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Collective Reincorporation Processes in the Colombia Peace Accord

by Christopher Baumohl

Participating Organizations:

- Comité Permanente por la Defensa de los Derechos Humanos (CPDH)
- Fundación por la Defensa de los Derechos Humanos y del Derecho Internacional Humanitario del Oriente y Centro de Colombia (DHOC)

The following is a summary of a hearing of the 173rd Period of Sessions at the Inter-American Commission on September 26, 2019. Nearly three years after the historic peace accord between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), many Colombians, especially those in rural areas, are still waiting for conditions to improve. [1] At a hearing before the Inter-American Commission on Human Rights (the Commission) on September 26, 2019, advocates from Comité Permanente por la Defensa de los Derechos Humanos (CPDH) and Fundación por la Defensa de los Derechos Humanos y del Derecho Internacional Humanitario del Oriente y Centro de Colombia (DHOC) argued that the government of Colombia must do more to protect the rights of ex-combatants and promote full implementation of the accord to safeguard Colombia's progress toward peace.

Colombia has been engaged in a protracted battle against guerrilla groups for over five decades, resulting in more than 220,000 deaths.[2] The FARC is the largest of these groups, controlling approximately 18,000 fighters at its peak strength.[3] While some of the smaller guerrilla groups have demobilized pursuant to agreements with the Colombian government, multiple attempts to reach an agreement with the FARC had failed.[4] Ratified on November 30, 2016, the historic agreement between the government and the FARC called for government efforts to address extreme poverty throughout the country, to transform rural Colombia to facilitate greater service provision, and to provide for the reincorporation and political participation of former FARC combatants.[5] In exchange, the FARC agreed to a cessation of hostilities and a transparent and verifiable process for laying down of arms. Both sides reaffirmed their commitment to the promotion, respect, and guarantee of human rights.

has failed to implement its obligations under the accord. They asserted that the systematic violation of human rights by state forces are in violation of the American Convention on Human Rights. Further, they claim the government is not sufficiently carrying out its obligations under Chapter 3.2 of the Colombian peace agreement, which calls for the economic, social, and political reincorporation of ex-combatants into civilian life.[6] Camilo Fagua of Fundación DHOC emphasized the need for greater support for social, economic, and political reincorporation programs at the state, local, and individual levels. In particular, Fagua explained the National Development Plan fails to sufficiently articulate Colombia's long-term strategic plan for reincorporation and plans to extend it to territories that have not previously been within the state's control.[7] Fagua also emphasized that while there has been a focus on creating sustainable sources of income for ex-combatants, successive governments have only approved thirty-five "productive projects," covering only 2,196 persons out of the more than 13,000 persons active in the reincorporation process.[8]

Furthermore, Fagua called on the government to put an end to systematic violations of human rights of ex-combatants and civil society leaders, carried out in part by Colombian forces. According to Fagua, more than 150 ex-combatants have been murdered since the signing of the peace accord. Fagua highlighted the recent deaths of Carlos Célamo Iter Conde, who was murdered in Caloto on September 25, and Dimar Torres, whose murder by Colombian security forces was initially defended by the Colombian Defense Minister as an accident during a struggle for a weapon.[9] Finally, Fagua lamented the absence of Diego Martínez, a human rights lawyer and legal advisor to the FARC, who was denied entry into the United States.

The civil society organizations allege the government

Colombia was represented by a high-ranking

delegation led by Emilio Archila, Presidential Counselor for Stabilization and Consolidation; Francisco Barbosa Delgado, Presidential Counselor for Human Rights; and representatives from the Office of the Attorney General. Archila continually stressed patience in carrying out the long-term reintegration and state-building programs, which he estimated would take at least seven or eight years. Archila emphasized that the State has a long-term plan based on the census it conducted, and it has invested over \$19 million in a variety of programs including health projects and productive projects. He noted that the number of productive projects authorized by the state has been limited because of the quality of the proposals received, and that the government is working with local organizations to improve the quality of the proposals so they may be carried out effectively. Archila reiterated that the State is committed to carrying out its obligations and will continue to support the reintegration of ex-combatants for as long as is necessary.

Colombia stated it has adopted significant measures for protecting ex-FARC members and that it holds regular meetings on protection. According to Archila, the state has enacted measures to protect FARC political campaigns ranging from general de-stigmatization to individual security but that security campaigns would take time to achieve broad success. Archila then addressed the allegations of violence by Colombian security forces; he emphasized that government was committed to protecting ex-combatants like Dimar Torres, and that those responsible for his murder and the ensuing cover-up were in jail and would be held accountable. Colombia proclaimed that President Ivan Duque's administration, led by the Office of the Attorney General, was committed to investigating these murders and will continue to devote the necessary resources to do so effectively. Archila conceded these security concerns are valid and that total success would take time. Archila noted that the Irish peace process is twenty years old and continues to develop, and that Colombia's process was in its infancy. However, Archila asked the Commission to view Colombia's progress in terms of relative improvement. Archila noted that there have been noticeable drops in homicides, kidnappings, and soldier fatalities, and that the government is committed to building on this progress.

The principle concern of the Commission was to address shortcomings in safeguarding the accord. According to Commissioners Macaulay and Urrejola, many of the women they spoke to in Colombia—especially in more rural areas—say public safety has deteriorated since the signing of the accord. These women attributed the security concerns to the increased presence of new armed groups, including the National Liberation Army (ELN) and El Clan del Golfo. Moreover, Commissioner Urrejola emphasized the importance of protecting ex-FARC members from retribution and thanked Colombia for its efforts to investigate and

hold accountable those responsible for the violence. Both Commissioners inquired about how the Commission could help address ongoing security concerns. Commissioner Eguiguren, Country Rapporteur for Colombia, emphasized that the reinstatement of ex-combatants is vital to the peace accord, and asked both sides to talk more about specific successes and shortcomings in implementing the peace accord at the societal and individual. Commissioner Eguiguren also praised Colombia for providing salaries to ex-combatants in order to aid their reintegration, however, he asked for more examples of how the State was working to provide means of work to ensure ex-combatants are not wholly dependent on state aid. The Commissioners lauded the Petitioners and the government of Colombia for working to implement the historic agreement and praised the exceptional efforts of the Colombian people to achieve lasting peace. In closing, Commissioner Joel Hernández asked that both parties keep the Commission informed about developments in the deal's implementation.

1 Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Colom.-FARC-EP, Nov. 11, 2016.

2 Nicholas Casey, Colombia's Peace Deal Promised a New Era. So Why Are These Rebels Rearming?, N.Y. TIMES (May 17, 2019), <https://www.nytimes.com/2019/05/17/world/americas/colombia-farc-peace-deal.html>.

3 Leon Valencia, Commentary: FARC fighting two wars, REUTERS (Sept. 9, 2008), <https://www.reuters.com/article/columns-commentary-colombia-valencia-dc/commentary-farc-fighting-two-wars-idUSDIS95174420080909>.

4 Pastrana, FARC leader to resume peace talks, CNN (Feb 9, 2001), <https://edition.cnn.com/2001/WORLD/americas/02/09/colombia.peace.03/index.html>.

5 <http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/summary-of-colombias-peace-agreement.pdf>

6 Final Agreement to End the Armed Conflict, supra note 1.

7 Gobierno de Colombia, Bases Del Plan Nacional de Desarrollo (2019).

8 United Nations Office on Drugs and Crime, Comprehensive and sustainable productive projects, <https://www.unodc.org/colombia/en/da2013/proyecto4.html>

9 Carlos Célimo Iter, otro excombatiente de las Farc asesinado en Cauca, VANGUARDIA (Sept. 26, 2019), <https://www.vanguardia.com/colombia/carlos-celimo-iter-otro-excombatiente-de-las-farc-asesinado-en-cauca-IC1477912>; Nicholas Casey, Colombia Army's New Kill Orders Send Chills Down Ranks, N.Y. Times (May 18, 2019) <https://www.nytimes.com/2019/05/18/world/americas/colombian-army-killings.html>.

Missing and Murdered Indigenous Women and Girls in Canada (Ex Officio)

by Sydney Delin

Participating Organizations:

- Native Women's Association of Canada (NWAC)
- Canadian Feminist Alliance for International Action (FAFIA)
- Indigenous Governance Ryerson University, Toronto, Ontario, Quebec
- Native Women
- Jeremy Matson

The following is a summary of a hearing of the 173rd Period of Sessions at the Inter-American Commission on September 24, 2019. Several organizations participated at a hearing before the Inter-American Commission on Human Rights (IACHR) to update the IACHR on the high rates of murder and large number of missing women and children among Canada's First Nations populations. Both the participating organizations and the state of Canada acknowledged that there is a problem concerning the missing and murdered women and girls. However, Canada is currently in an election period and must wait until October 2019 before taking more concrete action in accordance with the "Caretaker Convention." Francois Jubinville, representative for Canada, appreciated the courage of those who shared experiences with the National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry),^[1] published June 2019, and was at the hearing to observe and to issue a written statement at a later date. As of January 27, 2020, there has been no such official statement but there have been remarks about the government's work with the First Nations to create a national plan with the help of the Organization of American States.^[2]

The high rate of missing and murdered indigenous women and girls in Canada is a result of political, economic, and social inequality dating back to colonialism.^[3] In September of 2016, Canada began a two-year independent inquiry into the high rates of missing and murdered women and children.^[4] The final report, known as the National Inquiry, is a compilation of testimonies from almost 2,400 individuals within a framework of Indigenous Rights.^[5] Recently, Canada passed provisions to Bill S-3 eliminating a discriminatory provision in the Indian Act that revoked "Indian Status" from women who married a man without that status.^[6] Bill S-3 reinstates 'Indian status' to those women and their children. This legislation came in response to the UNHRC case, *McIvor*

v. Canada, in which Sharon *McIvor* complained to the Human Rights Commission about the antiquated discriminatory legislation. At the hearing, *McIvor* and the Canadian Feminist Alliance for International Action (FAFIA) argued that sex discrimination against First Nation women and girls under the Indian Act is a root cause of violence as found by IACHR, CEDAW, and the National Inquiry.^[7] In previous reports, the IACHR expressed concern over the treatment of indigenous women and girls, including claims of forced sterilization and gender-based violence.^[8] Canada also met with the IACHR during its 167th period of sessions to discuss the situation of Human Rights of Indigenous Peoples in Canada.^[9] The IACHR came to Canada at the request of FAFIA in 2013 to investigate the situation of missing and murdered women and girls before issuing its first report in December 2014, bringing global attention to the issue.

Pam Palmater, the Chair for Indigenous Governance at Ryerson University and lawyer of Mi'kmaq background, explained how Canada created and maintained a structure that enabled violence against First Nations women and girls. Indeed, the National Inquiry found that these structures and policies enabled the genocide of Indigenous peoples.^[10] The President of Quebec Native Women Viviane Michel asserted that the government must work with the First Nations communities to create a national plan of action. Lorraine Whitman, president of the National Women's Association of Canada, asked for an expert body to come and support the First Nations in Canada. Whitman also wanted to see concrete actions and commitments from the Canadian government following the findings of the National Inquiry. The other organizations present echoed a request for a working visit from the IACHR.

Interim Representative of Canada at the OAS, Francois Jubinville, began his statement on behalf of the

State by acknowledging the important work of all the organizations present and recognized the strength of those who shared their stories with the inquiry. However, less than two weeks before this hearing, Prime Minister Justin Trudeau called for a federal election for October 2019.[11] The Caretaker Convention in Canada calls for the current government to restrict itself from exercising its authority, besides routine, non-controversial activity, during an election period to prevent binding action on the future government. [12] Because of this, Jubinville was not in a position to answer the questions from the Petitioners. He reiterated the goal of reconciliation between Canada and the First Nations, and he discussed what steps the government had taken, including the allocation of 50 million dollars in funding for the health and healing of survivors, for the commemoration of victims, for review of police practices, and for the creation of a national oversight body. He also noted the 1.7-billion-dollar funding of child care services for Indigenous families set to be distributed over the next ten years.[13] One of the largest steps Canada has taken from the recommendations given by the National Inquiry was amending Bill S-3, which eliminated sex discrimination from the Indian Act. Canada welcomed the IACHR and the international community's participation in advancing indigenous rights around the world.

The Commissioners were primarily concerned with setting up a working visit to Canada after the October 2019 election and stated that they look forward to helping Canada put together a national plan. Commissioner Margarete May Macaulay recognized Canada's first step of amending the Indian Act and acknowledged that Canada is constrained from acting until the October elections.[14] However, she thought an IACHR visit to Canada after the elections to work on a national plan would be important and encouraged participation at every level. Commissioner Flávia Piovesan listed three points of concern: the inclusion of indigenous voices in the process, the engagement of all levels of government, and the adoption of a gender perspective in a national plan. Commissioner Antonia Urrejola Noguera pointed out that Canada has not ratified the ILO's C169, the Indigenous and Tribal Peoples Convention.[15] She reiterated the importance of working on an action plan that looks at both gender issues and race discrimination against the First Nations. Commissioner Esmeralda Arosemena de Troitiño thanked the organizations for all their work and supported an IACHR visit to Canada. The Commissioners applauded the historic National Inquiry and looked forward to helping Canada create a national action plan. The National Inquiry into Missing and Murdered Indigenous Women and Girls concludes that "Canada's past and current colonial policies, actions and inactions towards Indigenous Peoples is genocide. And genocide, as per law binding on Canada, demands accountability." [16] Canada has ratified the Convention on the Prevention and Punishment of

the Crime of Genocide and is bound by it under international law.[17] Additionally, Canada is a member of the Organization of American States, though Canada has not yet signed the American Convention on Human Rights.[18] Although there may be delays due to the election, Canada's National Inquiry, the recent bill amendment, and a potential future visit from the IACHR show promise.

1 RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS (June 3, 2019), <https://www.mmiwg-ffada.ca/final-report/>.

2 Kristy Kirkup, Government Eyes June National Action Plan on Missing, Murdered Indigenous Women, THE GLOBE AND MAIL (Dec. 4, 2019), <https://www.theglobeandmail.com/politics/article-government-eyes-june-national-action-plan-on-missing-murdered/>.

3 NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS (JUNE 3, 2019), <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/News-Release-Final-Report.pdf>.

4 Human Rights Watch, World Report: Canada, <https://www.hrw.org/world-report/2018/country-chapters/canada>.

5 Reclaiming Power and Place, *supra* note 1.

6 Indian Act, R.S.C., 1985, c. I-5; Jennifer Greens, Indian Status Could be Extended to Hundreds of Thousands as Bill S-3 Provisions Come Into Force, CBC (Aug. 15, 2019).

7 IACHR Calls on the State of Canada to Address the Recommendations Issued by the National Inquiry into Missing and Murdered Indigenous Women and Girls in Order to Protect and Guarantee Their Human Rights, IACHR (June 25, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/159.asp.

8 IACHR Expresses Its Deep Concern Over the Claims of Forced Sterilizations Against Indigenous Women in Canada, IACHR (Jan. 18, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/010.asp.

9 Canadá Pueblos Indígenas, Video of Session, IACHR (Mar. 14, 2018).

10 A LEGAL ANALYSIS OF GENOCIDE, Supplementary Report, NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS (2019), https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

11 PM Justin Trudeau Calls Canadian General Election for 21 October, BBC NEWS (Sept. 11, 2019), <https://www.bbc.com/news/world-us-canada-49656611>.

12 "Guidelines on the Conduct of Ministers, Ministers of State, Exempt Staff, and Public Servants During an Election," GOV'T OF CANADA (Sept. 2019), <https://www.canada.ca/en/privy-council/services/publications/guidelines-conduct-ministers-state-exempt-staff-public-servants-election.html>.

13 "Gender Equality Statement," GOV'T OF CANADA (BUDGET 2019), <https://www.budget.gc.ca/2019/docs/plan/chap-05-en.html>.

14 Jennifer Greens, *supra* note 7; "Guidelines on the Conduct of Minister," *supra* note 12.

15 International Labour Organization, Indigenous and Tribal Peoples Convention, June 27, 1989, C169.

Environmental Protection in the Amazon and the Rights of Indigenous Peoples in Brazil

by Maria Alejandra Torres

Participating Organizations:

- Center for Human Rights and the Environment Institute for Governance and Sustainable Development (IGSD)
- Amazon Watch
- Indian Law Resource Center (ILRC)
- Articulação dos Povos Indígenas do Brasil (APIB)
- Coordenação das Organizações Indígenas da Amazônia (COIAB)
- Instituto Socioambiental
- Asociación Interamericana para la Defensa del Ambiente
- Operação Amazonia Nativa
- International Rivers
- Fórum Teles Pires
- Movimento Xingu Vivo para Sempre
- Justiça Global
- Conselho Indigenista Missionario
- Defensoria Pública da União

The following is a summary of a hearing of the 173rd Period of Sessions at the Inter-American Commission on September 27, 2019. At a hearing before the Inter-American Commission on Human Rights (IACHR) on September 27, 2019, organizations representing civil society urged Brazil to take immediate measures to curtail the fires in the Amazon that have been impacting the environment and isolated Indigenous communities.[1]

A representative of the Terena Indigenous people argued that the current Brazilian president does not respect the provisions of the 1988 Constitution, which protect Indigenous people.[2] He stated that from July to August 20, 2019, more than 3,500 fires have invaded about 148 isolated Indigenous peoples' lands and burned about 3,000 hectares. Loggers and cattle ranchers are cutting down 533 ancient trees per minute. In around 300 Indigenous villages, about 20,000 illegal miners have contaminated water sources with mercury. Consequently, mercury is now present in fifty-six percent of Indigenous women and children in those villages. Because Indigenous people are putting their own lives on the line to save the land from agro-industry activities, the Terena representative begged the President to respect his people and the Amazonian

region.

Mr. Vieira, the representative of a research agency, echoed concerns about how environmental crimes have skyrocketed without government sanctions. He noted that from April to July 2019, the government received fifteen alerts of illegal deforestation per day (about a thirty-eight percent increase) but failed to take action. There has been a ninety-five percent increase in deforestation in what used to be areas of environmental conservation. About 114 isolated Indigenous peoples are gravely affected by illegal logging, mining, and planned infrastructure projects. Mr. Vieira lamented how Brazil effectively launched an anti-deforestation policy in 2003, and deforestation dropped by eighty percent from 2004 to 2012, but that policy is presently nonexistent.

Amazon Watch criticized the government for financing companies that are involved in deforestation. [3] The Defensoria Pública da União affirmed that the Brazilian government is obliged to mitigate the destruction of the Amazon by approving a nondiscriminatory plan to stop deforestation.[4] Further, the current administration has violated the right to information, contravening Article 13 of the American

Convention on Human Rights (ACHR), because it is misinforming the public about the gravity of the fires. [5] The organizations further expressed that the government must take immediate measures to protect the right to a healthy environment and to avoid aggression against human rights defenders; it must avoid the forced displacement of Indigenous communities, an obligation under Article 22 of the ACHR.

The State claimed that Brazilian environmental law is among the most advanced in the world and rebutted the gravity of the fires. In the State's view, the fires were caused by the dry season. The State asserted that the average number of fires from January to August of 2019 was less than that of past years. President Jair Bolsonaro signed Decree 9985 on August 24, 2019, authorizing the use of armed forces to guarantee environmental law and order.[6] "Operation Green Brazil," an interagency cooperation between highway police and Amazonian state governments, partially funded by international support, is leading an effective fight according to the State.[7] It has reclaimed 20,000 hectares of land from aggressive actors and detained sixty-eight of those actors. The last speaker, on behalf of the State, began his introductory sentence in an Indigenous language. Continuing in Portuguese, he then added that Brazil has nineteen remote centers that are monitoring the ongoing situation. He assured the civil society representatives that President Bolsonaro is dedicated to protecting Indigenous communities, human rights, and environmental defenders.

Commissioner Urojola explained that the Commission will be releasing a Pan-Amazonian report analyzing the status of Indigenous communities in nine countries. She asked the State whether "Operation Green Brazil" was also providing healthcare to affected Indigenous villages and if there was any early alert coordination between armed forces and Indigenous peoples. Commissioner García Muñoz followed, inquiring about the nature of sanctions on those arrested under "Operation Green Brazil." She also asked the State if it plans on enacting reforestation projects.

The participating organizations responded that the Brazilian Development Bank has not allotted a budget for projects that protect Indigenous peoples. The Terena representative noted that the Brazilian government's data is outdated and that President Bolsonaro's initial dismissal of the situation greatly compromised the impact of the government's eventual response. Further, the government does not consult with Indigenous communities before releasing decrees. Mr. Vieira closed by acknowledging that Brazil has taken a leading role in environmental protection, so he did not understand why the State is presently ignoring that history.

In closing, the State claimed that the media has sensationalized the situation. In response to the

Commissioners' questions, the State admitted that it does not have complete information about those detained under "Operation Green Brazil" but maintained that there are seventy-six trials taking place and the detained will be judged appropriately for their crimes.

The IACHR President called for more information on the topic and assured commitment to Civil Society and State efforts. The future of the Amazon, however, will remain in peril if civil society, and Brazil cannot agree on the severity of deforestation.

1 Organization of American States, Inter-American Commission on Human Rights, <https://www.oas.org/en/iachr/>.

2 Constituição Federal art. 231 (Braz.).

3 Amazon Watch.org, <https://amazonwatch.org/>.

4 Defensoria Pública da União, <https://www.dpu.def.br/>.

5 American Convention on Human Rights, Organization of American States, Nov. 16, 1999.

6 <http://www.loc.gov/law/foreign-news/article/brazil-brazilian-president-signs-decree-authorizing-use-of-armed-forces-in-amazon-region/>.

7 Reuters, Brazil Environment Agency Launches Operations to Combat Amazon Deforestation, VOICE OF AMERICA (June 8, 2019), <https://www.voanews.com/americas/brazil-environment-agency-launches-operation-combat-amazon-deforestation>.