission on

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15. Nat'l Afro-Colombian Peace Council [CONPA], *Agenda de Paz Afrocolombiana*, 53 (2017), [http://www.afrodescolombia.org/wp-content/uploads/2017/07/Agenda\\_de\\_paz\\_CONPA.Final-ilovepdf-compressed.pdf](http://www.afrodescolombia.org/wp-content/uploads/2017/07/Agenda_de_paz_CONPA.Final-ilovepdf-compressed.pdf) [<https://perma.cc/23HD-D4SR>].

16. Lina M. Céspedes-Báez, *Gender Panic and the Failure of a Peace Agreement*, 110 AJIL UNBOUND 183, 184 (2016). The six-point agenda topics are comprehensive rural reform; civic and political participation; the problem of illicit drugs; victims of the conflict; the end of the conflict; and implementation, verification, and endorsement of the Agreement. *Id.*

17. Virginia M. Bouvier, *UN Women Background Paper: Gender and The Role of Women in Colombia's Peace Process*, 12–13 (Mar. 4, 2016), [http://wps.unwomen.org/pdf/research/Bouvier\\_Women-in-Colombia-Peace-Process\\_EN.pdf](http://wps.unwomen.org/pdf/research/Bouvier_Women-in-Colombia-Peace-Process_EN.pdf) [<https://perma.cc/8DY3-J7JY>] (providing an overview of Colombian laws that address gender equality).

18. Céspedes-Báez, *supra* note 16, at 184.

Gender” that included civil society representation and provided a mechanism for meaningful participation in the negotiations, including the topics that had already been settled in the Peace Accord up to that point,<sup>19</sup> as well as in the Final Accord.<sup>20</sup> The Sub-Commission not only included the term “gender” but also included more specific terms such as “sexual orientation,” “gender identity,” and “LGBTIQ,” acknowledging the disproportionate impact of discrimination and violence against queer, nonbinary, and gender non-conforming persons during the conflict.<sup>21</sup>

Afro-Colombian and Indigenous Peoples also mobilized for the inclusion of a racial and ethnic perspective in the Peace Accord. By 2015, Afro-Colombian and Indigenous groups joined together to form the Ethnic Commission for Peace and Defense of Territorial Rights. A year later, Afro-Colombian representatives were finally invited to Havana where the peace negotiations took place. They called for the recognition of racial justice issues including the right to collective reparations, safeguards to accompany the demobilization process, and

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19. *Id.* (noting that members of the FARC also held representation on the Subcommission).

20. KROC INST. FOR INT’L PEACE STUD., SPECIAL REPORT OF THE KROC INST. AND THE INT’L ACCOMPANIMENT COMPONENT, UN WOMEN, WOMEN’S INTERNATIONAL DEMOCRATIC FEDERATION, AND SWEDEN, ON THE MONITORING OF THE GENDER PERSPECTIVE IN THE IMPLEMENTATION OF THE COLOMBIAN FINAL PEACE ACCORD 9 (2016–2018), [https://kroc.nd.edu/assets/297624/181113\\_gender\\_report\\_final.pdf](https://kroc.nd.edu/assets/297624/181113_gender_report_final.pdf) [<https://perma.cc/U9FD-9XK3>] [hereinafter KROC REPORT].

21. Céspedes-Báez, *supra* note 16, at 185. Colombia Diversa, an organization advocating on behalf of LGBTIQ people, advocated for the National Council on Reconciliation and Coexistence (National Council), an entity created by the Accord, to explicitly include the LGBTIQ population in its mandate, for the inclusion of protective measures in the Accords, specifically the “enfoque de género,” or, “gender focus” and the “enfoque étnico” or “ethnic focus.” Nicole Maier, *Queering Colombia’s Peace Process: A Case Study of LGBTI Inclusion*, 24 INT’L J. OF HUM. RTS. 337 (2009). Afro-Colombian groups were also organizing with strong women’s leadership for meaningful inclusion. For example, in 2015, the National Afro-Colombian Peace Council (CONPA), and Procesos de Comunidades Negras (PCN), two of the country’s most prominent Afro-Colombian coalitions, advocated through international human rights bodies, submitting written reports and organizing meetings with grassroots Afro-Colombian organizations and international allies. CONPA, *CONPA: Ultimatum to the National Government Regarding a Humanitarian Crisis and the Lack of Inclusion of Afrodescendants in the Peace Accords* (May 22, 2017), <https://afrocolombian.org/2017/05/22/conpa-ultimatum-to-the-national-government-regarding-a-humanitarian-crisis-and-the-lack-of-inclusion-of-afrodescendants-in-the-peace-accords/> [<https://perma.cc/HRR2-ZZ8C>]; Roosbelinda Cárdenas, *The Anti-Racist Horizon in Colombia’s Peace Process*, NACLA (Mar. 23, 2017), <https://nacla.org/news/2017/03/23/anti-racist-horizon-colombia%E2%80%99s-peace-process> [<https://perma.cc/3364-HSMC>].

meaningful participation in the peace negotiations.<sup>22</sup> Unfortunately, a permanent seat at the table for Afro-Colombians and Indigenous Peoples was never created. The Commission did however, successfully lobby for inclusion of the “Ethnic Chapter” in the Peace Accord, although the government only accepted four pages of the more than twenty pages proposed.<sup>23</sup> The Ethnic Chapter acknowledges the disproportionate impact of the conflict on Afro-Colombian communities, and includes key safeguards for Indigenous and Afro-Colombian territorial and individual rights, reflecting an intersectional rights-based approach that incorporates ethnicity, race, gender, women, family, and inter-generational perspectives.<sup>24</sup>

#### A. The Accountability Question

A major point of controversy was the original Peace Accord’s fifth chapter that addressed the issue of “justice” within the complex framework of victims’ rights and perpetrator accountability.<sup>25</sup> Those in opposition to the peace deal, including Uribe, voiced concerns at the lack of traditional accountability for perpetrators of the world’s worst crimes, namely crimes against humanity and war crimes. Under the Accords’ process, a perpetrator who cooperated completely and fully with the Truth Commission could receive a lighter sentence than they would in the traditional justice system.<sup>26</sup> However, defendants who denied participating in a crime or specific wrongdoing and were found

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22. Cárdenas, *supra* note 21.

23. Manuel Góngora-Mera, *The Ethnic Chapter of the 2016 Colombian Peace Agreement and the Afro-descendants’ Right to Prior Consultation: A Story of Unfulfilled Promises*, 23 INT’L J. H.R. 938, 957 (2019).

24. Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Art. 6.2.3 (Nov. 24, 2016), <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [<https://perma.cc/QCM2-HYDD>] [hereinafter Peace Accord].

25. See Claudia Josi, *Accountability in the Colombian Peace Agreement: Are the Proposed Sanctions Contrary to Colombia’s International Obligations?*, 46 SW. L. REV. 401, 402 (2017); see also Lily Rueda, *One Step Closer to Peace in Colombia: Implications for Accountability*, CTR. FOR INT’L CRIM. JUST. (June 24, 2016), <https://cij.org/2016/06/one-step-closer-to-peace-in-colombia-implications-for-the-accountability-for-international-crimes> [<https://perma.cc/G7LW-HY7J>] (describing the issue of victims’ rights as challenging and politically charged).

26. Josi, *supra* note 25, at 410; see also René Urueña, *Prosecutorial Politics: The ICC’s Influence in Colombian Peace Processes, 2003-2017*, 111 AM. J. OF INT’L L. 104, 121 (2017) (explaining that perpetrators who fully confess crimes falling under the jurisdiction of the ICC are to serve a maximum of eight years of “restricted freedom,” not to be understood as jail or prison).

guilty could receive the full sentence for their crimes, which under Colombia's legal system is a maximum of twenty years.<sup>27</sup>

The international community also critiqued the concessions given to the FARC and other armed actors. When the peace negotiations concluded in September 2016, the Chief Prosecutor for the ICC, Fatou Bensouda, cautioned that the Special Jurisdiction for Peace, charged with enforcing the "justice" provision, would be expected to ensure that perpetrators of serious crimes were genuinely brought to justice and noted that genuine accountability for serious crimes included "effective punishments."<sup>28</sup> An analysis of the Peace Accord by Human Rights Watch (HRW), a watchdog organization that exposes human rights abuses around the world, stated that Colombia was obliged to follow in the path of international tribunals, such as the ICC, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda, all of which had imposed lengthy sentences as punishment for violations of international criminal law.<sup>29</sup>

Aligning itself with some of the positions of Colombia's conservative citizens, who fiercely advocated against the first version of the Peace Accord, HRW came out forcefully against the "justice" provisions of the Peace Accord, adding that the agreement was nothing more than a "piñata of impunity."<sup>30</sup> HRW asserted that the agreement was weak on holding perpetrators, including the FARC, accountable,<sup>31</sup> calling it a "checkmate against justice"—a term which cycled through the Colombian press, propelled forward by conservative organizations.<sup>32</sup>

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27. Rueda, *supra* note 25.

28. Fatou Bensouda, *Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Peace Negotiations Between the Government of Colombia and the Revolutionary Armed Forces of Colombia – People's Army* (Sept. 1, 2016), <https://www.icc-cpi.int/Pages/item.aspx?name=160901-otp-stat-colombia> [<https://perma.cc/U3U4-X3A8>].

29. HRW, *Human Rights Watch Analysis of Colombia-FARC Agreement* (Dec. 21, 2015), <https://www.hrw.org/news/2015/12/21/human-rights-watch-analysis-colombia-farc-agreement> [<https://perma.cc/ZQ42-73N4>].

30. AFP, *Pacto de Justicia en Colombia es una "Piñata de Impunidad"*, *Denuncia HRW*, EL ESPECTADOR (Dec. 22, 2015), <http://www.elespectador.com/noticias/paz/pacto-de-justicia-colombia-una-pinata-de-impunidad-denu-articulo-607243> [<https://perma.cc/XSG7-LBMT>].

31. Grandin, *supra* note 2.

32. See HRW, *Colombia: FARC Pact Risks Impunity for 'False-Positives'* (Mar. 28, 2016), <https://www.hrw.org/news/2016/03/28/colombia-farc-pact-risks-impunity-false-positives> [<https://perma.cc/4W8Q-MULW>]; see also Grandin, *supra*



While several other prominent human rights institutions, such as the UN Office of the High Commissioner for Human Rights in Colombia, the International Center for Transitional Justice, and *Dejusticia*, a Colombian think tank, rejected this depiction,<sup>33</sup> many believed the damage had been done.<sup>34</sup> Colombia's political far-right used this dire reading of the Accord to build opposition in the weeks leading up to the vote, which caused some to question whether HRW negatively interfered with Colombia's transitional justice process.<sup>35</sup>

While there was much critique on all sides of the Accords debate, there was also much praise for its innovative and ambitious attempts to break out of the traditional criminal justice response by taking a more holistic and tailored approach to peace and reconciliation. The transitional justice and reconciliation system set up by the Accords is by far one of the most complex justice processes of any conflict. It ambitiously sets out to investigate the most serious crimes committed over five decades of war. The framework for the system established in the Accord strived to strike a balance between demands for retributive justice and calls for restorative justice and sustainable peace. Marta Nubio has noted the strong desire of Colombians to end armed conflict, noting that victims "do not want a

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note 2 (describing how the Colombian press publicized HRW's stance against the justice provisions as a criticism of proposed impunity).

33. See Int'l Ctr. for Transitional Just., *Colombia at a Crossroads: The Impact of Presidential Elections on the Peace Process* (June 5, 2014), <https://www.ictj.org/news/colombia-crossroad-impact-presidential-elections> [https://perma.cc/DU8Y-ZRVW]; see also U.N. Secretary-Gen., *Annual Report of the United Nations High Commissioner for Human Rights*, 32 U.N. Doc. A/HRC/31/3/Add.2 (Mar. 15, 2016), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/3/Add.2](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/3/Add.2) [https://perma.cc/3STW-B7BX] (noting that the secretariat supported the justice provisions and stated "[t]he special jurisdiction offers a window of opportunity against impunity"); Claret Vargas, *The Peace Agreement in Colombia Matters, and It Could Set an Example for Entrenched Conflicts Elsewhere*, DEJUSTICIA (Feb. 9, 2016), <https://www.dejusticia.org/en/column/the-peace-agreement-in-colombia-matters-and-it-could-set-an-example-for-entrenched-conflicts-elsewhere/> [https://perma.cc/P9KV-7J5S] (arguing that the justice provisions of the agreement were innovative because they balanced peace and justice and focused on the rights of victims and reparations).

34. Grandin, *supra* note 2 (noting that the Washington Office on Latin America stated that HRW's discourse did "real damage" because voters interpreted it signaled HRW "oppose[d] the entire process").

35. *Id.*

perfect model of justice, but an end to the conflict.”<sup>36</sup> They “prefer an imperfect peace to a perpetual war.”<sup>37</sup>

Achieving sustainable peace after a fifty-year conflict will require building a pathway for demobilized armed actors, to reintegrate into society after confessing their crimes. It also will require recognizing the myriad harms caused to victims and their communities that traditional criminal justice processes rarely accomplish when keeping with a more narrowly tailored goal of individual punishment for narrowly defined crimes under law. Traditional criminal prosecutions of armed actors are not sufficient to achieve long-lasting peace that pays the debt owed to victims and breaks the cycle of violence. The final Peace Accord repeatedly uses terms such as “peaceful co-existence,” “national reconciliation,” and “inclusion,” recognizing that reintegration, diversity and acceptance are indispensable to achieving sustainable peace.<sup>38</sup> Even in the revised final Accord, Colombia’s holistic approach to peace broadened the traditional justice lens to include restorative justice. It builds an accountability system that works to both hold perpetrators accountable and repair individual and community harms. The real challenge, however, lies in its implementation.

## B. Opposition to Gender

While the “justice” component was among the most criticized and politically charged aspects of the Peace Accord,<sup>39</sup> a conservative backlash by the religious right against the incorporation of a gender perspective in the Accord also helped to propel the “No” campaign. At the same time that the Peace Accord was being negotiated, the Colombian government released a new manual for teachers in public schools with education materials designed to help prevent

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36. Mariana Cardona, *Colombia’s Peace Process and Transitional Justice*, LATIN AM. WORKING GROUP (2018), <https://www.lawg.org/colombias-peace-process-and-transitional-justice/> [https://perma.cc/SG4L-A9CL].

37. *Id.*

38. Ted Piccone, *Peace with Justice: The Colombian Experience with Transitional Justice*, 10–11 (July 2019), [https://www.brookings.edu/wp-content/uploads/2019/06/FP\\_20190708\\_colombia.pdf](https://www.brookings.edu/wp-content/uploads/2019/06/FP_20190708_colombia.pdf) [https://perma.cc/X3YS-3XKQ].

39. Courtney Hillebrecht, *The Judicialization of Peace*, 59 HARV. INT’L L.J. 279, 305 (2018); see also Vargas, *supra* note 33 (describing the political debate over the effective restriction of liberty).

discrimination and bullying against lesbian and gay students.<sup>40</sup> Uribe was highly critical of this material and seized the opportunity to couple these developments with provisions in the initial Peace Accord that protected people of “diverse sexual orientations and identities”<sup>41</sup> in an effort to fuel anti-LGBTIQ sentiment.

While the Accords recognized women and LGBTIQ persons as victims of the conflict and thus entitled to take part in the peace process, both conservatives and fundamentalists attempted to stoke hysteria by claiming the recognition was simply an attempt to promote the established right to same-sex marriage or abortion.<sup>42</sup>

The initial design of the negotiations did not explicitly employ any differential approach or gender perspective.<sup>43</sup> Advocacy by women’s organizations and progress by the Sub-Commission on Gender during negotiations in Havana made it possible for inclusion of a gender perspective in the text of the initial final Peace Accord.<sup>44</sup> This shaped an understanding of gender that went beyond women’s issues in armed conflict and incorporated issues of sexual orientation and gender identity.<sup>45</sup> Such a document recognizing the differential impact of the conflict on women and the LGBTIQ population and how these groups would benefit from gender-sensitive measures in a post-conflict society was without global precedent.<sup>46</sup>

However, as Colombian Law Professor Lina M. Céspedes-Báez points out, while raised visibility of human rights abuses against LGBTIQ people helped strengthen affirmative action demands, it also

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40. Redacción Política, *El Espectador*, *¿Campana de Uribe Contra Gina Parody?* (Aug. 8, 2016), <https://www.elespectador.com/noticias/politica/campana-de-uribe-contra-gina-parody-articulo-647943> [<https://perma.cc/2W5K-NT8Q>].

41. *Id.*

42. Gélica Mazzoldi Díaz et al., *La ‘Ideología de Género’: ¿Un Spoiler para la Paz?*, *Fundación Ideas para la Paz* (Oct. 17, 2016), <http://www.ideaspaz.org/publications/posts/1414> [<https://perma.cc/2PSF-UNBA>]. While abortion has been partially legalized in Colombia, there remains substantial obstacles to women accessing services. See Deborah Zalesne, *Making Rights a Reality: Access to Health Care for Afro Colombian Survivors of Conflict Related Sexual Violence*, 51 *COLUM. HUM. RTS. L. REV.* 670, 712–13 (2020).

43. KROC REPORT, *supra* note 20, at 8; see also Céspedes-Báez, *supra* note 16, at 184 (describing that the original roadmap of negotiations lacked a gender approach).

44. KROC REPORT, *supra* note 20, at 8; see also Céspedes-Báez, *supra* note 16, at 184–85 (stating pressure from women’s groups resulted in the incorporation of gender into the negotiations).

45. KROC REPORT, *supra* note 20, at 9–10.

46. *Id.*

prompted conservative backlash.<sup>47</sup> Since the turn of the century, Colombia's Constitutional Court has delivered a significant number of domestic legal rulings deepening the understanding of rights for women and LGBTIQ persons. In 2006, the Constitutional Court reached a 5-3 decision which decriminalized abortion in Colombia in three circumstances: when the continuation of the pregnancy constitutes a danger to the life or health of the mother; when there are life-threatening fetal malformations; or when the pregnancy is the result of rape, non-consensual artificial insemination or incest.<sup>48</sup> In 2007, The Court recognized the right of same-sex couples to enjoy the same benefits granted under common-law marriage to heterosexual couples.<sup>49</sup> By 2016, the Court ruled that banning same-sex marriage was unconstitutional.<sup>50</sup>

Former president Uribe called attention to these reforms and the educational manual to galvanize Colombia's resurgent conservative movement against the initial Peace Accord.<sup>51</sup> Conservative opposition was partially based on the argument that the Accord language was an affront to "traditional values."<sup>52</sup> Céspedes-Báez explains that the conservatives' rejection of the Accords reflected the "wider panic" the country's conservative right was undergoing in reaction to the recent legal victories.<sup>53</sup> The backlash against LGBTIQ rights almost automatically extended to women, since "there is a strong equation between gender and women, and some of the women's

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47. Céspedes-Báez, *supra* note 16, at 184–85.

48. Corte Constitucional [C.C.] [Constitutional Court], Mayo 10, 2006, Sentencia C-355/06, Gaceta de la Corte Constitucional [G.C.C.] (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2006/c-355-06.htm> [<https://perma.cc/HR8N-D3EU>].

49. Corte Constitucional [C.C.] [Constitutional Court], Febrero 7, 2007, Sentencia C-075/07, Gaceta de la Corte Constitucional [G.C.C.] (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2007/c-075-07.htm> [<https://perma.cc/Z7ZK-V8YT>].

50. Corte Constitucional [C.C.] [Constitutional Court], Abril 28, 2016, Sentencia SU214/16, Gaceta de la Corte Constitucional [G.C.C.] (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2016/su214-16.htm> [<https://perma.cc/BBJ2-8X7Q>].

51. Laura Gamboa Gutiérrez, *El Reajuste de la Derecha Colombiana. El Éxito Electoral del Uribismo*, 99 COLOM. INT'L 187, 196 (2019); see also Winifred Tate, *A Dark Day in Colombia*, NACLA (Oct. 4, 2016), <https://nacla.org/news/2016/10/04/dark-day-colombia-0> [<https://perma.cc/ZHQ3-QNH9>] (describing how Uribe and the Colombian Conservative party dominate social media and influenced key urban and business voters).

52. Céspedes-Báez, *supra* note 16, at 183, 187.

53. *Id.*

rights movement's strategies have been replicated and translated to advocate for LGBTIQ rights."<sup>54</sup>

As a result, in an effort to close the deal and appease the far-right, the term "gender" became synonymous with women in the final version of the Peace Accord,<sup>55</sup> which conservatives hoped would limit the understanding of gender to the male-female binary.<sup>56</sup> References to sexual orientation and gender identity were stripped out altogether.<sup>57</sup> Provisions related to women, Afro-Colombians, and Indigenous peoples were also modified, although to a lesser extent.

### C. A Closer Look at Gender in the Accords

The word "gender" appears 114 times in the initial Peace Accord and only 55 times in the final Peace Accord, having been replaced with the word "women."<sup>58</sup> The final Peace Accord uses the expression "violence against women" instead of "gender-based violence," and "equal participation of men and women" instead of "gender equality." The expressions "gender identity" and "diverse sexual orientation" were either deleted altogether or substituted with "vulnerable groups,"<sup>59</sup> "groups in vulnerable circumstances," "LGBTIQ persons," or "women." The following table summarizes the changes:

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54. *Id.* at 187.

55. Lina M. Céspedes-Báez & F. Jaramillo Ruiz, *Peace Without Women Does Not Go! Women's Struggle for Inclusion in Colombia's Peace Process with the FARC*, 94 COLOM. INT'L 83, 103 (2018).

56. *See* Céspedes-Báez, *supra* note 16, at 186.

57. *Id.* at 187 (predicting the removal of this terminology).

58. *Compare* Acuerdo Final para la Terminación del Conflicto y la Construcción de Una Paz Estable y Duradera, (Aug. 24, 2016), <https://reliefweb.int/sites/reliefweb.int/files/resources/acuerdofinalfinalfinal-1472094587.pdf> [<https://perma.cc/LFW8-7QPT>] [hereinafter Acuerdo Final] *with* Peace Accord, *supra* note 24. The Colombian government made an English version of the Peace Accord available, but removed it in October 2016; a copy of the English version is on file with MADRE.

59. The term "vulnerable groups" commonly encompasses LGBTIQ persons and other groups who face discrimination when discussing human rights abuses in U.N. resolutions and other official international documents.

<b>August 2016 Peace Accord</b>	<b>November 2016 Peace Accord</b>
Gender-Based Violence	Violence Against Women
Gender Equality	Equality Between Women and Men
Non-Sexist Values	Non-Discriminatory Values
Diverse Sexual Orientation & Gender Identity	Vulnerable Groups or Discriminated Groups
Gender	Sex

Other changes include replacing the use of Afro-Colombian and Indigenous Peoples, communities, and organizations with “ethnic communities” and/or “the most vulnerable sectors of society.”<sup>60</sup>

Gender oppression is always experienced more acutely when intertwined with discrimination based on animus towards people based on race, ethnicity, nationality, or gender. It also exacerbates oppression based on sexual orientation, gender identity or other statuses.<sup>61</sup> Groups made vulnerable because of their gender in Colombia including Afro-descendent women, Indigenous women, LGBTIQ, non-binary and gender non-conforming persons have experienced the effects of the long-standing conflict at greater proportions. Decades of conflict and a history of racism, patriarchy, homophobia and transphobia normalized violence against Afro-Colombian and Indigenous women and girls and LGBTIQ persons, and the ongoing insecurity exacerbates their vulnerability to gender violence.

All of Colombia’s armed actors—paramilitaries, guerrilla groups, and government forces—have inflicted gender-based crimes.<sup>62</sup> About four-fifths of conflict victims are women and girls<sup>63</sup> with the

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60. Compare Acuerdo Final, *supra* note 58, arts. 2.3.5 & 3.4.2, with Peace Accord, *supra* note 24, arts. 2.3.5 & 3.4.2.

61. See e.g., Lisa Davis, *Reimagining Justice for Gender Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTI Persons*, 24 WM. & MARY J. WOMEN & L. 513, 514–16 (2018) (discussing gender-based persecution committed against women, LGBTIQ persons, and other intersectionalities in ISIS-controlled territories).

62. Virginia Bouvier, *Gender and the Role of Women in Colombia’s Peace Process* 9, (UNWOMEN Background Paer, 2016) (noting that, while documentation efforts have focused on women victims, there has been increased recognition of men as victims of sexual violence in Colombia’s conflict).

63. *Id.* at 9.

conflict taking place predominantly on Afro-Colombian and Indigenous lands.<sup>64</sup> Sexual violence and other forms of gender-based violence was consistently used by armed actors as punishment inflicted against those who deviated from patriarchal norms aggravated by their perpetrators. Labeled as “bad girls” they have been subjected to humiliation, forced labor and enslavement.<sup>65</sup> “Good girls” were considered those who followed established norms on dress and behavior set by fighters.<sup>66</sup> Paramilitary and guerrilla groups also controlled women’s reproductive rights and behaviors, including through forced abortions, forced pregnancies and sexual slavery.<sup>67</sup> LGBTIQ, non-binary and gender non-conforming persons were subjected to rapes and executions under organized campaigns.<sup>68</sup> Men and boys who exhibited what perpetrators believed to be undesirable behaviors associated with masculinity, such as stealing or using drugs, were punished with torture or murder.<sup>69</sup>

Armed actors also regularly monitored the dress and behaviors of community members including the regulation of jewelry, hairstyles, and clothing length. Women were forbidden from wearing clothes that exposed their bodies and sometimes were ordered to wear specific garments.<sup>70</sup> When sexual violence was used against women and girls as punishment for gender transgressions, it was often accepted by the community, with victims viewed as “deserving” such punishments for breaking or transgressing gender norms.<sup>71</sup>

Discrimination based on gender, race, and ethnicity is not new. However, recognition of multiple forms of oppression was one of the most remarkable achievements of the Colombian Peace process,<sup>72</sup> and

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64. Rebecca Bratspies, “Territory Is Everything’: Afro-Colombian Communities, Human Rights and Illegal Land Grabs, 4 COLUM. HUM. RTS. L. REV. ONLINE 290, 304 (2020).

65. Bouvier, *supra* note 241, at 10–11.

66. *Id.*

67. AMNESTY INT’L., THIS IS WHAT WE DEMAND. JUSTICE! IMPUNITY FOR SEXUAL VIOLENCE AGAINST WOMEN IN COLOMBIA’S ARMED CONFLICT 15 (2011).

68. Bouvier, *supra* note 241, at 14.

69. *Id.* at 10–11.

70. Inter-American Commission on Human Rights (IACHR), *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, 98–99, OEA/Ser.L/V/II (Oct. 18, 2006).

71. *Id.* at 95–96.

72. See Lisa Davis, *Third Party at the Table: Afro-Colombian Women’s Struggle for Peace and the Inclusion of a Racial-Gender Justice Analysis in Colombia’s Peace Process*, COLUM. HUM. RTS. L. REV. ONLINE (discussing the challenges to the implementation of one of the most historic peace accords known for recognizing racial and gender crimes).

a hard-fought accomplishment by civil society organizations, notably women's, LGBTIQ, Afro-Colombian and Indigenous groups. The 2016 Peace Accord between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) stands out internationally for its recognition of Afro-descendant and Indigenous collective rights, and its emphasis on gender justice and women's participation. This initial peace accord is historic in its inclusion of an intersectional lens. It recognizes LGBTIQ persons, Afro-Colombians and Indigenous people as victims in the conflict, acknowledges discriminatory violence based on race, ethnicity, sexual orientation and gender identity, and takes a survivor-centered approach to peace.<sup>73</sup>

#### D. Organizing at the Intersection of Race, Ethnicity, and Gender<sup>74</sup>

One successful result of the work of the Ethnic Commission for Peace and Defense of Territorial Rights, was the Peace Accord's creation of the Special High Level Body for Ethnic Peoples (*Instancia Étnica*). The *Instancia Étnica* is meant to serve as a first-order consultant on peace implementation in accordance with provisions that protect and promote Afro-Colombian and Indigenous rights, to the Commission for Monitoring, Verifying and Furthering Implementation of the Final Accord (CSIVI).<sup>75</sup>

A key win for the *Instancia Étnica* was the incorporation of an ethnic, racial, and gender lens into the initial peace implementation framework (*Plan Marco*) drafts, which excluded mention of the Ethnic Chapter. After substantial civil society advocacy, the *Instancia Étnica* negotiated directly with the Government to include ethno-racial- and gender-responsive indicators—jointly developed by Afro-Colombian and Indigenous authorities and organizations, including women's

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73. *Id.*

74. A version of this section of this article was authored by Lisa Davis and J.M. Kirby and featured in a report by MADRE entitled Violations of Afro-Colombians' Gender-Based Human Rights, [https://www.madre.org/sites/default/files/PDFs/Full%20CEDAW%20Colombia%20Final\\_Eng%20Revised.pdf](https://www.madre.org/sites/default/files/PDFs/Full%20CEDAW%20Colombia%20Final_Eng%20Revised.pdf) [<https://perma.cc/W2DE-HAJ2>]. This revised edition expands on the original report and is updated to reflect recent developments in Colombia.

75. KROC INST. FOR INT'L PEACE STUD., SEGUNDO INFORME SOBRE EL ESTADO EFECTIVO DE IMPLEMENTACIÓN DEL ACUERDO DE PAZ EN COLOMBIA 245 (2018), [https://kroc.nd.edu/assets/284864/informe\\_2\\_instituto\\_kroc\\_final\\_with\\_logos.pdf](https://kroc.nd.edu/assets/284864/informe_2_instituto_kroc_final_with_logos.pdf) [<https://perma.cc/Y259-Q9QV>] [hereinafter KROC SECOND REPORT]. The CSIVI is the body tasked with monitoring implementation of the Peace Accord. *Id.*



organizations.<sup>76</sup> Afro-Colombian advocates have expressed concern however that the government has not dedicated funding to follow through on the *Plan Marco* indicators that would implement the Ethnic Chapter and gender provisions of the Peace Accord.<sup>77</sup> Of the 130 gender provisions in the Accord, 40% have not been initiated compared to 26% of the 578 total provisions.<sup>78</sup>

More broadly, insufficient funding and lack of political recognition have limited *Instancia Étnica* members' ability to carry out their function.<sup>79</sup> Moreover, CSIVI failed to establish an ongoing communication mechanism with the *Instancia Étnica*, further complicating the question of the *Instancia*'s authority and mandate, and contributing to exclusion of Afro-Colombian and Indigenous women.<sup>80</sup> As one advocate points out, onerous participation criteria, a hasty timeframe in which to declare participation, and under-funding of Afro-descendent women's organizations, made it so they could not mobilize to attend assemblies in order to vote in significant enough numbers to ensure that Afro-Colombian women would be represented on the Special High Level Body on Gender for peace implementation.<sup>81</sup> As a result, after appointing the body, Afro-Colombian women pivoted

76. *Id.* at 245–46; Procesos de Comunidades Negras [PCN] and MADRE, Open Letter to Colombian President Manuel Santos and Members of the Commission for Monitoring, Furthering and Verifying Implementation of Colombia's Peace Accord (Oct. 3, 2017), <https://www.madre.org/press-publications/statement/open-letter-colombian-president-manuel-santos-and-members-commission> [<https://perma.cc/9JPX-Q3GK>]; *see also* CUNY School of Law, MADRE & PCN, *Afro-Colombians' Human Rights: A Call for Racial and Gender Justice in Peacebuilding* (Apr. 2018), <https://www.madre.org/press-publications/human-rights-report/afro-colombians%E2%80%99-human-rights-call-racial-and-gender-justice> [<https://perma.cc/KP7Y-W4U3>] (describing the Colombian government's consultation with Afro-Colombian and Indigenous Peoples after "extensive civil society advocacy").

77. Interview with Afro-Colombian woman human rights defender (Sept. 29, 2018) (on file with MADRE) (names omitted for safety reasons).

78. KROC INST. FOR INT'L PEACE STUD., *TRES AÑOS DESPUÉS DE LA FIRMA DEL ACUERDO FINAL DE COLOMBIA: HACIA LA TRANSFORMACIÓN TERRITORIAL 42* (2020), <http://peaceaccords.nd.edu/wp-content/uploads/2020/06/Cuarto-Informe-Final-with-Annex-Link-1.pdf> [<https://perma.cc/5FDE-A5BA>].

79. *Id.* at 245; KROC REPORT, *supra* note 20, at 30; Organización Nacional Indígena de Colombia, *Pronunciamiento de la Instancia Especial de Alto Nivel con Pueblos Étnicos* (Aug. 2, 2018), <https://www.onic.org.co/comunicados-onic/2491-pronunciamiento-de-la-instancia-especial-de-alto-nivel-con-pueblos-etnicos> [<https://perma.cc/FVF5-RHWF>].

80. KROC SECOND REPORT, *supra* note 75, at 245–46.

81. Interview with Afro-Colombian woman human rights defender (June 2017) (on file with MADRE) (names omitted for safety reasons).

to mobilizing nationally in order to ultimately secure a single representative of Afro-Colombian women's organizations on the Gender Body.<sup>82</sup> While this was an important success, it may be undermined by decisions that limit the influence of both the Gender Body and the *Instancia Étnica*.

In March 2018, Colombia's Highest Administrative Court, the State Council, suspended the regulatory authority of the CSIVI.<sup>83</sup> Later, key FARC and government representatives withdrew their participation from the CSIVI and were replaced by specially appointed government officials.<sup>84</sup> At one point, the CSIVI failed to meet for over two months.<sup>85</sup> Moreover, the lack of fluid communication between the *Instancia Étnica* and the Gender Body has prevented intersectional analysis and limited inclusion of Afro-Colombian women's voices in peace implementation.<sup>86</sup> Another barrier, according to one Afro-Colombian women's rights advocate observing the process, is the structural racism that limits the feminist vision within the Gender Body, affecting the participation of women with a Afro-descendant or Indigenous ethno-racial identity, and excluding their intersectional feminist theories and knowledge.<sup>87</sup>

There has also been a failure to ensure Afro-Colombians' right to free, prior, and informed consent ("FPIC") with regard to a number of key peace implementation laws and programs, as required under Colombia's constitution and the Peace Accord. In the fast track context, only the law forming the Special Jurisdiction for Peace (JEP) was

82. Contagio Radio, *Mujeres Afro Se Sienten Excluidas de la Instancia de Genero de la CSIVI* (July 27, 2017), <https://www.contagioradio.com/mujeres-afro-se-sienten-excluidas-de-la-instancia-de-alto-nivel-de-genero-de-la-csivi/> [https://perma.cc/L38F-TPM3]; see also Commission for Monitoring, Advance, and Verification of the Final Accord (CSIVI), *Joint Communique #21* (Dec. 18, 2017), <http://www.equidadmujer.gov.co/prensa/2017/Documents/171219-Comunicado-21-CSIVI-genero.pdf> [https://perma.cc/FJV3-3TXC] (arguing for the continued inclusion of women in the implementation of the accord).

83. Redacción Judicial, *El Espectador*, *Freno del Consejo de Estado a la Comisión de Seguimiento al Acuerdo de Paz* (Mar. 7, 2018), <https://www.elespectador.com/noticias/judicial/freno-del-consejo-de-estado-la-comision-de-seguimiento-del-acuerdo-de-paz-articulo-743003> [https://perma.cc/47JL-RDN4].

84. KROC SECOND REPORT, *supra* note 75, at 62.

85. *De la Corte al Capitolio: la Demorada Ley Estatutaria de la JEP*, SEMANA (Feb. 7, 2019), <https://www.semana.com/nacion/articulo/la-demorada-ley-estatutaria-de-la-jep/600421> [https://perma.cc/SP97-5R8D].

86. KROC SECOND REPORT, *supra* note 75, at 246.

87. Interview with Afro-Colombian woman human rights defender (Jan. 18, 2019) (on file with MADRE) (names omitted for safety reasons).

subject to consultation by Afro-descendant people, and that occurred with serious limits of time to review and influence the legislation.<sup>88</sup> As a result, while the statutory law for the JEP has ten articles defining Indigenous participation, which are important to include, the proposals that Afro-Colombians presented in that regard were ignored.<sup>89</sup>

Peace Accord implementors have not yet fully and adequately consulted with Afro-descendant authorities on other legislative initiatives within the framework of the Final Accord. For instance, the Government representatives emailed four of the six remaining legislative initiatives to Afro-descendant authorities, received an email consultation with a limited group and only with regard to those four initiatives. The representatives of the National Consultation Space, the entity charged with formalizing the FPIC process for Colombia's Afro-descendant population, rejected receipt of the proposals and the idea that they were expected to develop input solely via email.<sup>90</sup> This impossible process all but assured exclusion of Afro-descendant women's input in the consultation process and subsequent fast-track legislation.

### III. THE LONG ROAD TO IMPLEMENTATION

Despite the revisions reflected in the final Accord, The November 2016 Peace Accord between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) stands out internationally for its recognition of racial and ethnic rights, and its emphasis on gender justice. While implementation has been slow going, many of the Accord's commitments have begun to take form, creating a general reduction in violence in many conflict-related areas of Colombia.

Still, many Afro-Colombian territories continue to suffer from violence and other human rights violations largely due to Government's lack of political will to implement the accord's Ethnic Chapter and key gender provisions.<sup>91</sup> While a number of measures implementing security and protection guarantees under the Peace

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88. KROC SECOND REPORT, *supra* note 75, at 246.

89. Interview with Afro-Colombian woman human rights defender (June 10, 2018) (on file with MADRE) (name omitted for safety reasons).

90. KROC SECOND REPORT, *supra* note 75, at 344.

91. Cárdenas, *supra* note 21; *see generally* KROC SECOND REPORT, *supra* note 75 (finding a lag in the initiation and implementation of measures for gender equality compared with general implementation of the Colombia Peace Accord).

Accord have passed,<sup>92</sup> there have been challenges to meeting obligations under the Accord to ensure Afro-Colombian and women's participation in this aspect of implementation. For example, while Afro-Colombians remain targets of widespread violence and displacement by armed groups,<sup>93</sup> there has been a lack of coordination with Afro-descendant authorities regarding collective security and self-protection as required under the Accord.<sup>94</sup> In addition, measures incorporating a gender perspective have not been fully implemented.<sup>95</sup> For example, the Commission on Security Guarantees has only one woman civil society representative, despite repeated requests to incorporate women's civil society.<sup>96</sup>

The failure to fully implement the accord's racial and gender justice provisions have left Afro-Colombian and Indigenous communities to face persistent forced displacement, confinement, and other violence, including sexual and gender-based violence (SGBV), as a result of a resurgence of different armed actors in regions abandoned by the FARC, and of stalled negotiations with the National Liberation Army (ELN). Decades of conflict and a history of racism and patriarchy normalized violence against Afro-Colombian women and girls, and the ongoing insecurity exacerbates their vulnerability to SGBV. The spread of COVID-19 in Colombia risks further destabilizing Afro-Colombian communities, which lack adequate access to basic health infrastructure, and to services for domestic violence, which are increasing in connection with measures to control the pandemic.

The racial and gender justice safeguards under the Ethnic Chapter and other provisions in the Peace Accord require meaningful consultation with Afro-Colombian and Indigenous authorities on

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92. KROC REPORT, *supra* note 20, at 32–36.

93. Defensoría del Pueblo, *Con Narcotráfico y Minería Ilegal, ELN, AGC y Disidencias de las FARC Violan Derechos Humanos* (Apr. 6, 2018), <https://www.defensoria.gov.co/es/nube/comunicados/7173/Con-narcotr%C3%A1fico-y-miner%C3%ADa-ilegal-ELN-AGC-y-disidencias-de-las-Farc-violan-derechos-humanos-Tumaco-Nari%C3%B1o-miner%C3%ADa-ilegal-USAID-Defensor%C3%ADa.htm> [https://perma.cc/S45N-8FKS]. For a discussion on gender-based violence committed against Afro-Colombian women, see Julie Goldscheid, *supra* note 10; see generally Babe Howell & Naree Sinthusek, *In the Crosshairs: Centering Local Responses to SGBV in Afro-Colombian Communities*, 4 COLUM. HUM. RTS. L. REV. ONLINE 268 (2020) (advocating for ensuring access to justice for victims of SGBV by supporting Afro-Colombian women's groups).

94. Interview with Afro-Colombian woman human rights defender (June 10, 2018) (on file with MADRE) (names omitted for safety reasons).

95. KROC REPORT, *supra* note 20, at 32.

96. *Id.* at 34–35.

security planning and all other aspects of implementation that impact their Peoples and territories. As FARC-EP fighters demobilized, paramilitaries and other armed actors have filled the remaining power vacuum in many areas that heavily overlap with their territories. The lack of local planning for good governance programs and early warning response mechanisms provides new armed actors with a pathway to fill power vacuums left by the FARC. These armed groups continue to commit violence without consequences, with particularly harmful impacts on women and girls. Additionally, inadequate consultation with Afro-Colombian authorities undermines their territorial rights, worsening the social, economic, and environmental crises that have helped to fuel conflict. This ongoing, pervasive physical and economic insecurity adversely impacts Afro-Colombian women's and girls' participation and mobility, and increases their vulnerability to sexual and gender-based violence and other human rights abuses. While Colombia's protracted war may have finally come to an end, there is a long road ahead to meaningful implementation of its Peace Accord. Real implementation could lead to peace but can only be accomplished by consulting those most affected by the war.