



**T.C.**  
**NEVŞEHİR HACI BEKTAŞ VELİ UNIVERSITY**  
**SOCIAL SCIENCES INSTITUTE**  
**DEPARTMENT OF INTERNATIONAL SECURITY AND TERRORISM**

**HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN  
LAW IN THE COLOMBIAN CONFLICT**

**Master's Thesis**

David Leonardo MORENO HERRERA

Supervisor

Assist. Prof. Dr. Murat DEMİREL

Nevşehir

August 2023





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## **COMPLIANCE WITH SCIENTIFIC ETHIC**

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

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## **SUITABILITY FOR GUIDE**

The master's thesis, entitled "Human Rights and International Humanitarian Law in the Colombian Conflict" has been prepared according to postgraduate thesis proposal and thesis writing guidelines of Nevşehir Hacı Bektaş Veli University.

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Director of the Institution

## **PREFACE**

The elaboration of this thesis has been thanks to the YTB scholarship that provide me with the chance to pursue my master's degree in International Security and Terrorism in this wonderful country, to them my gratitude and respect. I also want to thank Dr. Murat DEMIREL, my renowned supervisor and mentor, without whom this thesis would not have been possible. I want to thank him for his unwavering support and dedication.

On a personal level, I would like to thank my aunt, Herminda Moreno and my brother, Cristian Moreno who are my driving force and my life and have supported me unconditionally throughout this process. I also want to thank my close family and friends for their spiritual support from afar.

I would like to show my heartfelt gratitude to Paola Bohada, my beloved life partner who has been with me during the entire process, supported me with her words when I was exhausted, did not spare any type of assistance, and always gave answers in the most difficult situations. I owe it to her to be able to endure this academic process, since she has been the light that has shone when all other lights have gone out.

But, above all, I want to dedicate my thesis to my dear grandpa, Rafael Moreno, since by embarking on this academic path, I have given away years that I should have spent with him. I finish this work in the hope of reuniting with him and regaining those lost years.

What remains I give to my heavenly stars, who are always in my heart and will be loved forever. This is for you, mom, dad, Jorge, and Mauricio.

David Leonardo MORENO HERRERA

# **HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW IN THE COLOMBIAN CONFLICT**

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## **ABSTRACT**

The involvement of United Nations (UN) mechanisms in armed conflicts may have different effects on influencing the dynamics of the conflict and potentially assisting in the achievement of a peace agreement. This is the case in Colombia, where the United Nations has established an Office of the High Commissioner for Human Rights (OHCHR) accountable for promoting and protecting human rights in the country.

The OHCHR produces annual reports to the UN Commission on Human Rights that allow understanding from an international perspective of the reality of the effects of the armed conflict on the country's human rights and international humanitarian law situation. Similarly, it enables evaluation of the Office's activities in Colombia through its submitted reports. Therefore, this study examines how the situation of human rights and international humanitarian law in Colombia evolved according to the OHCHR annual reports from 2002 to 2018, during the presidential administrations of Alvaro Uribe Velez and Juan Manuel Santos.

This study aims to contribute to the literature on Colombian peace studies and conflict resolution studies in relation to the Colombian conflict. The findings of this research suggest specific factors that appear to have affected the situation of human rights and international humanitarian law in Colombia during the armed conflict. The main factors found include the systematic impunity identified in all annual reports, the coordination deficiencies between state entities, a recurring disregard for humanitarian obligations within the armed conflict by the illegal armed groups, a disproportionate impact of the conflict on especially vulnerable groups, and a slow and inefficient implementation of the peace agreement.

**Keywords:** Human Rights, International Humanitarian Law, guerrillas, paramilitaries, armed conflict, peace.



# KOLOMBİYA ÇATIŞMASINDA İNSAN HAKLARI VE ULUSLARARASI İNSANCIL HUKUK

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## ÖZET

Birleşmiş Milletler (BM) mekanizmalarının silahlı çatışmalara dahil olması, çatışmanın dinamiklerini etkilemede ve potansiyel olarak bir barış anlaşmasının sağlanmasına yardımcı olmada farklı etkilere sahip olabilir. Birleşmiş Milletler'in ülkede insan haklarını geliştirmek ve korumaktan sorumlu bir İnsan Hakları Yüksek Komiserliği Ofisi (OHCHR) kurduğu Kolombiya'da da durum budur.

OHCHR, BM İnsan Hakları Komisyonu'na, silahlı çatışmanın ülkenin insan hakları ve uluslararası insancıl hukuk durumu üzerindeki etkilerinin gerçekliğinin uluslararası bir perspektiften anlaşılmasına olanak tanıyan yıllık raporlar hazırlamaktadır. Benzer şekilde sunulan raporlar aracılığıyla Ofisin Kolombiya'daki faaliyetlerinin de değerlendirilmesine olanak sağlamaktadır. Dolayısıyla bu çalışma, Alvaro Uribe Velez ve Juan Manuel Santos'un başkanlık yönetimleri sırasında 2002'den 2018'e kadar OHCHR yıllık raporlarına göre Kolombiya'da insan hakları ve uluslararası insancıl hukukun durumunun nasıl evrildiğini incelemektedir.

Bu çalışma, Kolombiya barış çalışmaları ve Kolombiya çatışmasına yönelik çatışma çözümü çalışmalarına ilişkin literatüre katkıda bulunmayı amaçlamaktadır. Bu araştırmanın bulguları, silahlı çatışma sırasında Kolombiya'daki insan hakları ve uluslararası insancıl hukukun durumunu etkilemiş gibi görünen belirli faktörleri ortaya koymaktadır. Bulunan ana faktörler tüm yıllık raporlarda tanımlanan sistematik cezasızlığı, devlet kurumları arasındaki koordinasyon eksikliklerini, yasadışı silahlı gruplar tarafından silahlı çatışma kapsamındaki insani yükümlülüklerin sürekli göz ardı edilmesini, çatışmanın özellikle savunmasız gruplar üzerindeki orantısız etkisini ve barış anlaşmasının yavaş ve verimsiz uygulanmasını içermektedir.

**Anahtar Kelimeler:** İnsan Hakları, Uluslararası İnsancıl Hukuk, gerillalar, paramiliterler, silahlı çatışma, barış.

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## LIST OF ICONS AND ABBREVIATIONS

<b>AUC:</b>	United Self-Defense Forces of Colombia
<b>DAS:</b>	Administrative Department of Security
<b>GAULA:</b>	Unified Action Group for Personal Freedom
<b>ELN:</b>	National Liberation Army
<b>EPL:</b>	Popular Liberation Army
<b>EU:</b>	European Union
<b>FARC:</b>	Fuerzas Armadas Revolucionarias de Colombia
<b>GAULA:</b>	Unified Action Group for Personal Freedom
<b>GDP:</b>	Gross Domestic Product
<b>GMG:</b>	Historical Memory Group
<b>ICRC:</b>	International Red Cross
<b>IHL</b>	International Humanitarian Law
<b>JEP:</b>	Special Jurisdiction for Peace
<b>MNUC:</b>	United Nations Mission in Colombia
<b>MVNUC:</b>	United Nations Verification Mission in Colombia
<b>M-19:</b>	19th of April Movement
<b>NGO:</b>	Non-governmental organization
<b>OAS:</b>	Organization of American States
<b>OECD:</b>	Organisation for Economic Co-operation and Development
<b>OHCHR:</b>	Office of the High Commissioner for Human Rights
<b>PDPMM:</b>	Magdalena Medio Development and Peace Program
<b>UN:</b>	United Nations
<b>UP:</b>	Patriotic Union
<b>US:</b>	United States of America



**SAT:** Early Warning System

**SUIN:** Single Regulatory Information System

**UARIV:** Comprehensive Victim Support and Reparation Unit



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## INTRODUCTION

In internal armed conflicts, nations aim to ensure state security, but in doing so, they frequently jeopardize their citizens' rights and freedoms. The Colombian armed conflict has been considered one of the most important internal conflicts in the world in recent times, which has captivated the interest of many foreign actors who seek to generate changes within it and eventually help end the conflict. In 1997, the United Nations (UN) established an office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia, recognizing the need for Colombia to improve the situation of human rights and international humanitarian law, which had deteriorated dramatically over the years due to the armed conflict.

This entity was critical in analyzing the situation of human rights and international humanitarian law in Colombia from within the country, as well as carrying out work to support, monitor, control, and pressure the Colombian government to take into account its international obligations in terms of human rights and international humanitarian law (IHL), and thus carry out their actions within the armed conflict with full respect for those obligations.

Colombia's armed conflict is one of the longest in history, and it continues to this day, with the war beginning in the 1960s with the formation of guerrillas, who became a major danger to the country's security. Colombia's armed conflict is difficult to analyze due to its multiple actors and complexity, where different tactics and behaviors occur, within an irregular war. Colombia's conflict actors have violated human rights and IHL provisions through the armed conflict, resulting in one of the most violent and deadly internal conflicts of our time, with millions of

civilian victims affected by forced displacement, selective assassinations, kidnappings, forced disappearances, and other atrocities.

The main actors in Colombia's armed conflict are two guerrillas that formed in the 1960s, the FARC (The Revolutionary Armed Forces of Colombia—People's Army - *Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo*) and the ELN (National Liberation Army - *Ejército de Liberación Nacional*), the paramilitary organizations (mostly under the umbrella of AUC (United Self-Defense Forces of Colombia - *Autodefensas Unidas de Colombia*) and the armed forces as state representatives (Ribetti, 2007: 701). The Colombian state was opposed by communist guerrillas, who launched an armed struggle against it in the 1960s. The FARC and the ELN endured throughout the armed conflict and have been designated as terrorist organizations by several nations and international organizations owing to the brutality and breaches of human rights and IHL that they have perpetrated. As a result, in this study, both the terms 'guerrillas' and 'terrorist organizations' will be used interchangeably to describe the FARC and the ELN. Different governments and international organizations have also labeled the AUC paramilitary forces as terrorist organizations<sup>1</sup>.

The establishment of the OHCHR-Colombia was owing to the Colombian state's acknowledgment of the major violations of human rights and breaches of IHL that were occurring within the country and that began in the 1990s, putting Colombia on the list of failed states as a result of that scenario. The armed conflict in Colombia is a clear example of the significant impact that internal conflicts have owing to the many characteristics and methods used to foster fear and violence between conflict actors.

As a result, this thesis investigates the situation of human rights and IHL within Colombia's armed conflict with a focus on comprehending the impact that the armed conflict has had on violations of human rights and IHL, the state of Colombia's

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<sup>1</sup> See for instance US Department of State. <https://2001-2009.state.gov/secretary/former/powell/remarks/2001/4852.htm> and Council of the EU. <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32009E0468&qid=1412596355797&from=ES>

responsibility for these violations and infractions, and the impact of the security policies implemented by Colombia's various governments to combat the armed conflict's actors and how these actions have positively or negatively impacted the armed conflict's actors.

This study seeks to answer, “How did the situation of human rights and international humanitarian law related to the armed conflict evolve within the annual reports of the OHCHR in Colombia from 2002 to 2018 throughout the presidential administrations of Álvaro Uribe Vélez and Juan Manuel Santos?”. The evolution of OHCHR reports on the status of human rights and IHL in Colombia connected to the armed conflict throughout that period is examined in this study with the goal of better understanding the situation of human rights and IHL in Colombia during the armed conflict, the changes and continuities in the human rights situation within the conflicts, learn about the primary violations of human rights and IHL committed by the armed actors within the armed conflict, and comprehend the impact of the armed conflict on the civilian population from an international point of view.

To do this, this work primarily uses primary sources, which are the annual reports on the human rights situation in Colombia delivered by the High Commissioner to the United Nations Human Rights Commission, in the same way secondary sources have been consulted within this study. To conduct this investigation, the annual reports of the OHCHR-Colombia were the primary source of information to analyze the situation of human rights and IHL within Colombia's armed conflict; the study has a temporal limitation, as it examines the situation of human rights and IHL from 2002 to 2018. The emphasis of this research contributes to the literature on Colombia's armed conflict and to studies of the situation of human rights in Colombia, which have been two continuous topics of study in the field of international relations, particularly since the 2016 peace agreement.

It is essential to understand that an analysis of the human rights situation includes an examination of both current and past situations, as well as the actions taken by the state to ensure justice, truth, and reparation in relation to those situations, as well as policies and actions taken to improve the future situation of human rights and IHL.

As a result, the analysis is complex, and all of these elements are considered in order to carry out an appropriate study. It should be noted that the analysis of the situation of human rights and IHL within the armed conflict conducted during this work is not quantitative, due to the limitations of statistics and data within Colombian institutions in relation to human rights and IHL, and because the analysis of the OHCHR-Colombia annual reports is primarily qualitative.

This study has been organized into four chapters. The first chapter examines the roots of the armed conflict, the primary factors that led to the outbreak of the present armed conflict in Colombia, the actors in the armed conflict and their evolution, and the significant events that happened in a conflict that has been ongoing for more than 60 years. The second chapter addresses the OHCHR's role in Colombia through its office, as well as a structural analysis of the annual reports produced by the OHCHR-Colombia on human rights and IHL, taking into consideration all of the reports from the years examined in this study.

The third chapter conducts a content analysis of the OHCHR-Colombia annual reports from 2002 to 2010, during which the condition of human rights and IHL during Alvaro Uribe Velez's two presidential mandates is thoroughly examined. Similarly, the fourth chapter examines the annual reports from 2011 through 2018, which correlate to Juan Manuel Santos's two presidential terms. The changes and continuities in the reports, as well as the evolution of the human rights and IHL situation over time, are explored in the final two chapters in order to finally present the conclusions of this work through empirical analysis and taking into account those changes and continuities that facilitate the understanding of the implications of the armed conflict on human rights and IHL in the country during the period of this investigation.



# CHAPTER ONE

## THE COLOMBIAN CONFLICT

### 1.1. Introduction

The armed conflict in Colombia is one of the longest and most protracted internal conflicts of our time. It is a conflict that has historically been fragmented by various actors since its inception in the early 1960s and that has remained evolving for decades. The violence in Colombia has been so intense that Colombia began to be labeled as a failed state in the 1990s within United States institutions (see Martelo Martelo, 2014: 77;81) and in international scenarios at the beginning of the year 2000<sup>2</sup>, causing concern among various international actors such as the UN, the European Union (EU), the United States of America (US), the Organization of American States (OAS), and others. The armed conflict in Colombia has very deep roots, ranging from the unequal distribution of land in the 19<sup>th</sup> century, the bipartisan struggle in the 20<sup>th</sup> century, and the influence of the Cuban revolution and the rise of communism in Latin America in the 1950s and 1960s.

This conflict has tested the ability of the Colombian state and its security policies to ensure the survival of the state. Similarly, the violent nature of the conflict has also posed another very important challenge for the state of Colombia to guarantee respect for human rights and IHL in the midst of the armed conflict. It can be said that the main challenge for the state has been to guarantee respect for human rights and IHL while defending the state and guaranteeing security within the entire territory.

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<sup>2</sup> Please see The Failed States Index 2005. <https://foreignpolicy.com/2009/10/22/the-failed-states-index-2005/>

This chapter provides the contextual framework of the armed conflict in order to understand the roots and development of the conflict as well as the actors that act in it. This analysis is significant since it provides for a broad background of the conflict and to be able to comprehend more clearly the actions made by the Colombian state in connection to security policies and the fight against the numerous illegal armed groups and terrorist groups. Similarly, it allows for a better understanding of the ideology, motives, and objectives of the illegal actors in the armed conflict, as well as the influence that the multiple actors have had within the armed conflict and its repercussions in relation to human rights and IHL.

Within this framework, this study has found that the case of Colombia consisting of a long-standing armed conflict and the peace process has four distinct phases. These phases were developed based on research and study of the literature on armed conflict from its inception to the present. This study argues that the armed conflict could be classified under four main phases entitled as: The emergence of the guerrillas and the outbreak of the armed conflict; the strengthening of the guerrillas and paramilitary groups through drug trafficking and the growth of violence; the internationalization of the conflict and seeking for solutions via military means; and the process of the peace agreement between the Colombian government and the FARC guerrillas. Finally, this chapter concludes with a brief evaluation on the success of the post conflict era in prospect of a stable and lasting peace to be able to build final conclusions in this research.

## **1.2. Historical Roots and Background**

The internal conflict in Colombia is one of the longest conflicts in recent history, and it has been brought to the international stage due to its great importance both in Latin America and in the international arena. This research explain the roots and background of the conflict, as well as its development through the decades to seek to fully understand the conflict and in this way also achieve a more accurate understanding of the actions that must be taken to bring carry out an effective post-conflict process after the peace agreement with the illegal guerrilla and most important terrorist organization in the country; the FARC, since it supposes a great challenge for the country to materialize the peace agreements between this terrorist

organization and the government as well as to seek the definitive end of the armed conflict.

### **1.2.1. Internal Roots**

Colombia's armed conflict is diverse, and the elements that played a role in its establishment are diverse as well. The conflict has significant historical roots in land inequity, which, as noted by LeGrand, created separation and friction between the country's wealthy landowners and small peasants even before the conflict arose (2003: 169). In the years 1870-1880, a sharp divide began to form between two social classes: wealthy landowners who controlled large tracts of land in the country's higher eastern regions, and the poor peasants who worked for them; this frequently resulted in expressions of social conflicts, such as land conflicts (González, 2004: 11-12).

According to LeGrand (2003: 169) with the opening of communication and transportation routes, the peasants of those areas decided to emigrate and take possession of lands in lower areas of the country that were not privately owned and to devote themselves to agriculture. However, the big landowners seized those territories from the peasants, who continued to be used as cheap labor, and this generated hatred on the part of the peasants towards the landowners (LeGrand, 2003: 169), and towards the government for not being able to protect them or for even helping them lose their lands (Baysal, 2017: 126). LeGrand argues that the growth of private property became a forceful method of acquiring labor and that the resulting hate was translated into social protest movements by peasants during the 1920s and 1930s, resulting in a struggle for land (As cited in Torres del Rio, 1987: 362-363). In this sense, LeGrand sees the armed conflict in Colombia as having its roots in a significant extent in the fact that these rich landowners tried to take the land and labor in areas of public land (LeGrand, 1989: 10).

This has been one of the key reasons of Colombia's current conflict, as well as one of the primary causes of all violent conflicts in Colombia since its foundation. It should be recognized that Colombia has been a country distinguished by violence long before the present armed conflict, and that this is a socioeconomic cause of the

current armed conflict, Colombia's history, according to Ortega and Tamayo, is filled with war, as seen below:

1816 [war] federalist vs centralists. 1826 confrontation between warlords. 1851 fight for the emancipation of slaves. 1859 [war] Mosquera vs. Ospina. 1863 to 1884 fifty-four miniwars. 1872 Radicals against Liberals and Conservatives. 1855, 1895, 1899 fight between liberals and conservatives. 1903 Thousand Days War. 1948 the Bogotazo for the murder of Gaitán; in addition to wars between guerrillas, military, paramilitary, drug traffickers, common crime (Ortega & Tamayo in Mosquera-Mosquera & Rodríguez-Lozano, 2020: 270).

Many historians agree that the gestation phase of the guerrillas in the current armed struggle happened during *La Violencia*<sup>3</sup>, and as a result, it is often regarded as the primary cause of the formation of communist guerrillas in the 1960s. *La Violencia* was a period of clashes between conservatives and liberals (the two traditional political parties that completely dominated Colombian politics in the second half of the 19th century and throughout the 20th century) that began in 1946 and spread throughout the country in 1948 following the assassination of liberal leader Jorge Eliécer Gaitán, in what is known as *El Bogotazo*<sup>4</sup>, which resulted in a counter-offensive by conservatives throughout the country, with an estimated 200,000 people murdered between 1946 and 1953 (González, 2004: 12; LeGrand, 2003: 172). This conservative counteroffensive resulted in the formation of liberal and communist self-defense groups, which exacerbated the conflict; the FARC can even be traced back to the union of Communist self-defense groups with a faction of the Liberal guerrillas that was formed in the 1940s and 1950s during *La Violencia* (Chernick, 2003: 14).

In 1953, General Rojas Pinilla seized power in the country through a coup, declaring the end of the bipartisan struggle and the restoration of order in the country, and promising guarantees to the guerrilla formations in exchange for handing over their weapons; most of the liberal formations accepted this amnesty and demobilized, while some communist peasant self-defense groups decided to maintain the resistance, believing that armed confrontation could return at any time (Centro Nacional de Memoria Histórica, 2014: 47).

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<sup>3</sup> It was given this designation because it was the most violent period in the country.

<sup>4</sup> Because the riots and bloodshed erupted in Bogotá, Colombia's capital.

The political scenario in Colombia was quite unique in the years preceding the emergence of the current armed conflict; in 1957, the National Front<sup>5</sup> (1958-1974) was formed, a pact between the two traditional political parties (liberals and conservatives) to equally divide the country's power that preceded the dictatorship of General Rojas Pinilla, but by doing so, they excluded other political alternatives, one of which was the communist party, which was banned and declared illegal<sup>6</sup>; this was another significant reason for the eventual formation of illegal armed groups, as it eliminated any political prospect of new local forces such as the communist party (González: 2004, 12; Historical Memory Group, 2016: 118). It is important to highlight that one of the reasons for this exclusion to any other political option through the National Front took place in the international context of the Cold War, since during that context of the Cold War<sup>7</sup> the construction of the anti-communist imaginary in Colombia was consolidated, which was also key to allowing the acceptance of the creation of the National Front within the general population.

The two political parties, which had been fighting for power using violence for decades, agreed to join forces not just to put an end to *La Violencia*, but also to confront the spread of communism observed in other areas of the world and that was beginning to grow in Latin America. The National Front was born as a joint understanding between liberals and conservatives to exercise power and ensure the restoration of the institutional channels disrupted by the dictatorship of Rojas Pinilla (Historical Memory Group, 2016: 206), but the National Front also ensured the two political parties' control and closed all political channels to communism. González Cepeda (2017: 303) states that during the National Front, partisan hatreds between conservatives and liberals became a confluence and an understanding between the leaders of the two political parties, in this way the imaginary of communism that was linked to the liberal party, separated from it and it became the new enemy, communism itself.

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<sup>5</sup> The National Front was a political coalition comprised of liberals and conservatives who alternated in administration and had an equal say in selecting their respective supporters to bureaucratic positions (Historical Memory Group, 2016: 121).

<sup>6</sup> Legislative Act No. 6 of 1954 prohibited communism in Colombia (see González, 2017: 305)

<sup>7</sup> The historian Gonzalo Sánchez points out that the event that marks the beginning of the Cold War in Colombia and Latin America was the assassination of Jorge Eliecer Gaitán (González Cepeda, 2017: 300).

### **1.2.2. External Roots**

To comprehend the armed conflict in Colombia, it is also necessary to underline the international context in which it arose, as this scenario was critical to both its genesis and evolution. The armed conflict arose at a period of Cold War and global political division, during which communism became perceived as a threat within Latin America. The Cuban revolution that helped boost communist groups in other parts of the continent made the communists in other parts of Latin America understand that they could defeat a traditional army and a state; this resonated especially in Colombia, where the communists, seeing that they were being attacked and seeing the success of the Cuban revolution, understood that they could through unconventional tactics reach a victory against the state and that in underdeveloped America the armed struggle must fundamentally take place in the countryside (Pizarro, 1987: 108).

In this international context of the Cold War and the Cuban Revolution, as well as the internal situation of the National Front, illegal insurgent guerrillas developed in some areas of the Colombian periphery. According to Obando Silva et al (2016: 394), the National Front intensified the insurgent struggle and led to the formation of the guerrillas in the 1960s, the main example being the attack on Marquetalia in 1964 under the Plan Lasso, which was decisive for these communist organizations to decide to establish the FARC guerrillas (Chernick, 2003: 14).

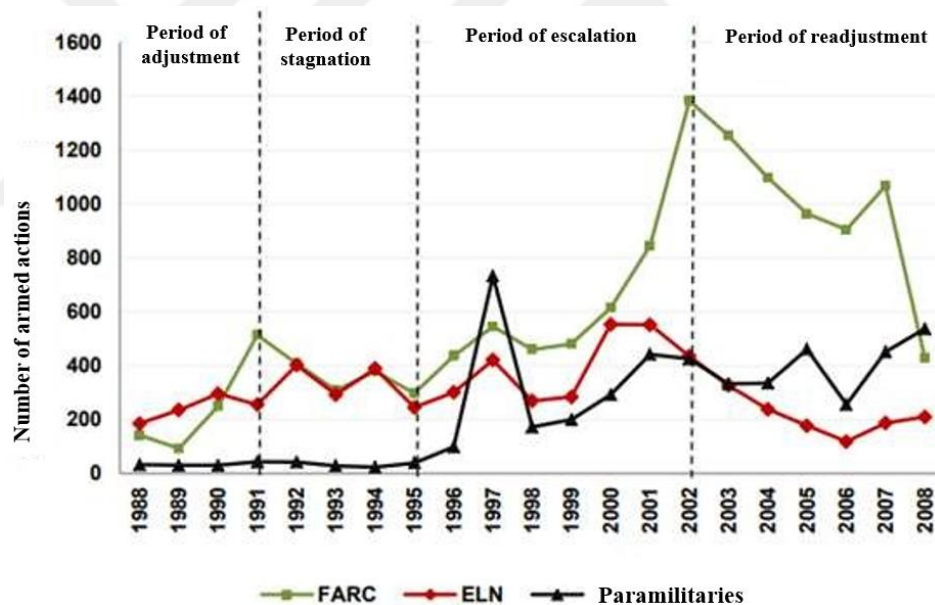
It might be claimed that international involvement had a big influence on this event; the American influence that was generated in the early 1960s through the "Alliance for Progress," a United States government initiative that sought to counter the influence of communism in Latin America, provided both socioeconomic aid and military support to Colombia, which helped carry out Plan Lasso, a 1962 offensive carried out by the Colombian government against communist formations (Baysal, 2017: 136).

Melamed & Pérez Espitia highlight that both the FARC and the ELN were born within a national context of social and political violence made up of the atmosphere

created during the Rojas Pinilla dictatorship and the establishment of the National Front but asserts that also the international context generated by the Revolutionary wave through the Cuban Revolution had a determining factor, especially in the constitution of the ELN (2017: 142).

### 1.3. Phases of the Armed Conflict in Colombia

Many historians and scholars from many fields, ranging from economics to peace studies and researches in the area of international relations, have written about Colombia's armed conflict. Other researchers have divided the armed conflict into phases, for example, Durán Pabón divides the armed conflict into four periods based on the number of armed actions by the illegal actors in the conflict: period of adjustment, period of stagnation, period of escalation, and period of readjustment. (2011: 4-6).



**Figure 1.** Armed Activities of the Main Actors in the Colombian Armed Conflict 1988-2008

**Source.** Adapted from Durán Pabón (2011: 6)

Durán Pabón classifies the conflicts into four stages based on data obtained by the Resource Center for Armed Conflict (CERAC in Spanish), which provides municipal and monthly statistics on the armed conflict from 1988 to 2010 (Durán Pabón, 2011: 3), consequently, it does not account for the insurgents' gestation time.

González Cepeda (2017), for his part, divides Colombia's armed conflict into three periods based on the Cold War periodization, but in the domestic context of Colombia, identifying three phases as follows:

A phase of ideological consolidation and national unity between 1948 and 1958; a second phase where the internal enemy is consolidated from the formation of communist guerrillas and the need for security is imposed before the solution to the problems, period comprehended between 1958 and 1978; and the third phase, the open war phase between 1979 and 1990/91, where the communist threat is conceived as real due to the levels of development and control achieved by the guerrilla organizations both in Colombia and in Central America. (González Cepeda, 2017:300).

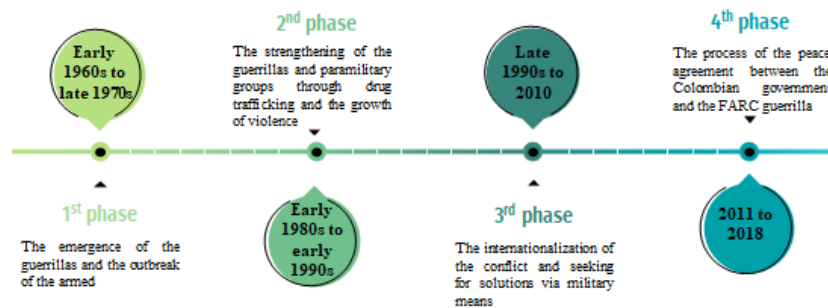
Echandía Castilla, for his part, creates a periodization based on the number of FARC and ELN members between 1964 and 2014<sup>8</sup>. Durán's classification from 1988 to 2010, González Cepeda's classification from 1948 to 1991, and Echandía Castilla's classification from 1964 to 2014, as well as other authors' studies of the armed conflict, have been employed in this work to carry out a new periodic categorization of the armed conflict. The study presents a new categorization of armed conflict phases based on an analysis of the conflict itself and its evolution over time, within which various phases are identified and selected based on the radical and substantial changes that occurred within the same conflict and changed the course of it and its actors.

This study examines the conflict historically in four phases, which are determined by crucial moments that have radically altered the continuity of the conflict or determining points of change of one or more actors within the conflict that have drastically altered the conflict. These phases have been chosen within this work after researching and analyzing the evolution of the armed conflict from its beginnings to the present, considering the most important changes and the most significant actions that have shaped the conflict over the years. To do so, this study reviewed the literature and found similarities in different sources of moments of the conflict that were decisive and changed its course; these four phases are explored chronologically, considering the main actors in Colombia's armed conflict and the turning points that shaped the conflict.

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<sup>8</sup> Please see *Cincuenta años de cambios en el conflicto armado colombiano (1964-2014)*.  
<https://zero.uexternado.edu.co/cincuenta-anos-de-cambios-en-el-conflicto-armado-colombiano-1964-2014/>





**Figure 2.** Phases of the Armed Conflict in Colombia

**Source.** Author's own assessment

### 1.3.1. 1<sup>st</sup> Phase: The Emergence of the Guerrillas and the Outbreak of the Armed Conflict (early 1960s to late 1970s)

The first phase of Colombia's armed conflict begins with the formation of guerrillas in the 1960s, which slowly became a military threat to the Colombian state. The communist formations transitioned from having political objectives to having military objectives and decided to evolve into illegal insurgents whose goal was to seize power and control of the country. The most notable example is the FARC, which began as rural guerrilla organizations with little military capabilities until establishing their first five military fronts in 1973 (Segura & Mechoulan, 2017: 6). As previously stated, the guerrillas were formed as a result of various social and political factors, including the conflict for land between rich landowners and poor peasants, as expressed by LeGrand (2003: 169), as well as the political conflict for power and the gap created by traditional parties to maintain power between them through the National Front, that gave an incentive for insurgent left-wing guerrillas to take up arms. All of this added to the international scenario of the Cuban Revolutions in Latin America and the appearance of emblematic revolutionary figures such as Ernesto "El Ché" Guevara and Camilo Torres "the priest" at the national level (Historical Memory Group, 2016: 129-130).

There have been other leftist guerrillas involved in the conflict, but this research focuses on the two most significant ones that have posed a threat to the Colombian government. The FARC and the ELN have been the most important insurgents in the

fight over the years, surviving more than 60 years of conflict. These two organizations have had a greater involvement in the violence within the armed conflict, as well as greater influence and importance for the state, being perceived as the biggest threat to the country's security and have had a greater role in the peace processes that have developed throughout the conflict (Tawse-Smith, 2008: 273).

This is because, whereas a government's security policies strive to finish the conflict in a short time and provide results to the public, usually within the time that their mandate lasts, leftist guerrillas have objectives that can take decades, making it more difficult for government forces to defeat them. The unconventional tactics of the guerrillas extend these objectives, trying to wear down and fracture the state apparatus and to do so, Rangel, explains that the guerrillas carry out a war of exhaustion or progressive attrition (Rangel, 1998, in Lair, 2000). For example, the FARC's long-term objective was to seize control from the state while also disrupting the social order. The ELN and FARC are the two main illegal armed actors in the conflict, and it can be said that the current armed conflict emerges in the years when these two leftist guerrillas pose a threat to the Colombian state, and over time these guerrillas began to be labeled as terrorist organizations on the national and international stage by countries like Canada and the United States (LeGrand, 2003: 196).

Since October 8, 1997, FARC and ELN have been designated as terrorist organizations by the US Department of State; FARC was delisted on December 1, 2021<sup>9</sup>, and both groups were also designated as terrorist organizations by Canada on April 2, 2003<sup>10</sup>. It should also be noted that FARC has been placed on the so-called "EU terrorist list" since June 2002, which established a list of people, organizations, and institutions involved in terrorist actions and subject to restrictive measures and was removed from the list in October 2017 (Council of the EU, 2023). For its part, the ELN is still designated as a terrorist organization<sup>11</sup>

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<sup>9</sup> Please see US Department of State. "Foreign Terrorist Organizations", 2023, <http://www.state.gov/j/ct/rls/other/des/123085.htm>

<sup>10</sup> Please see Government of Canada. "Listed Terrorist Entities", 2023, <https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#20>

<sup>11</sup> Please see Council Decision (CFSP) 2019/1341, 2019, <https://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:32019D1341&from=en>

Although the term "guerrillas" is widely used in literature instead of "terrorist organizations," the US Department of State has designated both the FARC and the ELN as terrorist organizations. There is much debate in the literature about how to describe these guerrillas, as many researchers prefer to use the term "guerrillas", but it should be noted that they have been designated as terrorist organizations by 33 states and some international organizations, including Colombia, Panama, the United States, Canada, and New Zealand, as well as the European Union (Álvarez Rubio, 2015: 58). Therefore, the term "terrorist organizations" it is also used by other academicians<sup>12</sup> in the literature. The term narcoterrorist has also been used to refer to guerrilla groups<sup>13</sup>, notably the FARC because to the extensive linkages discovered between the group and the drug trafficking business.

It should be noted that the term terrorist organization was regularly used by the government under the Uribe Velez administration; President Uribe Velez refers to the FARC as a terrorist organization in his speech to the country's armed forces on September 8, 2003<sup>14</sup>, and the text of the Democratic Security policy of his mandate classifies the FARC and the ELN within the subtitle of terrorism<sup>15</sup>.

Internal factors such as the National Front's restricted democracy, the unresolved agrarian problem, and the radicalization of some sectors of youth, particularly students in the 1960s, as well as remnants of the liberal guerrillas of the time of *La Violencia*, and the tendency towards political radicalism of some union sectors, as explained by Velasquez (2003: 31), created a backdrop for the conflict to emerge and, as a result, the appearance of guerrillas such as the FARC and the ELN.

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<sup>12</sup> Please see Ospina, C. 2014. Colombia and the FARC: From Military Victory to Ambivalent Political Reintegration?  
[https://cco.ndu.edu/Portals/96/Documents/books/Impunity/CHAP\\_6%20Colombia%20and%20the%20FARC.pdf?ver=2017-01-19-102821-070](https://cco.ndu.edu/Portals/96/Documents/books/Impunity/CHAP_6%20Colombia%20and%20the%20FARC.pdf?ver=2017-01-19-102821-070)

<sup>13</sup> Please see Castañeda, D. 2012. The European Union in Colombia: Learning how to be a peace actor.  
<https://archives.defense.gouv.fr/content/download/158084/1625311/file/Paris%20Paper%20n%C2%B03.pdf>

<sup>14</sup> Please see Speech by President Alvaro Uribe in the possession of the new commander of the FAC. 09/08/03. <https://www.semana.com/on-line/articulo/discurso-del-presidente-alvaro-uribe-posesion-del-nuevo-comandante-fac-08/09/03/60603-3/>

<sup>15</sup> Please see Política de Defensa y Seguridad Democrática.  
<https://www.oas.org/csh/spanish/documentos/colombia.pdf>

### **1.3.1.1. The Revolutionary Armed Forces of Colombia—People's Army**

The FARC terrorist organization's origins can be traced back to the union of communist self-defense groups and liberal guerrillas during the time of *La Violencia*. The Historical Memory Group (GMH in Spanish) points out three important sociopolitical phenomena of the origins of the FARC: the agrarian struggles of the 20th century, the political activity of the Communist Party and the creation of the peasant self-defense groups (Centro Nacional de Memoria Histórica, 2014: 31). But what triggered the formation of the Revolutionary Armed Forces of Colombia was a bombing campaign against these communist formations in 1964 with the assistance of the United States (Chernick, 2003: 14). According to many historians, the exact moment that led to the formation of the FARC as a guerilla was the second Southern Bloc meeting in 1966 in response to the Colombian government's repression of peasant groups and communist organizations (Safford & Palacios, 2002: 356), particularly after the bombardment of the military forces of the Marquetalia region in June 1964, where the leaders of these communist formations were established; one of these leaders was Manuel Marulanda Velez "Sureshot," who barely escaped the bombardment and decided to respond to the state's violence by founding the FARC guerrillas (Baysal, 2017: 139).

In the literature, discrepancies can be found between one or another date such as the date of creation of FARC that can confuse, Leech (2011) clarifies that "at the Second Guerrilla Conference, the Southern Bloc changes its name to the Revolutionary Armed Forces of Colombia (FARC in Spanish) and takes the 27 May 1964 attack on Marquetalia as the official date of the founding of the guerrilla organization". This is supported by the FARC Manifesto from 1966, which states:

...the guerrilla detachments of the Southern block, we have united in this Conference and constituted the Revolutionary Armed Forces of Colombia (F.A.R.C.), which will begin a new stage of struggle and unity with all the revolutionaries of our country, with all the workers, peasants, students, and intellectuals, with all our people, to promote the struggle of the great masses towards the popular insurrection and the seizure of power for the people (FARC Manifesto, 1966).

FARC began as a guerrilla force made up of poor peasants who clustered in distant rural areas where there was no state presence throughout the 1960s and 1970s (LeGrand, 2003: 176). Due to the state's historical obligation to the poor peasants,

the FARC identified with the poor peasants and gained support in those abandoned territories (González, 2004: 13). The FARC even took part in the start of a peace process with the government in 1982, which led to the signing of a cessation of hostilities agreement and the start of peace negotiations known as the Uribe Accords in 1984, to which other minor guerrillas such as the M-19 (The 19<sup>th</sup> of April Movement – *Movimiento 19 de abril*) and the EPL (Popular Liberation Army – *Ejército de Liberación Popular*) later joined (Leech, 2011: 26).

During the peace talks, the FARC formed a political party named the Patriotic Union (UP) with the Communist Party, which was founded in 1985. This political party was a means for the FARC to strengthen their political influence (Leech, 2011: 27). The UP had a high level of participation and acceptability in the 1986 elections, but despite the political acceptance of the UP, congressmen, senators, mayors, and members of the political party, including their presidential candidate in 1986 and 1990, began to be assassinated (Chernick, 2003: 15).

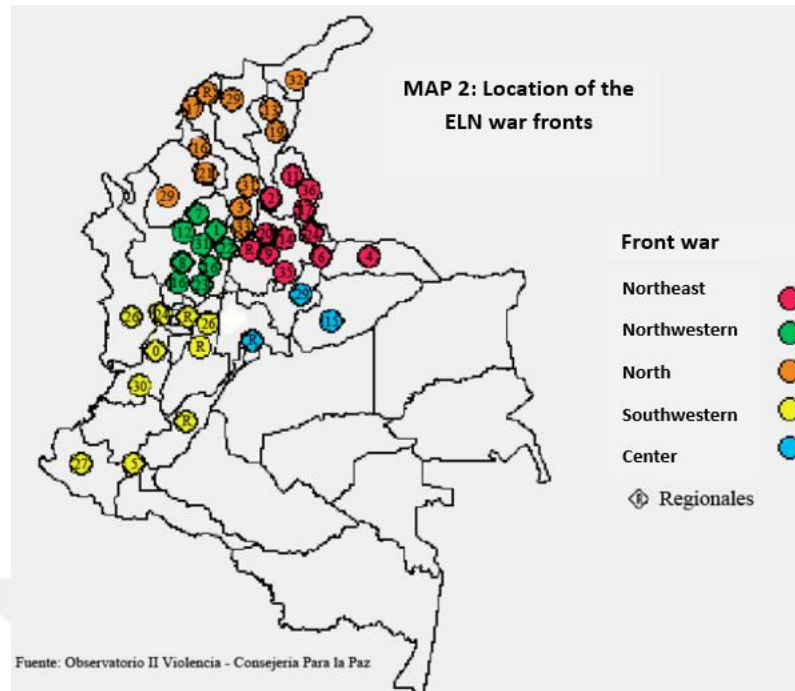
This fact fueled the FARC's skepticism of the government and any future attempts at peace talks, as they realized that the political path was no longer an option and began to fear that what happened with the UP would be repeated (LeGrand 2003, p. 176). During the initial phase of Colombia's current armed conflict, the guerrillas founded in the 1960s to resist the state presented minimal threat to the state's security. Guerrillas such as the FARC focused their energies on survival rather than expansion, thus they did not constitute a significant danger to the state until the mid-1980s (Longhurst & Lopez, 2005: 9-10).

During the early years of the emerge of FARC, they attempted to ensure their survival and grow influence and strength inside the rural territories where they were created, while repelling government forces attacks. The peasants saw how large ranchers and landlords were gaining more control and influence over the traditional parties, which led to guerrillas such as the FARC and the ELN gaining acceptance and support from poor peasants across the country in their early stage, but as stated above, the guerilla plans were not particularly ambitious at this phase.

### **1.3.1.2. The National Liberation Army**

The National Liberation Army (ELN) is a terrorist organization that emerged in 1964 as a movement of students and Catholics, primarily radical priests, inspired by the Cuban Revolution. These people felt they represented the majority of Colombians: people with economic, political, and social concerns fostered by official marginalization (Center for International Security and Cooperation, n.d.). At its founding, the ELN's principal goals were to seize power, fight against US imperialism, and fight against local oligarchic elites (Yaffe, 2012: 53).

The ELN guerrillas has grown slowly throughout the conflict due to financial difficulties, and it has even been on the verge of extinction due to state military persecution. In 1973, the Fifth Brigade of the Colombian Army carried out Operation Anori against the ELN, which was a hard blow for this terrorist group, which went from having 270 members to less than 70 in just one year (Yaffe, 2012: 53). Nonetheless, the ELN flourished in the second half of the 1980s as a result of a change in financing techniques, taking control of major sections of the country with high economic potential in the oil and mining industries, and extracting large resources from them. According to Safford & Palacios, the discovery and exploitation of new oil reserves in ELN-controlled territories enabled them to engage in large-scale extortion (2002: 363). This, combined with extortion of ranchers and a late incursion into the drug trafficking business, allowed the ELN to develop from 350 militants and four combat fronts in 1984 to 4,500 militants distributed across 41 fronts in 2000 in different zones of Colombian territory (Yaffe, 2012: 54).



**Figure 3.** Map of the Location of the ELN Fronts for 1998

**Source.** Adapted from Echandía Castilla (1999)

However, this expansion was halted in the late 1990s and early 2000s as a result of state pressure and persecution, as well as an offensive by paramilitary groups in the Magdalena River valley and the interior of the Caribbean Coast (LeGrand, 2003: 174), and as a result of FARC pressure over control of some territories (Yaffe, 2012:55). The ELN is a guerrilla that is still active in Colombia and poses a threat to the country's security, it concentrates its power and operations in remote areas of the country, with a stronghold in the northwest and the eastern plains, where it controls a portion of drug trafficking, smuggling, and extortion as a means of financing its operations against the state and private companies (Yaffe, 2012: 54).

The ELN is a guerrilla that adheres to a liberal theological Catholic ideology; this radical Catholicism "considers imperialism and capitalism to be responsible for the violence and inequality in the so-called 'underdeveloped' region" (Carrick, 2021: 30). One of the ELN's guiding principles has been to combat foreign influence in Colombia and to establish a popular democracy; however, with the demobilization of the FARC guerrillas, the ELN has moved closer to the government, focusing more on demobilization and reintegration; nevertheless, these negotiations have not been

successful in the past due to their ideology. For example, the ELN, unlike other guerrillas such as the M-19 or the EPL, has refused to enter into talks with the state in the 1984 Uribe Accords (Leech, 2011: 26). The ELN has traditionally been less open to peace talks; as said by Carrick “The US, the Colombian state, and the landowning elites are all on the side of evil, and negotiations towards a state-sanctioned peace would not, in the eyes of the ELN, be a peace at all” (2021: 32).

Despite the fact that the ELN has continued to operate actively and has carried out various terrorist actions, particularly in the Arauca region and along the border with Venezuela, where it has great territorial control, and that the ELN remains on terrorist organization lists in both the United States<sup>16</sup> and the European Union<sup>17</sup>, the BBC News recently announced that talks between the government and the ELN have resumed after three years; this is due to the election of Colombia's new President, Gustavo Petro, who is the country's first left-wing president, for whom it is expected that these negotiations between the new government and the terrorist group are more successful than in the past (BBC News, 2022).

### **1.3.2. 2<sup>nd</sup> Phase: The Strengthening of the Guerrillas and Paramilitary Groups through Drug Trafficking and the Growth of Violence (early 1980s to early 1990s)**

In the second phase of the armed conflict, a great growth in violence can be identified, since the armed conflict was altered by the appearance of other actors who began to take on great importance within it and became a great threat to state security and a great threat for the protection of human rights and IHL within the conflict. During this phase, there was a huge increase in violence in the late 1980s and 1990s because Colombia's armed conflict became considerably more complicated and heterogeneous since two main factors entered and were highly crucial for the armed conflict: drug trafficking and paramilitaries. Since they not only began to play a part inside the conflict, but also caused modifications and adjustments in other actors of the armed conflict; these two factors changed the trajectory of the armed conflict and became a crucial variable in the conflict's future.

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<sup>16</sup> US Department of State. 2023 “Foreign Terrorist Organizations”, 2023, <http://www.state.gov/j/ct/rls/other/des/123085.htm>

<sup>17</sup> Council of the EU. 2023. EU terrorist list, <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/>



### 1.3.2.1. Drug Trafficking

Drug trafficking played a significant role in the escalation of the conflict since it provided the guerrillas with greater power and considerably increased their military capabilities. As their aims became more ambitious, they began to expand their geographical control, opting to attack metropolitan areas. According to Longhurst & Lopez (2005: 10), the FARC's more aggressive expansion began with the seventh conference<sup>18</sup> of FARC in 1982, and the means to carry out this aggressive expansion and obtain personnel was through drugs exploitation (Marks, 2002:6). However, according to analyst Dave Spencer, this expansion was planned and exponential in order to build a guerrilla capable of confronting state forces:

The goal was the creation of a 28,000-man army divided into 48 guerrilla fronts... In 1982 FARC was just a small organization of 15 fronts with maybe 2,000 guerrilla fighters. By 1990 it had expanded its forces to 43 fronts with about 5,000 fighters. Now [2002] it has between 15-20,000 combatants in 60 fronts and mobile companies (these formations range from 60 to 400 individuals). This has allowed them to move to mobile or maneuver warfare, the use of large units capable of directly confronting military units of equal size, of overrunning military installations and smaller units (Marks, 2002: 6-7).

According to the Washington Post, the FARC reached its pinnacle in the late 1990s, rich with cocaine revenues, with roughly 20,000 combatants (Miroff, 2016). According to Vargas (1999), in the 1990s, the growth of cocaine plantations was exponential in territories controlled by guerrillas who earned significant income by taxing coca production, coca intermediates, processing laboratories, and clandestine airstrips for cocaine shipments, and all of these funds were used to strengthen the guerrilla's military and logistical capacity in the war effort.

Year	Number of fronts	Number of members
1986	32	3,600
1995	60	7,000

**Figure 4.** The FARC's Growth from 1986 to 1995

**Source.** Vargas (1999)

<sup>18</sup> Please see Conclusiones generales de la Séptima Conferencia Nacional de las FARC-EP. <https://verdadabierta.com/wp-content/uploads/2020/08/5-Septima-conferencia.pdf>

Initially, the ELN was hesitant to support its programs through drug trafficking because it saw it as a business that contradicted their revolutionary fight and philosophy (Carrick, 2021: 32) As a result, their growth and profit through this business was delayed; however, the ELN's control of key territories for drug trafficking drew them closer to this practice. By the end of the 1990s, both the FARC and the ELN had been classified as "narco-terrorist" or "narco-guerrilla" groups on a national and international level, resulting in the discredit and delegitimization of their fight and the erasing of boundaries between common criminals and political criminals (Centro Nacional de Memoria Histórica, 2014: 150).

With the rise of drug trafficking, large drug barons emerged, who initially coexisted with the guerrillas in the territories. However, when the drug traffickers arrived in rural coca-producing areas, they discovered that the FARC were already present, making the FARC the middleman, paying taxes to be able to produce and sell their product (LeGrand, 2003: 181). As the drug barons came into conflict with the guerrillas, who grew increasingly involved in the industry, the guerrillas decided to utilize the kidnapping of these barons' family to demand significant quantities of money as a means of funding, as a result, drug lords began to form paramilitary squads to protect themselves against guerrillas (LeGrand, 2003: 182).

The paramilitary groups became a response to this advance of the guerrillas that the government and the armed forces could not prevent, as a result, the guerrillas became a shared adversary between illegal paramilitaries and the armed forces, resulting in collaboration between them (Baysal, 2017: 141). This link between the state and the paramilitaries was so deep as can be seen in LeGrand “this ongoing collaboration is so close that some international observers call the paramilitaries ‘irregular forces of the state’” (2003: 182).

### **1.3.2.2. Paramilitaries**

Paramilitary organizations were armed groups that played a significant role in the armed conflict in Colombia. These groups operated on Colombian territory until the end of 2006, when their demobilization process came to a conclusion during President Álvaro Uribe Vélez's mandate, and according to Hanson (2008), roughly

31,000 paramilitary members had been disarmed since the demobilization process began. During their active years, paramilitary groups attempted to ruthlessly suppress leftist guerrillas in several parts of the nation. Because of their violent conduct, paramilitaries are accused of the greatest number of violations of human rights and IHL in Colombia.

The paramilitaries were known for spreading dread and panic throughout much of the national area through massacres, targeted killings, acts of terrorism, torture, and the enforced disappearance of persons, among other breaches of human rights and IHL. According to Chernick, paramilitary organizations were responsible for 75% of massacres and extrajudicial executions by 2003 (2003: 13). It was also stated by Leech that “according to the Colombian government’s Ombudsman’s Office, the paramilitaries were responsible for more than double the number of massacres attributed to both the FARC and the ELN” (2011: 106).

There is no clear date for the appearance of paramilitary groups in the literature; however, many argue that it has its roots in the 1960s through Law 48, which granted legal rights to the organization and arming of civilian self-defense units aimed at restoring public order (Tate, 2001: 164); however, it was not until the mid-1980s, during peace initiatives with the guerrillas, that the creation of paramilitary groups increased (Leech, 2011: 29). According to Chernick, the formation of these paramilitary organizations was caused by two factors: the truce during the peace attempts with the guerrillas, which caused discontent in the military, and the rise of drug trafficking and narco-investments in rural Colombia (2003: 16).

Thus, two key elements of the emergence and evolution of paramilitary groups can be identified: the formation of the “*Muerte a Secuestradores*” (Death to Kidnappers) group by drug traffickers around 1981, and the organization and training of self-defense groups by the army's XIV Brigade in Magdalena Medio in the early 1980s (Romero, 2002: 286). With little opposition from the state, these paramilitary groups quickly strengthened, and in 1997, an organization called the United Self-Defense Forces of Colombia (AUC in Spanish) was formed to combat the guerrillas (Leech, 2011: 80), which increased the violence of the armed conflict to its peak, and these

paramilitaries became the actor responsible for the most violations of human rights and massacres during the conflict.

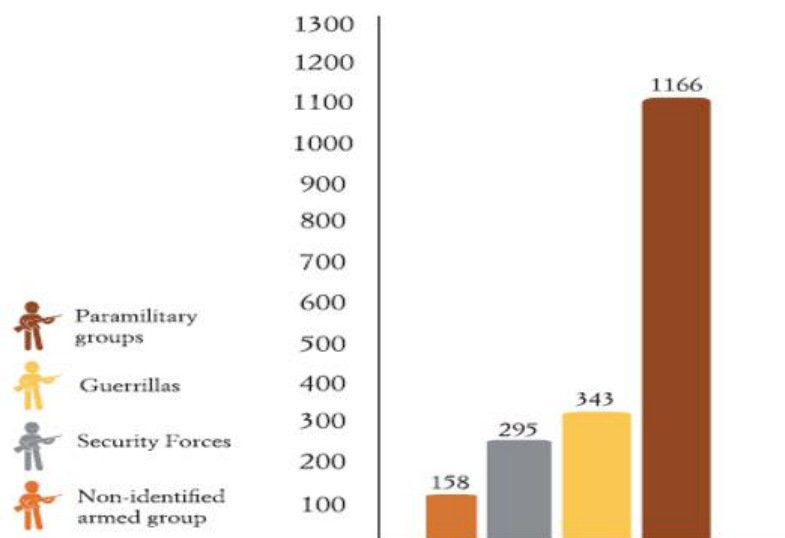
The paramilitaries, as unlawful self-defense organizations, carried out all types of attacks without regard for human rights; as a result, they decided to target the UP political party where around 2000-4000 persons associated with the UP were assassinated until the mid-1990s. Former members of the paramilitary organization AUC revealed paramilitaries' involvement with the Army in False Positives<sup>19</sup> in 2010, confirming that Colombian military troops and paramilitary groups coordinated and worked together to combat the guerrillas. One of the reasons that Colombian military forces may have decided to collaborate with paramilitary groups in some areas of the country is that paramilitary groups do not have the same limitations that military forces do as part of the Colombian state to respect human rights and IHL; as a result, paramilitary groups had more room for maneuver and could use combat and terror tactics that military forces could not.

The Sixth Division<sup>20</sup> is one of the clearest examples of cooperation between paramilitary organizations and the Colombian armed forces. The Colombian Armed Forces had five divisions, but because the paramilitaries were so interwoven with the Army, coordinating operations, and exchanging intelligence and supplies, they were dubbed the Sixth Division (Human Rights Watch, 2001: 1). According to data on fatalities caused by Colombia's armed conflict, paramilitaries perpetrated more atrocities and massacres than guerrilla insurgents; nonetheless, the Colombian government concentrated its anti-terrorism measures on battling guerrillas, particularly the FARC terrorists.

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<sup>19</sup> The enforced disappearance of children from lower socioeconomic groups who were illegally executed by members of the Security Forces in areas far from their homes and afterwards posed as *guerrilleros* slain in combat (Historical Memory Group, 2016: 69).

<sup>20</sup> In Colombia, this term refers to paramilitary groups (Human Rights Watch, 2001).



**Figure 5.** Distribution of the Number of Massacres in the Armed Conflict by Armed Group, 1980-2012

**Source.** Historical Memory Group (2016: 42)

The drug barons who emerged with the advent of drug trafficking and the large cartels lost power as a result of the Colombian offensive against drug trafficking and the cartels in the mid-1990s, thanks to US military support, and were defeated thanks to the Plan Colombia effort launched by the US and Colombian governments in 1999 to combat drug trafficking, as will be disclosed in the next phase of the conflict (González, 2004: 13). The fall of the cartels and drug barons left a void in the drug trade that was filled by paramilitary organizations that were able to broaden their operations and were involved in direct coca cultivation and began to support themselves largely via trafficking (Brittain, 2010 :138). This also helped allow paramilitary groups to become stronger and increase their power and influence in different parts of the country, according to Chernick: “Since 1996, the paramilitaries have evolved from atomized, regional forces totaling about 4000 fighters to a national armed organization under a unified command structure, the AUC. In January 2001, the Colombian Ministry of Defense put their numbers at more than 8000” (Chernick, 2003: 16).

### 1.3.2.3. Growth of Violence

Drug trafficking not only provided funding for the guerrillas, but it was also critical in the formation of paramilitary groups tasked with defending themselves against the

insurgents and combating them. As previously stated, this phase of the conflict exacerbated the violence caused by drug trafficking and the formation of paramilitary groups, contributing to the financial strengthening of the guerrillas, and resulting in a more violent conflict with a new actor who did not have the obligations of the armed forces to respect human rights and IHL during the conflict with these terrorist organizations.

It can be said that drug trafficking fueled the violence because it allowed both guerrilla and paramilitary groups to strengthen and expand, while also generating conflicts between the different actors for control of critical areas for the drug trafficking business, since it began to play a fundamental role in the financing of each group, for which another reason was created to exacerbate the existing hatred between paramilitaries and guerrillas.

Another factor that supported the proliferation of the guerrillas was the failed peace negotiations in the late 1990s during the Pastrana administration; as part of the discussions, the FARC guerrillas demanded control of a demilitarized zone, which the government agreed to. Instead of focusing on the peace process, the FARC guerrillas chose to use this land as a base of operations to boost their troops. The FARC controlled and tried to consolidate power in more than 40% of the country by 2000, according to the Freedom House Report 2001-2002 (Karatnycky, 2002: 167).

### **1.3.3. 3<sup>rd</sup> Phase: The Internationalization of the Conflict and Seeking for Solutions via Military Means (late 1990s to 2010)**

In the third phase of Colombia's armed conflict, it is worth noting the growing engagement of foreign actors in the conflict, particularly the United States, the United Nations, and the European Union, especially since the late 1990s. The situation of the armed conflict was so dire towards the end of the 1990s and the beginning of the twenty-first century that numerous non-governmental organizations (NGOs) and international organizations demanded more forcefully for the Colombian state to assure the protection of human rights and IHL inside the armed conflict.

### **1.3.3.1. The Internationalization of the Conflict**

The role that various international actors began to play in the Colombian armed conflict was critical in understanding the conflict's evolution during this third phase and the impact that international actors had on the armed conflict's future. As previously stated, the deterioration of the armed conflict, as well as a significant increase in violations of human rights and IHL by conflict actors who were not abiding by international regulations, prompted the conflict in Colombia to be placed on the agenda of major international players such as the United States, the European Union, and the United Nations.

#### **1.3.3.1.1. The Role of the United Nations**

Human rights violations reached terrifying proportions in the 1990s, and Colombia became one of the most violent countries in the world (Leech, 2011: 106). Given Colombia's significant problems in containing terrorist organizations such as the FARC and ELN, as well as drug trafficking and paramilitary groups, the United Nations and the Colombian government decided to establish an office of the High Commissioner for Human Rights in Colombia in 1996, with the goal of assisting Colombian authorities in developing policies and programs for the promotion and protection of human rights, as well as monitoring human rights violations in the country, presenting analytical reports to the High Commissioner, in order for him to give analytic findings on Colombia to the UN Human Rights Council (OHCHR, 1997: 4).

This Office was created due to concern on the part of the United Nations regarding the gross violations of human rights and IHL within the armed conflict in Colombia during the second phase of the conflict, when violence increased and the conflict intensified, making Colombia one of the top priorities on the international stage. The Office in Colombia is still active today, submitting annual reports to the High Commissioner for Human Rights on the state of human rights and IHL in the country.

The United Nations, through the Office in Colombia, was critical of human rights and IHL violations during the armed conflict and called on all actors to respect

international regulations and human rights in order to reduce the impact of the armed conflict on the civilian population; however, during this period, the Office denounced violations of human rights and IHL by members of the state. In its 2002 annual report, stated that “at least 39 civilians are said to have died in operations conducted by the security forces in Medellín during the year (including 14 minors) and 120 were wounded” (OHCHR, 2003: 55).

Since its inception in Colombia's armed conflict, the UN's role has been criticized within the country, owing to the UN's strong criticism in matters of human rights and IHL in the country, as well as the fact that they were speaking in the international community of Colombia as a "failed state"<sup>21</sup>, as many Colombians found it offensive that the country was listed alongside countries like Somalia and Haiti in terms of state capacity (Segura & Mechoulan, 2017: 20).

During the Pastrana government, the United Nations also actively participated in the peace process. In 1999, the Secretary General of the United Nations took the decision to name Jan Egeland as its Special Representative for Colombia, who accompanied the peace discussions and opened the doors for a direct communication between the United Nations and the different parties in the armed conflict (Chernick, 2003: 22).

#### **1.3.3.1.2. The United States and the Plan Colombia**

At the end of the 1990s, Colombia's conflict and the ensuing bloodshed became one of the most serious security issues in Latin America, as it began to pose a concern for neighboring nations and the United States owing to drug trafficking from Colombia to that country. As previously noted, the United States and Colombia implemented '*Plan Colombia*' in 1999; a bilateral agreement whose initial goal was for the United States to eliminate the drug trafficking issue in Colombia and reduce cocaine use in the United States (LeGrand, 2003: 166).

But, given that drug trafficking was related to guerrilla and paramilitary groups, this unlawful activity was also a component that had a significant impact on the armed struggle and so had as a goal for Colombia to stop the internal armed conflict. Under

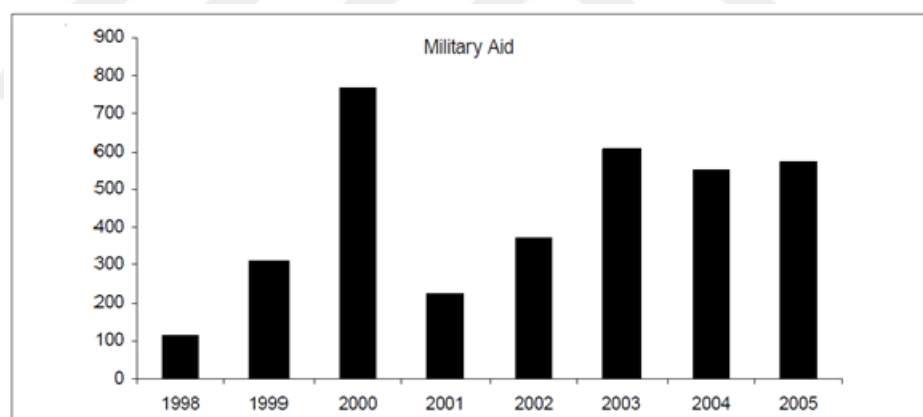
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<sup>21</sup> Amburn, B. (2009) “The Failed States Index 2005”, Foreign Policy.



George Bush's administration, military assistance to Colombia's army and police was increased in 2001 to combat left-guerrillas who had been labeled as "terrorists" both inside and outside the country since September 11, 2001, and the Bush administration began to target Colombian illegal armed groups without regard for drug activity in March 2002 (LeGrand, 2003: 167).

Plan Colombia aided the Colombian government not just in the war on drugs, but also in the military struggle. During this period, the Colombian government relied on the US and, thanks to economic and military aid, made significant advances in the armed conflict. Over time, Plan Colombia evolved into Patriot Plan under the Bush administration; a counterinsurgency and anti-terrorism strategy that became the priority on US cooperation in Colombia (Katz, 2006: 147). The graph below depicts the huge commitment of military aid from the United States to the Colombian state in millions of dollars (US\$) between 1998 and 2005 under the Plan Colombia, then known as Patriot Plan.



**Figure 6.** Military Aid from the US to Colombia from 1998 to 2005

**Source.** Katz (2006: 148)

Although military aid was not the only component of Plan Colombia, it is evident that it was a critical component. Colombia became the third-largest recipient of US military aid globally, demonstrating that, despite being billed as an anti-drug campaign, it had a very substantial and critical counterinsurgency component for the growth of the armed conflict (Yaffe, 2012: 51).

The United States' redirection to Plan Colombia was heavily influenced by the terrorist attacks of September 11, 2001, as these events gave rise to the United States' war on terror policy, which had ramifications in Colombia's armed conflict. Military aid escalated, and the US Department of State even designated the United Self-Defense Forces of Colombia (AUC) as a terrorist organization<sup>22</sup>.

#### **1.3.3.1.3. The Role of the European Union**

The European Union also began to show interest in the armed conflict that Colombia was experiencing in this phase, however, it did so with a different perspective from that seen by the United States, the role of the EU in the armed conflict in Colombia has been more passive and has not sought intervention as aggressive as that of the United States in the armed conflict, according to Katz:

The role the EU assigns to cooperation is that of an instrument of support for dynamics already existing in the Colombian civil society. Its specific function is to enable a structuring and deepening of experiences that are already underway, and thus help in resolving the conflict (2006: 149).

When it comes to conflict resolution, the European Union has a different perspective in which the military aspect is not the only or most important way to end a conflict. Instead, the European Union gives more space to dialogue, solving social and economic problems, and generating development as an alternative to ending the conflict. According to Salamanca: “Cooperation in conflict resolution must transcend the military, but also the humanitarian. International aid is used to reinforce armies and protect frontiers (Plan Colombia) as well as to meet the basic needs of populations directly affected by atrocities” (International Institute for Democracy and Electoral Assistance IDEA, 2009: 10).

The EU became interested in Colombia's armed conflict in the 1990s, as indicated by its participation in various projects and initiatives aimed at mitigating the effects of the conflict. One of the most significant initiatives in which the EU was interested was the Magdalena Medio Development and Peace Program (PDPMM), which was established in 1995 and served as a model for the EU to establish various Peace

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<sup>22</sup> AUC was designated in the United States Department of State's list of terrorist organizations on September 10, 2001, and was delisted on July 15, 2014 (US Department of State, 2023).

Laboratories in Colombia, demonstrating the EU's interest in developing peace-oriented policies toward Colombia during this period (Barreto Henriques, 2010: 5). However, the impact of the EU's approach within Colombia's armed conflict cannot be compared to the impact of the US's approach within the country, because the EU did not play an interventionist role and was even initially critical of Plan Colombia because it did not consider it the product of a process of dialogue between social actors and believed that it was being questioned by various social sectors in several countries, notably in Colombia, and that certain features of Plan Colombia may undermine cooperative projects and programs to which the EU had committed itself in Colombia<sup>23</sup>.

### **1.3.3.2. Democratic Security, Seeking for Solutions via Military Means**

The situation in Colombia's armed conflict was particularly concerning during the beginning of the 2000s, owing to the strength and control that illegal armed organizations possessed over a major portion of Colombian territory. According to LeGrand (2003: 177), by the first year of the twenty-first century, the FARC was still particularly strong in the southern jungle areas of Guaviare, Caquetá, and Putumayo, and the ELN in the border areas with Venezuela. LeGrand also stated that these terrorist organizations had a presence in approximately 700 of the nation's 1085 municipalities at the time (LeGrand, 2003: 177).

As a result of the guerrillas' strong presence in large areas of Colombian territory, as well as the violence during the second phase, a hawkish President Álvaro Uribe Vélez was elected, who sought, with popular support, a more forceful security policy against the guerrillas known as Democratic Security (Baysal, 2017: 149). This program focused on developing and professionalizing the military machinery, owing in part to financial assistance from Plan Colombia. The number of uniformed people was expanded, and military equipment was strengthened, with the goal of launching a military attack and reclaiming regions gained by the guerrillas during their advances in the previous phase.

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<sup>23</sup> For details, please see European Parliament resolution on Plan Colombia and support for the peace process in Colombia, 1 February 2001.

Within this goal of military expansion, the Democratic Security policy sought to establish a presence throughout the national territory to gain control and sovereignty over it, particularly in the demilitarized zone seized by the FARC during peace talks with the previous Andres Pastrana administration. The Democratic Security policy was primarily focused on military strengthening; between 2002 and 2010, during President Uribe's first and second governments, 5% of annual Gross Domestic Product (GDP) was devoted to security and defense spending, which resulted into the expansion of previously exposed military units (Ríos Sierra et al, 2013: 13). This meant that "the foot of the Colombian national police force managed to go from 110,000 to 160,000 troops, and that of the army, from 203,000 to 276,000, which in sum amounts to a reinforcement of the public force of approximately 40%" (Ríos Sierra et al, 2013: 13).

With this, President Uribe's security policy was able to reduce the threat posed by the guerrillas and reclaim regions lost to them throughout the 1990s, demonstrating the Democratic Security policy's efficacy in terms of security. According to OECD (2016: 11), the FARC moved from having close to 20,700 combatants in the early 2000s to between 6,700 and 8,000 men as a result of a prolonged 12-year military effort begun under Democratic Security policy.

Despite this enormous military accomplishment, President Uribe has been strongly criticized for abuses of human rights and IHL throughout the state offensive. According to Ríos Sierra et al, military strengthening was followed by a failure to respond to issues such as paramilitary rearmament, forced displacement, and systematic breaches of human rights and IHL (2013: 13). Complaints through the Office's reports on Human Rights and IHL fueled tensions with the government, as did complaints from NGOs and human rights organizations that sharply criticized President Uribe's aggressive security policy for jeopardizing respect for human rights and IHL in the course of the ongoing conflict. President Uribe referred to human rights organizations as terrorists in a speech in 2003 (Uribe Velez, 2003; Leech, 2011: 90).

The False Positives<sup>24</sup> controversy is one of the major scandals of abuses of human rights and IHL that President Alvaro Uribe Velez's government is accused of. It is unknown how many people were killed as a result of the False Positives practice, but according to the most recent report released by Colombia's Attorney General's Office, approximately 2,248 people were killed between 1988 and 2014, although other reports by human rights organizations have estimated that the number could be 5,000 or even higher (Palau, 2020), and BBC News revealed last year that a fresh inquiry conducted by the Special Jurisdiction for Peace (JEP) discovered that 6,402 civilians were murdered by the military between 2002 and 2008 and were falsely passed off as adversaries dead in battle (2021).

#### **1.3.4. 4<sup>th</sup> Phase: The Process of the Peace Agreement between the Colombian Government and the FARC Guerrillas (2011 to 2018)**

When President Santos took office in 2010, after serving as President Uribe's defense minister in the previous administration, it was believed that he would maintain the same security policies, nonetheless, he opted to pursue peace negotiations with the FARC while maintaining military offensives. In this respect, the discussions formally started in 2012, despite the two sides' mutual distrust; however, with the assistance of guarantor nations such as Norway and Cuba, the negotiations survived the tensions and military activities of the two parties (Baysal, 2017: 151). In 2012, the FARC and the government signed the General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace, which included a six-point agenda: comprehensive agrarian development policy; political participation; the end of the conflict, a solution to the problem of illicit drugs; victims; and implementation, verification, and endorsement (Centro Nacional de Memoria Histórica, 2014: 317).

In 2016, a peace agreement was implemented and put to a referendum, however 50.2% of voters opposed it, influenced by former President Uribe's opposition, while 49.8% supported it. The agreement was reviewed and amended before being signed by the parties in November 2016, and it was ratified in Congress and the Senate, lending it legitimacy (Baysal, 2017: 152). The Peace Agreement allowed the

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<sup>24</sup> Extrajudicial executions carried out by public forces on innocent citizens posing as *guerrilleros* slain in action in order to display favorable results in the military operation. (Historical Memory Group, 2016: 67)

demobilization of the guerrillas and established the political party "Common Revolutionary Alternative Force (FARC)," which was granted ten seats in Congress for four legislative years. However, according to Estrada, the FARC Party participated in the 2018 elections despite the agreement's requirements for political participation not being implemented (Estrada, Común, and CEPDIPO, 2020: 49).

When the peace agreement was reached, many sectors of the international community began to talk about the end of Colombia's armed conflict, although this is far from a reality. The Colombian state faces a challenge as great as the conflict itself: carrying out all of the points agreed upon in the peace agreement, eliminating the causes that led to the armed conflict, and repairing the victims of more than 60 years of conflict, as well as investigating and finding those responsible for violations of human rights and IHL that occurred during the armed conflict, and ensuring that those responsible pay for their actions.

The Kroc Institute for International Peace Studies (2019) has been tasked with assessing the development of the peace agreements in Colombia point by point in order to determine the parties' compliance with each of the agreed points, and has discovered that:

The report presents a quantitative analysis that shows that at the end of the third year of implementation, according to the methodology used by the Barometer Initiative, 25% of stipulations have been fully implemented. Another 15% of stipulations are at an intermediate level of progress, meaning that they are on their way to being fully implemented in their corresponding timelines. A further 34% of commitments are at a minimal state of implementation, having started but made marginal progress. The remaining 26% of commitments have yet to be initiated (Kroc Institute for International Peace Studies, 2019).

It is worth noting the UN's role in the Colombian peace agreement, as at the request of the Colombian government and the FARC, the UN established a Political Mission known as the United Nations Mission in Colombia (MNUC), which was very successful and contributed to the signing of the final peace agreement (Rodríguez, 2019: 30). In this final agreement, the Government and the FARC seek that the United Nations establish a Verification Mission (MVNUC).

The National Government and the FARC-EP will request a Political Mission from the United Nations, through the General Assembly, with the mandate to verify the reincorporation of the FARC-EP and the implementation of personal and collective security and protection measures. This mission will start to operate on conclusion of

the mandate of the Mission for Monitoring and Verification of the Bilateral and Definitive Ceasefire and Cessation of Hostilities. Recognising the importance of having an international verification mechanism which ensures the implementation of what has been agreed in respect of reincorporation and security guarantees, the National Government and the FARC-EP consider that the verification system which is implemented must ensure its operation for a period of three (3) years, renewable if necessary. (Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera, 2016: 212)

The political mission of this verification mission was to ensure that the Government of Colombia and the FARC carry out the final agreement's points 3.2 and 3.4, the first of which refers to the FARC's economic, social, and political reincorporation, and the second of which consists of verifying compliance with the plans and programs and ensuring the protection of communities (Rodríguez, 2019: 37). The UN has established a verification mission in Colombia to ensure that the peace agreements are being implemented, this Verification Mission has registered 13,577 former FARC members who are in the process of reintegration, but it also notes that more than 9,300 ex-combatants face challenges in terms of security, opportunities, and access to institutional support (Verification Mission of United Nations in Colombia, 2020).

It should also be noted that, while the FARC guerrilla demobilized, not all of its members did, and certain radical FARC fronts that failed to join in the peace talks continue to operate as FARC dissidents, posing a substantial threat to national security. The ELN guerrilla continue to pose a threat to national security. Due to ELN assaults, including a vehicle bomb<sup>25</sup>, detonated in 2019 that he classified as a terrorist attack, conservative President Ivan Duque (2018-2022) stopped discussions with the group in recent years. (Aljazeera, 2023).

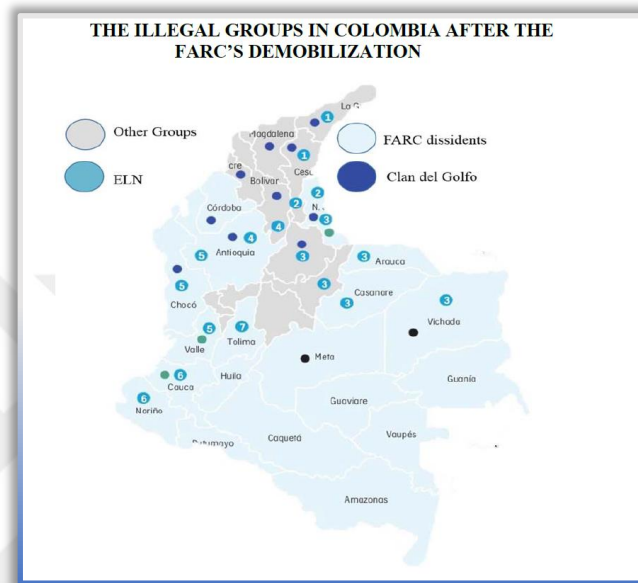
However, peace discussions with this guerilla began after a new leftist administration seized power in 2022. President Gustavo Petro, a former member of the defunct M-19 guerilla, has stated that his goal following the 2016 peace accord is to achieve “Total Peace”<sup>26</sup> and the end of the armed struggle (BBC News, 2023). The first

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<sup>25</sup> Attack on a police academy that left 21 dead. Please see Colombia’s ELN to blame for bomb attack that killed 21: Officials. <https://www.aljazeera.com/news/2019/1/18/colombias-eln-to-blame-for-bomb-attack-that-killed-21-officials>

<sup>26</sup> Term used by the government of Gustavo Petro for an ambitious approach to implement the peace agreements and seek an end to the armed conflict of more than 60 years. Please see Guerra & Hege,

round of negotiations took held in Venezuela between November 22 and December 12, covering topics such as the humanitarian impact of the conflict on rural areas. (Hege, 2022) and during 2023, two more negotiation cycles were carried out. According to BBC News, the ELN announced a ceasefire on Thursday, July 6, 2023, with the expectation of a total ceasefire in August of that year, the same month in which the fourth cycle of talks will take place in Venezuela (BBC News, 2023).



**Figure 7.** The illegal Groups in Colombia after the FARC’s Demobilization

**Source.** La FM (2018)

Figure 7 depicts Colombia's recent security scenario, and it can be seen that ending the conflict will be a great challenge for the new administration, seeing the actors that are still part of it. However, Colombia needs to acknowledge that the policies put in place to end the conflict need to be viewed as state policies rather than government policies, because the armed conflict threatens the state as a whole, and ought to be viewed in this light in order to achieve a genuine solution that is not affected by changes in government or political ideologies, as seen with the peace agreement with the FARC guerrillas.

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2022. <https://www.usip.org/publications/2022/07/colombias-new-administration-raises-hopes-total-peace>



#### **1.4. Conclusions**

Colombia's armed conflict has been present in recent history and has had a significant impact on the country's development; it is a conflict that has generated great concern both nationally and internationally, and multiple parties have attempted to end it through various means. However, because it is an irregular armed conflict, it has survived and even changed through time. Through this analysis, it is possible to identify that the armed conflict in Colombia has colored different stages marked by significant changes within one or more conflict actors; it was also possible to identify that new actors have emerged within the conflict, shaping, and altering the armed conflict.

This chapter identifies four phases: the emergence of the guerrillas and the rise of the conflict; the strengthening of the guerrillas due to drug trafficking and the emergence of paramilitary groups; the internationalization of our conflict and seeking the end of the conflict via military means; and the peace agreement between the government and the FARC guerrillas. These phases assist us in better understanding the reasons of the armed conflict as well as how the different actors interact within it. This is critical in understanding each of the players' activities and how they have affected human rights and IHL during the conflict. Most violations of human rights and IHL have been committed by guerrillas and paramilitary groups; however, it can be seen in this chapter that the Colombian state has also been responsible for various violations of human rights and IHL within the conflict, such as cooperation with paramilitary groups, as in the serious case of false positives mentioned earlier in this work.

It should be noted that the peace agreements reached between the government and the FARC guerrillas have included a number of key points demonstrating that the roots of the conflict were considered during the negotiation process, that the peace agreement seeks to eliminate the factors that led to the emergence of the conflict so that it does not happen again, and that the victims of the conflict have been considered in order to find justice, truth, and reparation for them. Furthermore, this chapter assists to comprehend the steps that need to be taken in the post-peace

agreement between the government and the FARC guerrillas in order to accomplish what was agreed upon in the peace process.

This scenario demonstrates that there is still a long way to go until the FARC-Colombia peace agreements are completely implemented, and that if the essential steps are not followed, everything has been agreed upon may be jeopardized. Today, former FARC militants have opted to return to the battlefield because the peace agreement contains no assurances<sup>27</sup>. According to the Kroc Institute for International Peace Studies (2019), 77 FARC ex-combatants were killed in 2019. These assassinations of ex-combatants and leaders have had a disastrous effect on the implementation and advancement of the final agreement.

To successfully implement the peace agreements, the various rulers and authorities need to acknowledge their responsibility to commit to upholding the agreement, regardless of whether it contradicts their government policies, and actions to implement the peace agreement ought to be included in each government's National Development Plan, with the understanding that it is a state policy rather than a government policy (Estrada, Común, & CEPDIPO, 2020: 33). Finally, the peace agreement appears to be an excellent opportunity to end the armed conflict since it has proved the ability to demobilize an important player in the conflict, such as the FARC, therefore lowering the violence. For this reason, the peace agreement presents itself as a great opportunity to continue working in a peace process with other illegal actors in the conflict. Colombia needs to take into account all of the conflict's actors if it wants to achieve a stable and lasting peace and you must understand that there are still active illegal actors in the Colombian armed conflict that are threatening the country's security and that still generate serious human rights violations and pose a constant threat to people and the development of the country.

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<sup>27</sup> Please see Casey (2019). Colombia's Former FARC Guerrilla Leader Calls for Return to War. <https://www.nytimes.com/2019/08/29/world/americas/colombia-farc-rebel-war.html>

## **CHAPTER TWO**

### **STRUCTURAL ANALYSIS OF THE REPORTS OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA**

#### **2.1. Introduction**

The UN reports has issued regular reports on the human rights and IHL situation in Colombia which provides an external perspective on the conflict while also portraying themselves as an official and unbiased source of analysis of the condition of human rights and international humanitarian law within Colombia's armed conflict. This chapter focuses on the structural analysis of the reports of the OHCHR on the situation of human rights in Colombia during 2002 and 2018 in the context of the internal armed conflict in Colombia. During this time period, this chapter examines 17 annual reports, examining their titles and subtitles and identifying the essential concepts using graphs and tables to analyze the structure of the reports and better grasp their substance in chapters three and four.

This examination of the structure of the reports is done in order to understand how the OHCHR portrays the condition of human rights and IHL throughout this time period. Within this analysis, the terms used and the subjects that have been most relevant across the numerous reports will be examined in order to find the changes and continuities that have been perpetuated within the reports so as to comprehend the fundamental points that have interested and that have been the primary concern for the OHCHR, and to comprehend in the following chapter how these reports address the armed conflict in Colombia and the importance that has been given to

human rights and IHL within the armed conflict, taking into account the various actors that have been involved in it, as well as the importance and influence that these reports have had in the development of the conflict.

This chapter examines the reports delivered by the OHCHR Office in Colombia regarding the situation of human rights and IHL in Colombia during Álvaro Uribe Vélez's two presidential terms, 2002-2006 and 2006-2010 and Juan Manuel Santos two presidential terms, 2010-2014 and 2014-2018, in order to understand the OHCHR position within the conflict and the role it has taken to help Colombia overcome the armed conflict. As a result, the OHCHR-Colombia's appraisal of the condition of Human Rights and IHL in Colombia as well as its recommendations to the country throughout this period will be explored in this chapter utilizing quantitative analysis of subjects and terms from the OHCHR reports in a structured manner.

First, the creation and activities of the OHCHR-Colombia will be outlined, as will the goals of the annual reports issued by this Office on the state of human rights and IHL in Colombia. Following that, modifications in the form and design of the reports will be examined, as will the terminology used to characterize the armed conflict and the many actors and activities that have impacted human rights and IHL in the conflict, which will be classified based on their impact on the Colombian state's security policies.

To accomplish this, the format used by the OHCHR-Colombia has been examined by this study, considering the various titles and subtitles of content examined in the reports, as well as the changes and continuities in them, in addition to the changes and continuities in the terms used in each of the reports. The quantitative analysis of the terms used in each report is being carried out, categorizing reports according to the two distinct rulers who were in power over the 16 years covered by this work.

## **2.2. Establishment of The Office of the United Nations High Commissioner for Human Rights in Colombia**

The United Nations, as a primary international actor, has been present in various countries affected by internal conflicts and where the situation of human rights and IHL within the conflict has been of concern, and has sought to assist countries in achieving stability with the primary goal of ending human rights violations and eradicating violence. The UN is an organization that strives to provide peace and stability to all regions of the world; it has conducted a variety of missions in various nations with violent problems. It has participated in peacekeeping operations, civil-military operations, election observance, regional process assistance, and other activities. In this regard, the Human Rights Commissioner is the United Nations' principal human rights official, advising the Secretary-General on the United Nations' Human Rights policies and ensuring support for projects, human rights activities, and programs (OHCHR, 2023).

The Office of the High Commissioner for Human Rights in Colombia was founded in 1996 in response to the United Nations' ongoing concern about the state of Colombia's violence in the 1990s as a result of an internal armed conflict and a severe drug trafficking problem. Colombia was viewed as a failed state or on the verge of becoming one in the 1990s owing to the severity of the internal armed conflict, the advancement of drug trafficking, the regime's legitimacy crisis under the Samper administration (1994-1998) and the violation of human rights (Martelo Martelo, 2014: 53-64). Because of these factors, Colombia was unable to ensure national security and protect the human rights of its citizens. This is why the United Nations chose to establish the OHCHR Office in Colombia in an agreement with the Colombian government on November 29, 1996, and that, as Valencia (2007) points out, has been established to:

- Observe the human rights situation throughout the country, and compliance with IHL by the parties to the Colombian internal armed conflict.
- Advise the Colombian authorities and institutions in the development of policies and programs for the promotion and protection of human rights and IHL.

- Provide advice on human rights to civil society, including non-governmental organizations and individuals.
- Report what was observed to the High Commissioner, so that he can present analytical reports on Colombia to the UN Human Rights Council.

As part of its objectives, the OHCHR Office in Colombia committed to submitting annual reports analyzing the situation of human rights and IHL in the country, with the goal of creating compliance and making recommendations to the state of Colombia to improve the serious situation of violence and achieve better human rights for its citizens. These reports are significant because they enable us to comprehend the country's human rights status from an international perspective. Various measures were also carried out as part of the OHCHR Office's activity, such as human rights training for several government entities. The Office has also been in charge of teaching military personnel on human rights and IHL so that its troops are aware of and conduct military operations in compliance with international human rights and IHL standards and treaties.

The government of Álvaro Uribe Vélez reached an agreement to extend the time of the OHCHR-Colombia, as well as its capacity for action outside of Bogotá, and more field actions were carried out. This allowed the OHCHR-Colombia to get firsthand knowledge of the dynamics of different parts of the country and conduct a more impartial and detailed examination of the situation of human rights and IHL in places where armed conflict and violence remained. This has enabled the Office to provide the Colombian government with evidence-based recommendations, supporting it in better adjusting its human rights policies and engaging to grave human rights violations in Colombia and according to the Colombian government, the OHCHR-Colombia is fundamental in combating human rights breaches (OHCHR, 2003: 7).

### **2.3. Reports of the United Nations High Commissioner for Human Rights on the Office in Colombia: An Overview**

The High Commissioner's reports are in charge of studying and monitoring the condition of human rights and IHL in Colombia, both during the armed conflict and in other instances where citizens' rights may have been jeopardized by official action

or omission. This research focuses on the OHCHR Office in Colombia's observations and analysis of the most serious violations of human rights and IHL within the conflict, both by guerrillas (mostly FARC and ELN) and paramilitary groups and by the security forces of the state of Colombia within its operations and methods inside the armed conflict, particularly the government's counterterrorism and counterinsurgency policies.

This chapter consists of a structural analysis of the OHCHR reports, splitting them into two distinct periods, with the first period corresponding to Alvaro Uribe Velez's two presidential terms and the second period corresponding to Juan Manuel Santos's two presidential terms. The structural analysis examines the subtitles, the volume, the structure of the reports, and the frequency of the most relevant terms used throughout each report. This structural analysis has been carried out using methods such as quantitative term analysis and word clouds; the term analysis and word cloud are tools that assist us determine what a text is about, what its important points are, and what its content is focused on. As a result, it is critical to do a structural analysis of a text and has been used in this research to better comprehend the role of United Nations reports in Colombia's armed conflict.

The structure and content of the OHCHR reports from 2002 to 2018 is examined in this research. The Office's 2002 report was used as a starting point because of the radical change in the Colombian state's security policy with the beginning of Álvaro Uribe Vélez's presidential term, where the "hard hand" against terrorism prevailed, which meant a turning point that altered the course of the armed conflict as well as its impact on human rights and IHL.

This dramatic change in the government's conception of the conflict led to a change not only in state security policies, but also in the understanding and development of the conflict on the part of all actors who have interacted with it. Similarly, the year 2018 is chosen as the final year of this analysis because it corresponds to the last year of President Juan Manuel Santos' administration, which was responsible for reaching a peace agreement with the FARC guerrillas in 2016, which also marked a turning point in Colombia's armed conflict.

### 2.3.1. Content of the Reports of the United Nations High Commissioner for Human Rights on the Office in Colombia

Despite the fact that the annual reports differed substantially from one another at times, particularly during the second period, there are similarities that can be seen throughout all of the years studied in this research, as well as omissions in the titles and subtitles covered in each report. The table below compares the years in which the most important titles from the years of analysis were used inside each annual report to the years in which they were not, as well as the titles that were most frequently used throughout the reports in both periods covered in this chapter. If the report's title was retained<sup>28</sup>, it is indicated with (+), and if it was not, it is indicated with (-).

**Table 1.** Comparative table of titles of the annual reports of the OHCHR

Year	National Context	Human Rights Situation	International Humanitarian Law Situation	Situation of Especially Vulnerable Groups	Activities of the Office	Recommendations	Annexes
2002	+	+	+	+	+	+	+
2003	+	+	+	+	+	+	+
2004	+	+	+	+	+	+	+
2005	+	+	+	+	+	+	+
2006	+	+	+	+	+	+	+
2007	+	+	+	+	+	+	+
2008	+	+	+	+	+	+	+
2009	+	+	+	+	+	+	+
2010	+	+	+	+	+	+	+
2011	+	+	+	-	+	+	+
2012	+	+	-	-	-	+	-
2013	+	+	-	-	-	+	+
2014	+	+	-	-	-	+	-
2015	-	-	-	-	-	+	-
2016	-	-	-	-	-	+	-
2017	-	-	-	-	-	+	-
2018	-	-	-	-	-	+	-

**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2018

The main titles and subtitles of each of the Office's annual reports are shown below to provide a better understanding of the concerns and situations that were of greatest importance during each year of analysis, since due to the changing situation and the

<sup>28</sup> The title may occasionally have a slightly different name, but in general, it can be regarded as the same title.



different exceptional situations that arose over the years, it can be seen that the Office was adapting to the context and the situations that arose in terms of human rights and IHL. The tables of contents of each of the reports were examined, and it was discovered that not all of the reports have the same titles, therefore a keyword filtering approach was employed to find titles relating to human rights and IHL concerns, as well as the armed conflict. Thus, for this study these reports might be classified under the titles presented in table 2 in relations to human rights and IHL.

**Table 2.** Titles of the annual reports

<b>Titles of Annual Reports</b>						
<b>2002</b>	National Context	Internal Armed Conflict	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Areas of Special Concern or Importance	Recommendations
<b>2003</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Situation of Special Vulnerable Groups	Recommendations	State Policies and Follow-up on International Recommendations
<b>2004</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Situation of Special Vulnerable Groups	Recommendations	Public Policies and Implementation of the Recommendations
<b>2005</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Situation of Special Vulnerable Groups	Recommendations	Public Policies and Implementation of the Recommendations
<b>2006</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Situation of Special Vulnerable Groups	Recommendations	Main Achievements and Challenges in Public Policies and Follow-up of Recommendations
<b>2007</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Situations of special concern and particularly vulnerable groups	Recommendations	
<b>2008</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Recommendations	Representative Cases of Human Rights Violations and Breaches of International Humanitarian Law	
<b>2009</b>	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Recommendations	Representative Cases of Human Rights Violations and Breaches of International Humanitarian Law	

2010	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Recommendations	Illustrative Cases of Violations of Human Rights and Breaches of International Humanitarian Law	
2011	National Context	Human Rights Situation/International Humanitarian Law Situation	Activities of the Office	Recommendations	Illustrative Cases of Violations of Human Rights and Breaches of International Humanitarian Law	
2012	National Context	Human Rights Situation/International Humanitarian Law Situation	Recommendations			
2013	National Context	Human Rights Situation/International Humanitarian Law Situation	Recommendations			
2014	National Context	Human Rights Situation/International Humanitarian Law Situation	Recommendations	Comparative Figures on Persons Killed in Combat and Alleged Cases of Extrajudicial Executions		
2015	Peace Process and Victims of the Armed Conflict	Peacebuilding : Opportunity and Risks for Human Rights	Structural Human Rights Challenges for an Equitable and Sustainable Peace	Recommendations		
2016	Peace Agreement	Human Rights in Peace, Security, Development and Democracy	Recommendations			
2017	Challenges in the Implementation of the Peace Agreement with regard to Guarantees of Non-Repetition	The Rural Challenge and Other Structural Factors Affecting the Human Rights Situation	Citizen Security in a Context of Peace	Transitional Justice and the Response to the Rights of the Victims	Recommendations	
2018	Guaranteeing Human Rights as a Pathway for Sustainable Peace	International Protection Mechanisms	Technical Cooperation and Cooperation with the Office of the High Commissioner in 2019	Recommendations		

**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2018. Please see [https://www.hchr.org.co/informes\\_anuales/](https://www.hchr.org.co/informes_anuales/)



**Figure 8.** Word Cloud of Tables of Contents

**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2018

In this exercise we can identify the most important issues that were considered throughout the reports, both within the titles and subtitles of each annual report. For instance, in all the tables of contents that were examined, the term "human rights" appeared 60 times, whereas the terms "peace" and "international humanitarian law" appeared 18 times each.

**2.3.1. Structural Analysis of the Reports of the Human Rights Office in Colombia (2002-2010)**

Under this first period of the structural analysis, the Office's reports during Álvaro Uribe Velez' two presidential terms are examined regarding abuses of human rights and IHL in Colombia's armed conflict. The structure and terms utilized by the Office in the various reports from 2002 to 2010 have been reviewed for this purpose. Because there is no structure for writing reports within the OHCHR-Colombia, this study is important for understanding the substance of the annual reports and identifying the key concerns that were crucial to the OHCHR throughout that period.

**2.3.1.1. Analysis of Titles and Subtitles**

During the first years of analyzing the Office's reports, a common pattern can be seen in the design and presentation of the numerous reports; similarly, the terms used during the first reports analyzed do not vary significantly, and the reports focus on the same subtitles outlining the Office's main concerns and recommendations regarding the human rights situation in Colombia. They begin by briefly exposing the national context in which the country is currently operating in the year of analysis, before moving on to analyze the various public policies and recommendations made in previous years in the same reports, as well as international recommendations in relation to the actions that the state should take in relation to human rights and IHL.

Finally, the reports focus on the country's human rights situation as well as the position of international humanitarian law, concluding with an overview of the Office's activities in connection to the condition of human rights and IHL in

Colombia. The reports conclude with several recommendations that become redundant inside each report owing to the continuation of the same dynamics by the various parties in the armed conflict. Furthermore, the reports include annexes that detail the significant breaches of human rights and international humanitarian law that occurred throughout the conflict, as well as the main vulnerabilities that the Office encountered and a more detail explanation of the activities and missions of the Office in the different regions of Colombia.

Although the annual reports fail to use a consistent format due to variations depending on the environment in which they were created, a comparison of the titles and subtitles of the many reports revealed that a type of format was distinguished by having six significant titles in the majority of the reports: National Context, Human rights situation, International humanitarian law situation, Situation of especially vulnerable groups/ situation of special concern, Activities of the Office, Recommendations and Annexes.

Every report started with an introduction that included a brief explanation of the Office's presence in Colombia, its formation and maintenance during the reporting year, as well as a description of the issues that would be addressed. After this, the reports included a brief overview of the state of the nation during the analysis year under the heading "National Context" in which the most significant occurrences were highlighted so that the reader could comprehend the context in which the reports were created. This context was primarily concerned with the acts taken by the participants in the armed conflict throughout the analysis year in relation to human rights and IHL.

The annual reports then provided a brief overview of the national setting and the armed conflict before analyzing the state of human rights during that time period. This review of the human rights situation looked at the state of economic, social, and cultural rights both inside and outside of the armed conflict as well as the state of civil and political rights. The Office concentrated mainly on exposing the worst abuses of civil and political rights, including extrajudicial executions, enforced disappearances, arbitrary detentions, torture and ill-treatment, impunity and procedural violations, freedom of expression violations, and forced relocation,

among other abuses. Thus, issues of poverty, inequality, illiteracy, and precariousness in the health system that have hindered these rights for millions of people in Colombia were particularly revealed within the examination of economic, social, and cultural rights.

The findings revealed the most significant and concerning transgressions of IHL committed by each actor to the armed conflict. For this, the most egregious transgressions of international humanitarian law committed by the state troops, paramilitary organizations, and guerrilla insurgents during the armed conflict were detailed. The Office also focuses on the most heinous crimes under IHL, such as terrorist activities, massacres, the use of children in battle, and extrajudicial executions.

It is possible to see that during this period the Office showed great concern about the disregard on the part of the different actors to respect international provisions on IHL within conflicts, since it found that illegal armed actors, especially the guerrillas and paramilitaries persisted in their total disregard and contempt for humanitarian obligations and continued to commit serious breaches to IHL across the country (OHCHR; 2007: 16-18).

It was feasible to pinpoint a constant risk for violations of human rights and international humanitarian law in various populations based on annual reports and the activities of the Office in Colombia. Because of this, the style of these annual reports also includes a title devoted to the circumstances of particularly vulnerable populations. The Office includes an examination of each of these groups' rights breaches in each of its reports throughout this time because it recognizes that some groups have a particular risk of having their rights harmed since they reside near to an armed conflict or because of past violations of their rights. To that end, the reports examine the situation of the following groups, which have been identified as particularly vulnerable due to repeated attacks and violations of their rights over the years: human rights defenders, social leaders, indigenous communities, LGBTI groups, Afro-Colombian communities, women, and children.

The Office then goes over the actions it carried out during the analysis year, focusing on the various field missions and complaints it received and acknowledged involving abuses of human rights and/or violations of international humanitarian law. The Office presents the results of its various activities and field missions from the various sub-offices it has in different regions of Colombia, presenting data on complaints received related to violations of human rights and international humanitarian law of civilians, as well as reports on activities carried out with various state institutions to strengthen Colombia's capacities in terms of prevention and protection of human rights.

Lastly, the structure of the reports always results in some recommendations that are centered on providing direction to the various parties in the armed conflict, particularly the state, in order to decrease abuses of human rights and IHL in the nation. There are recommendations for the prevention and defense of human rights breaches, as well as pleas for the various actors in the armed conflict to follow international norms and respect human rights and IHL while participating in hostilities. Moreover, proposals from the Office to the state for technical collaboration are available, as are recommendations targeted at enhancing the capabilities of state institutions.

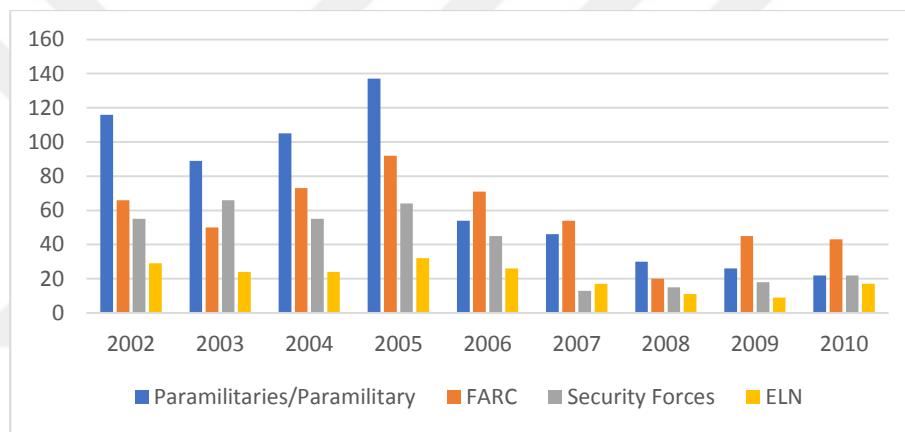
Overall, the Office's reports from this time period included a variety of annex sections that went into deeper detail about the many human rights and IHL infractions. Within these annexes, each annual report featured a summary of the most relevant cases of human rights and humanitarian law violations. Further subheadings can be found within these annexes, depending on the specific circumstances of each annual report, and the operations of the Office in Colombia have occasionally been included as a subheading inside the annexes. Nevertheless, starting with the 2007 annual report, the only appendix that is included is that of “Illustrative cases of violations of human rights and breaches of international humanitarian law”.

#### **2.3.1.2. Analysis of Terms**

An examination of various key terms relevant to understanding the development of the reports in relation to the situation of human rights and international law in the

midst of armed conflict has been carried out within the structural analysis of the reports of the OHCHR-Colombia. This term analysis allows us to understand the importance that the various conflict actors have placed in the reports, as well as the approach they have taken over the years regarding the situation of the armed conflict and its impact on the situation of human rights and IHL.

Important terms from reports from 2002 to 2010 were statistically examined for this purpose, giving a variety of data that help in understanding the work of Colombia's Office of the High Commissioner for Human Rights. These were the crucial aspects that troubled the Office and were revealed in the many reports that were examined over the years.



**Figure 9.** Analysis of Terms of the Actors of the Armed Conflict 2002-2010

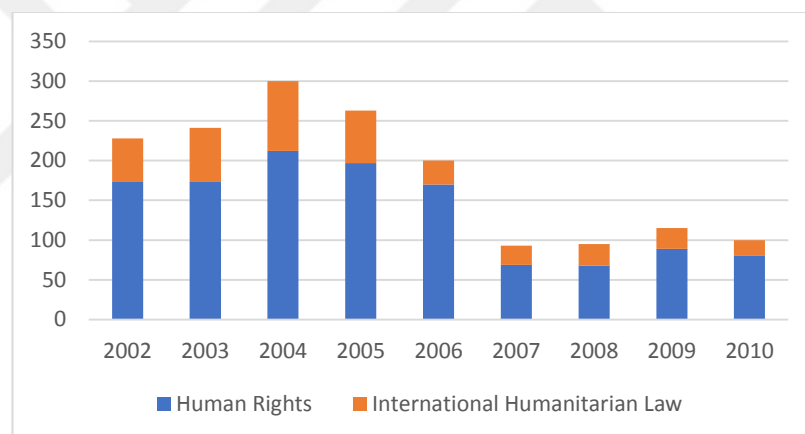
**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2010

Figure 9 illustrates the use of the terms paramilitaries/paramilitary; FARC; Security Forces and ELN in reports from 2002 to 2010, allowing us to infer that during the first reports, great importance was given to paramilitary groups and the FARC guerrillas within the reports, as well as the security forces represented primarily by the police and the army. The paramilitary organizations were referenced the most, in part because of the demobilization process, which began in 2003 and was known as the Justice and Peace Law that was passed. According to Nussio (2011: 88), collective demobilization ceremonies were attended by 30,671 paramilitary members between 2003 and 2006.



Both the FARC and the security forces have had a significant impact on the reports, since they are the two most crucial parties in the armed conflict, particularly with the demobilization of paramilitary organizations in late 2005 and early 2006. As a result, the FARC guerrillas took a larger role in the 2006 report, and its mentions were more frequent in the reports of the OHCHR-Colombia, while the ELN guerrillas remained a secondary actor due to the fact that it has been seen under the shadow of the FARC throughout the armed conflict.

It is important to note that the reports issued by the OHCHR-Colombia touch on a variety of issues concerning human rights and IHL, and that they do not solely focus on the situation of these rights within the context of the armed conflict. As a result, this quantitative analysis of terms also aids in determining the relevance of the armed conflict within the Office's reports.

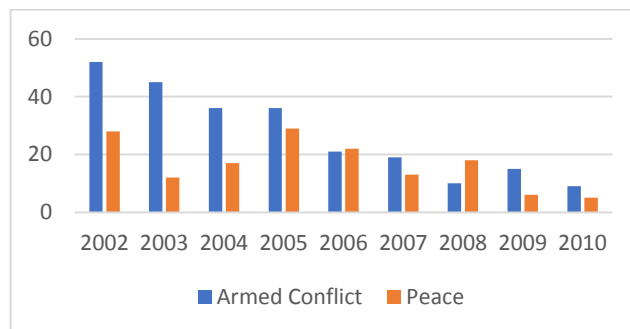


**Figure 10.** Analysis of terms: Human rights and International Humanitarian Law 2002-2010

**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2010

The terms Human Rights and International Humanitarian Law have been frequently used in the reports, with the former being used to a greater extent because, as previously stated, these reports not only analyze the situation of human rights within the conflict, but also the situation of all human rights in Colombia, even when violations occur outside of the armed conflict. However, in the case of international humanitarian law in Colombia, it is worth emphasizing that the reports invariably allude to violations of IHL by the various actors involved in the armed conflict. Figure 10 above shows how references of international humanitarian law fell

dramatically over time, until the word was used just twenty (20) times in the 2010 report.



**Figure 11.** Analysis of terms: Armed Conflict and Peace 2002-2010

**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2010

The analysis of terms also shows that throughout this initial time, the Office's reports concentrated to a large part on the condition of the armed conflict in Colombia, but that within these reports, the Office, like the government, did not take into consideration a negotiated settlement to the conflict. Although the term is much more frequently used in 2005 and 2006, this is owing to the paramilitary organizations' demobilization, however, the usage of the term peace is limited, and there is little debate about a peaceful end to the armed confrontation with the guerrillas in the reports.

It is also important to note that the investigation discovers that the annual reports delivered by the Office regarding the situation of human rights and IHL in Colombia have been progressively decreasing in content, with the report for the year 2002 having sixty (60) pages where it explained in detail the various violations of human rights and IHL, as well as the Office's recommendations and gave a rendering of accounts of the activities carried out by the Office during the reporting period. The annual report for 2010 was shortened to 27 pages, where the key issues of the Office were briefly addressed, which also implies that the terms used in the most recent reports are less.



**Figure 12.** Word Cloud OHCHR 2005 Report

**Source.** Author's own assessment adapted from OHCHR 2005 Report

The previous one is a word cloud that indicates the words that were used the most during a text, in this case the longest report within this period, the 2005 report (78 pages), where the 30 main words used within the report can be seen, allowing to observe the issues that were most relevant during the report and giving a small idea of what this report is composed of. This is also consistent with the data studied in the word graphs, which show that during this time period, reports concentrated on terms such as paramilitaries, FARC, human rights, international humanitarian law, security forces, and that references of the ELN, for example, were sparse.

### **2.3.2. Structural Analysis of the Reports of the Human Rights Office in Colombia (2010-2018)**

Under this second period of the structural analysis, the Office's reports during Juan Manuel Santos' two presidential terms are examined regarding abuses of human rights and international humanitarian law in Colombia's armed conflict. The structure and terms utilized by the Office in the various reports throughout this time period have been extensively reviewed for this purpose. It has been discovered that the reports have lost quality and quantity in comparison to the previous period, and that the reports have changed format, making it more difficult to understand the relationship between the armed conflict and human rights violations in Colombia, because the reports focus on different points that, while important within human

rights violations, are outside of the armed conflict. This makes it more difficult to recognize when a violation of human rights occurs within the context of the armed conflict, as well as to identify the actors responsible for it.

In this structural analysis corresponding to the second period of analysis during the two presidencies of Juan Manuel Santos, it should be noted that having his mandate started on August 7, 2010, the report for the year 2010 has been considered within the structural analysis of the previous period under Alvaro Uribe Velez administration and that this second period starts with the 2011 annual report since it is in this report that one can begin to examine the work done during President Juan Manuel Santos' first year in office.

#### **2.3.2.1. Analysis of Titles and Subtitles**

As previously stated, the Office's annual reports changed format during this period, therefore the titles and subtitles used in the initial reports from 2002 to 2010 are significantly decreased, as is the number of pages in the reports from 2011 to 2018, with an average of 20 pages each year. Some important titles that were essential during the first period are removed, while others are added; however, it is possible to identify that the reports during this period lose quality and quantity, and the annual reports during this period become more general and do not expose or examine in depth the situation of human rights and IHL in Colombia.

It should be noted that until 2014, the Office's reports retained the most important titles that were constant during the first period: the national context, the situation of human rights, and the recommendations; however, beginning with the 2012 report, the situation of international humanitarian law no longer appears neither as a title or a subtitle within the reports. This structural and format study also revealed that, beginning in 2015, the titles and subtitles of the reports changed dramatically, concentrating mostly on subjects linked to the peace process and eventual peace agreement between the FARC and the government. As of 2015, the reports lack a table of contents and instead jump right to the subheadings, which largely deal with the peace process and the requisite implementations both during the peace process and thereafter in the post-agreement period. However, this does not imply that the

reports have stopped discussing the situation of human rights and IHL in the country, but rather that they do so in a new style that is not clearly differentiated and relies on subheadings and disparate forms that make identifying issues related to the situation of human rights and IHL in Colombia regarding the armed conflict more difficult.

As there is a format difference between the studied reports and the reports from the first period, doing a structural analysis of the reports produced during this time is significantly more challenging. It is acknowledged that each annual report was prepared using an independent structure, with just a few similar titles and subtitles remaining, showing that there was a major variation in structure and format throughout this second period. Yet, the titles and subtitles that were most frequently used in annual reports will be revealed in this chapter.

During the second period of analysis, the introduction title continues to provide a brief explanation of why the Office exists in Colombia, its foundation, and continuity throughout the year of the report, but it becomes a little broader to explain the national context of the report's year of analysis, as well as a brief explanation of the issues that will be addressed within the report's content. The reports continue to provide information on the country's general situation and the major events of the year analyzed in each report; however, as of 2015, this title fades and is combined with the title introduction, which explains the state of the peace process, the relevance of the Office's actions, and the government ratification of these actions.

Similarly, Human Rights Situation is no longer a title but a subtitle as of 2015, making it difficult to detect a clear format of the human rights situation in Colombia at this time, particularly from the 2015 annual report, and sometimes it was just pointed to inside other subtitles. It can be observed that as of 2015 the human rights situation was intermingled with the peace process, and it can be discovered that the mentions of human rights from this report focus on how human rights have been contained inside the peace agreements, recognizing that the human rights situation remained grave regardless of the agreements that were reached between the government and the FARC. It should be emphasized that all of the reports that were

analyzed during this second period no longer had the title “international humanitarian law situation” on them.

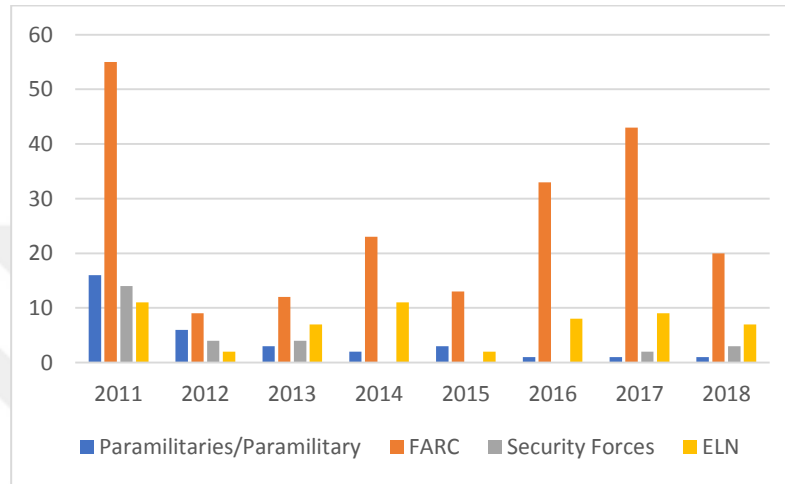
The fact that nearly none of the reports from this time period had annexes that examine some of the report's topics in more detail, in contrast to all of the reports from the first period, is another significant change during this second period. Annexes documenting instances of violations of IHL and human rights are only present in the 2010 and 2011 reports. There is an annex to the 2014 report, however, unlike the annexes of the first period reports, it solely presents comparison figures on persons combat deaths and alleged cases of extrajudicial executions from 2002 to 2011, with no additional explanation digging into the condition of human rights and IHL.

The recommendations in the reports during this second period initially do not differ from those made during the first period, particularly in the fact that they call on all actors in the armed conflict to respect and guarantee the non-repetition of violations of human rights and IHL committed. However, based on the reports' interest in the peace process and peace agreement, it is clear that the Office was interested in proposing recommendations for the implementation of what had been agreed between the FARC and the government, as well as proposing solutions and mechanisms to a greater understanding of the parties within the peace agreement.

During this second phase, as was already indicated, new titles and subtitles occur, particularly from the 2015 annual report, when it is clear that the titles concentrate on matters connected to the peace process. Examples include the introduction of the titles "Peace process and victims of the armed conflict" in 2015 and "Challenges in the Implementation of the Peace Accord with Respect to Guarantees of Non-Repetition" in 2017. There are references to the titles that were used in earlier reports inside these new titles and subtitles that appear in the most current annual reports, but their analysis is less thorough and distinct because they do not have their own section for each one. Instead, they are incorporated into other concerns that the Office had throughout this second phase of examination.

### 2.3.2.2. Analysis of Terms

Several keywords were statistically studied throughout this time in the same way that it was done during the first period of analysis, which will aid in understanding the changes in the reports between the two analysis periods. The same words that were evaluated in the first period were employed in this study to understand the continuities, changes, and omissions between these two periods of investigation.

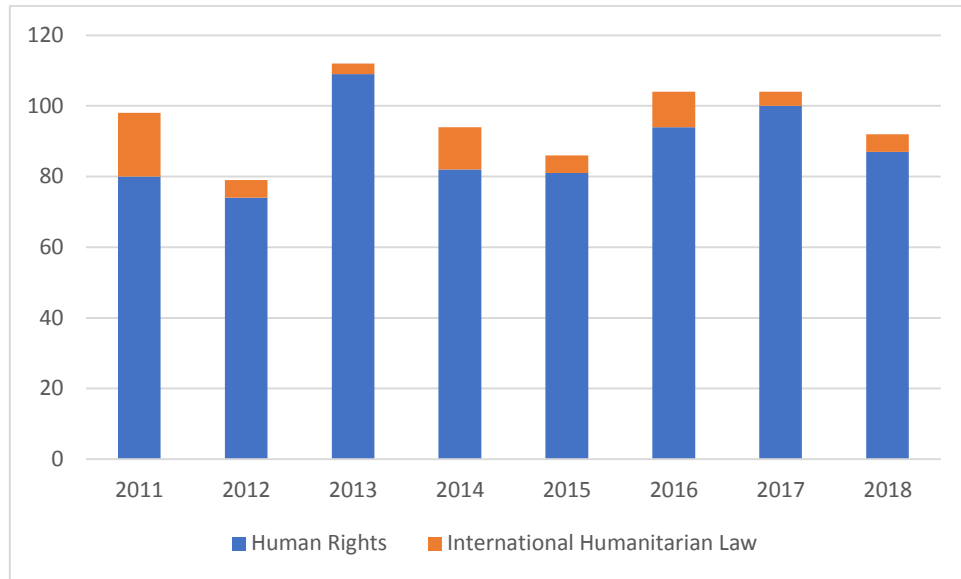


**Figure 13.** Analysis of Terms Actors of the Armed Conflict 2011-2018

**Source.** Author's own assessment adapted from OHCHR Reports from 2011 to 2018

Figure 13 shows the use of the terms paramilitaries, FARC, Security Forces, and ELN during this period of analysis, and it can be seen that from 2011 to 2018, the reports focused on the FARC as the main actor of analysis during this period, and it can also be seen that mentions of the paramilitaries and Security Forces progressively decreased, while mentions of the ELN were few but consistent in all reports.

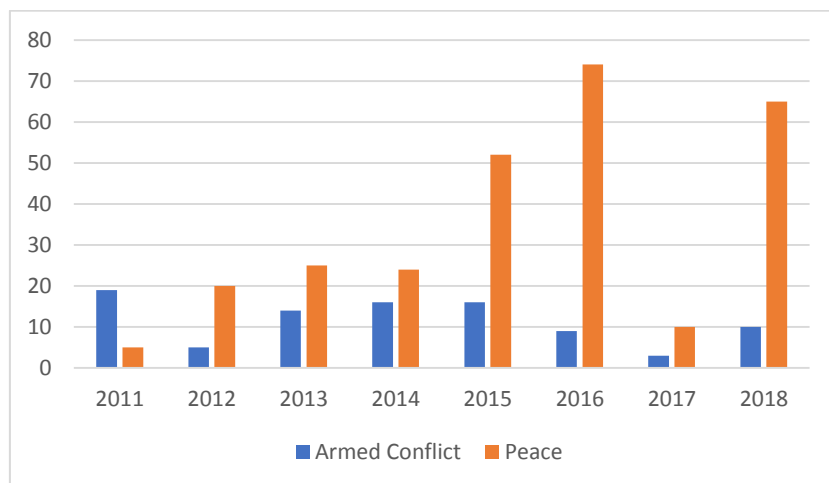
Similarly, as shown in the figure 14, which analyzes the mentions of the terms Human Rights and International Humanitarian Law, the situation of international humanitarian law is mentioned to a lesser extent during this second period of analysis, because, as previously stated, it ceased to be an analysis subheading within the Office reports and began to be mentioned within the text of other subtitles.



**Figure 14.** Analysis of Terms: Human Rights and International Humanitarian Law 2011-2018

**Source.** Author's own assessment adapted from OHCHR Reports from 2011 to 2018

During this time, it was clear that the reports focused increasingly on the peace process, which began in 2011 and achieved legal form in 2012, becoming the dominant theme of the reports. The Office's major goal became the peace negotiations and the peace process, as indicated by the several reports in which the Office is more strongly concerned with giving suggestions and following up on the peace talks between the FARC guerilla and the government before the agreement was reached and concentrating mostly on the agreement's implementation once it was signed in 2016.



**Figure 15.** Analysis of Terms: Armed Conflict and Peace 2011-2018

**Source.** Author's own assessment adapted from OHCHR Reports from 2011 to 2018



As indicated by a quantitative analysis of terms in figure 15, beginning with the 2012 reports, the term "peace" begins to have greater value inside the Office's annual reports than the term armed conflict, this contrasts with the 2002-2010 reports, which, while more comprehensive, did not mention the term "peace" as frequently. According to this data, the term "peace" was used 150 times during the first period, whereas it was used 275 times during the second period, despite the fact that the second period reports represented half the amount in pages of the first period reports.



**Figure 16.** Word Cloud OHCHR 2016 Report

**Source.** Author's own assessment adapted from OHCHR 2016 Report

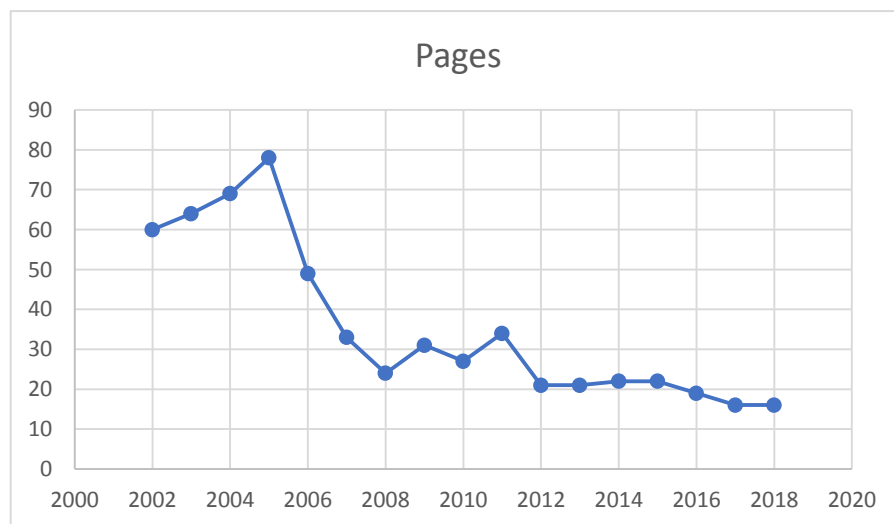
As seen in the word cloud on figure 16, which highlights the most frequently used words in a text, the term peace becomes very important in the 2016 report. This also corresponds to the data reviewed during this analysis, where it was discovered that the use of the term peace was infrequent during the first period of analysis, with the year 2005 being the year in which it was used the most (25) due to the demobilization process of paramilitary groups, whereas during the period from 2010 to 2018, the term peace was more frequent and important in the reports, being used 74 times in 2016 when the peace agreement between the government and the FARC was signed. Yet, the term was not only used extensively this year; it was also used 65 times in the 2018 report and maintained an average of roughly 34.3 over this period of analysis.

It is apparent that the annual reports during this period focused more on the peace agreement and its implementation. However, by doing so, the reports seem to lose their meaning and relevance as a way of claiming and publicizing the many abuses of

human rights inside the armed conflict. This is not to say that the analysis of the state of human rights and IHL has been left out of the reports, but it became a secondary objective in the analysis and was not as important as in the early reports. It should be mentioned that this might also be attributed to a drop in violence within the armed conflict during the peace negotiations and following the signing of the peace agreement.

### 2.3.3. Comparison of Time Periods

A comparison of the parallels, differences, omissions, and continuities in the evolution of the reports across the two periods may be conducted using the structural analysis of the Office reports from 2002 to 2010 and 2010 to 2018. The comparison reveals a significant variation in the amount and size of reports produced by the Office during the first and second periods. The reports became shorter over time, despite the fact that abuses of human rights and IHL did not cease to exist both inside and outside the armed conflict. This shortness in the reports is further emphasized in 2011, with reports that did not surpass 20 pages, which may be a little amount of substance given it is an annual report.



**Figure 17.** Number of pages of OHCHR Reports 2002-2018

**Source.** Author's own assessment adapted from OHCHR Reports from 2002 to 2018

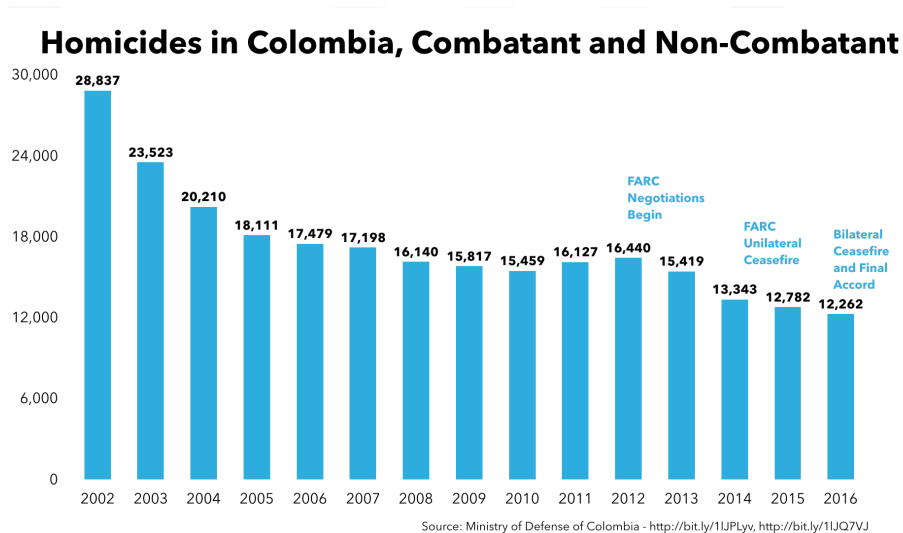
The reports preserved some of the titles and subtitles within their content throughout time, but the structure and form of the reports did not remain consistent since a defined framework for report writing was not maintained due to the somewhat

diverse volume and different subjects that appeared. Despite the diversity of the reports, important titles that appeared in much of the two analysis periods were found: Introduction, national context; situation of human rights; situation of international humanitarian law; situations of special vulnerability; and recommendations of the Office. Initially, the activities of the Office were also explained in the reports, revealing the various actions taken by the Office on national territory to promote the defense of human rights and train state institutions in human rights matters, as well as all actions and complaints received by the Office regarding violations of human rights and IHL both inside and outside the armed conflict.

It can be said that the Office's reports never had a clear format, and that depending on the situation of the year and the main concerns of the Office during the years of analysis, one or two specific subheadings referring to that situation were added, for example, in 2005, the subtitle "The challenges of demobilization and its legal framework" was added, due to the process of demobilization of paramilitary groups, Due to the controversy involving state officials tied to paramilitary organizations, a subtitle dubbed "Parapolitics" was introduced in 2010. In 2011, the subtitle "Land Restitution Law" was added owing to the law that intended to restore land to those displaced by the armed conflict, yet, it can be said that a kind of framework was used that respected several titles that were crucial for the OHCHR to grasp the country's human rights and international humanitarian law situation. However, in the latter reports of the study, notably as of 2015, the reports concentrated on the peace process between the FARC and the government, and any sort of framework within the reports was lost as a result.

As of 2011, the Office's reports omit the subtitle Activities of the Office and stop giving a clear account of the actions carried out by the Office in the national territory, making it impossible for the reader to know what the Office's activities were, the number of complaints of human rights violations received, and understand the situation of human rights and IHL during the year analyze. On the contrary, the Office continues to reveal the most significant incidents of human rights breaches inside the armed conflict by various parties, presenting examples and demonstrating the country's human rights status, but in a flatter and more generic approach.

The examination of words over the two eras reveals that there was a shift in the substance of the reports that has been noticeable over the years and that is amplified beginning in 2015 owing to the importance of the peace process inside the reports. According to this term analysis, the term Peace began to gain importance in the second period of analysis, as opposed to the first, despite the fact that the two periods had different peace processes with an armed actor, the first being the peace process between the government of Alvaro Uribe Vélez and the paramilitary groups that led to their demobilization in 2005 and 2006, and the second, the peace agreement between the government of Juan Manuel Santos and the FARC signed in the year 2016.



**Figure 18.** Homicides in Colombia, Combatant and Non-Combatant

**Source.** WOLA (2017)

As figure 18 shows, the number of homicides in Colombia decreased noticeably following the peace talks, after it increased beginning in 2008 when the security forces' military offensive ceased to be effective, and it became clear that a military solution to the conflict would result in a lot of bloodshed (WOLA, 2017). This is due in part to commitments made during the negotiating phases, in which the FARC insurgents agreed to a unilateral ceasefire, although this was not always followed, and the peace talks were on more than one occasion in danger of breaking down.

The term 'peace' is rarely mentioned during the first period, as evidenced by the graphs and word cloud of the 2005 report, where it does not even appear among the

30 most used words in the report, despite the fact that it is the longest report of the first period and is based on the year of paramilitary group demobilization. According to the word analysis, the word 'peace' was referenced more frequently during the second analysis period, from 2002 to 2010, 150 times, and 275 times between 2011 and 2018.

The word international humanitarian law becomes less relevant during the second phase of analysis and is cited less frequently, as indicated by a comparison of terms used throughout the two periods; it was referenced 404 times during the first period and just 62 times during the second. Regarding the actors in the armed conflict, it can be seen that during the first period of analysis, the focus was on paramilitary groups and the FARC, with the FARC being mentioned to a greater extent from the 2006 report, while the paramilitaries who were the actors most mentioned in the first reports became progressively less and less mentioned throughout the reports during the first period and almost not mentioned during the second period of analysis.

#### **2.4. Conclusions**

Based on this structural and form analysis of the Office's reports, it has been possible to evaluate the development that these reports have had over the years, conducting it in two periods corresponding to Alvaro Uribe Velez's and Juan Manuel Santos's presidential mandates. According to the analysis of the titles and subtitles, the Office's annual reports do not adhere to a strict format, and some titles and subtitles change, are omitted, or are added in different years; however, several titles have been identified that persist in the vast majority of the reports: Introduction, national context, human rights situation, situation of international humanitarian law, situations of special vulnerability, activities of the Office and recommendations.

This emphasizes the necessity of examining the condition of human rights and IHL in the reports, as well as exposing the major incidents of breaches of these and recognizing the situation of especially vulnerable groups. Similarly, the Office has always made recommendations to both the national government and the various armed actors in the conflict to ensure that they respect and comply to international human rights and IHL standards.

However, based on this data, it has been determined that the Office's reports have decreased in volume significantly throughout the years and have become briefer between 2011 and 2018. It has also been determined that during this second period of analysis, the reports stopped providing accounts of the Office's activities in Colombia and instead focused on analyzing the challenges both during the peace process and after the peace agreements, as well as making recommendations to ensure that the agreements are fulfilled. While the Office's support for the peace agreements is important because they represent a significant change in the situation of human rights and IHL in Colombia, it is also important that the Office continue to analyze in depth the situation of human rights and IHL in Colombia because there are still various armed actors involved in the conflict who continue to pose a threat to the civilian population's security.

In relation to the analysis of terms during this investigation, it can be inferred that the armed conflict in Colombia has taken on great importance within the Office's reports of the country, particularly during the first years of analysis, and that the Office has taken care to show and explain the situation of human rights and IHL in Colombia; however, it can be deduced from the analysis of terms that during the second period of analysis, the situation of human rights and international humanitarian law came to take second place, owing to the fact that the peace process between the FARC and the government, as well as the implementation of what was agreed, was essential in the Office's reports. Although the Office has always made recommendations on human rights and international humanitarian law to all conflict actors, these recommendations have become repetitive and have not been effective among the illegal actors, who continued to operate within the armed conflict without respecting international regulations.

According to the data acquired in this chapter, the following noteworthy changes may be recognized throughout the two periods of analysis:

- Paramilitary groups ceased to be major participants in the conflict, as seen by the few references they received throughout the second period of investigation.

- During the first period of analysis, it can be seen in the reports that a peaceful solution to the armed conflict was not widely discussed and was not a priority for the Colombian government, despite the fact that within the Office's recommendations, a peaceful and negotiated solution was always advocated between all parties to the armed conflict.
- The Office's reports during the second period lost content on human rights and international humanitarian law, became shorter, and were more difficult to objectively understand the reality of the situation of human rights and international humanitarian law in Colombia because they did not have a clear framework as in the first period.
- During the second period, the reports focused on the development of the peace process and the subsequent peace agreement between the FARC and the government, while failing to explain the situation of human rights and international humanitarian law in the country, even as the armed conflict continued and violations of human rights, particularly of vulnerable groups, remained concerning.
- Figures 9 and 10 illustrate that the term "peace" was not often used in the first period of analysis reports, even when the paramilitary organizations were being demobilized. This can be explained by the fact that neither the government nor the guerrilla organizations had any intention of seeking a negotiated resolution to the armed conflict during the period in question.
- Figure 12 illustrates that the term international humanitarian law was dropped from the reports and ceased to be a prominent subtitle. As a result, it became more difficult to explain and identify the situations and times in which the reports related to violations of human rights and IHL within the context of an armed conflict.
- Figure 15 can show the great decrease in the volume of OHCHR annual reports, which began with fewer than 30 pages in 2011 and had an average of 21 pages by 2018, which seems to be insufficient for an annual report that assesses the human rights situation in a whole country.

## **CHAPTER THREE**

### **CONTENT ANALYSIS OF THE REPORTS OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA 2002-2010**

#### **3.1. Introduction**

This analysis explains the significance of the work done by the OHCHR in Colombia as an outside observer of the development of Colombia's human rights situation, as peacemaker and advisor, as well as the role that the OHCHR has played in Colombia's internal conflict in relation to human rights and IHL, employing into account the OHCHR reports on the situation of human rights in Colombia. The United Nations, being the world's most significant international organization, cares about nations affected by violence and has several programs aimed to assist ameliorate the situation in such countries, as will be examined in the instance of Colombia.

The main purpose of the United Nations has been to maintain international peace and security among nations, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, to cooperate in solving international economic, social, cultural, and humanitarian problems and in promoting respect for human rights and fundamental freedoms and to be a center for harmonizing the actions of nations in attaining these common ends (United Nations Charter, article I; Ariye, 2014: 25).

The internal armed conflict in Colombia that has persisted for more than 60 years has created a strong atmosphere of violence in the country in which the state's security



policies are put to the test to ensure both the survival of the state and the guarantee of human rights and in the same way, respect for IHL by all the actors in the conflict.

This chapter assesses the situation regarding human rights and IHL in relation with the development of the internal armed conflict in Colombia. To carry out this analysis, the annual reports of the OHCHR in Colombia have been taken as the main source of information, considering the starting year for this analysis from 2002 and until 2010.

This period has been selected since it represents a change in the security and defense policy of the Colombian state and for this reason, it is very important to analyze the consequences that this change generated in relation to the situation of human rights and IHL in the country. To do this, the two presidential periods of Alvaro Uribe Velez would be analyzed according to the reports. First, the laws and agreements regarding human rights and IHL to which Colombia is bound, as well as the internal rules and legislation that govern the country on these issues will be highlighted. Then, the national context of each presidential period will be examined in order to comprehend the dynamics that occurred during each period, as well as to better envision the scope of the armed conflict and its relationship to human rights and IHL.

In this manner, the violations committed by each of the actors in the armed conflict will be enumerated, with special emphasis on the faults committed by the Colombian state, particularly when the increased operations by the armed forces and the intensification of hostilities had a negative impact on the civilian population, resulting in violations of international humanitarian law and affecting civilian human rights. For this, the impact of the conflict in terms of human rights and IHL is being analyzed based on the reports of the OHCHR-Colombia.

This chapter examines the reports delivered by the OHCHR-Colombia regarding the situation of human rights and IHL in Colombia during Álvaro Uribe Vélez's two

presidential terms (2002-2006 and 2006-2010)<sup>29</sup>. As a result, the OHCHR-Colombia evaluation of the situation of Human Rights and IHL, as well as its recommendations to the country during this period, had been studied, as these reports allow us to understand the country's human rights situation from an international perspective. By analyzing the situation of human rights and IHL in Colombia, this chapter explores the actors, causes, and consequences of the armed conflict and the repercussions on human rights and IHL during this period. Additionally, the main changes in government policies and the most relevant events that took place during this period and that had a direct impact on the armed conflict in Colombia were analyzed. Terrorist acts were given special consideration since they have become an important issue on the national and international security agenda.

Similarly, the main issues that concerned the OHCHR-Colombia the most during each period in relation to the armed conflict are studied in a comparative manner in order to understand the changes and continuities that occurred from the first presidential period to the second, as this allows us to better understand the OHCHR's position regarding the situation in Colombia and the observations and recommendations that it makes to the Colombian state in matters of human rights and IHL. Furthermore, this chapter provides a summary of the activities undertaken by the OHCHR-Colombia to assist in improving the situation of human rights and IHL in Colombia. Finally, this chapter provides an evaluation of the situation of human rights and IHL in Colombia related to the armed conflict based on information obtained from annual reports, as well as the response of the Colombian state to that situation in order to guarantee the rights of its citizens.

### **3.2. Colombia and the International Laws on Human Rights and International Humanitarian Law**

Before delving into the violations committed during the armed conflict, it is critical to understand the national and international norms and regulations that oversee the state of Colombia's actions in the area of human rights and IHL. Colombia has a wide regulatory framework on human rights and IHL, having accepted the majority

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<sup>29</sup> The presidential terms in Colombia begin on August 7, so in the first presidential term the annual reports from 2002 to 2006 are analyzed and in the second presidential term the 2007 annual report begins.

of international treaties concerning human rights and IHL, as evidenced by the Colombian Foreign Ministry:

**Table 3.** Conventions, Agreements, and Pacts, signed Bilaterally or Multilaterally by the Colombian State in matters of Human Rights and IHL

<b>Content of the treaties, protocols, conventions, conventions, agreements, and pacts, signed bilaterally or multilaterally by the Colombian state in matters of Human Rights and International Humanitarian Law</b>	
United Nations Charter	26/06/1945
Charter of the Organization of American States	30/04/1948
Inter-American Convention on the Granting of Civil Rights to Women	02/05/1948
United Nations International Convention on the Elimination of all forms of Racial Discrimination	07/03/1966
International Covenant on Civil and Political Rights and its Optional Protocol	16/12/1966
American Convention on Human Rights Pact of San Jose de Costa Rica	22/11/1969
Convention on the Elimination of all forms of Discrimination against Women	18/12/1979
Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	10/12/1984
Inter-American Convention to Prevent and Punish Torture	09/12/1985
Additional Protocol to the American Convention on Human Rights in the field of Economic, Social and Cultural Rights "Protocol of San Salvador"	17/11/1988
United Nations Convention on the Rights of the Child	20/11/1989
United Nations Agreement Establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean	24/07/1992
Inter-American Convention on International Trafficking of Minors	18/03/1994
Inter-American Convention to Prevent, Punish and Eradicate Violence against Women "Convention of Belem do Para"	09/06/1994
Inter-American Convention on Forced Disappearance of Persons	09/06/1994
Rome Statute of the International Criminal Court	17/07/1998
Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities	07/06/1999
Optional Protocol to the United Nations Convention on the Elimination of all Forms of Discrimination against Women	06/10/1999
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	25/05/2000
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime	15/11/2000
Convention on the Rights of Persons with Disabilities	13/12/2006
International Convention for the Protection of All Persons against Enforced Disappearances	20/12/2006
Establishment in Colombia of an Office of the United Nations High Commissioner for Human Rights, signed in Geneva on November 29, 1996	18/07/2013
Agreement by Exchange of Notes between the Republic of Colombia and the United Nations, represented by the United Nations Entity for Gender Equality and the Empowerment of Women (UN women) on the presence of UN Women in Colombia	19/03/2018

**Source.** Adapted from Cancilleria de Colombia

Colombia has ratified international treaties and conventions concerning the protection and guarantee of human rights, as well as the Geneva Conventions, which govern IHL and state action in conflict. Colombia has accepted and/or ratified the great majority of international treaties connected to IHL, as indicated in the table below, according to the Single Regulatory Information System (SUIN) of the Ministry of Justice and Law:

**Table 4.** Conventions and Pacts of the Inter-American Human Rights System

<b>Name of the protection instrument</b>	<b>Approving law</b>	<b>Constitutionality Control Judgment</b>
Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	Law 5 of 1960	
Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II)	Law 5 of 1960	
Geneva Convention of August 12, 1949, relative to the Treatment of Prisoners of War (Convention III)	Law 5 of 1960	
Geneva Convention of August 12, 1949, relative to the protection due to civilians in time of war (Convention IV)	Law 5 of 1960	
Protocol relative to the prohibition of the use in the war of asphyxiating, toxic or similar gases, and of bacteriological means”, signed in Geneva on June 17, 1925, and the Government of Colombia is authorized to adhere to said Protocol; and the “Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Distribution	Law 10 of 1980	C-664/13
Additional Protocol to the Geneva Conventions of August 12, 1949, relative to the protection of victims of non-international armed conflicts (Protocol II)"	Law 171 of 1994 Promulgated by Decree 082 of 1996	C-225/95
Additional Protocol to the Geneva Conventions of August 12, 1949, relative to the protection of victims of non-international armed conflicts (Protocol II)", issued in Geneva on June 8, 1977.	Decree 509 of 1996	C-574/92
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.	Law 340 of 1996	C-467/97
Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons that May Be Considered Excessively Noxious or of Indiscriminate Effects”, done in Geneva, on October ten (10), nineteen hundred and eighty (1980), and its four (4) protocols: "Protocol I. On non-locatable fragments", adopted on October 10, 1980, with the convention. "Protocol II. On prohibitions or restrictions on the use of mines, booby traps and other devices”, as amended on May 3, 1996, in Geneva. “Protocol III. On prohibitions or restrictions on the use of incendiary weapons” adopted on October 10 with the convention. "Additional Protocol, considered as IV, on blinding laser weapons"	Law 469 of 1998	C-156/99
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction"	Law 525 of 1999	C-328/00

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (1997)	Law 554 of 2000	C-991/00
Optional protocol to the convention on the rights of the child on the involvement of children in armed conflict	Law 833 of 2003	C-172/04
Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict	Law 1130 of 2007	C-812/07

**Source.** Adapted from SUIN-juriscol

It is also worth emphasizing that Colombia has shown remarkable devotion in the worldwide war against terrorism, owing to components of terrorism that have stayed in Colombia and have permeated due to the lengthy duration of the conflict, permitting the continuation of terrorist activities (Tarapués, 2012: 36). Colombia, as part of this reality, has approved nine international counter-terrorism instruments and is a signatory to several international agreements, as seen in figure 19.

Convention	Incorporation into national law	Ratification of Colombia
Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (UN, 1969)	01/02/1973, Law 14 of 1972	06/07/1973
Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 <sup>21</sup> (UN, 1973)	01/02/1972, Law 14 of 1972	03/07/1973
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 (UN, 1975)	15/10/1974, Law 4 of 1974	04/12/1974
Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, Including Diplomatic Agents, 1973 (UN, 1977)	09/12/1994, Law 169 of 1994	16/01/1996
International Convention against the Taking of Hostages, 1979 (UN, 1983)	18/07/2003, Law 837 of 2003	14/04/2005
Convention on the Physical Protection of Nuclear Material, 1979-1980 (UN, 1987)	30/12/2001, Law 728 of 2001	28/03/2003
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988 <sup>24</sup> (UN, 1990)	05/08/2002, Law 764 of 2002	14/01/2004
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 <sup>25</sup> (UN, 1992a)	--	No
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 <sup>26</sup> (UN, 1992b)	--	No
Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991 <sup>27</sup> (UN, 1999a)	14/07/2003, Law 831 of 2003	No yet <sup>28</sup>
International Convention for the Suppression of Terrorist Bombings, 1997 (UN, 1998)	02/04/2003, Law 804 of 2003	14/09/2004
International Convention for the Suppression of the Financing of Terrorism, 1999 (UN, 1999b)	28/05/2003, Law 808 of 2003	14/09/2004
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 (UN, 2005)	--	No yet <sup>29</sup>
Amendment to the Convention on the Physical Protection of Nuclear Material, 2005 <sup>30</sup> (IAEA, 2006)	--	No
Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation <sup>31</sup> (UNODC, 2005a)	--	No
Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf <sup>32</sup> (UNODC, 2005b)	--	No

**Figure 19.** Counter-terrorism Instruments signed by Colombia

**Source.** Tarapués (2012: 35)

Internally, Colombia is a country with a solid legal framework regarding terrorism, which is based on the Penal Code, which contains descriptions of behaviors and offenses related to this issue and has various laws that contain measures against terrorism in terms of controlling terrorism financing and legal punishment for acts of terrorism (Tarapués, 2012: 32).

Law	Short Summary
Law 526 of 15/08/1999	Creating a <i>Department of Information and Financial Analysis</i> with a focus on money laundering and financing of terrorism.
Law 599 of 24/07/2000	Penal Code that includes the description of the various terrorist offences.
Law 733 of 31/01/2002	Measures against kidnapping, terrorism and extortion.
Law 1.121 of 30/12/2006	Measures for the prevention, detection, investigation and punishment of the financing of terrorism.
Law 1.142 of 28/07/2007	Legal reform of the Penal Code and Code of Penal Procedure and incorporation of measures for the prevention and suppression of crimes of particular significance for coexistence and citizen security.

**Figure 20.** Internal Laws regarding Terrorism

**Source.** Tarapués (2012: 32)

These anti-terrorism laws have sought to suppress acts of terrorism from the political and military struggle; however, this struggle has occasionally led in decisions that appear to be harmful to human rights. As a result, Colombia's greatest challenge is to continue preventing acts of terrorism and fighting terrorists while respecting human rights (Tarapues, 2012: 36).

### **3.3. Annual Reports of the United Nations High Commissioner for Human Rights on the Office in Colombia (2002- 2006)**

The High Commissioner's annual reports are responsible for evaluating and monitoring the condition of human rights and IHL in Colombia, both during the armed conflict and in other instances when citizens' rights may have been jeopardized by state action or omission. This work focuses on the OHCHR-Colombia's observations and analysis of the most serious violations of human rights and IHL within the conflict, both by guerrilla and paramilitary groups and by the Colombian state's security actions within the context of its policies and approaches inside the armed conflict, particularly the government's anti-terrorism policies. Within the context of Alvaro Uribe Velez's two presidential terms, it is important to note that presidential terms in Colombia begin on August 7 of the election year, while annual reports are delivered to the Human Rights Council in the first months of each year; thus, the analysis of the annual reports has been conducted as follows: Alvaro Uribe Velez's first presidential term included annual reports from 2002 to

2006 and his second presidential term had been analyzed in the annual reports from 2007 to 2010.

### **3.3.1. National Context**

Colombia was undergoing a time of transition in 2002 in terms of governance. That year, peace talks between the government and the FARC guerrillas collapsed altogether, resulting in an increase of the armed conflict characterized by violent activities, many of which were terrorist in nature (OHCHR, 2003: 4). The political shift occurred as a result of the election of right-wing candidate Álvaro Uribe Vélez as president of the country (OHCHR, 2003: 11).

According to Katz “the breakdown of peace dialogues with the FARC in February 2002, the economic crisis, the growing mistrust in politics and politicians and the atmosphere of public skepticism made it easy for an independent candidate to reach the presidency, with the surprising result of 53% of the vote in the first round” (2006: 150). President Álvaro Uribe Vélez highlighted in his candidacy even before becoming president the intention of strengthening the armed forces and seeking to combat the guerrillas through direct confrontation, implying that the Colombian state selected the military route as the only solution to the internal armed conflict.

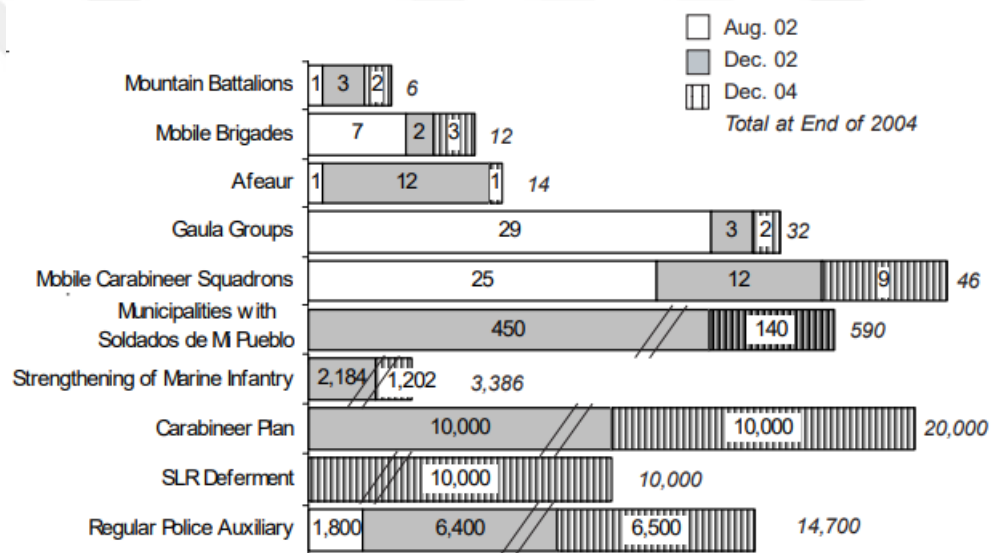
The period between 2002 and 2006 marks a change in the state security policy, this new security policy was known as "Democratic Security", and one of its main objectives was to combat terrorism and put an end to the armed conflict through military victory. The fact of centering the end of the armed conflict on the military victory implies a drastic change in the security policy since Colombia had just emerged from a failed attempt at a peace process between the previous government and the guerrillas. Consequently, Democratic Security eliminates the option of thinking about the conclusion of Colombia's armed struggle between the government and the guerrillas through a peace process, implying that both parties were forced to use weapons and war tactics to achieve their objectives.

According to the High Commissioner for Human Rights' reports in Colombia throughout this period, the violence deteriorated, and breaches of human rights and



IHL remained and even exacerbated. It may even be observed that by the time Alvaro Uribe was elected president, Colombia was being perceived by some as a failed state<sup>30</sup>, owing to the level of the violence that occurred there (Mason, 2002: 67-68; Rotberg, 2004 in Ríos Sierra & Zapata Garcia, 2019: 141).

According to the 2002 report, the government's new security policy was centered on "strengthening the armed forces, increasing the number of military and police forces, the creation of a network of informants and cooperators among the civilian population and a new system for recruiting peasant soldiers" (OHCHR, 2003: 11), as can be seen in the figure below.



**Figure 21.** Increments in Fighting Forces

**Source.** Katz (2006: 153)

Figure 21 gives us an official balance of the increase in military forces and the new units created for December 2004 (Katz, 2006: 152). This can be evidenced as seen in the report of 2002, where it is possible to verify the change in the tactics used by the security forces and the increase in the operatives against the guerrillas during the conflict; as a response the guerrillas resorted more frequently to terrorist acts and harassment, which forced them to change their combat strategies.

“Assuming that during the presidency of Andrés Pastrana a total of 2,150 operatives of the public force against the FARC and ELN were counted, under the presidency

<sup>30</sup> Please also see Hay Futuro si hay Verdad, Tomo 2, Hallazgos y recomendaciones, 2022: 364.



of Alvaro Uribe these amounts raised to almost 17,000, obtaining, during the first two years, the disappearance of the guerrilla from the geographic central enclaves in the country, such as Cundinamarca, Caldas, Risaralda, Quindío, Boyacá, Santander, and northern Meta” (Ríos Sierra & Zapata Garcia, 2019: 142).

The 2002 annual report points out the degradation of the armed conflict and the increase in the cruelty of the combat methods used by the guerrilla groups (OHCHR, 2003: 5). The guerrillas were forced to employ techniques such as hit-and-run, which are common in irregular conflicts and pose significant challenges to the state since they make it difficult for the state to neutralize this form of attack; these guerrilla tactics of secrecy, stealth, and surprise attacks created new obstacles for the state's reaction in security policies, as well as terror in the civilian population, producing a sense of instability and fear. However, it should be noted that the government's Democratic Security strategies led to significant changes in national security, and the military forces achieved significant victories over the guerrillas, who were forced to withdraw; as a result, the armed forces were able to bring security to more areas of the country and free the roads so that civilians could move freely.

Although great importance is given to the degradation of the conflict by the guerrilla groups, especially the FARC, the reports also highlight the participation of paramilitary groups in the armed conflict. This concern was felt more strongly in the first years of this period, because paramilitary groups expanded their operations to new regions of the country, including Arauca, the old, demilitarized zone (where the failed peace process took place), Guaviare, Cundinamarca, Valle del Cauca, Sucre, and Putumayo, among others (OHCHR, 2003: 13).

The paramilitary groups also stood out for a shift in their techniques and activities in order to gain legitimacy in the eyes of the national government and public opinion. As a result, paramilitary groups attempted to decrease activities that harmed their image, such as massacres, and instead sought to achieve their goals through new warfare methods such as selective killings and death threats (OHCHR, 2003:12).

### **3.3.2. Situation of Human Rights and International Humanitarian Law**

In this section, the violations of human rights and international humanitarian law seen by the OHCHR-Colombia through its reports and that have occurred as part of

the internal armed conflict will be examined. According to the OHCHR (2005: 21), human rights violations are "actions and omissions that affect rights established in international human rights treaties or in general international law norms constitute violations of those rights when carried out by public servants or committed with the acquiescence of the authorities." With respect to breaches of the IHL within the armed conflict, the OHCHR says that:

Within the framework of the Colombian armed conflict, breaches of international humanitarian law are actions or omissions in violation of common article 3 of the Geneva Conventions of 12 August 1949, Additional Protocol II thereto, international criminal law and customary law. All parties involved in the hostilities, be they the State or illegal armed groups (guerrillas or paramilitaries), must comply with the obligations imposed by international humanitarian law. (2005: 21)

According to the annual reports reviewed, the internal armed conflict was the primary factor affecting thousands of people's enjoyment of human rights and fundamental freedoms in various regions of Colombia, with violations of the rights to life, integrity, liberty, and personal security, as well as due process and judicial guarantees, being among the most serious during this period (OHCHR, 2007: 12).

During this time, it is possible to demonstrate that abuses of human rights and IHL decreased significantly over time. In 2002, the assessment rated the human rights situation as serious and expressed concern about widespread and systematic violations of those rights, some of which amounted to crimes against humanity (OHCHR, 2003: 5). However, throughout the previous reports, there has been an ongoing decrease in the number of homicides, massacres, assaults on civilians, and so on, while warning that the levels of violations remained high, and the human rights situation remained to be severe (OHCHR, 2004: 3). A gradual increase in charges of extrajudicial executions ascribed to security forces personnel, as well as reports of links between public workers, security forces members, and illegal armed organizations, were of particular concern (OHCHR, 2005: 4).

There was a decline in guerrilla raids into urban sections of municipalities; nonetheless, these illegal groups chose the method of scaring the civilian population by carrying out periodic acts of terrorism (OHCHR, 2004: 18). As previously stated, the guerrillas' shift toward various fighting techniques was said to be response to the offensive of the state security forces, which effectively reclaimed control of a

substantial portion of the national land (OHCHR, 2003: 13-14). The guerrillas avoided confrontation with security forces by employing new strategies such as assaults on public officials and the employment of measures such as hostage-taking and terrorist acts against civilians (OHCHR, 2003: 13-14). The guerrillas were responsible for repeated indiscriminate assaults with explosive devices, with no regard for civilian life, and even utilized people to smuggle explosive devices. For instance, within the annual reports, the OHCHR-Colombia highlights the case of April 17, 2004, in Fortul (Arauca) where an 8-year-old boy died when the bicycle he was riding exploded near a military checkpoint, revealing the total lack of respect for IHL and norms on the part of the guerrillas (OHCHR, 2004: 19).

Another consequence of the FARC and ELN's tactical change, which sought to achieve military and political objectives while avoiding direct confrontation with state security forces, was the practice of selective killing, which accelerated with the new government's offensive security strategy. These selective killings targeted local officials, social leaders, and political candidates, as well as people accused of belonging to the government's informant network. During this period, the OHCHR-Colombia also highlighted the constant use by the FARC and the ELN of antipersonnel mines<sup>31</sup> and the constant recruitment of minors, in some cases by force. According to the reports, paramilitary groups perpetrated a large portion of the humiliations and human rights violations during the conflict; however, the reports also show that, while paramilitary groups were the main actors in attacking human rights and IHL, the government did not act in the same way to prevent their actions as it did with the guerrillas. This indicates that, while the acts of paramilitary groups had a higher impact on human rights and IHL, the state's responses to these groups were frequently ineffective, if not permissive. This is evident within the annual reports, as it can be seen that the OHCHR-Colombia repeatedly reported the presence of paramilitary groups in various areas of the national territory, and yet the armed forces did nothing to stop them, and on some occasions these paramilitary groups committed violent actions against the civilian population in those areas,

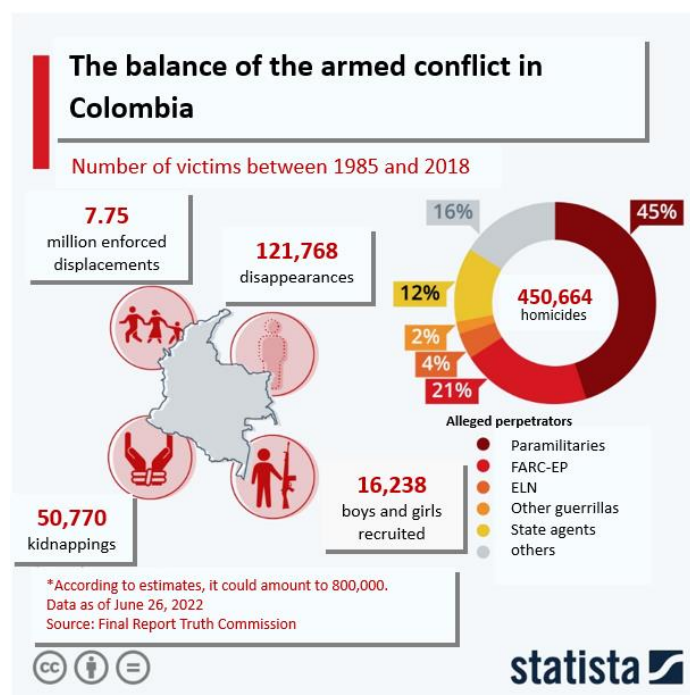
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<sup>31</sup> The 2004 annual report found that deaths from antipersonnel mines increased, especially in rural areas (OHCHR, 2005: 26).

despite the Office's warning that it feared paramilitary group actions. (OHCHR, 2004: 13)

This meant that the state's exceptional and security measures were not oriented towards a direct conflict with paramilitary groups; for example, the OHCHR-Colombia denounced the presence of a paramilitary base in the municipality of El Guamo, in Montes de María since the year 2000, however knowing of the existence of this base, the state did not act to prevent the presence and expansion of the group in this area, therefore, the paramilitary base was not the object of operations by the armed forces, resulting in the paramilitaries extending their presence to neighboring municipalities (OHCHR, 2003: 23).

This disparity between state security policies against guerrilla groups and state security policies against paramilitary groups is one of the reasons why paramilitary groups were the primary perpetrators of homicides, massacres, and other atrocities against civilians during Colombia's armed conflict. The government's failure to challenge paramilitary groups has given them a freer field of operation, allowing them to commit atrocities against human rights and IHL. As can be seen in figure 22, the paramilitary groups have been the main responsible for the largest number of victims within the armed conflict in Colombia:



**Figure 22.** Victims of the Armed Conflict between 1985 and 2018

**Source.** Naranjo (2022)

This is due to the fact that, unlike the guerrillas who wanted to topple the government throughout the conflict, the government did not see paramilitary groups as a danger to national security. Even the High Commissioner's reports mention allegations of links between paramilitary groups and armed forces during the conflict, as well as the state's permissiveness and failure to prevent paramilitary groups from violating the human rights of various populations on national territory (OHCHR, 2005: 4).

According to the 2002 report, the operational results of the public force between January and October were marked by a significant increase in subversion arrests and casualties, according to the Ministry of Defense. However, paramilitary organizations accounted for 26 and 11% of all arrests and casualties obtained by security forces, respectively (OHCHR, 2003: 15). This helps to clarify why paramilitary organizations had an easier time carrying out unlawful activities during this time period. While the guerrilla organizations were forced to hide and seek sanctuary in the country's jungles and border regions, the paramilitary groups had the means to expand and were even able to conduct operations in towns and territories where the public force was strong (Peña Jaramillo, 2005: 62).

The actions of the guerrilla groups, particularly those of the FARC, have been distinguished by the indiscriminate use of improvised weapons like as gas cylinders and other explosive devices, which have resulted in the deaths of numerous civilians. The most devastating of these attacks happened on May 2, 2002, in Bojayá (Chocó), when one of the FARC's gas cylinder bombs in a confrontation with paramilitaries hit a church where fleeing people had sought sanctuary; this explosion killed 119 persons, including 48 minors, and injured over 100 more (OHCHR, 2003: 55).

### **3.3.3. Situations of Special Concern and Particularly Vulnerable Groups**

There were transcendental issues that had unique relevance in the evolution of the conflict and in the government's actions regarding its security strategy throughout

this period, and they are highlighted in each of the OHCHR's reports. Throughout this work, some of the most important national concerns between 2002 and 2006 are examined which are supposed to have an impact on the state of human rights and IHL related to the armed conflict in Colombia during this period. The situation of particularly vulnerable groups is also examined, since these groups became one of the OHCHR's main concerns through the reports, owing to the significant impact that the armed conflict had on them.

### **3.3.3.1. Extrajudicial Executions**

It should be mentioned that the OHCHR-Colombia received complaints of attacks against civilians and indiscriminate attacks directly attributable to members of the army, according to the reports. This was seen in the Mariscal operation on May 21, 2002, when the public force intervened with heavy armament, armored tanks, and air support, killing 9 civilians and injuring 37 others, including individuals raising white flags (OHCHR, 2003: 56).

The OHCHR Office in Colombia demonstrates that during this period, operations of the armed forces against the guerilla groups, did not count on prevention and sufficient respect for human rights and, in particular, IHL within the conflict. Extrajudicial executions have been the most serious issue for the OHCHR-Colombia among reports of attacks by members of the security forces. It is worth noting the case of seven persons, including two kids, who were killed in 2003 and whose deaths were attributed to members of the army (OHCHR, 2004: 44).

In 2004, the annual report highlights the complaints of civilians executed by members of the National Army and who were later registered as members of the guerrilla killed in combat, in the same way the alteration of crime scenes was denounced (OHCHR, 2005: 50). This scenario persisted in 2005 and 2006, with allegations of extrajudicial executions by members of the public security forces causing great concern for the OHCHR Office in Colombia and serving as a continual source of breaches of human rights and IHL.

One of the main regions where cases of extrajudicial executions were registered was in Antioquia. It can even be evidenced by monitoring the reports that during the years 2002 and 2006 the reports of extrajudicial executions had a special incidence in the region of Antioquia and that many of these cases were attributed to the Fourth Brigade of the Army, which continued to be denounced by these practices in each of the reports during this period:

- The 2002 annual report stated that "during the military operations carried out between July 2 and 8 by the Army's Fourth Brigade in Eastern Antioquia, the disappearance of at least six peasants was reported, later executed and buried in mass graves" (OHCHR, 2003: 54).
- In 2004, the complaints against members of the IV Brigade of the Army increased: "The massacre of four peasants, between December 31, 2003, and January 1, 2004, in Granada, and other executions in Medellín are representative of this, including that of an adult and a minor (former militia informants of the Police), in September, in the La Cruz neighborhood" (OHCHR, 2005: 48).
- During 2005, this pattern continued to repeat itself, again and repeatedly involving members of the Army's IV Brigade: "the collective execution of three peasants, in May, in Dabeiba (Antioquia), attributed to members of the Pedro Justo Berrío Infantry Battalion of that Brigade, as well as the massacre of three youths, which occurred in Caldas (Antioquia) in November, attributed to the Unified Action Group for Personal Freedom (GAULA) of the IV Brigade." (OHCHR, 2006: 44)
- And although by 2006 the complaints of extrajudicial executions in the department of Antioquia decreased, this department continued to present one of the highest numbers of executions at the national level and once again the Fourth Brigade of the Army was the protagonist. For example, the execution of four peasants, on March 14, attributed to members of the Fourth Brigade of the Army in the municipality of Yarumal, can be cited. (OHCHR, 2007: 26)

According to the reports, there have been many complaints and irregularities in the operations of the armed forces during the conflict that have directly and indirectly affected civilian rights, in some cases with serious violations that concern the

OHCHR-Colombia and lead to a request for greater respect for international provisions by the Colombian state in the preparation and execution of military operations, particularly when these may affect the civilian population. The OHCHR-Colombia further emphasizes that the areas where the armed forces launched their operation against guerrilla groups often did not make a clear distinction between the civilian population and the combatants (OHCHR, 2003: 15).

### **3.3.3.2. Acts of Terrorism**

The review of the annual reports of the OHCHR made it possible to identify that the large number of acts of terrorism carried out during this period played an important role in the violations of human rights and IHL carried out by the illegal armed groups. According to the annual reports evaluated, terrorist acts had contributed significantly to breaches of human rights and IHL committed by the illegal armed groups during the first period. In this section, the annual reports refer mainly to terrorist acts committed by the FARC and the AUC. Acts of terrorism are one of the greatest concerns for the OHCHR within the situation of human rights and international humanitarian law since they are a direct threat to the life and integrity of the civilian population, according to OHCHR:

Acts of terrorism are those included in the prohibition contained in article 4 of Additional Protocol II to the four Geneva conventions of 12 August 1949, including acts or threats of violence the primary purpose of which is to spread terror among the civilian population. The last- mentioned acts constitute a particular form of terrorism and are the subject of a specific prohibition in article 13 of the same instrument. (2005: 38)

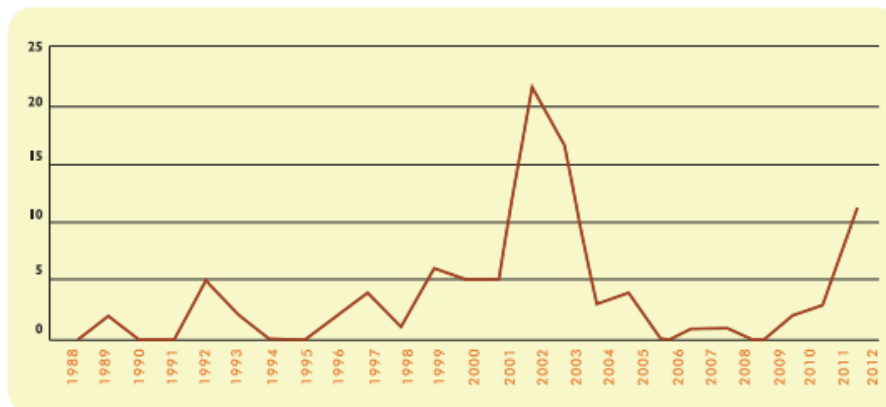
It can be found that acts of terrorism were used systematically as a weapon by the various actors in Colombia's internal armed conflict, even more, it can be found that they were used as a pressure strategy, particularly by the FARC through sowing terror in the population and sending a message of defiance to the government (OHCHR, 2003: 55).

In the 2002 annual report, the OHCHR-Colombia observed that the escalation of the armed conflict brought with it an increase in the number of acts of terrorism and although the other reports were expressing a decrease in the vast majority of massacres, attacks on the civilian population, indiscriminate attacks, hosting-taking,



forced displacements and acts of terrorism, the latter were responsible for a significant number of IHL violations through the use of car bombs and other explosive devices indiscriminately on civilians (OHCHR, 2004: 17; OHCHR, 2005: 55). For the 2006 annual report, there were still reports of acts of terrorism by the FARC guerrillas, however, a decrease in these acts can be evidenced through the reports, particularly when the years preceding this period are considered; the annual reports clearly show that terrorist acts decreased with the arrival of the new government and the Democratic Security policy.

According to the GMH, the terrorist attacks intensified between 2001 and 2002 due to the pressure that the FARC wanted to generate on the government within the fragile peace negotiations, but also as a method to contain the paramilitary offensive and the military forces, however, the GMH acknowledges that beginning in 2003 a decrease in terrorist attacks began to be noted (2016: 108). According to the GMH, 95 terrorist attacks were found within the armed conflict between 1988 and 2012, of which 77 cases were perpetrated by guerrilla groups (the FARC with 55 and the ELN, with 12), however figure 23 shows that the terrorist attacks were not a constant throughout the armed conflict.



**Figure 23.** Evolution of Terrorist Attacks in the Armed Conflict between 1988 and 2012

**Source.** Historical Memory Group (2016: 107)

Annual reports also show that during this period the use of explosive devices became more frequent after the breakdown of peace negotiations in 2002 (OHCHR, 2003: 55), and that the ELN and to a greater extent the FARC were responsible for

indiscriminate attacks using explosive devices with complete disregard for civilian life (OHCHR, 2004: 18; OHCHR, 2005: 55). For example, figure 24 shows that illegal bombings were much more frequent by guerrilla groups than by other actors in the armed conflict (Feldmann & Hinojosa, 2009: 13).

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total/Actor
FARC	5	25	22	26	4	35	21	4	16	3	161
Paramilitary	4	1	3	2	0	1	3	1	7	0	22
ELN	14	35	23	23	7	10	2	0	0	0	114
State Agents	6	2	3	2	1	2	0	0	3	0	19
Unidentified	10	5	4	3	0	0	0	13	5	8	48
Guerrilla	0	18	4	16	0	5	6	4	0	1	54
Total/Year	39	86	59	72	12	53	32	22	31	12	418

**Figure 24.** Illicit Bombing from 1996 to 2005

**Source.** Feldmann & Hinojosa (2009: 13)

It is also worth noting the terrorist attack attributed to the FARC guerrillas in 2003 on the El Nogal club, which caused a national upheaval because politicians and other important figures from the country were present, and it is the worst attack committed by the FARC guerrillas in the country's capital; this terrorist act was a shift of the armed conflict from the rural to the city (El Tiempo, 2021). Internationally this terrorist act was rejected, and the OHCHR-Colombia condemned this attack as a terrorist act, the Office of the High Commissioner issued a statement regarding this event that left 36 dead: "Terrorist acts have always been censured and condemned by the United Nations, in all circumstances, whatever the alleged political, philosophical, ideological, racial, ethnic, religious or other considerations used to justify them" (OHCHR, 2003).

### 3.3.3.3. Justice and Peace Law

During this period, the OHCHR-Colombia emphasized the peace process between President Alvaro Uribe Vélez's government and paramilitary groups, which began at the end of 2003 and resulted to the paramilitaries' demobilization by Law No. 975 of 2005, "Justice and Peace law." Throughout this process, the High Commissioner's reports expressed concern about the benefits given to demobilized paramilitaries,

because the Justice and Peace law, while including in its text the right to truth, justice, and reparation for victims, did not establish that non-compliance with these principles prevented the granting of benefits (OHCHR, 2005: 21). This indicates that the OHCHR-Colombia discovered a breach in Colombia's Justice and Peace law that jeopardized the rights of victims of human rights abuses committed by paramilitary groups. The demobilization was carried out gradually throughout 2004 and 2005 as part of the Justice and Peace law, and it included the demobilization of the majority of paramilitary organizations that were supported by the national government's benefits.

However, the demobilization of paramilitary groups was a major source of worry for the Office, particularly the risk of impunity and non-reparation of victims by paramilitary group members. The OHCHR-Colombia condemned the Justice and Peace Law's lack of readiness, as well as the demobilization of members of paramilitary organizations, in order to secure guarantees for victims and access to truth and justice. It should be noted, however, that the OHCHR -Colombia celebrated the adoption of a policy against impunity in 2006, as well as the government's declaration of a reform of the military criminal court system (OHCHR, 2007: 9). Despite this, the Office noted that more resources and methods were needed to adequately ensure victims' rights under the Justice and Peace Law (OHCHR, 2007: 11).

#### **3.3.3.4. Impunity**

The absence of guarantees in the justice systems on human rights and IHL was one of the issues that most troubled the OHCHR-Colombia in its findings during this time period. The declaration of a state of commotion following President Alvaro Uribe Velez's inauguration in 2002 caused the Office to be concerned about exceptions to the principle of presumption of innocence, the rights to defense and due process, as well as arrests and searches without a court order, because many of these exceptions went against the international provisions to which Colombia is bound (OHCHR, 2003: 26).

According to the OHCHR-Colombia, the transfer of cases of violations of human rights and IHL in which members of the military forces have participated has been the main cause of impunity, and for this reason the Office has urged that the action of military criminal justice be limited to crimes related to the service and do not contain serious violations of human rights and IHL (OHCHR, 2004: 12).

The most concerning aspect for the OHCHR-Colombia was that many of the extrajudicial executions that took place during this period were investigated improperly by the Military Criminal Justice (OHCHR, 2006: 11). This situation persisted throughout the years of this period, with the military criminal justice system taking undue charge of many cases that did not fall under its jurisdiction and should have been brought before ordinary courts since they involved serious violations of human rights and IHL; at the end of this period, however, the administration announced a substantial reform of the military criminal justice system where the OHCHR hoped that this would be fixed (OHCHR, 2007: 9).

At the end of this period, the most serious cases in terms of human rights were extrajudicial executions, which increased in 2006 compared to 2005 and in which three elements were found to be repeated: the portrayal of civilian victims as killed in combat, the alteration of the crime scene by its perpetrators, and the investigation of the facts by the military criminal justice system (OHCHR, 2007: 12). To summarize, the annual reports, and specifically the High Commissioner encouraged members of armed groups to follow IHL standards and the government to uphold international norms in concerns of human rights and IHL. Similarly, the OHCHR-Colombia urged the government to review the parameters used to evaluate the outcomes of military and police operations, as part of the Ministry of Defense's reforms to eliminate human rights violations by members of the security forces, particularly extrajudicial executions (OHCHR, 2007: 25).

#### **3.3.3.5. Vulnerable Groups**

The annual reports allude to groups that are particularly vulnerable during the armed conflict and express concern about the precarious human rights and IHL situation facing these groups as a result of the armed conflict. Human rights defenders, trade unionists, and social leaders; indigenous and Afro-Colombian groups; women;

children; displaced persons; and journalists are among the most vulnerable groups highlighted by the OHCHR through the reports. Human rights defenders were targeted during the armed conflict, primarily by killings, attacks, or threats carried out by paramilitaries, as well as unlawful detentions that hampered their work. (OHCHR, 2006: 21).

According to the 2006 annual report, the conflict had a particular impact on women, with the OHCHR identifying examples of killings, threats, and sexual abuse against women in several regions of the country that were ascribed to members of the FARC, ELN, and paramilitary organizations (OHCHR, 2007: 41-42). The main concern regarding the human rights situation of children in relation to the armed conflict was the armed recruitment by illegal armed groups, the lack of guarantees for children who disassociate themselves from the armed conflict, and the allegations of children being used for intelligence or as informants by the Army. (OHCHR, 2006: 21)

Murders, threats, sexual assault, and enforced displacement were also perpetrated against indigenous and Afro-Colombian communities. According to the 2004 annual report, the communities most impacted by the armed conflict were those in the Sierra Nevada de Santa Marta, coffee growers in Chocó, and those in the areas where the Patriot Plan was implemented (OHCHR, 2005: 30). Apart from the illegal armed groups, the annual reports for this period mentioned violations against these groups attributed to the security forces.

Many communities were at risk because they were in high-risk zones of armed conflict. The reports throughout this time period kept people informed of the critical condition of forced displacement, even if, according to the 2004 report, new forced displacement had decreased (OHCHR, 2005: 30). For the 2006 report, it is recognized that the displacement numbers continued to drop, however, clarifying that they continued to be high (OHCHR, 2007: 39). The reports also include information regarding threats made against journalists by illegal armed groups, which impede their freedom of speech. The number of reports about threats against journalists increased in 2006 compared to 2005, according to the report. (OHCHR, 2007: 42)

### **3.3.4. Activities of the Office in Colombia of the United Nations High Commissioner for Human Rights**

It can be shown that during this period there was a degradation of the armed conflict that also led to acts of terrorism such as bombs aimed at attacking police stations or strategic points within cities, which led to terrorizing the civilian population. Both paramilitary and guerrilla groups committed acts and threats of violence aimed at sowing terror among the civilian population. Terrorist acts came to have special attention for the government and in security policies since the dynamics of the conflict made their practice more widely used, because armed groups such as the FARC guerrillas tried to avoid direct confrontation with the armed forces and resorted to terrorism as one of their pressure tactics against the military offensive of the armed forces. In this respect, the High Commissioner's reports highlighted the importance of the Office's work for the defense of human rights and respect for IHL in Colombia, centered on training for state agents and institutions in the respect and protection of human rights, so that the state's security policies comply with international standards on these subjects.

The objective of the OHCHR Office in Colombia is that state agents have greater knowledge about human rights and IHL so that in this way the actions aimed at combating terrorism and both guerrilla and paramilitary groups were carried out taking care that these rights are respected and that people who are not combatants or party to the conflict do not suffer the consequences of the conflict. During the analysis period, the OHCHR Office in Colombia's field activities were consistent, fulfilling the purposes for which the Office was established in 1996 and carrying out observations of the country's situation, as well as numerous activities throughout the national territory in defense of human rights and IHL. throughout this period, the Office received several complaints alleging violations of human rights and/or violations of IHL, as shown below.

**Table 5.** Activities of the OHCHR-Colombia 2002-2006

<b>Year</b>	<b>Complaints</b>	<b>Admitted complaints</b>	<b>Field missions</b>
<b>2002</b>	1435	1106	183
<b>2003</b>	1144	936	168
<b>2004</b>	1211	827	226

<b>2005</b>	2403	1789	300
<b>2006</b>	2138	1772	259
<b>Total</b>	<b>8331</b>	<b>6430</b>	<b>1136</b>

**Source.** Adapted from the data from UN reports 2002-2006

The table shows that a large percentage of the complaints received by the OHCHR Office in Colombia during this period were admitted and selected for action and follow-up because they were associated with conduct that violated human rights and/or breaches of IHL, in addition, it can be seen that in 2005 there was a significant increase in the number of complaints compared to 2004 (OHCHR, 2006: 38), and that in the following year a high number of complaints admitted by the Office continued and the Office even transmitted information to the authorities on several of these complaints. Table 5 shows that the rise in complaints observed in 2005 and 2006 suggests that there was no improvement in the human rights and IHL situation, but rather that it worsened, leading to more complaints of serious breaches being made.

### **3.3.5. Evaluation of the Annual Reports from 2002-2006**

The annual reports presented by the OHCHR-Colombia during this period try to show the reality of the human rights situation in Colombia and the violations of IHL. Within this process, it has been in charge of highlighting national security policies and government actions that have benefited the reduction of acts of violence that affect human rights and the civilian population, as well as critically exposing the national government's weaknesses in policy implementation so that policies have a more effective positive impact in the reduction of serious human rights violations.

Among the major actions that concerned the OHCHR during this period were the FARC attack in Bojayá on May 2, 2002, which killed 119 civilians (OHCHR, 2003: 19), the kidnapping of presidential candidate Ingrid Betancourt and vice-presidential Clara Lopez in 2002 (OHCHR, 2003: 10), and the FARC terrorist attack on Club el Nogal in Bogotá in 2003, which killed 36 people (OHCHR, 2004: 18), the discovery of links between members of paramilitary groups and public servants (OHCHR, 2003: 10; OHCHR, 2005: 4), the challenges presented by paramilitary group demobilization in terms of justice, truth, and reparation for victims of human rights

violations committed by these groups (OHCHR, 2006: 68), and in general, the worrying situation of human rights and IHL in a scenario in which the military offensive by the armed forces exacerbated and changed the dynamics of the conflict. In some cases, the Colombian government implemented policies to improve the situation of human rights and IHL in the country, particularly policies related to violations and offenses committed by members of the state within the framework of the internal armed conflict, based on recommendations made by the OHCHR-Colombia in its annual reports. For example, the OHCHR-Colombia highlighted in the last annual report of this period the investigations carried out by the Supreme Court of Justice and by the Attorney General in cases of links between public servants and paramilitary groups (OHCHR, 2007: 12).

Nevertheless, after the analysis of the implementations made by the government in the midst of the armed conflict it can be found that numerous practices implemented contradicted OHCHR-Colombia recommendations and violated international human rights and IHL instruments. In the first term of President Alvaro Uribe Velez, the Democratic Security Policy was carried out, which sought to reinforce and guarantee the rule of law throughout the country, this policy sought to regain control of the entire territory by the state, defeat the terrorism and extend the presence of the public force to almost all the municipalities of the country (OHCHR, 2003: 11). Nonetheless, the government's security policies were a source of concern for the OHCHR-Colombia from the start, due to their hawkish nature from the military offensive, which, if not carried out properly, could result in violations of the civil population's human rights. Similarly, the OHCHR-Colombia found drawbacks in the implementation of the state of internal commotion from the beginning of Alvaro Uribe Velez's mandate because it granted greater power to the security forces<sup>32</sup>, contrary to international human rights instruments and IHL, which could be an incentive for human rights violations and breaches of IHL. In comparison to 2001, there was an increase in violations directly attributed to members of the security forces, according to the 2002 annual report (OHCHR, 2003: 6).

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<sup>32</sup> Security forces were allowed to perform arrests, raids, and searches without a warrant (OHCHR, 2003: 21).



As previously stated, the government managed to carry out a very successful security policy and regain control of a large part of the national territory, the military forces and public servants showed very positive figures in the fight against guerrilla groups, due to the security and anti-terrorism policies implemented within the Democratic Security policy. However, possible links with the paramilitarism of public servants and even cases of serious violations of human rights and IHL by paramilitaries with the support of public servants were also investigated during this period (OHCHR, 2005: 4). In November 2003, the Attorney General agreed with the OHCHR-Colombia to establish a specialized group of the Human Rights and IHL Unit of the Attorney General's Office to investigate these possible links (OHCHR, 2003: 13).

One of the main concerns during these reports was the government's lack of commitment to the fight against paramilitary groups that had great freedom to carry out violent acts and human rights violations in much of the national territory and more worrying was the reports of the OHCHR-Colombia finding links between paramilitary groups with public servants, which allowed them to become stronger. The OHCHR-Colombia criticized the fact that the government's military actions were practically used only in the fight against the guerrilla groups; although there were operations against paramilitary groups and arrests of their members, these were insufficient to halt the growth and consolidation of paramilitary groups (OHCHR, 2003: 13). According to reports during this period, this permissiveness towards paramilitary groups; responsible for a large part of the violations of human rights and international humanitarian law during the conflict was a problem that the Colombian government was unable to address effectively. Likewise, at the end of this period, the OHCHR-Colombia was concerned about the peace agreement reached between the government and paramilitary organizations, particularly because events of human rights violations would go unpunished, and victims would not be adequately compensated.

In relation to impunity the Government created the Unit for the Fight against Impunity within the Presidential Program for Human Rights and IHL within the Vice Presidency of the Republic (OHCHR, 2003: 13). The government, in an agreement with the Netherlands, undertook to create a special committee to investigate serious

human rights violations and violations of IHL, as well as to design a public policy to combat impunity (OHCHR, 2003: 14). The OHCHR-Colombia recognized these efforts in the policies and actions of the state of Colombia, however, in the same way the Office made it clear in the reports that this committee promoted by the Vice President did not have the expected results in terms of investigation of human rights violations (OHCHR, 2004: 14).

Not all the recommendations seen in the reports of the OHCHR-Colombia were considered by the Colombian government, especially those referring to the jurisdiction of military justice in human rights cases that affects international agreements on human rights of which Colombia is part. Although the reports recognized the progress made by the Colombian government in the area of human rights through the implementation of new mechanisms to assess the situation of violence in the country and work to reduce it, it can be seen that these mechanisms and institutions did not have a real impact and that Colombia's problem was that although it had the laws and mechanisms to more effectively prevent serious human rights violations, they were not transformed into reality and did not have a real impact. Similarly, although the reports warn of the serious problems of impunity and possible links between public servants and paramilitary groups, the efforts of the government were insufficient to encourage investigations that resulted in concrete outcomes.

It is apparent that the Colombian government achieved progress in terms of human rights and IHL during this time period, but it is also clear that the conflict remained one of the major causes of human rights violations and IHL breaches (OHCHR, 2006: 4). The High Commissioner's reports during this period evidenced a greater commitment on the part of the Colombian authorities to comply with the recommendations given by the Office in relation to the situation of human rights and IHL in Colombia. (OHCHR, 2006: 8) This is seen at the end of this period where the OHCHR-Colombia highlighted progress by the government in combating impunity through a policy to combat impunity and the announcement of a reform in the military criminal justice system (OHCHR, 2006: 9).

According to the 2002 annual report, both guerrillas and paramilitary organizations increased breaches of certain human rights while decreasing others; this was owing to a shift in tactics on the side of these illegal armed groups. The OHCHR-Colombia reports highlighted that the massacres declined although other forms of violations such as selective killings and kidnappings grew, which had a significant impact on the civilian population since groups such as the FARC also used terrorism as a form of pressure. The growth in conflict in urban areas was also proven as a pressure technique by guerrilla groups bringing the conflict to the cities, as well as by paramilitaries concentrating their activities in metropolitan areas to manage their operations (OHCHR, 2003: 13).

The OHCHR-Colombia observed an increase in complaints of forced disappearances<sup>33</sup> attributed to members of the security forces in 2003, which was repeated in the following annual reports, prompting the OHCHR-Colombia to request that the government investigate these types of violations more thoroughly in the 2005 annual report (OHCHR, 2006: 32). OHCHR-Colombia acknowledged in this period the Colombian government's intention to consider previous reports' recommendations and integrate these recommendations within its institutions, as well as the fact of allowing some institutions to partner with the Office on human rights training for their personnel. However, the OHCHR-Colombia emphasized the fact that its recommendations were not prioritized and comprehensively incorporated into the national government's public policies (2003, 10). Nevertheless, also noticed advances in some respects, for example, in 2003, the government implemented the recommendations of the OHCHR-Colombia to improve the Office of the Ombudsman and assure its presence in communities with little or no governmental presence (OHCHR, 2004: 26).

At the national level, the government expressed its interest in making reforms to the current provisions on intelligence services, so that they act in compatibility with the rule of law and do not commit abuses against members of the opposition, human rights defenders and citizens in general (OHCHR, 2007: 7). At the territorial level,

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<sup>33</sup> Some of these forced disappearances were attributed to the security forces or to joint actions between security forces and paramilitary groups (OHCHR, 2004: 45).

the efforts of a significant number of the local governments in various regions of the country were emphasized, with a growing focus placed on the human rights situation; in 2006, 651 municipalities prepared action plans on human rights and IHL (OHCHR, 2006: 8).

During this period, the OHCHR-Colombia worked to strengthen Colombia's institutional capacities in the areas of human rights and international humanitarian law through technical cooperation and assistance to the government. OHCHR-Colombia expanded its sub-offices in Colombia, leaving the capital and taking the OHCHR's work to places where the conflict has affected the situation of human rights and IHL in the country, allowing it to know firsthand the real situation in the territories. As a result, two sub-offices were established in Cali and Medellin in 2002, and a third in Bucaramanga in 2004, covering a significant portion of the national area. This expansion of the OHCHR-Colombia was also critical in providing technical assistance and cooperation to conflict-affected regions, as well as collaborating with the state institutions present in those regions, allowing the OHCHR to carry out a task of cooperation and technical assistance both nationally and locally in the territories.

During this work, the OHCHR was able to demonstrate that, while indicators of violence such as killings, kidnappings, and massacres were decreasing in 2004 (OHCHR, 2005: 11), in some cities and regions, these statistics were not decreasing and may have even increased. Similarly, it enabled OHCHR-Colombia to illustrate the linkages that emerged between public officials and paramilitary organizations, as well as members of the security forces. As a result, the OHCHR-Colombia saw an increase in the frequency of charges of extrajudicial executions in 2004, in which civilian victims were slain by paramilitary organizations and afterwards portrayed as insurgents killed in battle by the army (OHCHR, 2005: 49). During this period, the OHCHR was also able to demonstrate the situation of rapes against women and girls within the armed conflict by guerrilla groups, paramilitary groups, and even members of the security forces, particularly the Army, and made recommendations that those practices be punished.

Based on this fieldwork and study of the country's human rights and IHL situation, the OHCHR issued a series of recommendations, the majority of which were aimed at ending the armed conflict and understanding the armed conflict in Colombia as the primary source of human rights violations and IHL. Within this research it can be seen that the recommendations made by the OHCHR had a poor impact during this period and had to be repeated in simultaneous reports to attract the attention of the government, and on many occasions, they were completely ignored, resulting in violations and breaches of concern to the OHCHR. It was possible to observe from this work that of the 27 recommendations made by the OHCHR in the 2002 annual report, 24 were repeated in the 2003 annual report, simultaneously 20 recommendations were repeated in 2004 and 21 in 2005; it was not until the 2006 annual report that progress was seen in the recommendations, in which less than half of the 18 recommendations were repeated and attention was paid to other situations.

As can be seen, Colombia did not comply with all the OHCHR recommendations throughout the first years of these reports, and it was even clear that the recommendations that Colombia did comply with were not dealt with in the most efficient way. Such was the case with the linkages between paramilitaries and public servants, which the OHCHR demanded be examined and which was able to demonstrate that the government did not make major attempts to investigate, resulting in these links being more problematic later on. Even so, the OHCHR changed the scope of the recommendations in 2006 due to new dynamics in that year rather than advances in previous recommendations, particularly owing to the OHCHR-Colombia's growing concern about law 975 of 2005, which carried out the demobilization of paramilitary groups and posed a challenge in terms of guaranteeing victims' rights to truth, justice, and reparation.

Similarly, the OHCHR denounced the government's permissiveness in allowing paramilitary organizations to carry out their illegal operations, which resulted in significant breaches of human rights and IHL and might potentially amount to war crimes. The OHCHR advised of the importance of training members of the security forces in human rights and IHL, which might avoid abuses such as extrajudicial executions and other violations of civilian human rights. However, it acknowledged

the government's significant progress in territorial control, as well as the reduction in some human rights violations by illegal armed groups as a result of the state's effective offensive.

Based on this, it is possible to conclude that the OHCHR's actions to improve the situation of human rights and IHL in Colombia generated a slow response from the state and were insufficiently decisive to effect change. However, through its cooperation and technical assistance work, as well as its missions and pressure on the government to pay more attention to violations committed by state agents, it gradually helped to generate a positive change in the country's human rights and IHL situation.

It is also possible to assert that the recommendations and calls for attention made to the illegal armed actors within the armed conflict failed resoundingly because these conflict actors did not respect the international provisions on human rights and IHL in the least, for which reason the OHCHR-Colombia didn't generate any impact on their actions to improve the situation of human rights and IHL within the context of the conflict. Similarly, it can be seen that the OHCHR-Colombia, through its recommendations, was able to anticipate situations affecting human rights, and that if the state of Colombia had followed all of the OHCHR-Colombia's recommendations during this period, the situation of human rights and IHL in the country would have improved significantly.

A challenge was also discovered in the OHCHR-Colombia investigation that a suitable system of statistics and data on the condition of human rights and IHL did not exist in Colombia, with disparities in statistics from different official sources, for example, in 2004:

The Presidential Program for Human Rights and International Humanitarian Law records 1 or 14 cases of attacks on the civilian population, according to the source of information. If the source is the Ministry of Defence, it reflects a 75 per cent decrease in attacks on civilian populations. If the information comes from bulletins issued by the DAS, it shows a 180 per cent increase (OHCHR, 2005: 68).

As a result, the OHCHR-Colombia also recommended the establishment of a public statistics system that would match coverage to international criteria dealing with

human rights abuses and violations of IHL. However, this was another of the recommendations where the government made no significant progress, making it difficult for the state to understand the real situation in the territories and making it impossible to address the needs of the various territories to improve the country's human rights and IHL situation. The High Commissioner expressed concern in her annual report for 2005 about the lack of progress in building a system of data that effectively tackles human rights breaches and violations of IHL (OHCHR, 2006: 29).

Most of the field operations and missions carried out by the OHCHR-Colombia were based on training the institutions and agencies of the Colombian state in matters of human rights and IHL. Although this work was positive, the Office itself pointed out that state institutions could act with greater efficiency and legitimacy to face the challenges in terms of security and protection of human rights (OHCHR, 2003: 13). As a result, the construction of an effective statistical system was critical, because, as previously stated, Colombia lacked an official statistics system that completely covered infractions and transgressions in accordance with international standards throughout this time. (OHCHR, 2005: 22).

The OHCHR-Colombia recognized that in 2006, the armed conflict continued to be, along with drug trafficking and organized crime, one of the main factors affecting human rights and the life of the civilian population in Colombia (OHCHR, 2006: 5), which shows that although drastic and significant changes could be seen in terms of security and defense, in terms of human rights and IHL the situation did not improve in the same proportion from the beginning to the end of this period. Finally, the OHCHR-Colombia demonstrated that both guerrilla groups (FARC and ELN) and paramilitary groups did not respect the recommendations given by the High Commissioner in any of the reports seen during this period. On the contrary, illegal armed groups have remained the principal actors affecting the human rights and IHL situation, regardless of the harm done to civilians, which on many occasions constituted war crimes and crimes against humanity.

### **3.4. Annual Reports of the United Nations High Commissioner for Human Rights on the Office in Colombia (2007- 2010)**

During this second period, the Colombian government's willingness to work with the Office of the High Commissioner was recognized; since the mandate of the Office in Colombia was extended until October 30, 2010. The new dynamics of the armed conflict are exposed in this period's study, and the Colombian government's actions are examined with regard to the changes that happened in the armed conflict as a result of the security measures established during President Alvaro Uribe Velez's first term.

This second period is distinguished by Uribe Vélez's re-election, owing primarily to his effectiveness in combating guerrilla groups and achieving significant military results in the conflict. Uribe Vélez was re-elected president in 2006 and proceeded with the Democratic Security strategy, renamed Consolidation of Democratic Security. Similarly, the armed forces resumed their offensive and war strategy against illegal armed groups, particularly the FARC and ELN guerrillas. OHCHR-Colombia examined the impact of this new strategy as well as the state's security measures throughout this period. During this second period, the Office reviews its assessment of the breaches of human rights and IHL perpetrated by all sides to the armed conflict.

The shifting dynamics of the first period of analysis in the preceding presidential administration are highlighted, as are the behaviors and infractions that continued during this time. An overview of the context in which the country lived throughout this period in terms of politics, security, and particularly the armed struggle and changes in the tactics and methods of the various armed actors is created for this purpose.

#### **3.4.1. National Context**

During 2007, Colombia remained in a political context very similar to that of the previous period, with the most significant changes related to the peace process and demobilization of paramilitary groups, which were carried out prior to the conclusion of Uribe Velez's first presidential term, leaving the country with a challenge in terms



of justice and human rights respect, this examination of the second period must deal with the challenges created by the paramilitary organizations' demobilization process. The review of the Office's findings during this process of demobilization of paramilitary organizations reveals systemic issues such as impunity and limitations of the victims in the access to justice (OHCHR, 2008: 6).

During this period, the military forces' policy remained tied to the methods used during President Uribe Velez's first term, believing them to be effective, particularly in their fight against the guerrillas. The military forces' battle strategy was termed the "Consolidation Plan," and it eventually replaced the "Patriot Plan"<sup>34</sup> (OHCHR, 2008:7), although this did not mean a significant shift in the manner the guerrillas were combated, in fact, the security forces maintained its offensive, and the intensity of the hostilities had a severe impact on the civilian population in certain situations, resulting in violations of IHL being assigned to all parties in the conflict, including the security forces.

Similarly, it was possible to demonstrate that once paramilitary groups were demobilized, new illegal armed groups were formed, in some cases with former members of those paramilitary groups. Furthermore, the reports demonstrated that guerrilla groups took advantage of the paramilitary groups' demobilization process to conduct activities and operations in areas of influence held by the paramilitary groups prior to their demobilization.

The guerrilla groups which remained withdrew as a result of the Uribe government's attack throughout these two periods turned to the employment of militias and novel methods to try to achieve their aims. In 2007, it is worth noting the killing of 11 Valle del Cauca Departmental Assembly representatives who had been kidnapped by the FARC since 2002; according to Colombia's nationally distributed broadsheet daily newspaper *El Tiempo*, the FARC killed 11 of the 12 MPs, marking a turning point in the armed conflict (2021). The FARC's behavior was highly condemned by the public, who demanded the release of all kidnapped individuals (OHCHR, 2008:

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<sup>34</sup> It was a Colombian government military strategy with US financial assistance to confront the guerrillas (FARC and ELN) that began in 2002 and offered one billion dollars per year for three years (Vega Cantor, 2015: 42).

6). The environment of violence persisted throughout this second period, and the government responded to the guerrillas' new tactics in a forceful and direct manner, resulting in heavy deaths for the guerrilla groups, even though the operations were controversial in some circumstances.

For example, three American citizens and 12 members of the security forces and a former presidential candidate were rescued during a July 2008 operation; however, the government acknowledged that during this operation, members of the armed forces wore clothing bearing the International Red Cross logo (ICRC), which is a violation of the IHL (OHCHR, 2009: 12). On March 1, under the Fenix operation, Raul Reyes, considered the FARC's second in leadership, was killed in a bombardment of his camp in the forest of Santa Rosa de Sucumbios, Ecuador, near to the border with Colombia, raising tensions between the two countries (Reuters, 2008).

#### **3.4.2. Situation of Human Rights and International Humanitarian Law**

Despite some encouraging signals of progress, the state of human rights and international humanitarian law remained problematic during this period. OHCHR-Colombia expressed its concern for the victims to the government, highlighting the need of not letting the victims' demands to go ignored (OHCHR, 2008: 10). The OHCHR-Colombia offered recommendations to the national government to ensure victims' rights to truth, justice, restitution, and non-repetition guarantees, since they are critical pillars for building a just and enduring peace (OHCHR, 2008: 10).

Throughout this period, OHCHR-Colombia highlighted several flaws in the legal system by state authorities that jeopardized victims' rights, notably in the fight against impunity. Among these shortcomings were a lack of resources, difficulties in reporting, and delays in the progress of proceedings, as well as cases of corruption that fail to result in justice for those impacted by the conflict. However, the reports also mention improvements in the fight against impunity, such as Law 975 of 2005, which initiated procedures against demobilized paramilitary commanders, the voluntary depositions (*versiones libres*) of which were critical in clarifying the facts and brutal deeds of the paramilitaries in the past. Similarly, the processes undertaken

by the Supreme Court of Justice and the Prosecutor's Office in relation to links between paramilitary organizations and high civil and military officials were crucial during this period. In addition, the Colombian government recognized international responsibility for previous human rights violations.

Convictions were even handed down in some cases where evidence of extrajudicial executions by state agents was discovered, such as the case of three trade unionists murdered in August 2004 in Cao Seco, Saravena (Arauca), and a peasant murdered in April 2004 in the village of La Hondita, El Peol (Antioquia) (OHCHR, 2008: 11). In these incidents, justice exposed the dishonesty of military forces' assertions that these individuals were "dead in combat".

As previously indicated, OHCHR-Colombia was particularly concerned about the links that were coming to light during this period between paramilitary organizations, members of Congress, and state agents. Only in 2007, the Supreme Court of Justice initiated investigations into 45 members of Congress from 16 departments for alleged connections to paramilitary organizations (OHCHR, 2008: 13), 18 of whom were already imprisoned. Similarly, investigations of governors and mayors were launched, and the former Director of the Administrative Department of Security (DAS) was dismissed after it was determined that he was dealing with paramilitary organizations and indulging in corrupt practices.

Regarding IHL violations, selective assassinations and massacres by the guerrillas continued, particularly by the FARC, who continued to launch indiscriminate attacks against the civilian population, as in the case of the May 2008 explosives attack in Corinto (Cauca) (OHCHR, 2009: 10). The annual reports also revealed an increase in guerrilla groups installing antipersonnel mines, resulting in a large number of civilian casualties, many of whom were children. Nevertheless, a decrease in incidents and accidents related to antipersonnel mines was recognized in the final report for this period; according to that report, the number of cases in 2010 fell by 51%, from a concerning 1,556 in 2009 to 758 in 2010 (OHCHR, 2011: 14).

Children also continued to be recruited by guerrilla groups for intelligence work or for direct participation in hostilities; in this regard, the guerrilla groups, particularly the FARC, never followed the OHCHR's recommendations to stop recruiting children and remove all minors from their ranks. Similarly, accusations regarding incidences of sexual assault were often included in the annual reports, in 2009, OHCHR-Colombia received an alarming quantity of information on cases of sexual violence against women and girls, which were mostly linked to FARC members and illegal armed organizations that emerged after the demobilization of the paramilitaries (OHCHR, 2010: 10).

Violations of IHL by security forces were also documented, although to a lesser scale, including reports of killings, indiscriminate attacks, forced disappearances, torture, and cruel and humiliating treatment, among other violations, as well as the systematic and intermittent occupation of schools, houses, health centers, and public places by members of the security forces, which was reported repeatedly during this period. However, in the final reports for this period, particularly since the end of 2008, the number of complaints about extrajudicial executions attributed to security forces decreased significantly; in 2009, the Prosecutor's Office registered 7 cases, compared to 144 in 2008 and 464 in 2007 (OHCHR, 2010: 9). This might be attributed in large part to the Ministry of Defense's decision to release new rules of engagement and a new operations handbook comprising provisions for the respect and preservation of human rights (OHCHR, 2010: 9).

### **3.4.3. Situations of Special Concern and Particularly Vulnerable Groups**

During this period the most relevant political and public order events in relation to human rights were the scandal of extrajudicial executions known as "false positives" and the measures taken by the Government to deal with them, the issue of "parapolitics" in which congressmen were linked with paramilitary groups, the military successes against the FARC as well as the death of its leader and founder, Manuel Marulanda Vélez and the releases, rescues, and escapes of hostages in FARC's power. According to the annual reports studied, a substantial portion of the most relevant concerns in the condition of human rights and IHL surrounding the armed conflict are emphasized here. Finally, it also shows that the situation of

particularly vulnerable groups continued to be difficult during this second period of analysis.

#### **3.4.3.1. Extrajudicial Executions**

For the year 2008, extrajudicial executions continued to be a very serious issue for the national government, for this reason different measures were implemented to prevent human rights violations. The Office highlights the publication of the “Comprehensive Policy on Human Rights and International Humanitarian Law”, which included the establishment of operational legal advisers within the ministry to ensure that military operations comply with the standards of IHL (OHCHR, 2009: 7).

The Office in 2008 therefore highlighted these important advances by the national government to protect human rights. In 2008, the President of Colombia dismissed several generals and high-ranking military officers for lack of diligence in dealing with alleged irregular cases within their jurisdiction, which is in accordance with the policy of "zero tolerance" with violations of human rights (OHCHR, 2009: 7).

According to data from the Attorney General's Office, for the year 2008, the Attorney General's Office had initiated 112 investigations into alleged cases of extrajudicial executions that occurred in 2008. Additionally, another 473 cases, most of which occurred in 2006 and 2007, had been assigned during 2008 to the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation. During that year that unit investigated about 716 cases with more than 1,100 victims (OHCHR, 2009: 8). These figures showed that extrajudicial executions were not isolated events, but rather a systematic and extended practice that involves various military units throughout the country.

The Office even warned in the 2008 report that these practices were even evolving in terms of complexity, sophistication, and elaboration, coming to deceive civilians by offering them jobs in other cities or municipalities, even providing transportation and mobility logistics for them to arrive to those places where they were subsequently executed and presented as "dead in combat" (OHCHR, 2009: 8).

### **3.4.3.2. False Positives**

Even though the military forces have abundant guidelines on human rights and international humanitarian law, it is clear that during this period of time there have been pending tasks to implement these guidelines. The state was not successful in ensuring that all members of the military forces comply with and carry out their military operations considering the respect that must be shown to the civilian population in the midst of the armed conflict.

During this period, one of the most worrying scandals affecting the military forces and the Colombian state as such, the "false positives," was revealed. The Office expressed its concern and indignation at the multiple cases of extrajudicial executions by members of the military forces in their eagerness to show positive results in the fight against the guerrillas. These false positives represent one of the greatest crimes within international humanitarian law and human rights and reveal the inability of the Colombian state to protect its civilian population, when it is found that it is being systematically violated, including by members of the state itself. To date, official figures from the Attorney General's Office speak of 2,248 victims of which there is evidence, but nevertheless non-governmental human rights organizations speak of an approximate figure of 5,763 due to extrajudicial executions known as false positives (The New York Times, 2019).

The so-called "false positives" became a great scandal during this time and even to this day the state tries to clarify those responsible, find the guilty and repair the victims of this black stage in which both human rights and the international humanitarian law was affected to a great extent. It is in this period that it can be seen how the desire to deliver positive results in terms of security becomes more important at the expense of respect for human rights and the protection of civil society. Although it is true that in order to generate security within a state of armed conflict it is necessary to restrict some freedoms and even in some cases restrict some rights to the civilian population, in no case should the lives of people be affected or those deplorable behaviors be used, using defense and state security as an excuse.

OHCHR-Colombia, in its reports, shows its great concern about these extrajudicial executions, since it finds the mechanisms to make those responsible pay for this insufficient. The concern is greater since OHCHR-Colombia has indicated that the scene of the events has been altered where civilians were presented as "dead in combat" and also that in many cases these reports of extrajudicial executions have been taken to be investigated by the military jurisdiction, even though OHCHR-Colombia has recommended on countless occasions that in accordance with international standards and international humanitarian law, these extrajudicial executions that directly affect human rights and that link state agents, must always be investigated by the ordinary justice, to avoid impunity.

#### **3.4.3.3. Justice and Peace Law**

Regarding the Law of Justice and Reparation, the Office shows that for the year 2008 the implementation continued to be slow: As of October 31, 2008, of the total of 3,637 people postulated to be investigated and judged by this law, only 1,626 had initiated the first procedural stage called "voluntary depositions" (OHCHR, 2009: 14). It is for this reason that the Office asked the government to review the law to apply reforms and improvements that help individuals to tell the whole truth about crimes and victims can access the truth.

However, within the positive and tangible results of the law, important advances are highlighted in obtaining information on the location of mass graves that allow the families of the victims to know the truth about them. For the year 2007, the Justice and Peace law compelled paramilitary leaders to reveal the location of 1,009 clandestine graves during the demobilization process, allowing the recovery of the remains of 1,196 victims and demonstrating the systematic use of forced disappearance by paramilitary groups, particularly in the late 1990s and early 2000s, as shown in figure 25.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total/Actor
Paramilitaries	31	91	67	53	87	77	60	61	49	23	599
State Agents	4	7	2	4	4	5	6	7	7	9	55
Unidentified	0	1	2	37	152	204	84	35	38	28	581
Total/Year	35	99	71	94	243	286	150	103	94	60	1235

**Figure 25.** Disappearances 1996-2005

**Source.** Feldmann & Hinojosa (2009: 11)

According to the Attorney General's Office, in 2008 more than 410 clandestine graves were found and the remains of more than 560 victims were recovered, for an estimated total of 1,420 graves and 1,750 remains recovered since the beginning of the voluntary depositions (OHCHR, 2009: 17).

The Office also shows that despite the demobilization of paramilitary groups, during this period the formation of new armed groups was worrying. These new armed groups represented a new problem for the public force, because their structure or affiliation with other criminal gangs was not clear, so they managed to confuse the military forces for whom it was difficult to understand the complexity and variety of groups that appeared and that were able to carry out operations on many occasions, going unnoticed and disorienting and diverting the attention of the military forces from those who were truly responsible. However, official figures from the armed forces for the year 2007 reported that the number of casualties caused to these groups increased by more than triple in relation to the previous year. For the year 2006, 198 casualties had been reported by the Ministry of National Defense, while for the year 2007, 636 casualties were reported. (OHCHR, 2008: 23)

**3.4.3.4. Supreme Court of Justice and the Government**

Another issue that particularly caught the Office's attention was the investigations by the Supreme Court of Justice regarding links between members of Congress and paramilitary organizations. For the year 2008, 72 members of Congress were linked to judicial proceedings, of which 11 were convicted and four acquitted (OHCHR, 2009: 15). Twenty-five of these congressmen resigned their investiture in order to be investigated by the Attorney General's Office and not by the Supreme Court of Justice. In addition, the Attorney General's Office has carried out investigations into another 250 cases of a similar nature against high-level public servants, including ministers, governors, mayors, or directors of important public entities. (OHCHR, 2009: 15)



This was known as the “parapolitics” scandal and revealed the deep level at which the Colombian state was infiltrated by the paramilitary groups, and for that reason the Office requested that the investigations continue, even when the government emerged multiple criticisms against the work of the Supreme Court of Justice in this regard.

Another issue of concern in 2007 and previous years and that was pointed out by the Office was the capacity of the military justice system jurisprudence and the need to ensure that its scope did not include serious violations of human rights and international humanitarian law. For this reason, in 2008, the Constitutional Court, through judgment C-533 of July 2008, accepted the presidential exception on the scope of the military jurisdiction, in order to guarantee that it does not include serious violations of human rights and IHL (OHCHR, 2009: 18).

In 2009, tensions between the judicial and executive branches were of concern to the Office and could undermine the independence of the judicial branch. The Office documented public criticism against the Supreme Court and its magistrates that could hinder processes and alter investigations due to pressure and threats against some magistrates (OHCHR, 2010: 5). Likewise, in 2009 it was made public that the Administrative Department of Security (DAS), an institution dependent on the Presidency of the Republic, had been carrying out a series of illegal activities since 2003 aimed at human rights defenders, political opponents, journalists and high-ranking government officials. These illegal actions by the DAS included interceptions of both telephones and emails, tracking different people, theft of information, among others (OHCHR, 2010: 6).

During the 2010 report, it can be seen that the trial began against a former director of the Administrative Department of Security (DAS) for crimes such as homicide and threats, and investigations continued against other former directors for illegal interceptions between 2005 and 2008 (OHCHR, 2011: 5). The most worrying thing about this case of illegal wiretaps known as “chuzadas” was that the statements made by DAS officials implicated former senior officials of the Presidency of the Republic as the beneficiaries of the information obtained.

#### **3.4.3.5. Acts of Terrorism**

Acts of terrorism reduced steadily, according to OHCHR-Colombia reports analyzed over this period; nonetheless, the reports emphasize operations carried out by guerrilla organizations, primarily the FARC, with the purpose of intimidating people and putting pressure on the government. Concerning the human rights and international humanitarian law situation of the guerrilla groups, OHCHR-Colombia stated that the FARC continued to disregard its obligation to respect international humanitarian law through atrocious practices such as massacres, hostage-taking, homicide, and acts of terrorism, among others.

As previously noted, the FARC guerrilla was held accountable for the 2007 assassination of 11 Assembly of Valle del Cauca lawmakers who had been in their power since 2002. Acts of terrorism were also conducted, such as the assaults on the Cali courthouse in September 2008, which killed four people and wounded 26, and the attack on the town of Ituango in 2008, which killed seven people and injured 55 (OHCHR, 2009: 10). For the year 2008, the FARC guerrillas would have carried out massacres and selective assassinations throughout the national territory. The Office highlighted the massacre by the FARC of four coca leaf eradicators in Puerto Libertador (Cordoba) in February 2008 (OHCHR, 2009: 11).

During 2008, the Office paid great attention to the situation of antipersonnel mines, since there was evidence of an increase in the planting of these by guerrilla groups, which caused a greater number of civilian and military victims, emphasizing that among these victims were children (OHCHR, 2009: 11). The 2008 report also highlights that guerrilla groups continued to take hostages, which were held under inhumane conditions and represent crimes against humanity.

#### **3.4.3.6. Vulnerable Groups**

During President Uribe Velez's second term, the situation of particularly vulnerable groups was similar to that seen during his first term. The groups with the greatest vulnerability remained the same as in the first period, and the armed conflict continued to have a significant impact on them. In 2007, a report on enforced displacement was issued, noting that this phenomenon was mostly caused by FARC

and ELN attacks on civilians, the conflict between these two groups, or combat between these two groups and the armed forces (OHCHR, 2008: 17).

According to the 2008 annual report, indigenous and Afro-Colombian groups were particularly exposed to breaches by armed conflict actors since many communities were located in critical regions for armed conflict actors and drug traffickers (OHCHR, 2009: 20) and also reported that indigenous people and Afro-Colombians were the main ones affected by forced displacement in the context of the armed conflict (OHCHR, 2009: 20)

The OHCHR expressed grave concern in its reports on attacks and threats against human rights defenders. In its 2009 report, observed an increase in threats to human rights defenders via pamphlets and emails (OHCHR, 2010: 7). Within the armed conflict, the situation of women and children remained concerning, owing mostly to sexual abuse by members of illegal armed organizations and the recruitment and use of children for the armed conflict. The 2007 report discovered that the FARC was using sexual abuse as a form of retaliation and pressure, highlighting the case of a teacher in Medellin who refused to instruct her students in FARC political ideals and was subjected to sexual abuse as a result, as well as the case of a woman who was murdered for attempting to desert from the FARC. (OHCHR, 2008: 21). Similarly, annual reports showed that the FARC and ELN continued to recruit children (OHCHR, 2008: 21), but also recorded examples of child recruitment by illegal armed groups that emerged after paramilitary organizations were demobilized. (OHCHR, 2010: 13).

#### **3.4.4. Activities of the Office in Colombia of the United Nations High Commissioner for Human Rights**

During 2007, the Office in Colombia received 1,871 complaints, of which it followed up on 1,563 and 234 observation missions were carried out, according to the annual report for that year, furthermore (OHCHR, 2008: 38). Similarly, the Office continued to make recommendations to the Colombian state with the intention that the country advances in human rights and reduce violations of international humanitarian law. Similar to prior periods, the Office continued to call the various illegal armed groups

to observe international humanitarian law and free all those taken hostage throughout the armed conflict.

The Office also urged the Colombian state to respect international humanitarian law and the norms and recommendations to which it has subscribed. Because of the extrajudicial executions, the Office expressed its concern that these were carried out with the same patterns of previous years; they were civilian victims presented as members of guerrilla groups or other illegal armed groups killed in combat (OHCHR, 2008: 46). For this, the Office presented different cases in which it was evident that members of the military were responsible for the extrajudicial executions and that the evidence and scenes were altered, leading to the murder of civilians who were presented as killed in combat.

As part of the activities of the Office in 2008, it should be noted that up to November 2008, the Office in Colombia received 1,262 complaints, and of these it followed up on 1,257 and 231 observation missions were carried out (OHCHR, 2009: 25). Table 6 shows that the number of complaints steadily declined, and by 2010, they had been reduced to more than half of the complaints discovered and acknowledged at the start of this time.

**Table 6.** Activities of the OHCHR-Colombia 2007-2010

<b>Year</b>	<b>Complaints</b>	<b>Admitted complaints</b>	<b>Field missions</b>
<b>2007</b>	1871	1563	234
<b>2008</b>	1262	1257	231
<b>2009</b>	1387	1279	264
<b>2010</b>	800	771	196
<b>Average</b>	<b>1330</b>	<b>1217.5</b>	<b>231.25</b>

**Source.** Adapted from the data from UN reports 2007-2010

Similarly, it can be noted that OHCHR-Colombia was monitoring and advising different government institutions to improve the situation of human rights and international humanitarian law, working especially for the rights of victims. Likewise, the Office once again gave recommendations to both the national government and the different actors in the armed conflict, so that an agreement that

leads to the achievement of a sustainable and lasting peace can be reached through dialogue. Once again concerned about extrajudicial executions, OHCHR-Colombia urged the national government to carry out all the announced measures to put an end to the practice of extrajudicial executions and to intensify the investigative work in conjunction with the Office of the Attorney General of the Nation in order to promptly carry out and effective prosecution and punishment of these crimes.

#### **3.4.5. Evaluation of the Annual Reports from 2007-2010**

During the second period of analysis, it was possible to demonstrate more strongly that the OHCHR's recommendations made during the first period of analysis were largely ignored or not prioritized by the Colombian government, implying that several of the Office's concerns about concrete actions taken by the state during the first period persisted during the second period. Notwithstanding the fact that OHCHR-Colombia saw a decrease in human rights abuses and violations of international humanitarian law, this was primarily due to combat gains by the armed forces over illegal armed groups, particularly with regard to guerrilla groups, and as a result of the increasing demobilization of paramilitary groups, but the Office's worries about impunity and the provision of the rights to justice, truth, and restitution were particularly prominent.

OHCHR-Colombia discovered that the Justice and Peace Law (975) lacked the requisite safeguards and processes to ensure that members of paramilitary organizations who committed severe abuses of human rights and international humanitarian law were prosecuted rather than profiting from the law. According to the Office, this was a severe failure since the Justice and Peace Law (975) was not equipped to ensure victims' rights and may have even contributed to increased impunity.

It is also worth noting that during the second period, the OHCHR continued to express concern that many investigations against members of the armed forces for violations of human rights and IHL were still being conducted through the military criminal justice system, despite the fact that during the first period, the Office insisted that this violated international recommendations and had recommended that

all investigations related to violations of human rights and international humanitarian law be conducted through the civilian criminal justice system. However, in 2008, the Constitutional Court accepted the President's objection to limit the field of action of military judges in order to ensure that they do not have jurisdiction over serious violations of human rights and breaches of IHL (OHCHR, 2009: 15), and by 2009, the Office had observed that cases of human rights breaches were being handed over to ordinary courts by the military jurisdiction (OHCHR, 2010: 10).

Throughout this second period, the OHCHR remained worried about many of the actions that were significant during the first period, because many of them did not improve and as previously demonstrated, some even worsened the human rights situation and IHL. So much so that during this period, "false positives" were discovered; actions carried out by members of the armed forces, particularly the army, in which killed civilians were presented as members of illegal armed groups, particularly as guerrillas "killed in combat" (OHCHR, 2009: 7), and it was possible to demonstrate that these were not isolated cases, as initially presented, but rather a systematic practice that claimed the lives of thousands of civilians in one of the most serious violations of human rights and IHL by the state, particularly by Colombian security forces related to pressure in the military to show positive results in the field. For instance, see the case of six young men, apparently recruited by unidentified persons and that were found dead days later and reported as having been killed in combat by the GAULA of Army Brigade 11 in Chinú, Córdoba (OHCHR, 2008: 11). At this period, OHCHR-Colombia carried out recommendations to halt this horrifying practice, which is a heinous violation of human rights and international humanitarian law, as well as proposals to punish those responsible for these extrajudicial executions. It is clear from this study that the OHCHR made suggestions during the first phase of analysis to educate members of the armed forces and senior military commanders about the importance of human rights and international humanitarian law in their activities adding that it hoped to collaborate with the Ministry of Defense to educate personnel of the armed forces in human rights and IHL. Similarly, it had already issued recommendations to control and monitor that military operations were always carried out in accordance with international regulations and instruments, and that each action needed to be carried

out in accordance with international agreements on human rights and IHL to which Colombia belongs.

Based on this, it is possible to conclude that the impact of the OHCHR-Colombia was insufficient to prevent these terrible violations of human rights and IHL from occurring, and that if the High Commissioner's recommendations in these reports had been taken seriously, one of the most significant breaches of human rights and IHL in Colombia's armed conflict might have been prevented, especially given that the Office collaborated with the Ministry of Defense to educate members of the security forces on human rights and IHL in order to prevent these atrocities from occurring. However, evidencing what happened, soldiers in the field did not comply with directives issued by the Ministry and the army command, (OHCHR, 2010: 15), indicating that IHL training was ignored or did not reach these soldiers, particularly in conflict zones.

It wasn't until 2008, after the horrifying situation of "false positives," that the Ministry of Defense issued a Comprehensive Human Rights and International Humanitarian Law Policy for the security forces, which included the establishment of operational legal advisors within the Ministry to ensure that military operations adhered to IHL standards (OHCHR, 2009: 6). The Ministry of Defense's policy was very effective, and as of 2009, there was evidence of a continuous decrease in complaints of extrajudicial executions attributed to members of the security forces. As part of this policy, the Ministry of Defense agreed to have OHCHR-Colombia monitor the implementation of some of the policy measures aimed at strengthening the army's compliance with human rights and IHL (OHCHR, 2010: 9).

Based on this research, it is possible to argue that the OHCHR recommendations made during this period had a higher impact on government policies and the evolution of the country's human rights situation and IHL, notably during the armed conflict, than those made during the first period. There was greater cohesion and rapprochement on the part of the OHCHR with state institutions such as the Ministry of Defense, the Office of the Attorney General, the Vice Presidency of the Republic, and the government in general, which helped the recommendations to be taken more

seriously, and there was a commitment on their part to create specific policies in favor of the situation of human rights and IHL.

It should be noted that the OHCHR-Colombia discovered a decrease in the number of massacres, homicides, kidnappings, and guerrilla attacks against towns and military bases during this second period of analysis, which greatly benefited the country's human rights and IHL situation (OHCHR, 2008: 5). This could be attributed to the government's attempts to reinforce the rule of law by boosting the state's regional presence in regions formerly controlled by illegal armed organizations. Another significant advancement was the transfer of cases from the military justice to the ordinary justice system involving violations of human rights and IHL by members of the security forces; in 2008, there was evidence of 148 cases transferred, which was double the number in 2007 and more than the 36 cases reported in 2006 (OHCHR, 2009: 16).

During this time, OHCHR-Colombia also emphasized the persistent disregard for human rights and IHL by illegal armed groups in the middle of the conflict, as well as the 2007 murder of 11 Valle del Cauca MPs by the FARC, who had been abducted since 2002. Also of particular concern during this period were the state's violations of international humanitarian law in specific actions such as the use of ICRC clothing and logos in the rescue of 15 hostages, as well as cases of illegal actions by the Administrative Department of Security (DAS) that were discovered during this period and revealed that within the DAS cell phones and emails were being intercepted against opposition leaders, human rights defenders, and others.

Although during the second period, it should be noted that there was an improvement in the situation of human rights and IHL, many of OHCHR's main concerns during the first period remained concerns, even though the state managed to be more effective in containing the actions of the illegal armed groups and there were significant advances that allowed them to demonstrate a lesser impact of the country's internal armed conflict in terms of human rights and IHL. However, the Uribe Velez administration's efforts were insufficient in other areas that required attention, including as the issues of impunity and the assurance of victims' rights



under the Justice and Peace Law, as well as the horrifying incidents of extrajudicial executions, or "false positives".

During the second presidential term of Uribe Velez, the recommendations made by the OHCHR-Colombia based on the various reports were primarily aimed at encouraging all parties involved in the conflict to respect human rights and IHL, particularly the life and integrity of the civilian population, without exception. Other important recommendations during this period were to strengthen state institutions, particularly to carry out inter-institutional work that leads to structural and procedural reform within the Justice and Peace Law 975 (2005) and to accelerate processes in favor of victims, as well as to look for demobilized persons who committed serious crimes to be judged within that law while taking the principles of justice, truth, and reparation into account. Similarly, the OHCHR-Colombia recommendations sought to strengthen positive state mechanisms, such as the Early Warning System (SAT), so that it responds adequately and efficiently to alerts and exhibits effective protection for human rights defenders and other beneficiaries of this system (OHCHR, 2010: 15).

Regarding the impact of the OHCHR-Colombia in the armed conflict, it should be noted that the OHCHR consistently urged illegal armed groups to release all kidnapped persons under their control, and in the first months of 2008, the OHCHR was able to observe that the FARC unilaterally decided to release five former congressmen and a former vice-presidential candidate (OHCHR, 2009: 12), demonstrating that the work done by both the OHCHR and other civil organizations and human rights defenders has helped to minimize the effects of the armed conflict on the human rights and IHL situation in the country. It was important to show during this second period of study that acts of terrorism dropped significantly compared to the first period of analysis and that, while the status of human rights and IHL remained serious, some significant advancements were noted, mostly by the state and, to a lesser extent by the guerrilla organizations (FARC and ELN).

It should also be noted that by the end of this period of analysis, new situations that concerned OHCHR-Colombia arose, such as cases of "parapolitics" where links were

discovered between paramilitary organizations that even linked up with members of Congress, and that the number of disclosed cases continued to rise by 2009. Similarly, other situations that existed in the first period remained of great concern, such as the case of forced displacement, which was even shown to be growing in intra-urban areas, despite the fact that it occurred primarily in rural areas (OHCHR, 2011: 16). The appearance of new illegal armed actors who appeared after the demobilization of the paramilitaries and who were considered by the OHCHR-Colombia as part of the armed conflict because the Office was able to show that some of these groups continued with the same ideology, strategy, and even objectives of the former paramilitary groups contributed to the increase in this phenomenon. These groups were a major cause of concern in the closing years of this period, with a dramatic increase in the number of massacres occurring as a result of disagreements between these same groups (OHCHR, 2011: 7).

By the end of this second period of analysis, it is also worth noting that the OHCHR-Colombia observed a decrease in the number of cases of people "killed in combat" that could be violations of the human rights transferred from the military justice to ordinary justice in the last annual report, and that it was even possible to show that military judges who were collaborating with the ordinary justice system in those cases were transferred or dismissed as a result (OHCHR, 2011: 7). Finally, it should be mentioned that some of the recommendations and key concerns made by the OHCHR-Colombia in its annual reports aided the government in developing new policies and initiatives to improve the condition of human rights and IHL in Colombia. However, it seems that the impact of the Office's actions and recommendations to the various conflict actors did not have a greater impact on many occasions, and that, as in the first period, these recommendations were not considered essential on the government's political agenda.

## **CHAPTER FOUR**

### **CONTENT ANALYSIS OF THE REPORTS OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA 2011- 2018**

#### **4.1. Introduction**

The internal armed conflict in Colombia continued to be one of the main factors that affected the enjoyment of human rights in the second decade of the 21<sup>st</sup> century in the country, together with the difficulties of the government to ensure the rule of law throughout the national territory and the socioeconomic exclusion. During this chapter, the situation of human rights and international humanitarian law related to the internal armed conflict is analyzed, considering the annual reports of the OHCHR-Colombia and portraying the work that OHCHR-Colombia has done in the country to improve the human rights and IHL within the conflict and to help achieve an end to the armed conflict.

The OHCHR-Colombia understands that the end of the armed conflict would be a fundamental step to generate a positive impact on the human rights and IHL situation in the country and concentrated a large part of its efforts on collaborating with the state and civil organizations to promote solutions that prevent the civilian population from seeing their rights affected as a consequence of the armed conflict. The OHCHR-Colombia was also in charge of monitoring and examining the actions, policies and laws carried out by the State that were related to or affected to some extent the full enjoyment of human rights and IHL.

This chapter examines the reports delivered by the OHCHR-Colombia regarding the situation of human rights and IHL in Colombia during Juan Manuel Santos two presidential terms (2010-2014 and 2014-2018) in order to comprehend the observations and evaluations of the effects of the armed conflict on the condition of human rights and IHL in the country under Juan Manuel Santos' mandate. As a result, the OHCHR-Colombia evaluation of the situation of human rights and IHL, as well as its recommendations to the country during this period, are studied, as these reports allow us to understand the country's human rights situation from an international perspective.

This chapter first presents the national context in each of the presidential term with the objective of understanding the national panorama during each period analyzed as well as to better understand the scope of the armed conflict and its relationship to human rights and IHL. Subsequently, the major violations of human rights and breaches to the IHL by each of the actors in the conflict are examined according to the information presented in the annual reports of the OHCHR-Colombia, taking special care with the actions and policies of the state that have affected human rights and the infractions committed by the state against the IHL in its fight against the guerrilla groups within the armed conflict. For this, special attention will be paid to violations committed in the midst of hostilities that affected the civilian population and that can be considered war crimes.

The main issues that concerned the OHCHR-Colombia the most during each period in relation to the armed conflict are studied in a comparative manner to understand the changes and continuities that occurred since the previous chapter during the presidency of Alvaro Uribe Velez. Likewise, it allows to see the changes and continuities between the two presidential periods analyzed in this chapter. The main activities carried out by the OHCHR-Colombia during each of the presidential terms through its work of technical cooperation, observance, advocacy, and advice to the government are exposed. Finally, this chapter evaluates the situation of human rights and IHL in Colombia based on the work of the OHCHR-Colombia in both presidential periods according to the annual reports presented, taking into account the positive advances in the field of human rights and IHL in the country and also the

areas where no positive advances were carried out or in which a deterioration of the situation of human rights and the IHL was seen, especially within the internal armed conflict.

#### **4.2. Annual Reports of the United Nations High Commissioner for Human Rights on the Office in Colombia (2011- 2014)**

There have been significant shifts in the way the administration has addressed the security situation in connection to the country's armed conflict from Juan Manuel Santos' first presidential term. Even though Juan Manuel Santos was President Alvaro Uribe's defense minister and it was believed that his defense and security policies would be similar to those of the previous administration, President Santos expressed an interest in resolving the armed conflict via negotiations from the start, although he did not disregard the military capacity to minimize the FARC and ELN guerrillas, it can also be argued that during his first period of government, the main military coups were carried out against the high command of the FARC, such as the operation in which the armed forces killed one of the most important military leaders of this guerrilla, "Mono Jojoy" in 2010 and the military raid in 2011 in which the then leader of the FARC, Alfonso Cano, was killed. (BBC News, 2010; BBC News, 2011)

According to the annual reports of the High Commissioner for Human Rights through its Office in Colombia, the main changes in the way the Santos government addressed the armed conflict in Colombia and the impact this had on the human rights and international humanitarian law situation has been demonstrated during this period of analysis. It is important to mention again, as in the previous chapter, that the presidential terms in Colombia began on August 7, 2010 with the presidential inauguration, while the annual reports of the OHCHR-Colombia are normally presented in the first three months of each year, therefore, for greater practicality, the reports from 2011<sup>35</sup> to 2014 have been analyzed as part of the first presidential term of Juan Manuel Santos and the reports from 2015 to 2018 have been analyzed as part of his second term.

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<sup>35</sup> The 2010 annual report was examined as part of the second presidential term of Alvaro Uribe Velez.

#### **4.2.1. National Context**

During the first presidential term of Juan Manuel Santos, the violence caused by the internal armed conflict was mainly related to forced displacement, the recruitment of children and adolescents by illegal armed groups, and antipersonnel mine incidents that affected the security and tranquility of the civil population. During this period, President Juan Manuel Santos acknowledged the existence of an internal armed conflict, which was a critical step toward better understanding the conflict and acting accordingly, adhering to international norms and instruments, and developing a common language to refer to the situation in Colombia (OHCHR, 2012: 4). In this way, the Santos administration, through the new Comprehensive Security and Defense Policy, provided data that divided the country into red, yellow, and green zones, where it was discovered that more than 50% of the population lived in conflict-related areas, allowing us to better understand the impact of the armed conflict on the civilian population and in the enjoyment of their rights (Política Integral de Seguridad y Defensa para la Prosperidad, 2011: 16).

In this way, positive signs began to emerge in Colombia in relation to the armed conflict in 2012, with the formal initiative by the government and the FARC to end the conflict and the implementation of the Law of Victims and Land Restitution approved in 2011 and viewed by the OHCHR-Colombia as an important mechanism in favor of the victims of the armed conflict and the fulfillment of their human rights (OHCHR, 2013: 4). That same year, six key points were established between the government and the FARC in order to reach a peace agreement, and by 2013, the government and the FARC had already advanced on two of these six points of the peace agenda, and by 2014, discussions began within the national agenda between negotiators corresponding to victims of human rights violations and IHL infractions within the armed conflict (OHCHR, 2015: 3).

During Juan Manuel Santos' first presidential term, the peace agenda took on great importance, and his progress toward achieving a peace agreement between the government and the FARC was very promising; however, there were moments of tension, especially when the guerrilla group's armed actions and the constant atmosphere of mistrust between the parties caused the negotiations to stall; however,

with the assistance of several international organizations such as the OHCHR and the backing of other governments, peace discussions persisted until the conclusion of this period and were completed satisfactorily.

In addition to the dire condition of forced displacement, the growth of post-demobilization organizations and organized crime characterized the country's human rights status during this period. Similarly, one of OHCHR-Colombia's key concerns during this era was impunity, particularly in relation to the Justice and Peace Law and impunity for perpetrators of human rights violations and IHL breaches by members of the state security forces. The Victims and Land Restitution Law received special attention because land claimants were threatened and, in some cases, murdered, which hampered the land restitution process due to fear of the claimants and those who assisted them in the process.

By the end of 2014, the situation of forced displacement remained grave, with an average of 250,000 displaced persons since 2010, primarily indigenous people and Afro-Colombians, and the human rights and IHL situation, while improving within the peace process, remained concerning due to the formation of new illegal armed groups and a lack of guarantees to avoid impunity for human rights violations and IHL violations that affect millions of victims (OHCHR, 2015: 4).

#### **4.2.2. Situation of Human Rights and International Humanitarian Law**

The annual reports of the High Commissioner revealed that the negotiations and subsequent peace process between President Santos' government and the FARC had a significant role in the work of the OHCHR-Colombia. The peace process, according to the OHCHR-Colombia, had the potential to significantly and favorably impact the country's human rights and IHL condition, as noted in each of its reports. This did not mean that the OHCHR-Colombia abandoned its analysis of the human rights situation, as evidenced by its annual reports, in which there was great concern about the number of violations of human rights and IHL, particularly those involving attacks and threats against human rights defenders, Afro-Colombian and indigenous communities, journalists, and trade unionists.

#### **4.2.2.1. Armed Forces**

During this period, the OHCHR-Colombia received complaints against military personnel reported by the General Prosecutor's Office that corresponded to actions that were not linked to combat or the armed conflict, such as robbery, drug trafficking, and assault (OHCHR, 2013: 16), therefore it appears that the majority of complaints are unrelated to legal military actions. However, it was clear from the reports that violations of the principle of distinction by members of the armed forces during the armed conflict persisted, particularly in cases where state forces carried out hostilities and armed conflict unnecessarily close to civilian premises (OHCHR, 2012: 16). These breaches had already been raised in previous reports, in which the OHCHR-Colombia observed that the army used to take over schools, health centers, and other public facilities as part of its work against the guerrillas, placing people in danger.

During these years of investigation, it was possible to find a significant strengthening of a human rights culture within the security forces and the military, resulting in a significant reduction in both the number and severity of violations documented by state agents (OHCHR: 2014: 9). As a result, it can be seen that educating military personnel on human rights and IHL, as well as control and surveillance mechanisms for military operations, are beneficial in decreasing human rights violations and IHL violations during armed conflict.

#### **4.2.2.2. Guerrillas**

Despite the peace talks between the government and the FARC, many things remained the same in terms of the guerrillas' obligations within the armed conflict, and they continued to systematically violate IHL and human rights through cases of targeted assassinations, kidnappings, antipersonnel mine placement, and other violations. Cases of murders of indigenous leaders and authorities in northern Cauca by the FARC to impose social order were reported (OHCHR, 2013: 17). Similarly, the use of antipersonnel mines became a serious threat to citizens' security; official statistics showed a 39% increase in civilian deaths because of antipersonnel mines by 2012, as well as an increase in acts of sabotage against electric pylons and pipelines, which significantly impacted civilian lives (OHCHR, 2013: 17). The use of



antipersonnel mines was of particular importance during this period because it resulted in serious crimes; as of November 2013, the Presidential Program for Comprehensive Action Against Anti-Personal Mines recorded 285 mine incidents, resulting in 107 civilian injuries and the deaths of 13 people, including three women, as well as 147 police officers and military members wounded and 18 killed (OHCHR: 2014: 9).

The guerrilla groups violated the proportionality principle, which prohibits attacks when excessive harm to civilians can be foreseen, as demonstrated in the case where the FARC allegedly directed an attack against the police station in Toribio, Cauca, on market day, which is the day with the highest concentration of the population on public roads, this attack was near the municipal square where about 1500 civilians gathered, resulting in the death of three and 122 injuries (OHCHR, 2012: 16). These acts constituted a significant obstacle to the peace talks, which had been on the point of being terminated on multiple times.

#### **4.2.2.3. Post-demobilization Groups**

During this period, OHCHR-Colombia was particularly concerned about the growth of illegal armed groups that developed following the demobilization of paramilitary organizations. At the end of Uribe Velez's second term, the High Commissioner had already expressed his concern about the increasing violence perpetrated by these groups, particularly against human rights defenders, social leaders, and local authorities, and even the OHCHR-Colombia through its fieldwork was able to identify that several of these groups had the ability to recruit children and adolescents, control territories, and restrict the freedom of movement of the population (OHCHR, 2012: 9).

OHCHR-Colombia also identified post-demobilization groups as a risk for people attempting to reclaim their lands under the Victims and Land Restitution Law, because several of these groups appropriated the properties to finance their criminal activities, and the land claimants became their targets in order to halt the processes through threats and attacks. The OHCHR-Colombia documented 14 massacres attributable to post-demobilization groups in 2013 (OHCHR, 2014: 17).

The expansion and strengthening of post-demobilization groups became the greatest threat to public order for many sectors, and it was discovered that they were responsible for a large number of serious human rights violations, including murders, rapes, sexual exploitation, forced displacement, harassment, and threats, among other things, that affected the life of the communities during this period (OHCHR, 2013: 17). The main people affected were social leaders and human rights defenders, and as previously exposed through OHCHR-Colombia fieldwork, it was possible to identify that land claimants were also victims of these groups, but even though they became a greater threat to the population, the state's actions against these illegal groups were scarce, and the necessary preventive measures were not developed, limiting the state's capacity to guarantee the enjoyment of human rights. (OHCHR, 2013: 7)

#### **4.2.3. Situations of Special Concern and Particularly Vulnerable Groups**

Various situations arose during this period on which the OHCHR-Colombia focused the majority of its attention, due to the importance of these situations and the impact they had on people's enjoyment of human rights, and because some of these situations reflected violations of IHL within the armed conflict. Similarly, it can be observed that during this period, the Land and Victim Restitution Law, which attempted to favor victims of armed conflict and meet their rights as victims, experienced several barriers in order to achieve its goals.

##### **4.2.3.1. Impunity**

Impunity for violations of human rights and IHL remained a major concern for the OHCHR-Colombia. For example, at the end of the previous period, the OHCHR-Colombia identified that Law 975 of 2005 "Justice and Peace Law" had many shortcomings in terms of justice and reparation, which could lead to demobilized members who committed serious violations of human rights and IHL going unpunished, or that the victims were not provided with the essential guarantees to fulfill their rights. This was critical to remember during this period because, while the government was negotiating a new peace agreement and understanding that to achieve a true end to the conflict, the rights of the victims of the armed conflict needed to be respected, they needed to learn from previous lessons to elaborate an

improved mechanism that primarily considered the victims in an eventual peace and demobilization process.

The High Commissioner emphasized the large number of problems that arose during the implementation of the 2005 Justice and Peace Law, as well as the limited results it achieved, as expressed in the 2012 annual report, where, by September of that year, only 14 people had been sentenced out of thousands of potential defendants (OHCHR, 2013: 12). Because of this inefficiency in the Justice and Peace Law the government carry out modifications to improve its capacity. The main modifications made to the Justice and Peace Law as a result of its unsuccessful processing attempted to speed up court proceedings and limit the search for judicial compensation (OHCHR, 2013: 12).

During these reports, it was seen that the great majority of human rights breaches were still under investigation and that the activity of state institutions was slow and diluted, particularly in cases where the offenders were state agents. For example, in its 2013 annual report, OHCHR-Colombia expressed concern about impunity, stating that while the Justice and Peace Law appeared to be a vehicle for the truth, it was not a significant instrument of criminal justice and that almost all defendants would likely be released after eight years without ever going to trial (OHCHR, 2014: 6).

#### **4.2.3.2. Enforced Disappearances**

Enforced disappearance has been one of the most serious human rights breaches during the armed conflict, and it has been one of the most essential issues to consider during Alvaro Uribe's second presidential term. The passing of the Justice and Peace Law, allowed to be permissible to carry out testimony by paramilitaries that led to the whereabouts of thousands of persons who had gone missing as a result of the armed conflict. In this period, the OHCHR-Colombia also acknowledged Colombia's efforts to eradicate enforced disappearances from the national stage, as well as its adherence to international norms on enforced disappearances<sup>36</sup>.

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<sup>36</sup> The Constitutional Court passed Law 1418 of December 2010 in August 2011, ratifying the International Convention for the Protection of All Persons from Enforced Disappearances (OHCHR, 2012: 12).

When monitoring these major breaches, OHCHR-Colombia was especially disturbed by the level of impunity, considering the alarming figures for enforced disappearances. According to the 2012 annual report, there were 27,382 active criminal investigations of enforced disappearances in that year, and the OHCHR-Colombia observed that the Specialized Unit for Enforced Disappearances of the Prosecutor's Office, which was established in 2010, obtained 46 convictions, demonstrating the inadequacy and level of impunity in the case of these grave violations (OHCHR, 2013: 14). According to the National Registry of Disappeared Persons, there were 18,527 cases that corresponded to enforced disappearances, with 113 cases documented as enforced disappearances alone in 2012 (OHCHR, 2013: 13).

These data show that during this period, enforced disappearances were still a practice used by actors in the armed conflict, and it was possible to show in the reports that the government's actions to put an end to this practice and find those responsible for past enforced disappearances were insufficient; however, there were positive cases that the OHCHR-Colombia recognized, such as the sentence of a retired army general to 35 years in prison for enforced disappearances related to the events at the Palace of Justice in 1985 (OHCHR, 2012:12).

#### **4.2.3.3. Extrajudicial Executions**

Extrajudicial executions, as mentioned in the previous chapter, remained one of the OHCHR-Colombia's top concerns; however, this was not because they continued to occur in a particularly alarming manner as in previous periods, but because the OHCHR-Colombia was very attentive to Colombia's provisions and progress in eradicating extrajudicial executions, finding those responsible for these serious human rights violations, and compensating victims. Extrajudicial executions were one of the issues that most concerned the OHCHR and the international community in terms of human rights in Colombia, as was evident at the end of the previous period; however, Colombia's progress was very positive, especially based on the regulations made in 2008 by the Ministry of Defense, and which were implemented very effectively during Santos' first government. Nevertheless, by 2011, extrajudicial executions had not been fully eliminated, and there were situations when officials

claimed that the dead were "killed in combat," which was later shown to be military errors (OHCHR, 2012: 7).

In fact, the OHCHR-Colombia discovered in 2012 that the Ministry of Defense was confused about the legal framework relevant to the armed conflict; the Ministry of Defense described "military errors" in which civilians died unintentionally in an "illegal but legitimate" context, in utter violation of international standards that hold the state responsible regardless of whether it is a military fault (OHCHR, 2013: 10). However, OHCHR-Colombia noted in its 2012 annual report that it had received no new reports of so-called "false positives" with the goal of increasing military statistics, although the military violated the right to life and personal integrity, they did not fulfill the requirements to be classed in the horrific practice of "false positives" (OHCHR, 2013: 10), which was the worst controversy during Uribe's second term. In 2014, no examples of "false positives" were reported; nonetheless, situations were documented in which members of the armed forces attempted to mask victims of arbitrary killings as enemy battle deaths or changed the crime scene in self-defense (OHCHR, 2015:11).

#### **4.2.3.4. False Positives**

Concerning "false positives," the 2012 report stated that they ceased to occur during that year of observation; however, the same report noted that very few of those responsible for these serious violations were removed from service or prosecuted, and that high ranks of the armed forces linked to these human rights violations remained active (OHCHR, 2013: 15). Impunity in situations of "false positives" was a major worry during this period, owing to the slowness of the proceedings, which threatened to violate the victims' rights once more.

According to the 2012 annual report, the Attorney General's Office received complaints from 4,716 victims of homicides allegedly committed by members of the security forces, many of which were of the "false positive" variety, and it was discovered that only 30% of all homicide investigations were in procedural activity (active cases), of which the vast majority had not passed the preliminary stage; the report also shows that of the active cases, 60% were in the preliminary exploratory

phase (which precedes the formal investigation stage) and 294 cases had reached the trial/sentencing phase as of August 2012 (OHCHR, 2013: 15). Due to a lack of dedication and competence on the part of the institutions in charge of these procedures, it was not able to identify individuals responsible for these situations, and impunity in respect to the events of "false positives" might become systemic.

Based on an analysis of extrajudicial and casualty executions in combat over a ten-year period, the OHCHR-Colombia determined that the "false positives" were carried out for various reasons, and that due to the nature of the violations and the fact that the operations were planned, the "false positives" were systematic violations of human rights law (OHCHR, 2015: 13).

#### **4.2.3.5. Expansion of Military Jurisdiction**

Although the Santos government was always interested in complying with international norms and provisions on human rights and IHL, during this period it sought to expand the capacity of military jurisdiction in total violation of international provisions; as a result, the High Commissioner stated in the 2012 annual report that he considered this reform to be a significant step backwards from previous efforts made by the Colombian government to ensure that human rights violations were duly investigated (OHCHR, 2013: 16).

This reform to the military jurisdiction jeopardized the impartiality of the processes and victims' access to justice; as a result, the OHCHR-Colombia expressed grave concern about the fact that the military jurisdiction was expanded and that it came to take power over cases being investigated by the Prosecutor's Office, particularly cases involving serious human rights violations such as alleged "false positives" (OHCHR, 2013: 17).

However, the establishment of a special mechanism in 2011 to assess instances where there might be a dispute between military and civilian authorities was favorable, allowing the transfer of 220 homicide investigations ascribed to members of the security forces to the regular legal system (OHCHR, 2012: 8). It should be highlighted that the OHCHR-Colombia and the High Commissioner had frequently

urged this in prior reports, and that it was in compliance with international norms requiring cases involving breaches of human rights or IHL to be heard in regular tribunals.

The OHCHR-Colombia, on the other hand, discovered examples in which homicide cases ascribed to the army and of the type of "false positives" were moved from regular judiciary to military jurisdiction (OHCHR, 2014: 11). In 2013, a Superior Council of Justice magistrate was forced to resign when it was discovered that he promised assistance to a military commander in transferring his case to military tribunals as part of the investigations into incidents of extrajudicial executions (OHCHR, 2014: 11). These actions harmed the state's ability to combat impunity, particularly in situations of "false positives" and because of the permissiveness afforded to military members incarcerated in military establishments where they enjoyed advantages and did not comply with the victim's right to justice.

#### **4.2.3.6. Victims and Land Restitution Law**

On June 10, 2011, President Juan Manuel Santos signed the Victims and Land Restitution Law, which was deemed by the OHCHR to be the most important law passed in Colombia in recent decades, facilitating the recognition, promotion, and protection of victims' rights where it was highlighted that it was a law that applied to all victims of the armed conflict regardless of the actor that perpetrated the violations (OHCHR, 2012: 10).

OHCHR-Colombia, on the other hand, discovered flaws in the law's implementation. These flaws were originally detected in the various reports issued during this period; first, the High Commissioner was able to note a lack of information in the territories to apply the law because the population did not know the processes or they were not simple processes that facilitated the exercise of the victims' rights (OHCHR, 2013: 6), it was discovered a lack of understanding at the local level, particularly in rural areas. Second, due to the large number of victims generated throughout the years of the armed conflict, the implementation of this law was extremely complex; for 2011, the Commission for Reparation and Reconciliation, within its land restitution program, indicated that close to 3 million hectares were appropriated by force as a

result of the armed conflict's violence (OHCHR, 2012:11). Third, there was a lack of protection within land restitution procedures as a result of the dangers demonstrated by those participating in land restitution processes owing to criminal interests, particularly post-demobilization organizations, as a result, the OHCHR-Colombia underlined in its reports the need to improve security measures inside procedures, increase entity cooperation, and strengthen regional and national authorities to pursue those sabotaging the process (OHCHR, 2013: 6).

However, the Office commended the Land Restitution Unit's excellent efforts, and the High Commissioner welcomed the first two rulings in land restitution cases issued in October 2012 (OHCHR, 2013: 7), still, for the 2013 annual report, the OHCHR-Colombia observed a significant increase in the number of threats and attacks against claimants and people involved in land restitution processes, undermining public trust in the processes and fostering fear in land claimants who began to see compliance with this law as a threat to their lives (OHCHR, 2014: 8).

#### **4.2.3.7. Situation of Human Rights Defenders**

The reports highlighted a terrible scenario of threats against human rights defenders, undermining their vital work and putting their lives in peril. This was shown in the instance of human rights defenders in 2011, who were threatened through pamphlets and emails by mostly post-demobilization organizations, on occasion the FARC, and in some cases state agents (OHCHR, 2012: 5). Threats from post-demobilization organizations grew to outnumber those posed by the FARC in prior years. In 2012, the OHCHR reported that the great majority of allegations of violations against human rights defenders were linked to post-demobilization organizations; nonetheless, there were still cases of defenders, who worked on cases of extrajudicial executions and were attacked by the FARC and even state actors (OHCHR, 2013:9).

However, in terms of the situation of human rights defenders, a positive change can also be seen in the annual reports on the state's response, particularly by the National Protection Unit, which, for example, granted protection measures to approximately 3,500 defenders by August 2012 (OHCHR, 2013:9). The National Protection Unit was a very positive development on the part of the government during this period,



and the OHCHR-Colombia recognized that if used appropriately, more efficient, and timely measures could be taken that were not in previous years, when people who benefited from protection measures, particularly human rights defenders, were often killed despite being in the protection system (OHCHR, 2012: 6).

In terms of human rights defenders, the Office in Colombia worked on three fronts to help this vulnerable population as was stated in the 2013 annual report: supporting their efforts and actions when they are stigmatized, working with defenders who have been threatened or have had attempts on their lives, advocating for them to be given the necessary protection measures, and collaborating with the Attorney General's Office to assist in the investigations of the threats and attacks against them (OHCHR, 2014: 13-14). In general, the situation of human rights defenders improved during this period, particularly for urban defenders, who faced less risks while carrying out their duties. However, the OHCHR-Colombia highlighted that the position of rural defenders remained tough, and that the government had a significant problem in ensuring their safety (OHCHR, 2015: 5).

#### **4.2.4. Activities of the Office in Colombia of the United Nations High Commissioner for Human Rights**

Unlike in previous periods of analysis, the OHCHR-Colombia did not present exact figures of its activities in the field during the reports examined in this period, as revealed in the structural chapter of this investigation; however, in the 2011 report, the OHCHR-Colombia still provided this accountability through figures. In that year, the Office received 630 complaints, 500 of which were investigated, and the Office conducted 298 missions in the field (OHCHR, 2012: 18).

Because the other reports analyzed during this period did not present concrete figures about the number of complaints presented to the Office during each report or the number of missions carried out, a quantitative analysis of the OHCHR-Colombia's activities is impossible to conduct during this research. However, the reports provide information on specific activities carried out by the Office throughout this period, which may be analyzed qualitatively. The activities of the OHCHR-Colombia were

inspired by three essential pillars of the United Nations: peace, human rights, and development (OHCHR, 2014: 5).

During this time, OHCHR-Colombia expanded its local presence in other regions of the national territory by opening three new field offices with the goal of increasing intervention capacity in conflict zones and improving the human rights situation in regions where indigenous and Afro-Colombian communities have been most affected and in regions where it was necessary to support land restitution efforts, in order to achieve this, new field offices were strategically placed in Quibdó, Barranquilla and Neiva (OHCHR, 2014: 5).

By 2013, the Office had directly monitored the human rights situation of nearly 80 vulnerable communities in rural areas and low-income municipalities where there had been human rights violations by various actors (OHCHR, 2014: 5), with the goal of having a positive impact on the human rights situation in those communities and the country as a whole. The Office was also concerned with other aspects of human rights that were not directly linked to the armed conflict but were vital during that period to ensure the full enjoyment of the civilian population's human rights, As a result, the OHCHR-Colombia also served as an intermediary for the government and the many unions that protested in various social movements during this period, demanding better conditions in their fields.

#### **4.2.5. Evaluation of the annual reports from 2011-2014**

During Juan Manuel Santos' first presidential term, the annual reports of the OHCHR-Colombia show that the country's human rights and IHL situation improved and that human rights violations and IHL violations within the armed conflict were significantly lower than those observed in the third chapter of this study. The Santos government's significant shift in viewpoint on the armed conflict enabled good improvements in the field of human rights to be made inside state institutions. Similarly, it enabled the strengthening of collaboration among various governmental entities, civic groups, private sector, and the international community in order to provide a stronger response to the country's human rights and IHL situation.

The start of negotiations between the government and the FARC allowed for significant advancements in terms of human rights and IHL inside the armed conflict, because it allowed the most significant parts of it to seek a shared goal through the peace process. During this time, it was noted that the government implemented key policies and regulations aimed at improving the country's human rights and IHL situation. The implementation of the Law for Victims and Land Restitution, which marked enormous progress in satisfying the rights of thousands of victims of the armed conflict, was crucial.

Equally important was the integration of the Ministry of Interior's and the Department of National Security's protection programs into the National Protection Unit (OHCHR, 2012: 6). This Unit had a positive impact, which was recognized by the High Commissioner and the OHCHR-Colombia, because it was a vital mechanism for ensuring the security and protection of particularly vulnerable groups whose rights to life and personal integrity were violated by various actors in the armed conflict, particularly human rights defenders and social leaders.

However, while the human rights and IHL situation in general was better than in previous periods, the OHCHR-Colombia highlighted in its reports that various violations and serious infractions affecting civilian rights and violating international human rights and IHL provisions continued. Within these violations, it was repeatedly discovered during the various annual reports that there was great concern about the land restitution processes due to threats and attacks made against land claimants and authorities or defenders involved in the land restitution processes. These attacks were carried out mostly by post-demobilization organizations, with minor contributions from guerrilla groups and even state agents (OHCHR, 2012: 5; OHCHR, 2013: 17).

Although there were significantly fewer cases during this period corresponding to serious violations that were the focus of attention during the previous chapter, such as enforced disappearances and extrajudicial executions, in particular the so-called "false positives," the OHCHR-Colombia additionally highlighted as a focus of attention in the situation of human rights and IHL the alarming degree of impunity

that was occurring during this period precisely regarding those serious violations from the past. According to the OHCHR-Colombia's observation, it was feasible to demonstrate the dilatation, slowness, and inefficiency in the judicial proceedings of cases of breaches of human rights and IHL, particularly where state agents were involved.

This was obvious from the data compiled in the reports, where the great majority of the processes were not in the early or even preliminary stages and just a few cases resulted in sanctions. The OHCHR-Colombia determined that many of the delays in the procedures were caused by a lack of institutional coordination, but on other occasions, they were intentional delays and obstacles imposed by the defendants' attorneys who intended to discredit the processes. A clear example of this was presented in the 2011 annual report, where a trial for the rape of two girls and subsequent murder of one of their brothers committed in 2010 by allegedly a member of the army experienced multiple delays due to the defendant changing defense attorneys at least seven times, further delaying the process (OHCHR, 2012: 26).

During this period, the OHCHR-Colombia provided a total of 42 recommendations to the various parties in the armed conflict, civil society, the international community, and mainly the Colombian government through its annual reports. However, several of the recommendations were repeated since, on occasion, the recommendations were not followed by the various actors or were not implemented effectively, according to the OHCHR-Colombia. Among the most important recommendations, the OHCHR-Colombia urged the FARC and the ELN to provide information on civilians, police officers, and military personnel who disappeared or were in their possession in order to demonstrate their commitment to the Colombian people and the peace, as well as to stop recruiting and using children (OHCHR, 2015: 19). However, as evidenced by the analysis of the various annual reports, the recruitment of children continued to be a practice used by the two groups during this period, and there was no clear commitment from these groups to clarifying the situation of the disappeared persons.

Due to the OHCHR's concern about impunity in these cases, the most critical recommendations provided to the government concerned incidents of extrajudicial executions in the past. To combat impunity, the High Commissioner urged the Attorney General's Office to enhance its investigative tactics based on case priority and identifying the various levels of responsibility in them (OHCHR, 2015: 18). On the other hand, he requested that the government significantly enhance the investigation processes in incidents of attacks on human rights defenders, as well as uncover and prosecute those involved (OHCHR, 2012: 20). Similarly, he repeatedly requested in reports that the state take effective measures to combat post-demobilization groups, as well as those victims be considered in the peace process and that the Law of Victims and Restitution of Land be used as a social change mechanism (OHCHR, 2015: 18).

#### **4.3. Annual Reports of the United Nations High Commissioner for Human Rights on the Office in Colombia (2015- 2018)**

Juan Manuel Santos' second presidential term was marked by substantial progress toward the conclusion of Colombia's armed conflict. During this time, the government, and the FARC (the most powerful guerrilla and the greatest threat to Colombia's state) implement the final peace agreement. During this period, the OHCHR-Colombia's annual reports, in addition to focusing on its study of the country's human rights and IHL situation, also focused on the peace process and the monitoring of various elements of the peace agreement in compliance with the request made by the government and the FARC.

Given the peace agreement's extensive human rights provisions, the OHCHR was asked to assist with implementation, especially on the following issues:

- (a) Include a special chapter in the annual reports of the High Commissioner to the Human Rights Council on the situation in Colombia regarding the implementation of the human rights aspects of the peace agreement (point 6.3.4);
- (b) Provide partnership on the implementation of chapter 5 of the peace agreement on the rights of victims (6.4.2);
- (c) Participate as invitee in the National Commission on Security Guarantees charged with designing and following up on action against criminal organizations (3.4.3);
- (d) Provide partnership on the implementation of the points related to individual and collective security guarantees for FARC-EP members (6.4.2);

(e) Participate as permanent invitee in the mechanism responsible for developing and coordinating the strategic security and protection plan for the new FARC-EP political movement or party (3.4.7.4.2);

(f) Provide partnership on the review of the situation of FARC-EP members or collaborators deprived of their liberty (6.4.2);

(g) Collaborate upon request in the verification of the implementation and serving of sanctions handed down by the new transitional criminal justice mechanism (5.1.2, paras. 60 and 62 in relation to 53 (d)) (OHCHR, 2017: 2).

However, the OHCHR was critical throughout the various reports examined during this period, reminding the state that its Office in Colombia relied on voluntary contributions and that, despite being asked to carry out additional responsibilities, its execution was hampered due to a lack of resources (OHCHR, 2017: 3). Due to the significance of the Peace Agreement during this time and the decision to include an analysis of its implementation in the OHCHR-Colombia's annual reports, a section assessing the most relevant elements of that implementation in terms of human rights has been included to this chapter.

#### **4.3.1. National Context**

In terms of peacebuilding, the signing of the final peace agreement between the Colombian government and the FARC guerilla was the most significant milestone for Colombia and one of the most significant events in Latin America's recent history. The fact that Colombia was able to stop an armed war with this organization after more than 50 years was applauded by the whole world community and prompted speculation about the conclusion of the armed conflict in Colombia.

Peace negotiations that had been ongoing since 2012 during Santos' first presidential term culminated in a peace deal signed in Cartagena on September 26, 2016, in the presence of the UN High Commissioner for Human Rights, however, the peace agreement was submitted to a plebiscite to be accepted by the entire national population, and the vote in disagreement with the final text of the peace agreement won by a margin of 0.43%, for which the government decided to meet with the main representatives of the political parties that were opposed to the peace agreement, and a final agreement was formulated with the observations of these representatives, and which was signed in Bogotá on November 16 (OHCHR, 2017: 2).

Despite the major success that was the peace agreement, numerous other aspects of the armed conflict that violated human rights were of concern to the OHCHR-Colombia and to the international community during that period. It was of particular concern to the OHCHR-Colombia to ensure that the peace agreement incorporated the fundamental principles of truth, justice, reparation, and non-repetition and that there would be no impunity for those who had committed serious violations of human rights and IHL, as had occurred in previous agreements.

The presidential elections were held in the final year of this study period, and the administration was chosen for the term 2018-2022, which should continue with the execution of the peace agreement. In these elections, Ivan Duque was elected president with 53.9% of the vote, despite the fact that he was generally opposed to the peace agreement, raising serious concerns about the agreement's implementation and fate (Daniels, 2018). However, the OHCHR was encouraged by Ivan Duque's campaign commitment to the social pact for human rights promoted by the OHCHR (OHCHR, 2019: 2).

#### **4.3.2. Situation of Human Rights and International Humanitarian Law**

Just as it was not possible to separate the situation of human rights and IHL from the armed conflict in previous periods due to its complexity, it should not be separated from the peace agreement in this period because, in general, the agreement complies with international obligations regarding human rights in Colombia (OHCHR, 2017: 3). Because the communities envisaged in the peace agreement were also included in the human rights agenda, effective implementation of the peace agreement would be directly related to an improved human rights situation for those communities most affected by the armed conflict. During this time, the human rights and IHL situation in Colombia continued to improve because the peace agreement ended one of the primary protagonists in the conflict and the main antagonist of the Colombian government.

Even before the agreement was signed, positive developments in the armed conflict were being observed. The OHCHR observed that between August and November 2015, Colombia experienced the fewest offensive actions in 50 years of armed

conflict; this was due to the FARC taking unilateral ceasefire measures before the final agreement was signed, and the government was in the process of slowing down operations (OHCHR, 2016: 5).

Due to this great slowdown in the armed conflict and the violence within it, it was possible to identify that the peace negotiations avoided several human rights violations. However, other armed players continued to violate human rights and conduct IHL breaches, particularly in rural, indigenous, and Afro-Colombian communities. According to the Ombudsman's Office, forced displacement, social control, threats, extortion, and movement restrictions persisted in numerous departments (OHCHR, 2016: 5).

#### **4.3.2.1. Post-demobilization Groups**

OHCHR-Colombia observed that post-demobilization armed groups and other actors harmed citizens' human rights and security, as well as the administration of justice and peacebuilding, including land restitution processes, and called for effective policies to be implemented to address the dismantling of these groups, as they posed a permanent threat to peace and the enjoyment of human rights (OHCHR, 2016: 6). This violence can be evidenced with examples through annual reports, such as during the year 2015:

During two weeks in December in the urban centre of Tumaco, Nariño, where State presence is strong, 14 persons, including two children and two women, were killed in incidents that the police linked to such groups. In June, a member of a family claiming land restitution in Turbo, Antioquia, was killed in Ayapel, Córdoba. In northern Urabá, a post-demobilization armed group threatened and harassed campesinos whose land had been stolen. In Magdalena, a land restitution judge suffered repeated threats and, in Cesar, computers containing information on land restitution processes were stolen (OHCHR, 2016: 6).

As a result of this violence from post-demobilization groups, the OHCHR-Colombia urged state authorities to cooperate to combat these organizations, which have persisted after the demobilization of paramilitaries and have spread into new regions, endangering people's lives and integrity and becoming one of the greatest threats to human rights in the country.



#### **4.3.2.2. Armed Forces**

There were examples of human rights breaches as a result of military engagement in citizen security activities, despite the fact that the OHCHR cautioned that military intervention in citizen security tasks might jeopardize civilian human rights (OHCHR, 2017: 10-11). Military personnel have varying levels of training, which is insufficient in circumstances of citizen security since it exposes them to the possibility of violating civilian human rights.

In its 2016 annual report, the High Commissioner stated unequivocally that the military is not in charge of citizen security and that its functions are distinct; They have the constitutional mandate to protect sovereignty, independence, national territorial integrity, and constitutional order, whilst the police are in charge of ensuring the essential circumstances for the exercise of rights and freedoms (OHCHR, 2017: 10).

These worries were manifested subsequently, when the 2017 report, for example, revealed 5 extrajudicial executions carried out during public security operations undertaken by the military, illustrating the considerable risks to human rights posed by employing the security forces in police operations (OHCHR, 2018: 12). OHCHR-Colombia was concerned that in the fight against organized crime, military forces relied on IHL, which only applies to armed conflicts and not to the fight against criminal organizations, rather than international human rights law to respond to acts that jeopardize human rights violations (OHCHR, 2019: 13).

#### **4.3.2.3. Guerrilla Groups**

Although the FARC was focused on the peace process in the first year of analysis and after the agreement was signed, they gradually carried out the process of demobilization and reintegration of their members into society, the country's second most powerful guerrilla, the ELN, continued with the heinous practice of recruiting and using children, and as evidenced by the OHCHR-Colombia through the 2016 report, entire families fled their homes to prevent that their children were recruited by the ELN (OHCHR, 2017: 15).

The ELN and the EPL<sup>37</sup> were also involved for other major breaches, such as attacks on human rights defenders; while they were not the primary perpetrators of these crimes, their involvement was underlined in the reports. For example, the 2016 annual report implicates the ELN in four incidents of human rights defender murders, the EPL in one, and FARC dissidents<sup>38</sup> organizations in one (OHCHR, 2017: 9). The 2017 report also attributes four deaths of human rights defenders to the ELN, one to the EPL, and three to FARC dissidents (OHCHR, 2018: 3). It should be noted that FARC dissidents are included in this analysis as part of the guerrilla groups because they continued to use the same symbols, pursue similar goals to the FARC, and even intensified violent actions and harmed civilians, primarily in areas where the FARC had a historical presence.

#### **4.3.3. Situations of Special Concern and Particularly Vulnerable Groups**

There were circumstances that were evident in previous periods' reports, but they became more pertinent during this era owing to the changing dynamics that happened in the national setting. As a result, the OHCHR-Colombia paid special attention to situations that arose and had a significant impact on Colombia's human rights and IHL situation, one of which was the serious and repeated attacks against human rights defenders that occurred during this period, as evidenced by a terrible increase in the number of human rights defenders murdered throughout the four years analyzed.

It should be noted that, as previously stated, one of the situations that most concerned the OHCHR during this period was the implementation of the peace agreement, and as a result, it was also possible to identify through the analysis of the annual reports that the OHCHR gave most importance to the situation of economic, social, and cultural rights, understanding that they were essential for the implementation of the peace agreements and the full enjoyment of people's rights. Furthermore, as will be discussed below, the situation involving extrajudicial executions in the past and the significant issue of impunity were important concerns for the OHCHR during this period.

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<sup>37</sup> Ejército Popular de Liberación, guerrilla of less intensity that has been present in the armed conflict since 1967.

<sup>38</sup> FARC members who opposed the peace agreement (Cardenas et al, 2022).

#### **4.3.3.1. Impunity**

A significant development that occurred during this period, that was sought through the various mechanisms of justice, was to guarantee access to state and non-state archives, allowing them to serve as fundamental aid for the construction of peace, because OHCHR-Colombia observed with concern that factors such as file deterioration, destruction, or loss jeopardized the effective functioning of mechanisms for truth, justice, reparation, and non-retaliation, therefore, it requested the government to take measures to secure the archives in 2015, albeit the OHCHR did not see any actions to respond to the loss or destruction of military archives before the conclusion of that year's annual report (OHCHR, 2016: 10).

This concern about the destruction or disappearance of files that would make it possible to find the truth in different cases of violations of human rights and IHL became evident due to the discovery of a confidential military document issued in 2008 when the Ministry of Defense published its Policy Comprehensive Human Rights in the face of extrajudicial executions of "false positives", which confirmed an order from the then head of the Army to incinerate internal orders that had established institutional rewards for deaths in combat and captures (OHCHR, 2016: 11). Since the protection of public and private documents related to the armed conflict was ordered in 2016, the OHCHR expressed its enthusiasm, reiterating the need to protect complete files related to serious violations of human rights and IHL in the past and requesting that the FARC archives be considered and evaluated using the same criteria as the state archives (2017: 5). In 2017, the OHCHR expressed optimism about the Constitutional Court's judgment, citing worry over the "loss" of thousands of data connected to land conflicts before being moved from one state agency to another (2018: 11).

In the legal domain, the OHCHR expressed concern about the lack of compliance with the international standards of Law 1820 on amnesties, pardons, and special criminal treatment, which was approved in December 2016, and said that if those standards were not considered, the law may contribute to impunity for perpetrators of serious violations of human rights and IHL (OHCHR, 2017: 6). Although the report

clarifies that Law 1820 expressly forbids the granting of amnesties or pardons for serious violations of human rights and IHL, what primarily concerned the OHCHR was that this law provides for a probation program for officials of the state or members of the FARC who have been incarcerated for five years or more, without taking into account the seriousness of their crimes and without establishing objective criteria to assess eligibility, increasing the possibility that persons who have committed significant crimes may profit from this advantage, while abuses of human rights and IHL will go unpunished (OHCHR, 2017: 6).

All these factors favored impunity for serious human rights violations, and even the OHCHR-Colombia was able to identify that positive actions taken in previous periods to counteract the high levels of impunity, such as the Prosecutor's Office's prioritization measures and the new criminal investigation system created in 2012 to improve investigation and sentences that included enforced disappearances and serious human rights violations, were ineffective (OHCHR, 2016: 11). Based on the analysis of the OHCHR reports, it can be determined that impunity is a persistent problem in Colombia, and that it continued to affect rural areas in particular during this period, as in previous reports, due to a lack of state presence and the difficulty of the judicial system in reaching rural areas.

#### **4.3.3.2. Human Rights Defenders**

Human rights defenders' work is necessary for democracy inside countries, and therefore for achieving a stable and lasting peace. As a result, human rights defenders require the necessary guarantees to carry out their work inside the peace process. During this time, however, it was feasible to demonstrate that violence against human rights defenders persisted and that the state was unable to ensure complete respect and protection of their rights and work (OHCHR: 2016: 15).

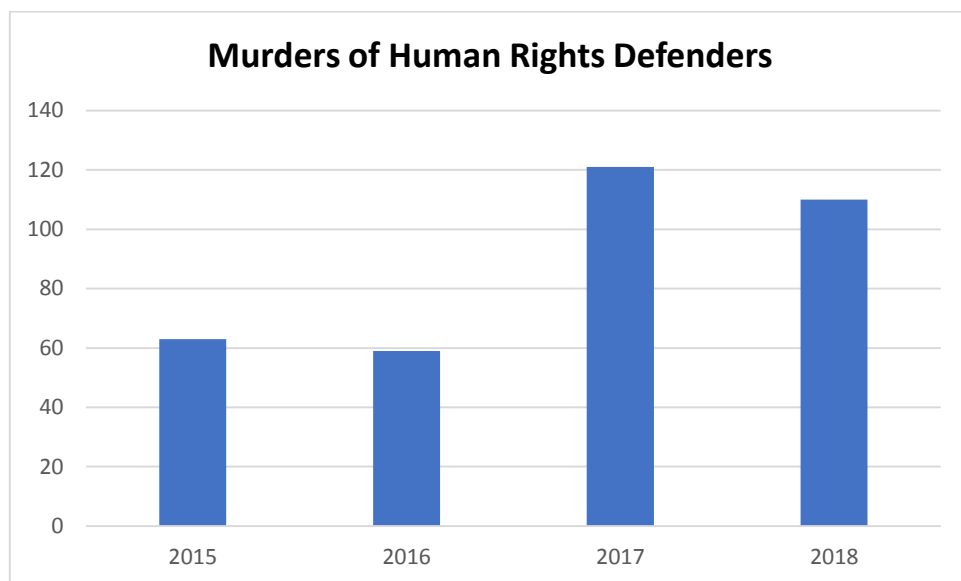
OHCHR-Colombia documented 295 assaults against 885 human rights defenders in 2015, including 310 women. The *Somos Defensores* initiative and OHCHR-Colombia documented the deaths of 63 human rights defenders, 41 of these cases were verified by OHCHR-Colombia (2016: 15). The most concerning finding of OHCHR-Colombia was that these statistics were higher than the national average

over the previous 20 years, reflecting the hostile climate in which human rights defenders found themselves (OHCHR, 2016: 15).

The OHCHR-Colombia recorded 389 instances in 2016, including 59 murders, 44 attacks, 210 threats (69 of which were collective), 72 breaches of privacy and property rights, 3 forced disappearances, and 1 incidence of sexual violence (2017: 9). The departments with the highest number of verified homicides were Cauca (14), Antioquia (7), Norte de Santander (6) and Cordoba (4) (OHCHR, 2017: 9).

The High Commissioner noted an increase in the number of attacks on human rights defenders in 2017 (OHCHR, 2018: 1). OHCHR-Colombia recorded 441 attacks in 2017, including 121 murders, and highlighted that there were twice as many murders of female defenders as the previous year, and that those most affected by the attacks were indigenous communities, peasants, Afro-Colombians, and union leaders, and that the regions with the highest number of defender murders occurred in Antioquia and Cauca (OHCHR, 2018: 3).

The situation did not improve in the last year of this investigation, with a high number of killings in 2018 of 110 human rights defenders, stressing that this data did not reflect all occurrences, but it did help to detect trends in those types of assaults (OHCHR, 2019: 3).



**Figure 26.** Murders of Human Rights Defenders from 2015 to 2018

**Source.** This Illustration is adapted from OHCHR Reports from 2015 to 2018

According to the 2016 annual report, the number of defenders killed in rural regions increased. Based to the report, 59 homicides were carried out in 2016, with 43 victims active in rural areas and 25 murdered in areas of historical presence of the FARC, data that showed a clear increase since 2015, when there were 25 murders in rural areas, demonstrating the danger generated by the FARC's power vacuum and the state's scarce presence on those territories (OHCHR, 2017: 9). By 2017, 64% of the killings had taken place in areas most affected by the armed conflict and where the FARC had a historical presence (OHCHR, 2018: 3).

The OHCHR-Colombia's work in 2018 also allowed it to analyze who the alleged perpetrators of the murders of human rights defenders were, and it was discovered that the vast majority of the perpetrators were members of criminal organizations; these organizations included in some cases members of criminal groups that potentially were former members of demobilized paramilitary organizations (40%), while the ELN and EPL were allegedly responsible for (8% and 4%, respectively) of the cases (OHCHR, 2019: 4). Based on the observations, the OHCHR was also able to determine that the vast majority of human rights defender murders in 2018 occurred in the departments of Antioquia, Cauca, and Norte de Santander, which was consistent with a trend in the three annual reports, demonstrating the high level of risk faced by human rights defenders in those areas of the country (OHCHR, 2019: 4).

In both 2015 and 2016, reports observed an increase in the number of arrests and detentions of human rights defenders, which sometimes resulted in lengthy imprisonment until the defender was freed due to a lack of evidence (OHCHR, 2017: 9). This demonstrated that the difficulties faced by human rights defenders were not only the threats they received from various armed groups, who saw them as an impediment to their interests, but also that state institutions blocked their work and worked inefficiently to punish those responsible for attacks against defenders, for

which OHCHR reiterated its concern about the high level of impunity for attacks against human rights defenders (OHCHR, 2017: 9).

In terms of protection mechanisms, the OHCHR continued to recognize the work of the National Protection Unit, which was critical in providing security for defenders in the previous period; however, the large number of attacks on human rights defenders in rural areas prompted the OHCHR to recommend evaluating the effectiveness of this Unit, particularly to improve the protection of human rights defenders in rural areas (2017: 10). However, it was possible to identify four defenders who were murdered while under the protection of the Unit in 2017, for which the OHCHR-Colombia recommended the modification of protection measures, particularly in rural areas, and the strengthening of collective protection measures, such as indigenous and Afro-Colombian guards, and was also able to demonstrate that the Unit had budget cuts that negatively affected the Unit's protection capacity (OHCHR, 2018: 4). According to the OHCHR-Colombia's 2015 annual report, violence against human rights defenders was primarily motivated by four goals: Defenders working on issues connected to land conflicts; defenders demanding justice, notably those who challenged human rights breaches by state actors; political and social leaders; and peace defenders (OHCHR, 2016: 15-16).

#### **4.3.3.3. Extrajudicial Executions**

The practice of extrajudicial executions decreased significantly during this period, as it had during Santos' first presidential term and particularly since the Ministry of Defense's new Comprehensive Human Rights Policy in 2008; as a result, the subtitles corresponding to extrajudicial executions in the annual reports for this period focus on extrajudicial executions committed in the past. The OHCHR-Colombia observed the judicial processes for extrajudicial executions that occurred in the past and discovered an alarming situation of impunity in relation to the extrajudicial executions known as "false positives" that were mostly practiced between 2002 and 2008. The OHCHR-Colombia expressed worry about the lack of investigations and consequences against high-ranking military leaders who may have been involved in "false positives" during that period via knowledge or inaction.

In 2015, the Council of State issued a ruling declaring extrajudicial executions to be a systematic practice (OHCHR, 2016: 11), which suggests that because it is a systematic practice, investigations into "false positive" extrajudicial executions should seek those responsible, including those in high military ranks, who allowed this systematic practice to be carried out between 2002 and 2008 (OHCHR, 2016: 11). International law recognizes criminal accountability for omission, which has not been applied appropriately to military leaders in Colombia in situations of "false positive" extrajudicial executions or paramilitary acts in military-controlled regions (OHCHR, 2016: 12).

As a result, OHCHR insisted during this period that responsibility for "false positives" could not be limited to the material perpetrators and that the Attorney General's Office should prioritize investigations of commanders and senior officers, understanding that these heinous actions are classified as systematic practices, as previously stated (OHCHR, 2017: 12).

However, criminal investigations into extrajudicial executions did not progress significantly during this period, as indicated by the statistics supplied by the Prosecutor's Office in the 2015 annual report:

In 2015, the Human Rights and International Humanitarian Law Directorate in the Attorney General's Office, which processes a significant portion of these cases, registered 2,653 homicide investigations, of which 167 are closed. A total of 7,773 members of the army are linked to these cases, involving 4,392 victims, including 183 women and 223 children. As of August, 838 army members (6 colonels, 99 officers, 127 junior officers, 603 soldiers and 3 with undefined rank) had been convicted in 210 cases (OHCHR, 2016: 11).

One of the main issues highlighted by the OHCHR-Colombia in relation to these processes is that the system acted very slowly, with the defense using delaying tactics and the judiciary relaxing in cases of homicides against members of the security forces, and that the lack of disciplinary measures against lawyers who used such practices or against judges who tolerated them undermined non-repetition and favored impunity (OHCHR, 2016: 11-12).

Another issue encountered by the OHCHR-Colombia in 2017 was selective impunity in cases of extrajudicial executions involving generals, affecting the victims' rights to



truth and justice, and it was even possible to show that the victims received threats, as did witnesses and even judicial officials who handled these cases, preventing an adequate functioning of justice and, as a result, affecting the search for truth and reparation (OHCHR, 2018: 14).

In 2018, the OHCHR was able to provide evidence in the instance of a mother of an extrajudicial execution victim who received threats to prevent her from testifying in proceedings against a retired general (OHCHR, 2019: 8). All of the information gathered by the OHCHR clearly demonstrates the obstruction of justice and the high degree of impunity in cases of extrajudicial executions carried out by state agents, particularly those involving top commands of the military forces.

Even though the OHCHR-Colombia focused its analysis on extrajudicial executions committed in the past, it did not overlook extrajudicial executions committed during this period; for example, in 2015, it documented 10 cases of arbitrary deprivation of life by military personnel (OHCHR, 2016: 12). In 2016, it identified six cases of arbitrary deprivation of life committed by army and police personnel, just one of which happened during a military operation against the ELN (OHCHR, 2017: 11).

During 2017, the OHCHR documented 11 cases of extrajudicial executions, with a large portion of the extrajudicial executions reported in Bolivar, Cesar, and Norte de Santander, indicating a clear problem in those areas that could be linked to a lack of command and control by police and military commanders, a lack of planning, and a lack of tactical discipline (OHCHR, 2018: 12). During 2018, the OHCHR was also concerned by 11 cases of alleged extrajudicial executions, and it was also able to identify that it was the third consecutive year that cases were reported in Arauca and Norte de Santander, it was also highlighted that only two cases of extrajudicial executions occurred in the context of military operations (OHCHR, 2019: 14).

Similarly, the extrajudicial executions documented in 2017 reflected the serious problem of military involvement in citizen security operations; as previously stated, five extrajudicial executions were carried out during military-led public security operations, while three cases of extrajudicial executions were linked to the armed

conflict because they were carried out during military operations against the ELN (OHCHR, 2018: 12).

#### **4.3.3.4. Enforced Disappearances**

Enforced disappearances remained one of the major human rights concerns during this period, and the OHCHR-Colombia discovered a significant difference in missing people data, making it hard to fully determine the scope of the situation (OHCHR, 2016:1). The Office in Colombia was able to illustrate this gap since the data between the various entities was quite varied. For the year 2015, the Attorney General Office's registration had 70,000 disappeared people, the National Registration of Disappeared Persons contained 22,366, and the Comprehensive Victim Support and Reparation Unit (UARIV) contained 45,515 (OHCHR, 2016: 4-5). The fact that on November 6, 2015, the state recognized its responsibility as a result of the military operations to retake the Palace of Justice, which led to extrajudicial executions and enforced disappearances, was symbolic (OHCHR, 2016: 5-6).

#### **4.3.3.5. Victims and Land Restitution Law**

The Victims and Land Restitution Law served to emphasize victims' rights and respond to armed conflict victims since 2011; but in this period this was also acknowledged within the peace process (OHCHR, 2016: 12). The annual report for 2015 indicated that by 2015, 7,874,201 victims had been recorded, emphasizing that over half of them were women and children, and that the UARIV projected that 6,084,064 persons required restitution, which surpassed the economic and technical resources that had been given to them (OHCHR, 2016: 12). As a result, it was necessary to enhance the resources available for the repair of armed conflict victims.

Regarding the Victims and Land Restitution Law, it was possible to identify that, despite significant efforts to implement this law, there were numerous obstacles related to structural and historical reasons, such as weak fiscal and political controls over resource implementation, that prevented progress in the processes (OHCHR, 2016: 13). Similarly, it was difficult to carry out collective reparations under this law due to coordination issues in collective reparations for indigenous and Afro-

Colombian communities' territorial rights; as of 2015, only 24 of the 153 ethnic communities owed collective reparation were in the prior consultation stage (OHCHR, 2016: 13).

According to the 2015 annual report, by the end of that year, the Land Restitution Unit received 87,119 requests for inclusion in the land theft registry, 42,325 (49%) of which were replied in "micro focus" regions where the Ministry of Defense allowed the start of the proceedings; of this, sentences were handed down in 3,160 instances (4%) involving 20,000 persons during the procedures (OHCHR, 2016: 13). That indicated that despite the work of the Restitution Unit, it was clear that the land restitution processes were sluggish, with 51% of the claims falling outside of the micro focus zones and showing no progress (OHCHR, 2016: 13).

The primary challenges faced by land claimants, according to OHCHR-Colombia, were an insufficient local institutional budget, a lack of institutional coordination, and disparities in capacity (2016: 14). Land claimants' security also remained a concern, as they continued to be targeted (OHCHR, 2017: 13). Another issue discovered by the OHCHR in the land restitution proceedings in 2017 was the impediment in regions of interest to agro-industrial, mining, and energy industries (OHCHR, 2018: 11). In the last year of this research, it was feasible to demonstrate that the land restitution process remained slow, particularly for collective reparation beneficiaries, because only six of the 634 beneficiary groups had made substantial progress (OHCHR, 2019: 12).

#### **4.3.3.6. System of Truth, Justice, Reparation, and Non-repetition**

The peace agreement resulted in the establishment of a system of truth, justice, restitution, and non-repetition as a tool for judicial proceedings within the framework of the peace agreement. The system includes a judicial mechanism known as the Special Jurisdiction for Peace (JEP in Spanish), as well as two extrajudicial processes known as the Truth, Coexistence, and Non-repetition Commission and the Special Unit for the Search for Persons Reported as Disappeared (OHCHR, 2018: 13). The OHCHR has assisted this system with the goal of lowering impunity for violations of

human rights and IHL by providing technical help to the JEP, the system's only active component in 2017 (OHCHR, 2018: 13).

However, the OHCHR highlighted at the time that the system excluded non-military state agencies and private persons from the obligatory scope, creating a fundamental issue in eliminating impunity, and identified that the definition of criminal responsibility of military superiors offered by the state through Legislative Act 1 of 2017 to judge the responsibilities of high command did not meet international standards; the OHCHR-Colombia stated that the regulation made it virtually impossible to prove the responsibility for omission of military commanders, which affected the ability of the comprehensive system and the JEP to guarantee that those most responsible would be held accountable (OHCHR, 2018: 13).

Similarly, the OHCHR-Colombia expressed concern about Congress' decision to grant amnesties and pardons to members of the Colombian army and the FARC who were convicted or accused of crimes against human rights without taking into account that persons linked to serious crimes are ineligible for amnesty under international law (OHCHR, 2018: 13). According to the OHCHR, these proceedings were carried out without regard for international norms, harming victims' rights as a result of the severe dangers of impunity that existed during this period. For example, as of November 24, 2017, the JEP declared the release of 2,381 former FARC members and 1,011 military personnel without providing any information regarding their whereabouts or if they will assist in truth and restitution initiatives (OHCHR, 2018, 14).

However, progress was made within the JEP system with the submission of 1,910 military members in the context of case No. 003, referring to alleged extrajudicial executions, and similarly, former high-ranking FARC members appeared before the JEP in relation to case No. 001, referring to the FARC's illegal detention of persons (OHCHR, 2019: 7). These significant achievements were advancements in being able to acknowledge previous human rights atrocities and violations of IHL, as well as to establish the locations of missing persons to deliver justice and compensation to

victims of the armed conflict through the narratives of the atrocities presented by these individuals.

Despite these advancements, the JEP encountered government impediments based on several legal processes, such as Law 1922, which specifically prohibits the JEP from examining state agents, particularly members of the security forces (OHCHR, 2019: 7). This law hampered the JEP's work and gravely harmed victims' rights because the versions that members of the armed forces might offer were critical to understanding the influence they had on human rights violations and IHL breaches within the context of the armed conflict.

#### **4.3.3.7. Economic, Social, and Cultural Rights**

During this period, it was possible to demonstrate that the OHCHR-Colombia was placing a larger emphasis on economic, social, and cultural rights, knowing that they were also continually impacted by the armed conflict and were necessary for achieving a stable and durable peace. Similarly, the difficulties in issues of poverty and inequality in the sectors most affected by the armed conflict exacerbated the state's ability to guarantee reparation processes for victims in those territories, owing to high rates of violence, the presence of criminal groups, a lack of institutional presence, and corruption.

During this period the OHCHR focused on a solution to the structural problems of the armed conflict and called for the response to violence to address the structural factors that favored illegal economies (OHCHR, 2017: 7). Although economic, social, and cultural rights have always been recognized by the OHCHR and are important in its reports, it is during this period that they are given greater importance, understanding them as a fundamental part of the peace agreement for the full enjoyment of human rights in Colombia, particularly through points related to comprehensive rural reform and the solution to the illicit drug problem (OHCHR, 2017: 8).

During the 2017 annual report, the OHCHR highlights the difficult problem caused by a lack of basic health care and a public health policy in various parts of the

country, which especially affects indigenous peoples at risk of extinction in Amazonas, Putumayo, and Caquetá, and also shows how in areas affected by the armed conflict, the persistence of mining activities that contaminate the rivers has harmed the right to water, health, and food of various communities (OHCHR, 2018: 9).

The OHCHR emphasized data supplied by the government in the 2018 report, exposing with statistics the level of affectation of the towns most impacted by the armed conflict in terms of economic, social, and cultural rights. According to government data, the municipalities most affected by the armed conflict had an average multidimensional poverty index of 76%, while the national average was 49%, demonstrating clearly how the armed conflict worsened the situation of those municipalities and the people who live there (OHCHR, 2019: 10).

#### **4.3.4. Peace Agreement Implementation**

During Juan Manuel Santos's second presidential term, the OHCHR-Colombia fulfilled the responsibility imposed by the peace agreement signatories to monitor the implementation of human rights aspects within the various points of the agreements and to support that implementation, as previously stated. The Colombian peace deal presented a unique opportunity to overcome structural challenges in human rights due to its extension, which aimed to embrace numerous sectors that would have a direct effect on the enjoyment of human rights. The 2016 report outlines the many aspects of the agreement in terms of human rights:

The peace agreement contains programmes that promote social welfare, development, the rule of law and democracy — all of which have human rights implications — in five areas: (a) integral rural reform; (b) political participation guarantees; (c) State action against criminal organizations; (d) solutions to the illicit drug problem, combining judicial action against organized crime with a public health approach for consumers, and viable sustainable economic alternatives for crop growers; and (e) actions on the rights of victims of past violations. The agreement also provides for the creation of an integrated transitional justice system comprising a truth commission, a unit to search for the disappeared, a special criminal jurisdiction for peace and reparations (OHCHR, 2017: 3).

However, difficulty in implementing several points of the peace agreement was recognized throughout the annual reports; in 2018, the OHCHR specifically

underlined the slowness in implementing points of comprehensive rural reform and the replacement of illegal crops (OHCHR, 2019: 4).

#### **4.3.4.1. Eradication of Illicit Crops**

The OHCHR-Colombia supported the negotiation platforms in relation to illicit crops, where the Catatumbo Peasant Association in Norte de Santander complied with the commitments to ensure that peasant families stopped cultivating coca, but it discovered that the government was not complying with the commitments, for which reason it reminded the government through the 2015 annual report that the success of these programs lies in technical support and the creation of viable market opportunities (OHCHR, 2016: 7).

During this period, it became evident that the substitution of illegal crops was a work that was intertwined with other socio-economic problems in the communities, as these are areas that have been severely impacted by armed conflict and the bloodshed caused by drug trafficking. As a result, a sustainable solution to the cultivation of illicit crops was required through structural changes that would allow farmers to fully integrate into the legal economy, and as a consequence, thousands of small farmers who wanted to substitute illicit crops saw an opportunity in the provisions of the peace agreement in the point referring to the substitution of illicit crops and rural reform (OHCHR, 2018: 7).

However, the violence caused by illegal armed groups and criminal organizations that were opposed to crop replacement because it jeopardized their interests and source of income created significant obstacles in carrying out crop substitution. The OHCHR was able to identify illegal groups that were threatening, kidnapping, and murdering crop substitution supporters (OHCHR, 2018: 7). The OHCHR documented the assassination of the president of a community action board in southern Colombia, who promoted the implementation of the peace agreement's substitution of illicit crops, as one of the most serious examples of risk within land substitution processes in its 2018 annual report (OHCHR, 2019: 4). The implementation of the Comprehensive National Program for the Substitution of Illicit

Crops was hampered until the last year of the period, with threats mostly coming from criminal groups, former FARC, and ELN members (OHCHR, 2019: 10).

#### **4.3.4.2. FARC Demobilization Process**

The demobilization process of the FARC had a great impact on the scene of the armed conflict in Colombia. The FARC, the largest illegal armed group in Colombia and the one with the most territorial control, significantly altered the overall landscape of the conflict as a result of the demobilization process that took place as a result of the peace agreement with the Colombian government; this change also had an effect on the other armed actors.

##### **4.3.4.2.1 Power Vacuums**

It was also feasible to highlight the hazards presented by the FARC's demobilization and reinsertion process through the work of the OHCHR. The OHCHR warned of the possibility that other illegal armed groups or criminal organizations might seek to take control of territories that were previously controlled by the FARC, due to the importance of these territories for criminal economic activities. During the 2015 report, the OHCHR-Colombia explicitly stated that this was predictable and that disputes for control of those territories where illicit income was generated primarily through drug trafficking, illegal mining, and other means would pose risks to the enjoyment of human rights in these populations as well as the peace process (2016: 7). As a result, the OHCHR-Colombia stated in its 2017 annual report that the consolidation of armed groups and criminal organizations in areas left by the FARC could significantly affect the peace agreement implementation and undermine the potential benefit of the agreement in terms of human rights (2018: 2).

The OHCHR warned that if these risks were not considered, violence could worsen. It is for this reason that, despite the demobilization of Colombia's most important guerrilla and one of the main offenders of IHL and human rights, an increase in violence could be identified in some regions, such as Bajo Cauca and Catatumbo, where violence increased with the beginning of the FARC's demobilization (OHCHR, 2017: 7). Other organized armed groups, including the ELN, EPL, FARC dissidents, and other organizations associated with national and transnational



organized crime, contested control, exploitation, and profit from illegal economic activity (OHCHR, 2017: 7),

#### **4.3.4.2.2. Demobilization and Reintegration**

The OHCHR was also able to note that the demobilization process might provide many problems and hazards, particularly when considering the historical experience of prior demobilization procedures, such as the M-19 and paramilitary groups (2016: 7). This enabled the OHCHR-Colombia to identify two very clear risks in the face of the FARC demobilization process. The first was the risk to the safety of ex-combatants during the demobilization process and the FARC political party established as part of the agreement; this was thought to be a risk given the M-19's previous experience with the process.

According to this, the OHCHR-Colombia recognized the possibility of similar actions, such as the murder of ex-combatants or attacks on candidates and leaders of the FARC political party, as happened at the time with members of the M-19 and the Patriotic Union Political Party, which were practically exterminated, demonstrating the great risks that the new FARC political party could face and for which ensuring political security was essential to avoid a rogue state (OHCHR, 2016: 7). In this context, it was critical that Colombia's president, Juan Manuel Santos, in September 2016, acknowledged the systematic persecution and brutality faced by Patriotic Union members, emphasizing the state's obligation to assure non-repetition (OHCHR, 2017: 4).

The second risk for ex-combatants was that the agreed-upon measures were not implemented or that the necessary conditions for them to reintegrate into society and enjoy opportunities and the enjoyment of their rights were not provided, putting the demobilization process at risk and ex-combatants at risk of creating criminal groups or joining other criminal groups, as occurred during the paramilitary demobilization process. Therefore, it was critical for the peacebuilding process to limit these dangers by providing security and access to good living circumstances for demobilized men and women (OHCHR, 2017: 5).

To have an effective demobilization and reintegration process, it was necessary to understand that it was essentially a rural process, as stated by the FARC and as evidenced by a National University study in which it was stated that 66% of the FARC reintegrated population was from rural areas and about 30% identified as belonging to ethnic groups (OHCHR, 2018: 5). As a result, because reintegration is mostly a rural process, Colombian institutions faced an important challenge because they had more expertise with urban reintegration than rural reintegration (OHCHR, 2016: 7).

Poverty and inequality were also major impediments to reintegration, owing to the harsh living circumstances in towns near transition zones where ex-combatants were awaiting reintegration, and even in transition zones themselves. There were challenges with adequate water, sanitation, and suitable housing throughout the transition period, which jeopardized the process and caused former FARC members to flee certain places (OHCHR, 2018: 5). According to the Office of the Ombudsman, as of October 25, 2017, nearly 800 former FARC members had formed or joined other illegal armed groups or criminal groups (OHCHR, 2018: 5).

According to the OHCHR, 36 former FARC members were killed in 2017, of which 11 were amnestied and released without any process of reintegration into society, which was a serious mistake because these people should have been followed up on and entered the reintegration program to ensure their safety (OHCHR, 2018: 14). The OHCHR was also able to record the death of four members of the FARC political party ahead to the presidential elections in the scope of the 2018 elections (OHCHR, 2019: 6), while the number of former FARC members murdered since the signing of the peace agreement was updated to 85 during the 2018 report, the stability of the peace process was jeopardized (OHCHR, 2019: 14).

#### **4.3.5. Activities of the Office in Colombia of the United Nations High Commissioner for Human Rights**

Between 2015 and 2018, the Office's activities were focused on technical assistance, cooperation with State institutions, and field missions in the 14 field offices, which allowed for a more in-depth understanding of the country's reality and a better

understanding of the situation of human rights and IHL in the country. The Office's activities and missions are numerous, and they have helped to improve the country's human rights and IHL situation while also assisting in the better implementation of the peace agreements. They have also had important critical work to show the Colombian state the successes and failures of its policies, as well as the necessary changes to ensure the enjoyment of human rights and to help build a stable and lasting peace.

The OHCHR specifically monitored the effects of the peace agreement on the effective enjoyment of human rights by persons living in conflict-affected regions; in 2017, it conducted 1850 field missions, and in 2018, it conducted 1339<sup>39</sup> (OHCHR, 2018: 2; OHCHR, 2019: 2). According to an examination of the annual reports from those years, it is clear that the OHCHR collaborated closely with the various state institutions. For example, in 2015, the OHCHR offered assistance to over 50 state agencies that comprised the National System for victim Support and Reparation (OHCHR, 2016: 8). The OHCHR functioned as a conduit for guidance to various bodies and ensured that they met the international standards to which Colombia is obligated.

In this way, the OHCHR's work in Colombia was so important to the country that the negotiating parties in the peace process asked the OHCHR to monitor the implementation of the agreements, and the negotiating parties in the social dialogues that arose from the social protests asked the OHCHR to serve as a guarantor and facilitator of the dialogue between the government and the various social sectors that demanded their rights, demonstrating the prominence that the OHCHR was able to take on in the country.

Similarly, the OHCHR was present in the regions most impacted by the armed conflict, contributing to good improvements and assisting communities in several areas, such as increasing victim engagement and rights realization (OHCHR, 2018: 2-3). Furthermore, the OHCHR-Colombia advocated for preventative and protection

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<sup>39</sup> The 2015 and 2016 annual reports do not show the number of OHCHR field missions.

measures, as well as investigating killings and attacks on human rights defenders and sanctioning those involved (OHCHR, 2019: 3).

Faced with an increase in violence against human rights defenders, the OHCHR adopted a variety of measures to assist them and to give them the best possible protection and security circumstances so that they can keep up their crucial work. OHCHR's technical support also aided in the coordination of investigations into threats against land claimants, assisting in the improvement of claimant protection mechanisms and creating more commitment from local authorities (OHCHR, 2019: 12).

#### **4.3.6. Evaluation of the Annual Reports from 2015-2018**

During Juan Manuel Santos' second presidential term, one of the most significant events in Colombian history occurred: the conclusion of the military conflict between the government and the FARC guerilla, which had lasted more than a half-century. The peace agreement reached between these two actors represented a great opportunity for Colombia in terms of human rights, owing to the great commitment that was placed on the various points of the agreement in terms of human rights and social development, particularly comprehensive rural reform and substitution of illicit crops.

With the peace agreement, the country's security situation was projected to improve, as were decreased levels of violence, confrontations, and hostilities within the armed conflict. Many of these developments may be realized as a result of the signing of the peace agreement and the gradual demobilization of FARC members during this period. However, it was also possible to demonstrate that some aspects of the peace agreement produced the opposite of what was desired in some regions of the country, and that, while the overall human rights situation in the country improved as a result of the peace agreement, the opposite occurred in some regions.

According to the OHCHR examinations, the FARC demobilization process had a detrimental impact on the regions under former FARC control. The power vacuums created in this armed group's regions of influence attracted other illegal armed groups

and criminal organizations interested in seizing control of areas with high value for illicit economic activity. According to the findings, this resulted in conflicts and clashes for control of previously occupied areas by the FARC, mostly harming civilian populations in such territories and their enjoyment of their rights. As a result, it was included in the High Commissioner's proposals to ensure the presence of complete security and effective institutional presence in rural communities, particularly those formerly under the control of the FARC (OHCHR, 2018, 15).

Similarly, the implementation of the Law for Victims and Land Restitution, lauded as the most important tool related to the rights of armed conflict victims, was hampered by a variety of issues. Despite the Land Restitution Unit's efforts, the OHCHR-Colombia observation was able to demonstrate that land claimants, as well as human rights defenders and state officials participating in land restitution cases, were subjected to threats and attacks, affecting the victims' entitlement to this mechanism. Recognizing the situation in land restitution proceedings, the OHCHR requested that the government increase protection and security systems, as well as conduct investigations against individuals who threaten and harm those participating in land restitution processes, which proved beneficial in some cases. Particularly in the 2016 annual report, it was acknowledged that the state had made progress in protecting the rights of those people who awaited restitution of land while occupying other lands, referred to as "good faith secondary occupants," despite acknowledging that challenges remained due to aggression and contempt (OHCHR, 2017: 13).

One of the primary issues uncovered by the study of these reports was the tremendous number of attacks on human rights defenders during this period, as well as the significant number of murdered human rights defenders. The OHCHR identified that a large part of the murdered human rights defenders were in areas with a historical presence of the FARC and essentially in rural areas, for which reason it asked the government and the different state institutions through its recommendations to work in a coordinated manner and technical commitments regarding the serious situation of human rights defenders, and asked them to essentially work on issues of prevention, protection and investigation of threats and attacks against them (OHCHR, 2017: 16).

During this time, the OHCHR-Colombia offered 57 recommendations in its annual reports, 15 more than during Juan Manuel Santos' first presidential term, and the majority of them were directed to the state. Unlike prior recommendations, these indicated a strategy targeted at implementing the peace agreement as well as a structural approach to human rights, emphasizing economic, social, and cultural rights within the recommendations. As a result, the Ombudsman's Office was urged to include lack of access to economic, social, and cultural rights, as well as corruption, in its early warning/risk reports in its 2017 annual report (OHCHR, 2018: 15).

Another important issue during this period was the slowness demonstrated by the OHCHR-Colombia through its reports on the implementation of the peace agreement, which hampered people's enjoyment of their human rights, particularly those groups that must be prioritized within the peace agreement. The implementation of the agreements was viewed as a unique opportunity by the OHCHR-Colombia to significantly improve the country's human rights situation; however, the delay in the vast majority of points agreed between the parties was evident during the analysis of the first two years of implementation of the agreements in the 2017 and 2018 reports. As a result, the High Commissioner made a specific recommendation to the National Attorney's Office to examine the reasons behind the delays in implementing the agreement and to take appropriate disciplinary measures (OHCHR, 2018: 16).

Finally, it can be seen that some of the recommendations were implemented by the various actors, while others were not, particularly those given to illegal armed groups. The ELN continued to recruit and use children, and the advice of a negotiated settlement to the dispute between that organization and the government was ignored. For its part, the government ignored the High Commissioner's advice to ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OHCHR, 2019: 15). This recommendation was ignored by Colombia even in the previous three periods, demonstrating how not all recommendations are taken into account by the state and how, on some occasions, the scope of incidence and advocacy of the Office of the

High Commissioner in Colombia has not been effective in achieving all necessary changes in favor of human rights and IHL.



## CONCLUSION

The main objective of this study was to provide a descriptive analysis of the state of human rights and IHL in Colombia during the armed conflict from 2002 to 2018. An examination of the annual reports provided to the UN Human Rights Council by the High Commissioner for Human Rights through his office in Colombia was conducted for this purpose.

The investigation's research question was: "How did the situation of human rights and international humanitarian law related to the armed conflict evolve within the annual reports of the OHCHR in Colombia from 2002 to 2018 throughout the presidential administrations of Álvaro Uribe Vélez and Juan Manuel Santos?". To address this issue, the annual reports of the OHCHR-Colombia were used as a primary resource, since they allow, from an international and relevant viewpoint, such as that of a UN body, to carry out a more accurate process of inspection of the state of human rights and IHL.

During the first chapter of this study, a synopsis of the armed conflict in Colombia was prepared, as well as the key causes for the conflict's development, the formation of the primary actors in the armed conflict, and its development and importance as a result of it. Based on the radical and substantial changes that occurred within the conflict as a result of the appearance of new actors and new dynamics throughout the conflict, this study categorizes four important stages within the armed conflict. These four stages are: the emergence of the guerrillas and the rise of the conflict; the strengthening of the guerrillas due to drug trafficking and the emergence of paramilitary groups; the internationalization of our conflict and seeking the end of the conflict via military means; and the peace agreement between the government and the FARC guerrillas.



The first chapter is critical for understanding the armed conflict and the actors involved, as well as the context and reasons that led to the serious violations of human rights and violations of international humanitarian law that occurred during the armed conflict and which are discussed in the subsequent chapters of this research. Subsequently, chapter two provided an understanding of the work done by the OHCHR-Colombia through a structural analysis of the annual reports on human rights that were submitted to the UN Human Rights Council, as well as an understanding of the main issues that concerned the OHCHR-Colombia throughout each of them. Due to the annual reports' complexity and variability, this chapter was able to identify the most relevant titles and subtitles within which the human rights and IHL situation regarding the armed conflict was documented, as the reports also analyze human rights situations outside of armed conflict. Similarly, it demonstrated that annual reports were shifting and did not adhere to a uniform structure to be reviewed in all reports.

As a result, the structural analysis enabled us to examine the structure of each report and attempt to develop a common framework and method for analyzing all of the reports in chapters three and four. According to the structural analysis chapter, the annual reports appear to lack depth and specificity in their study of the human rights and IHL situation, as their volume decreased significantly over time and the reports became flatter, presenting a superficial analysis of the situation of human rights and IHL in Colombia. This was notably evident in the second period of analysis, during the administration of Juan Manuel Santos, when the quality of the annual reports declined, limiting this study's ability to assess the country's accurate human rights and IHL status. This study concludes that the lack of content on human rights and IHL was also directly related to the importance that the peace process began to take on in the annual reports, and that as a result, the human rights and IHL situation faded into the background or became a sub-theme within the peace process and the implementation of the peace agreement.

The third chapter focused on Alvaro Uribe Velez's two presidential terms. Throughout this chapter, this study observed that the human rights and IHL situation was serious as a result of the government's military offensive against several guerrilla groups such as the FARC and the ELN. This military offensive carried out as part of

the Uribe government's Democratic Security Policy, led to serious violations of human rights and IHL, both by illegal armed actors and by state actors such as security forces, which, seeing themselves strengthened and backed, carried out operations that resulted in abuses and violations of human rights and IHL. Similarly, the human rights and IHL situation deteriorated in various ways as a result of the military offensive, as illegal armed actors such as the guerrillas changed their strategies and tactics in order to avoid direct confrontation with the military that had been strengthened and consequently through the use of violence against civilians and acts of terrorism, among other things, they sought to continue in force and carry out the objective of destabilizing the state, which mainly affected vulnerable groups in zones of armed conflict.

Throughout this chapter, it is also possible to demonstrate that security policies and government policies, in general, did not differ significantly between Alvaro Uribe Velez's first and second presidential terms, the study observed that during the second term, the government made a greater effort to punish and end violations of human rights and IHL by state agents, particularly after changes made by the Ministry of Defense in 2008 through a new Comprehensive Human Rights policy. This was mostly due to the discovery of the scandal known as "false positives" in which innocent people were killed and reported as insurgents killed in combat by the armed forces in order to inflate the statistics within the armed struggle and claim rewards within the security forces.

However, this thesis acknowledges the significant advances of the Democratic Security Policy during the presidency of Alvaro Uribe Velez, because it achieved great advances in security matters, which also allowed for a favorable change in the human rights situation of thousands of civilians in Colombia because the military offensive against the guerrilla groups made it possible to liberate different areas of the country and bring state presence to remote areas where the armed conflict has affected the rights of vulnerable communities.

The annual reports for this period allowed to see that the situations that most concerned the OHCHR throughout this analysis were the persistent and absolute

disregard for human rights and the IHL on the part of all the illegal actors of the conflict. According to the OHCHR reports, the paramilitary groups were free to maneuver and commit serious violations of human rights and IHL as a result of the Colombian state's negligence during Uribe Velez's first presidential term. The annual reports additionally indicate that the state carries a significant deal of responsibility for these abuses over the period in question as a result of its inability to uphold and protect its citizens' human rights.

This study concluded that according to the OHCHR reports, the large amount of power granted to state security forces through the Democratic Security Policy, combined with a lack of education in human rights and IHL within state security institutions, and the incentives offered for positive results within the armed conflict were motivates that helped the state carry out one of the most serious violations of human rights and IHL within the armed conflict, the "false positives". Through the analysis of the various annual reports examined in the third chapter, it was also possible to conclude that the recommendations made by the High Commissioner were mostly ignored and that ignoring these important recommendations given through the OHCHR's monitoring of the situation of human rights and IHL resulted in further violations and worsened the situation for several types of human rights abuses.

The OHCHR's constant recommendations to establish means to monitor military operations to ensure compliance with international human rights and IHL were ignored, resulting in more serious breaches. As a final part of the third chapter, it was also possible to demonstrate that by the end of Uribe Velez's second presidential term, the OHCHR began to reveal serious problems of impunity for actions committed within the armed conflict, primarily related to serious human rights violations by demobilized paramilitaries who sought refuge under Law 975 "Justice and Peace Law".

In general, the annual reports from 2002 through 2010 expressed serious worries about claimed linkages between paramilitary organizations and public officials, which included high-ranking members of the Republic's Congress and the

government. The reports also raised concerns about the state's serious violations of extrajudicial executions, for which the annual reports were in charge of including cases within the content of the reports to demonstrate the seriousness of the violations, particularly in cases of "false positives." As a result, during that period, the OHCHR worked to promote respect for human rights and IHL through training in human rights and IHL, providing guidance, and collaborative work with state institutions, which was reflected in the annual reports.

The fourth and last chapter of this thesis examines the substance of the annual reports from 2011 to 2018 as part of Juan Manuel Santos's two presidential terms. Based on the work carried out throughout the fourth chapter, this study was able to conclude that the annual reports presented a significant improvement in the country's human rights and IHL situation and that violations committed by members of the state security forces were few and less frequent in comparison to the two previous periods.

Beginning in 2012, official negotiations between the government and the FARC were held to end the violent conflict between these actors, and the final agreement was reached in 2016, marking one of the most significant achievements in Latin America in recent years. The peace agreement managed to generate significant positive changes in terms of human rights and IHL within the armed conflict, as well as identifying that the implementation of the peace agreement would have a positive impact on the human rights situation, particularly for vulnerable groups and victims of the armed conflict, because the agreement took into account both the historical roots of the armed conflict and present challenges such as rural reform and the eradication of illegal crops into its points of the Agreement.

However, from the examination of the reports, this study was also able to determine that the peace agreement and ensuing post-conflict stage had a detrimental influence on human rights and IHL in several parts of the country. The power vacuums generated by the FARC's demobilization in different regions of the country where they held influence prompted other illegal armed actors and criminal organizations to contest control of those territories, resulting in an increase in violence and human rights violations in those regions.

During this period of investigation, it was possible to confirm that one of the most serious problems under Juan Manuel Santos' first presidential term was impunity for crimes perpetrated by state agents, particularly those involving "false positives". This impunity was primarily due to the slowness of the proceedings, the defendants' and their lawyers' obstruction of justice, corruption, and the fact that serious violations of human rights and IHL were still subject to military jurisdiction, despite the fact that the OHCHR repeatedly stated that all cases involving serious violations of human rights and IHL should be brought before ordinary courts to avoid partiality and impunity.

During the second presidential term of Juan Manuel Santos, the violations carried out by the post-demobilization groups of the paramilitaries and by other guerrillas such as the ELN and the EPL were of great concern. The critical situation that human rights defenders were in was also addressed; human rights defenders and social leaders faced serious violations of their rights, threats, and even murders as a result of their work, particularly when they were involved in issues related to the peace agreement, such as the eradication of illicit crops, support for peace agreements, or defense of victims in matters of land restitution, or serious violations such as extrajudicial executions in the past.

The fourth chapter identifies that the main issues that concerned the OHCHR through its reports had less to do with human rights violations that occurred during that period and more to do with past violations that were being tried during that period and that they did not present any significant progress, revealing the state's slowness and permissiveness, encouraging impunity, and failing to carry out sanctions that respect the rights of the victims. Based on the analysis, this study has been able to determine that the occurrence of process obstruction and delay arose more frequently in situations of breaches when high military commanders were investigated.

Similarly, the situation of human rights defenders was serious, particularly as a result of actions carried out by post-demobilization paramilitary organizations and other guerrilla groups with less capability but nevertheless essential within the armed conflict. The violence and instability created by these groups also resulted in serious

human rights situations, such as massive enforced displacements as clashes between groups intensified across the country, fear of recruitment of children, and terror ingrained in citizens.

The peace agreement and the post-conflict era were highlighted in the last chapter, and the OHCHR's effort to monitor various issues stipulated in the agreements was essential for improving the country's human rights and IHL condition. The peace agreement and post-conflict process provide Colombia with a once-in-a-lifetime opportunity to not only end the armed conflict but also to improve the situation of human rights in a sustainable and effective manner, recognizing that the armed conflict is to blame for much of the country's awful situation. However, during the last annual reports analyzed, it was possible to demonstrate that the peace agreement was being implemented slowly and inefficiently, and that the agreed points were not being met, putting the peace agreement in grave danger. The fact that a candidate opposed to the agreement was elected as Colombia's new president at the conclusion of the last report examined in this research questioned the state's commitment to the effective continuation of the implementation of the peace agreement; as it has been seen at present, no significant progress in the implementation of the agreement was made during his four years in office.

After analyzing the annual reports within the different periods, it is possible to identify that the reports find great differences in the situation of human rights and IHL from one president to another. According to the reports, Colombia improved the situation of human rights and IHL during Uribe Velez's mandate, which occurred as a result of the Democratic Security policy that carried out a military offensive against illegal armed groups and that he succeeded in regaining control of much of the national territory and a reduction in human rights violations such as massacres, murders, kidnappings, and enforced disappearances. While during the mandate of Juan Manuel Santos, the human rights and IHL situation improved significantly as a result of the search for peace negotiations and subsequent peace agreement reached during his government in 2016.

However, the evaluation of the OHCHR's annual reports reveals that more violations were committed by members of the state security forces during Uribe Velez's tenure and that several of his administration's implementations had a negative impact on the country's human rights and IHL situation, as in the case of “false positives”. As a result, the reports emphasize the significance of the respect for human rights and IHL within the armed conflict by the state agencies themselves, and the necessity to take measures to ensure that state agents respect and adhere to international human rights provisions, and that in order to end the conflict, one must seek to achieve a positive peace in which respect for human rights prevails.

This is supported by data released by the Truth Commission (Comisión de la Verdad in Spanish) in 2022, which gives new updated information on the most serious breaches committed during Colombia's armed conflict.



**Figure 27.** Victims of Massacres and Extrajudicial Executions between 1985 and 2019

**Source.** Adapted from *Hay Futuro si hay Verdad* (2022: 132)

The Truth Commission's report (*Hay Futuro si hay Verdad*) demonstrates the difficult situation of civilians within the armed conflict through these statistics, which are also consistent with those found in the Historical Memory Group's report, which emphasizes that the armed conflict killed 220,000 people, with 81.5% of these being civilians and 18.5% combatants (Historical Memory Group, 2016: 38), which already showed the disproportionate impact that the armed conflict in Colombia has on civilians. However, they present updated statistics where it can be seen that the

numbers of victims are higher than those presented by the Historical Memory Group report.

Through this comparison of the OHCHR annual reports with various assessments on the situation of the armed conflict, they corroborate the information exposed through the Office, as shown in figure 27, where the Truth Commission reflects the serious situation of extrajudicial executions during the Uribe Velez administration and how this practice was gradually eradicated beginning in 2008, and especially during the presidential term of Juan Manuel Santos, where it can be shown that the number of this violations is constantly minimal.

Figure 27 also illustrates what was discovered during this investigation of the annual reports, which is that, while situations of violations of human rights and IHL had decreasing patterns, this was in unsettling contrast to a disproportionate increase in the serious practice of extrajudicial executions during the Alvaro Uribe Velez administration. The Truth Commission emphasizes that between 2001 and 2007, massacres may have decreased as a result of the AUC's demobilization, but extrajudicial executions increased significantly (Comisión de la Verdad, 2022: 132), which may have been encouraged in part by the provisions and objectives of the Democratic Security policy, and by the security forces' offensive against guerrilla groups during that period.

It is possible to draw conclusions after finishing the comprehensive examination of the OHCHR reports in the structural analysis in chapter two and the content analysis in chapters three and four. Thus, during the first reports, it can be seen that the reports were more critical of the human rights and IHL situation within the armed conflict, and that they sought to show more deeply the critical situation of human rights and IHL, as well as the level of affectation that the armed conflict has had on the enjoyment of people's human rights, through annexes and the presentation of illustrative cases of human rights and IHL violations, particularly in cases that affected members of vulnerable groups. It is also feasible to conclude that the OHCHR reports began to detect a better commitment on the part of State entities during Alvaro Uribe Velez's second presidential term (2006-2010), when more



measures were implemented to improve the country's human rights and IHL condition and that this tendency persisted throughout Juan Manuel Santos' presidency, as evidenced by the Victims and Land Restitution Law and the thorough and ambitious commitment to human rights and IHL established in the 2016 peace agreement.

On an overall basis, it can be argued that over the whole time of analysis (2002-2018), one of the most serious problems and concerns disclosed by the Office was the repeated impunity for human rights crimes and IHL breaches. These cases of impunity occurred mostly in two instances: The first one was a poor approach and preparation of the judicial mechanisms implemented in judicial processes, and an oversight in processes of demobilization of members of illegal armed groups, which did not guarantee the victims' rights to truth, justice, reparation, and non-repetition. The second one was related to the impunity associated with violations attributed to members of the security forces, which was primarily due to the attribution of cases to the military criminal justice system in which serious violations of human rights and IHL were investigated, despite the fact that, according to Colombia's binding international norms, they should be investigated within ordinary courts to ensure impartiality, justice, and the rights of the victims.

Colombia's peace agreement, ascribed in 2016 between the government of Juan Manuel Santos and the FARC guerilla, is another significant element that has impacted the country's human rights and IHL status. Although the OHCHR stated in its reports that the peace agreement was a great opportunity to improve the situation of human rights and IHL in the country, the inefficient and inadequate implementation of the several agreed points also had a negative impact on the situation of human rights and IHL in the country; as evidenced by the annual reports of the OHCHR, particularly the title dedicated to the implementation of the peace agreements in the 2017 and 2018 reports.

Although the peace agreement contained a rich human rights component, and the demobilization of the country's largest guerrilla represented a positive change for Colombia and a decrease in the national human rights situation, this was not the case

all over the national territory. The reports were able to demonstrate that there were areas where the human rights situation remained critical or had worsened as a result of the peace agreements and the demobilization of the FARC. This was mostly due to power vacuums created in regions under FARC control, which became points of conflict for other illegal organizations, resulting in additional bloodshed and impacting the livelihoods of the civilians who inhabited such areas. Many ex-combatants returned to criminal activity as a result of the slow pace in the implementation of peace agreements.

The dangers faced by peace agreement advocates who faced threats and abuses of their rights while attempting to carry out the deal's implementation were obvious. Those most affected were human rights defenders, who, according to figures found in the annual reports, began to be constantly attacked, even reaching record numbers, and demonstrating that the areas where the most murders and other violations against human rights defenders were carried out were in the areas most affected by the conflict and where the FARC guerrillas had historically been present.

Therefore, the peace agreement affected both positively and negatively the situation of human rights and IHL in Colombia, and it also became a key component in the analysis of the situation of human rights and IHL in the OHCHR's annual reports, because the OHCHR was asked by the government and the FARC to take an active role in monitoring the implementation of various points found in the peace agreement.

This research of the OHCHR annual reports, in which the Office itself presents an account of its activities and initiatives carried out in the country, allows for the identification of an evolution of the Office itself over a period of analysis. It may be concluded that the OHCHR in Colombia is not only a department tasked with assessing the state of human rights and IHL, but that it has been integrated into the actors that aim to promote and preserve human rights in the country. It collaborates with governmental institutions and has been in continual contact with the great majority of institutions, providing its assistance and backing in the effort to end the armed conflict, knowing that doing so would considerably improve the human rights

and IHL situation. As a result of its work in the field and annual reports, the OHCHR has become a part of the peace process, acting as a dialogue facilitator in social demonstrations and as a participatory actor in the peace process. And, more recently, as an actor committed to monitoring the implementation of several aspects of the peace agreement. As a result, the OHCHR may be considered to have played a role in the armed conflict and to have had an influence both at the national level and in the territories where it does fieldwork to improve the country's human rights and IHL situation.

This research concludes that the work of the OHCHR Office in Colombia has been of considerable benefit to the state of Colombia and that it has performed successfully in terms of the advising, advocacy, and pressure tasks that it has developed through collaboration with other international and national organizations. These tasks have been extremely helpful for Colombian institutions in terms of improving and generating the state's commitment to further respecting and complying with a wide number of international human rights and IHL regulations. However, it is important to note that the OHCHR's actions are limited because it is still an advisory department, and in the end, choices and decisions are made by the government, and it is the government's responsibility to ensure that human rights are respected and protected and that the provisions on IHL are followed within the context of the armed conflict.

Therefore, Colombia has a big opportunity since a president who supports the peace agreement was elected in 2022, which could rescue the peace agreement from the deadlock. The OHCHR recognizes the peace agreement's value in terms of human rights and the great opportunity that its effective implementation represents for Colombia's development, for which it seems that the OHCHR's work in Colombia has the great potential to positively contribute to the implementation of the peace agreement. The OHCHR's work has the potential to be of great assistance in the post-conflict process given that the human rights and IHL situation in Colombia remains difficult, the armed conflict continues to have different actors that affect people's rights, and the peace agreement requires the international community's support to be implemented effectively.

According to the findings of this study, the OHCHR, as an advisory body, has provided assistance to the state of Colombia in order to help the country comply with its human rights obligations, pronounced on violations of human rights and IHL in the country regardless of the armed actor who committed them and has even been severe in speaking out in cases of serious violations of human rights and IHL committed by the state, stressing its responsibility especially in situations of “false positives” extrajudicial executions and in breaches committed by paramilitary organizations where the OHCHR asserted the responsibility of the state for action or omission. This study additionally found that under Juan Manuel Santos' presidential tenure, the issue of human rights and IHL was relegated to the background of the annual reports owing to the priority put on the peace process and peace agreement.

In conclusion, this study has found that the annual reports indicate that the main issues affecting the situation of human rights and IHL in Colombia related to the armed conflict have been: First, the consistently high rate of impunity that was seen throughout the analysis period, particularly in cases of human rights breaches and IHL violations perpetrated by members of the security forces, as well as the impunity established throughout the demobilization processes. Those demobilization processes did not appear to have appropriate mechanisms in place to guarantee victims' rights to truth, justice, and reparation, as well as to ensure that persons who committed major human rights crimes were not granted amnesty and pardons. Second, a lack of coordination and monitoring among state institutions to work more efficiently and in accordance with international standards on human rights and IHL, as the OHCHR evidenced that, despite the existence of mechanisms and regulations for the prevention and protection of human rights, they were implemented in an inefficient manner on several occasions, or that they did not have a significant impact on the field and that despite the existence and knowledge of the regulations, they were not respected within the operations carried out during the armed conflict. Third, that the illegal armed groups demonstrated total disregard and contempt for humanitarian obligations within the armed conflict, and that the state's armed forces, particularly the army, failed on numerous occasions, committing violations of IHL due to a disregard for the principle of distinction, unnecessarily affecting civilians and

involving them in the armed conflict. Fourth, the conflict has disproportionately harmed human rights defenders, making them targets of killings, threats, and persecution by all armed conflict actors, preventing them from carrying out their critical work. Fifth, the state has not provided adequate guarantees for victims' access to justice and mechanisms for reparation and land restitution, and these victims have been the target of threats and attacks that have re-victimized them and resulted in new violations of their rights. And sixth, the peace agreement lacked the necessary mechanisms to ensure its implementation, posing risks in the territories where implementation has been attempted and causing new problems that have harmed human rights, particularly in demobilization zones and areas previously controlled by the FARC.

Finally, this research concludes that the OHCHR annual reports have provided a very accurate perspective of the situation of human rights and IHL in Colombia in relation to the armed conflict and that the evolution of the annual reports over the years corresponds to a reflection of the transformations in the armed conflict and, in particular, changes in policies in relation to the conflict during the presidential terms of Uribe Velez and Santos. Similarly, the peace agreement reached by the government and the FARC guerrillas has caused a shift within the OHCHR, which has taken on the task of monitoring the implementation of various significant points of the agreement and has focused much of its work on evaluating shortcomings and problems found in its implementation, in order to assist state institutions in achieving compliance with the agreement, which would significantly improve the human rights situation in the country.

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## TURKISH SUMMARY

Kolombiya, 60 yılı aşkın süredir devam eden, günümüzün en büyük iç silahlı çatışmalarından birini yaşayan ülkedir. Bu silahlı çatışma hem devletin güvenliğine hem de vatandaşlarının haklarının korunmasına yönelik güvencelerine bir tehdit oluşturmaktadır. Dolayısıyla bu çalışma, ülkenin iç silahlı çatışmasıyla bağlantılı olarak Kolombiya'da insan haklarının ve uluslararası insancıl hukukun durumuyla ilgili bir inceleme sunmaktadır. Kolombiya'daki silahlı çatışma ülkedeki insan hakları ve uluslararası insancıl hukuk (*International Humanitarian Law* - IHL) durumunu önemli ölçüde etkilemiştir. Paramiliter gruplar (AUC), FARC ve ELN gerillaları silahlı çatışmalarda insan hakları ve uluslararası insancıl hukuk ihlallerinin başlıca sorumluları olmuş ve Kanada, Amerika Birleşik Devletleri gibi ülkeler ve Avrupa Birliği gibi uluslararası örgütler tarafından terör örgütü<sup>40</sup> olarak kabul edilmişlerdir.

Bu çalışma, İnsan Hakları Yüksek Komiserliği Ofisi'nin (*The Office of the High Commissioner for Human Rights* - OHCHR) Kolombiya'da insan hakları ve uluslararası insancıl hukukun durumunu inceleyen yıllık raporlarının analizi ve yorumlanması yoluyla gerçekleştirilmektedir. Bu şekilde, bu çalışma öncelikle Kolombiya'daki silahlı çatışmanın arka planını ve kökenlerini ortaya koymakta ve çatışma 4 döneme ayrılmaktadır: Gerillaların ortaya çıkışı ve silahlı çatışmaların başlaması; uyuşturucu kaçakçılığı ve artan şiddet yoluyla gerillaların ve paramiliter grupların güçlendirilmesi; çatışmanın uluslararası hale gelmesi ve askeri yollarla çözüm aranması ve Kolombiya hükümeti ile FARC gerillaları arasındaki barış anlaşması süreci.

Bu araştırma, OHCHR gibi uluslararası bir kuruluş tarafından belirlendiği üzere, Kolombiya'daki silahlı çatışmanın ülkenin insan hakları ve uluslararası insancıl hukuk durumunu nasıl etkilediğinin kısmi bir incelemesini sağlamayı amaçlamaktadır. Bu araştırma, OHCHR'nin insan haklarına bakış açısını ve Kolombiya'daki uluslararası insancıl hukukun durumunu, OHCHR'ye göre silahlı

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<sup>40</sup> Bu nedenle, bu çalışmada FARC ve ELN'yi tanımlamak için hem 'gerilla' hem de 'terör örgütü' terimleri birbirinin yerine kullanılmıştır.

çatışmanın etkisinin ilerlemesini ve OHCHR'nin bu ülkedeki varlığının çalışmalarını ve önemini anlamamıza yardımcı olmaktadır.

Bu çalışma daha sonra OHCHR'nin yıllık raporlarının analiz edilmesinden sorumludur. Bu süreç, yıllık raporların yapısal analizi ve içeriğinin kapsamlı analizi yoluyla gerçekleştirilmektedir. Bu analiz, Kolombiya'daki silahlı çatışmada insan hakları ve uluslararası insancıl hukukun durumuna ilişkin kilit noktaları belirlemeyi amaçlamaktadır. Bu analiz yapıldıktan sonra elde edilen bulgular ve sonuçlar çalışmada sunulmuştur.

Mevcut literatür, Kolombiya'daki silahlı çatışmanın nedenlerinin anlaşılmasına, silahlı çatışmanın aktörlerinin analizine ve silahlı çatışma içinde var olan çeşitli dinamiklerin anlaşılmasına önemli katkılarda bulunmuştur. Ancak silahlı çatışmanın Kolombiya toplumu üzerindeki gerçek etkisini ve özellikle de ülkedeki insan hakları ve uluslararası insancıl hukuk durumunu nasıl etkilediğini anlama konusunda hala bir boşluk vardır. Bu çalışmada, Yüksek Komiser'in BM İnsan Hakları Komisyonu'na sunduğu yıllık raporları ana analiz kaynağı olarak kullanılarak, durum OHCHR perspektifinden incelenmektedir.

Dolayısıyla bu çalışma araştırma sorusu, Alvaro Uribe Velez ve Juan Manuel Santos'un başkanlık yönetimleri sırasında 2002'den 2018'e kadar OHCHR yıllık raporlarına göre Kolombiya'da insan hakları ve uluslararası insancıl hukukun durumunun nasıl evrilmiştir.

OHCHR'nin raporları çerçevesinde aşağıdaki sorulara da cevap aranması amaçlanmıştır:

- OHCHR'ye göre silahlı çatışma sırasında en ciddi insan hakları ve uluslararası insancıl hukuk ihlalleri neler olmuştur?
- OHCHR, silahlı çatışma sırasında Kolombiya'da insan hakları ve uluslararası insancıl hukukun durumunu iyileştirmek için ne gibi çalışmalar yapmıştır?

- OHCHR'nin silahlı çatışmalarda insan hakları ve uluslararası insancıl hukuk açısından devletin başarısız olduğu alanlar olarak belirlediği en ciddi sorunlar neler olmuştur?

Verilerin toplanmasında kullanılan birincil kaynakları OHCHR tarafından yayınlanan 17 adet yıllık rapor oluşturmaktadır. 17 adet yıllık raporun derlenmesinin ardından raporlar, derlemeler Kolombiya'daki silahlı çatışmayla ilgili olarak insan hakları ve uluslararası İnsancıl hukukun durumunu ele alan yıllık raporlarda yer alan verilere indirgenerek dikkatli bir şekilde analiz edilmiştir. Verilerin işlenmesinin ardından araştırmanın bulgularını ve sonuçlarını göstermek mümkün hale gelmiştir. Ayrıca raporlarda belirtilenleri doğrulamak amacıyla, araştırma konusuyla ilgili çeşitli bilimsel dergilerden, devlet kurumlarından gelen verilerden ve ülkenin insan hakları ve uluslararası insancıl hukuk karnesi hakkında bilgi veren sivil toplum kuruluşlarından gelen verilerden de faydalanılmıştır.

Bu veri toplama ve analiz çoğunlukla nitel metodoloji kullanılarak gerçekleştirilmiştir. Ayrıca bu araştırma sadece 2002-2018 yıllarını kapsayan bir zaman dilimine sahip olup, Alvaro Uribe Velez ve Juan Manuel Santos'un başkanlık dönemleri sırasında insan hakları ve uluslararası insancıl hukuk alanındaki durumu analiz etmeyi amaçlamaktadır. Kolombiya'daki silahlı çatışmanın tüm dönemini kapsamamaktadır ve OHCHR'nin Kolombiya'daki kuruluşundan bu yana yayınladığı tüm raporları içermemektedir.

Birinci bölümde Kolombiya'daki silahlı çatışmanın arka plan analizi yapılmaktadır. Kolombiya'daki silahlı çatışmanın nedenleri ve kökenlerinin analizi, çatışmaya taraf olan birimlerin ortaya çıkmasına sebep olan nedenleri anlamamıza, silahlı çatışmanın dinamiklerini anlamamıza ve sorunları çözmenin yollarını bulmamıza olanak tanımaktadır. Bu, çatışmanın gelişmesine yol açan temel sorunlara yol açabilir ve çatışma sonrası aşama göz önüne alındığında bu sorunların belirlenmesi kritik öneme sahiptir.

Bu bölüm, Kolombiya'daki silahlı çatışmanın hem iç hem de dış nedenlere sahip olduğunu göstermektedir. İç nedenler çerçevesinde, 19. yüzyılın sonlarından itibaren

toprak sahipleri ile köylüler arasında yaşanan eşitsizliğin, bu iki grup arasında büyük bir ayrılığa yol açtığı ve köylüler arasında hoşnutsuzluğa neden olduğu görülmektedir. Büyük toprak sahipleri tarafından ucuz işgücü olarak kullanılmak üzere bir baskı yöntemi ile köylülerin topraklarına el konulmuştur.

Benzer şekilde, mevcut silahlı çatışmanın patlak vermesinden önce, 1960'ların başında Kolombiya'da sol gerillaların ortaya çıkması için ideal bir ortam oluşmuştur. Kolombiya, *La Violencia* olarak bilinen bir dönemden geçmiştir; Bu dönemde, büyük ölçüde Liberal ve Muhafazakar siyasi partiler arasındaki güç mücadeleleri nedeniyle, özellikle de başkan adayı Jorge Eliécer Gaitán'ın *El Bogotazo* olarak bilinen bir şiddet salgınına yol açan suikastı sonucunda 200.000'den fazla insan ölmüştür. Zamanın şiddetini yatıştırmak için, liberaller ve muhafazakârlar arasında iktidarı paylaşmaya ancak Komünist Parti gibi diğer siyasi aktörleri her türlü siyasi fırsattan dışlamaya yönelik bir anlaşma olan Ulusal Cephe oluşturulmuştur.

Silahlı çatışmanın dış nedenleri arasında yer alan Soğuk Savaş senaryosu, Kolombiya'daki sol gerillaların yükselişini anlamak açısından önem taşımaktadır. Küba Devrimi'nin önderlik ettiği komünist gruplar, hedeflerine devrim yoluyla ulaşabileceklerine ve gerilla savaşı yoluyla devlete karşı savaşabileceklerine inanmaya başlamışlardır. Ayrıca ABD yönetiminin Kolombiya'ya müdahalesi, ABD coğrafyasında bölgeye tehdit olarak görülen komünist örgütlere yönelik saldırıları kolaylaştırırken, aynı zamanda gerillaların yükselişine yol açan politikaların geliştirilmesine de sebebiyet vermiştir. FARC'ın, Kolombiya hükümetinin komünist toplulukların bulunduğu Marquetalia olarak bilinen bölgeyi bombalamasıyla doğduğu söylenebilir. Bu operasyon, İlerleme İttifakı tarafından desteklenen "Lasso Planı" kapsamında geliştirilmiştir; ABD'nin Latin Amerika'da komünizmin ilerleyişini durdurma girişimidir.

İlk safhada gerillaların ortaya çıkışını ve silahlı çatışmanın patlak vermesini tespit etmek mümkündür. Yukarıda açıklandığı gibi FARC, 1964 yılında Lasso Planı kapsamında Marquetalia bölgesinin hükümet tarafından bombalanmasıyla ortaya çıkmıştır. ELN, 1964 yılında Küba Devrimi'nden etkilenen öğrenci ve Katolik rahiplerin hareketi olarak doğmuştur. Bu dönemde bu iki gerilla, hayatta kalma ve



varlıklarını sürdürme kaygısını taşımıştır ve ne büyük bir genişleme peşinde olmuş ne de Kolombiya devletini daha fazla riske atacak büyük hedeflere sahip olmuştur.

Bu durum ikinci safhada gerillaların ve paramiliter grupların uyuşturucu kaçakçılığı yoluyla güçlenmesi ve şiddetin artmasıyla değişmeye başlamıştır. Bu safhada, gerillaların, özellikle de FARC gerillalarının daha iddialı hedeflere sahip olmaya ve genişlemeye başladığı 1980'lerde başlamaktadır; FARC, yedinci konferansında yeni finansman ve büyüme yöntemleri arayışı içinde agresif genişleme hedefini açıkça ortaya koymuştur. Paramiliter gruplar, hem devlete hem de FARC tarafından tehdit edilen ve gasp edilen büyük uyuşturucu kaçakçılara yönelik gerilla tehditlerine yanıt olarak ortaya çıkmıştır. Hem gerilla grupları (özellikle FARC) hem de paramiliter güçler uyuşturucu kaçakçılığı işine tamamen dâhil olmuş ve bunu ülke içinde genişlemek için kullanmışlardır. Bu, ülkede kaçınılmaz insan hakları ve uluslararası insancıl hukuk ihlallerine yol açan ve Kolombiya halkının yaşamını etkileyen bir kitlesel şiddet atmosferi yaratmıştır.

Kolombiya'daki silahlı çatışmanın üçüncü safhasında çatışmanın uluslararasılaşması başlamıştır. 1990'ların ortasındaki ciddi şiddet durumu, uluslararası toplumu Kolombiya'daki insan hakları ve uluslararası insancıl hukuk durumuna daha fazla dikkat etmeye zorlamıştır. Yüksek düzeyde şiddet, Kolombiya'nın 1990'larda başarısız bir devlet olarak görülmesine yol açmıştır. Bu, ABD gibi aktörlerin, uyuşturucu kaçakçılığını ortadan kaldırmayı ve yasadışı silahlı gruplarla mücadele etmeyi amaçlayan bir ekonomik-askeri destek girişimi olan *Plan Colombia* aracılığıyla Kolombiya'ya müdahale etmesine yol açmıştır. Benzer şekilde Avrupa Birliği de silahlı çatışmaya müdahale etmeyi denemiştir, ancak daha az agresif bir bakış açısıyla, farklı girişimlerle Kolombiya'daki insan hakları durumunu iyileştirmeye ve diyalog ve iyi uygulamalara dayalı olarak silahlı çatışmanın sona ermesine yardımcı olmaya çalışmıştır.

Bunun dâhilinde Birleşmiş Milletler, İnsan Hakları Yüksek Komiserliği aracılığıyla Kolombiya'da ülkedeki insan hakları durumunu analiz etmek ve izlemek üzere bir ofis kurmuştur. Aynı şekilde Birleşmiş Milletler de Pastrana hükümeti bünyesinde barış sürecine aktif olarak katılmıştır. Ancak bu barış sürecinin başarısızlıkla

sonuçlanması, hükümete ve vatandaşlara güvensizlik yaratarak silahlı çatışmanın diyalogla sonuçlanabileceğini düşünmeyi imkânsız hale kılmıştır.

Bu, Álvaro Uribe Vélez'in 2002 yılında Kolombiya Devlet Başkanı olmasına yol açmıştır. Uribe Vélez, adaylığı sırasında silahlı kuvvetleri güçlendirme ve vatandaşların güvenliğini sağlamak ve yasadışı silahlı gruplarla mücadele etmek için daha agresif bir güvenlik politikası izleme sözü vermiştir. Güvenlik politikasına Demokratik Güvenlik adı verilmiş ve bu çerçevede askeri güç tabanı güçlendirilip artırılmış, askeri teçhizat iyileştirilmiş ve gerillaların kontrolü altındaki alanların büyük çoğunluğundan çekilmesini sağlayan bir askeri saldırı gerçekleştirilmiştir. Ancak bu politika kapsamındaki pek çok eylem, bu dönemde güvenlik güçleri tarafından ciddi insan hakları ve uluslararası insancıl hukuku ihlallerine ilişkin kanıtlar nedeniyle eleştirilmiştir; "Yanlış pozitif" vakalarına dikkat etmek çok önemlidir: öldürülen masum sivilleri eylem sırasında öldürülen gerilla gruplarının üyeleri olarak göstererek silahlı çatışma içindeki askeri istatistikleri artırmak amacıyla güvenlik güçleri, özellikle de ordu mensupları tarafından gerçekleştirilen yargısız infazlar oluşmuştur.

Son olarak, bu araştırmanın ilk bölümü silahlı çatışmanın dördüncü safhasının Kolombiya hükümeti ile FARC gerillaları arasındaki barış anlaşması sürecine odaklandığına işaret etmektedir. 2010 yılında Juan Manuel Santos'un başkan seçilmesiyle Kolombiya'daki silahlı çatışmaya bakış açısı değişmiştir. Başkan Santos, silahlı bir çatışmanın varlığını kabul etmiş ve hükümet ile FARC arasında 2012'de başlayan ve 2016'da nihai bir barış anlaşmasıyla resmileşen barış müzakerelerinin başlatılmasına karar vermiştir. Hükümet ile FARC arasındaki barış anlaşması 6 noktaya odaklanmaktadır: Kapsamlı kırsal reformu; siyasi katılım; çatışmanın sonu; yasa dışı uyuşturucu sorununa çözüm; kurbanlar; ve onaylama, uygulama ve doğrulamadır. Barış anlaşmasının çeşitli maddeleri açısından zengin insan hakları içeriğine sahip olduğunu belirtmekte fayda vardır.

İkinci bölümde OHCHR'nin yıllık raporlarının daha iyi analiz edilebilmesi amacıyla OHCHR'nin yıllık raporlarının yapısal analizine odaklanılmaktadır. Bu nedenle, aşağıdaki tabloda görülebileceği gibi, yıllık raporların daha sonraki içerik analizi için

gerekli başlık ve alt başlıkları bulmak amacıyla tüm raporların içindekiler analizi yapılmıştır. OHCHR'nin yıllık raporlarının yapısal analizi de iki döneme ayrılmaktadır: Alvaro Uribe Velez'in başkanlık dönemi olan 2002-2010 ve Juan Manuel Santos'un başkanlık dönemini kapsayan 2011-2018.

Yıllık Raporlarının Başlıkları						
2002	Ulusal Bağlam	İç Silahlı Çatışma	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Özel İlgili veya Endişe Alanları	Öneriler
2003	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Özel Hassas Grupların Durumu	Öneriler	Devlet Politikaları ve Uluslararası Tavsiyelerin Takibi
2004	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Özel Hassas Grupların Durumu	Öneriler	Kamu Politikaları ve Önerilerin Uygulanması
2005	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Özel Hassas Grupların Durumu	Öneriler	Kamu Politikaları ve Önerilerin Uygulanması
2006	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Özel Hassas Grupların Durumu	Öneriler	Kamu Politikalarındaki Temel Başarılar ve Zorluklar ve Önerilerin Takibi
2007	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Özel endişe gerektiren durumlar ve özellikle hassas gruplar	Öneriler	
2008	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Öneriler	İnsan Hakları İhlalleri ve Uluslararası İnsancıl Hukuk İhlallerine İlişkin Temsili Vakalar	
2009	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Öneriler	İnsan Hakları İhlalleri ve Uluslararası İnsancıl Hukuk İhlallerine İlişkin Temsili Vakalar	
2010	Ulusal Bağlam	İnsan Hakları Durumu/Uluslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Öneriler	İnsan Hakları İhlalleri ve Uluslararası İnsancıl Hukuk İhlallerine İlişkin Örnek Vakalar	

2011	Ulusal Bağlam	İnsan Hakları Durumu/UI uslararası İnsancıl Hukuk Durumu	Ofis Faaliyetleri	Öneriler	İnsan Hakları İhlalleri ve Uluslararası İnsancıl Hukuk İhlallerine İlişkin Örnek Vakalar	
2012	Ulusal Bağlam	İnsan Hakları Durumu/UI uslararası İnsancıl Hukuk Durumu	Öneriler			
2013	Ulusal Bağlam	İnsan Hakları Durumu/UI uslararası İnsancıl Hukuk Durumu	Öneriler			
2014	Ulusal Bağlam	İnsan Hakları Durumu/UI uslararası İnsancıl Hukuk Durumu	Öneriler	Çatışmalarda Öldürülen Kişiler ve Yargısız İnfaz İddialarına İlişkin Karşılaştırmalı Rakamlar		
2015	Barış Süreci ve Silahlı Çatışma Mağdurları	Barış İnşası: İnsan Hakları için Fırsat ve Riskler	Adil ve Sürdürülebilir Bir Barış İçin Yapısal İnsan Hakları Zorlukları	Öneriler		
2016	Barış Antlaşması	Barış, Güvenlik, Kalkınma ve Demokrasi de İnsan Hakları	Öneriler			
2017	Barış Antlaşmasının Uygulanmasında Geri Dönem Garantilerinin İlişkin Zorluklar	Kırsal Zorluklar ve İnsan Hakları Durumunu Etkileyen Diğer Yapısal Faktörler	Barış Bağlamında Vatandaş Güvenliği	Geçiş Dönemi Adaleti ve Mağdurların Haklarına Müdahale	Öneriler	
2018	Sürdürülebilir Barış İçin Bir Yol Olarak İnsan Haklarının Güvence Altına Alınması	Uluslararası Koruma Mekanizmaları	2019'da Yüksek Komiserlik Ofisi ile Teknik İşbirliği ve İşbirliği	Öneriler		

Bu bölümler, yıllık faaliyet raporundaki değişikliklerin ve her dönemdeki yapısal sürekliliğin daha iyi anlaşılabilmesi amacıyla yapılmıştır. Bu analiz sonucunda, yıllar geçtikçe raporların hacim ve nitelik kaybına uğradığı, insan hakları ve uluslararası insancıl hukuk ile ilgili konuların kaybolma eğiliminde olduğu tespit edilmiştir. Bunun özellikle Juan Manuel Santos döneminde belirgin olduğu görülmektedir;

Kolombiya'daki silahlı çatışmayla bağlantılı insan hakları durumunun analizi bir kenara bırakılmadan, hükümet ile FARC arasındaki barış sürecine de büyük önem verilmiştir. Ayrıca 2016'daki barış anlaşmasından bu yana barış konuları daha da önem kazanmıştır ve OHCHR, barış anlaşmalarının insan hakları durumuyla ilgili çeşitli hükümlerinin uygulanmasının analiz edilmesinden sorumlu olmuştur.

İnsan hakları ve uluslararası insancıl hukuk durumunun gelişimini etkili bir şekilde tanımlayacak yeterli bir sınıflandırma bulunmadığından, OHCHR tarafından silahlı çatışma bağlamında insan hakları ve uluslararası insancıl hukukun durumu hakkında sağlanan bilgilerin yıllık raporlarda bulunması daha zor olmaktadır.

Üçüncü bölüm, OHCHR'nin 2002'den 2010'a kadar olan yıllık raporları incelemekte ve bu raporların içeriği silahlı çatışmalarda insan hakları ve uluslararası insancıl hukuk kapsamındaki durum perspektifinden analiz etmektedir. Kolombiya silahlı çatışmasında insan hakları ve uluslararası insancıl hukuk durumunun değişimini ve gelişimini ortaya çıkarmak amacıyla analiz, Alvaro Uribe Velez'in iki başkanlık dönemini de içeren iki farklı döneme ayrılmıştır.

Bu içerik analizine göre, ilk yıllık raporlara nazaran insan hakları ve uluslararası insancıl hukuk ile ilgili durumun kritikleşmeye başladığı ve silahlı çatışmanın ülkedeki insan hakları ve uluslararası insancıl hukuk ihlallerinde temel faktör haline geldiği tespit edilmiştir. Ancak raporlar, Cumhurbaşkanı Uribe Vélez'in demokratik güvenlik politikası kapsamında insan hakları durumunun giderek iyileştiğini, güvenlik güçlerinin gerillalara yönelik askeri saldırıları nedeniyle insan hakları ve uluslararası insancıl hukuk ihlallerinin azaldığını ve FARC ve ELN gibi gerilla gruplarının geri çekilip izole bölgelere sığındığını göstermektedir. Bu dönemde devletin güvenlik güçleri, gerillaları ülkenin birçok bölgesinden uzaklaştırmayı başarmıştır.

Ancak bu grupların, devletin güvenlik güçleriyle doğrudan karşı karşıya gelmekten kaçınarak saldırılarını azaltmalarına rağmen, bu saldırıların ağırlıklı olarak sivillere yönelik olduğu, terör yaratma ve hükümet üzerinde baskı oluşturma amacı taşıdığı da belirlenmiştir. Benzer şekilde, daha fazla manevra özgürlüğüne sahip olan güvenlik

güçlerinin çok sayıda insan hakları ve uluslararası insancıl hukuk ihlali gerçekleştirdiği de tespit edilmiştir. Bunlar arasında öne çıkanlar, askeri rakamları şişirmek, ödül toplamak ve gerillalarla mücadelede olumlu sonuçlar göstermek amacıyla masum sivillerin öldürüldüğü ve savaşta öldürülen gerillalar gibi gösterildiği "yanlış pozitifler" olarak bilinen yargısız infaz iddialarıdır.

Öte yandan OHCHR'nin yıllık raporları, bu dönemde paramiliter güçlerin silahlı çatışmalarda daha fazla manevra özgürlüğüne sahip olduğunu ve devletin gerilla gruplarına yönelik askeri saldırılarını yoğunlaştırdığını göstermektedir. Yıllık raporlar, paramiliter grupların Kolombiya silahlı çatışmasındaki insan hakları ve uluslararası insancıl hukuk ihlallerinin ana failleri olduğunu gösterse de, manevra özgürlüğü paramiliter grupların katlanarak büyümesine ve genişlemesine olanak tanımıştır. Benzer şekilde yıllık raporlar, Uribe Vélez'in cumhurbaşkanı olarak ilk döneminin sonuna doğru soruşturmalara başlayan hükümet yetkilileri ile paramiliter gruplar arasındaki bağlantıları açıklığa kavuşturmuştur.

Uribe Velez'in ikinci başkanlığı sırasında, yıllık raporlar hükümet kurumlarının ülkedeki insan hakları ve uluslararası insancıl hukukun durumunu iyileştirme konusunda daha büyük bir kararlılık sergilediğini göstermiştir. Bu dönemde Savunma Bakanlığı'nın 2008 yılında yargısız infaz olgusunun sonlandırılması, askeri operasyonlarda kontrol ve gözlem mekanizmalarının kurulması ve söz konusu operasyonların uluslararası insan haklarıyla ilgili yükümlülüklerin standartlara uygun olarak yürütülmesinin güvence altına alınmasını amaçlayan politikası öne çıkmaktadır.

2009 yılı itibarıyla yargısız infazların sayısında ciddi bir azalma yaşanmıştır. Ancak raporlar aynı zamanda yargısız infaz vakalarında ve paramiliter gruplar ile kongre üyeleri, belediye başkanları, valiler ve diğerleri de dâhil olmak üzere kamu görevlileri arasındaki bağlantı vakalarında cezasızlık gibi kamu politikasındaki diğer eksikliklere de dikkat çekilmektedir. OHCHR'nin bu dönemde tespit ettiği en büyük cezasızlık sorunu, 2005 tarihli 975 Sayılı Kanun kapsamında paramiliter güçlerin silah bırakma sürecine yapılan atıf olmaktadır. Yıllık raporlara göre bu yasa, mağdurların haklarını kullanmalarını etkileyebilecek boşlukları ve eksiklikleri ortaya

çıkarmıştır. Silahlı çatışma mağdurlarının hakikat, adalet ve tazminat hakları tehlikeye atılmış ve yasanın ciddi insan hakları ve uluslararası insancıl hukuk ihlallerinin faillerine fayda sağladığı tespit edilmiştir.

Benzer şekilde, OHCHR, Başkan Uribe başkanlığındaki tüm yıllık raporlarında, insan haklarına ilişkin çok sayıda cezasızlık vakasının ve güvenlik güçleri tarafından gerçekleştirilen uluslararası insancıl hukuk ihlallerinin sürekli bir endişe kaynağı olduğunu, zira bu vakaların olağan adalet yerine askeri ceza adaleti tarafından ele alındığını vurgulamıştır. OHCHR bunun uluslararası düzenlemelere aykırı olduğunu bildirmiş ancak Uribe'nin ikinci başkanlığının son raporlarında bu konuda değişiklikler görülmüş ve davalar askeri ceza adaletinden olağan adalete devredilmeye başlanmıştır.

Dördüncü bölüm, Juan Manuel Santos'un iki başkanlık dönemi boyunca Kolombiya'daki silahlı çatışmada insan hakları ve uluslararası insancıl hukukun durumu analiz edilmektedir. OHCHR'nin yıllık raporlarına bakıldığında, Santos hükümetinin silahlı çatışmaya ilişkin değişen görüşlerinin ülkedeki insan hakları ve uluslararası insancıl hukuk durumu üzerinde hem olumlu hem de olumsuz etkileri olduğu görülmektedir.

Başkan Santos, ilk döneminde (2010-2014) Kolombiya'daki silahlı çatışmayı sona erdirmek için FARC gerillalarıyla barış görüşmeleri yapmaya çalışmış ve bu dönemdeki yıllık raporlar, hükümetin insan hakları durumunun iyileştirilmesine ilişkin kaygılarına dikkat çekmektedir. 2011 yılından itibaren, ihlallerin faili hangi silahlı aktör olursa olsun, milyonlarca silahlı çatışma mağdurunun faydalanmasını amaçlayan Mağdurlar ve Arazi Tazmin Kanunu oluşturulmuştur. Bu, OHCHR ve bizzat Yüksek Komiser tarafından hazırlanan yıllık raporlarda, Kolombiya'daki silahlı çatışma mağdurlarının hakları alanında elde edilen en büyük başarılarından biri olarak değerlendirilmiştir. Ancak bu yasanın uygulanması, yasal işlemler sırasında arazi talebinde bulunanlara ve mağdurlara, yasa dışı silahlı gruplara (çoğunlukla silah bırakma sonrasındaki paramiliter gruplara) ve nadir durumlarda devlet güvenlik güçlerine yönelik tehditler ve saldırılar nedeniyle birçok soruna yol açmıştır.

Benzer şekilde, Santos'un ikinci döneminde (2014-2018) barış anlaşmasının uygulanmasında, insan hakları savunucuları gibi özellikle savunmasız grupları etkileyen, yasadışı silahlı aktörlerin çeşitli sorunları ve tehditleriyle karşı karşıya kaldığı görülmektedir. Bu dönemdeki yıllık raporlar, barış anlaşmalarının uygulanmasında görev alan kişilerin, barış anlaşmasının etkili bir şekilde uygulanmasını tehlikeye atan ve sivillere yönelik insan hakları ihlallerine yol açan saldırı ve tehditlerin hedefi olduğunu göstermektedir.

FARC'ın silah bırakmasının ardından OHCHR, daha önce FARC tarafından kontrol edilen bölgelerin, diğer yasadışı silahlı örgütler (seferberlik sonrası gruplar, ELN, EPL ve diğerleri) arasında bölgenin kontrolü konusunda yaşanan anlaşmazlıkların hedefi olduğu açıklığa kavuşturulmuştur. Bu durum, söz konusu veya komşu bölgelerdeki toplulukların insan hakları durumunu daha da kötüleştirmiştir. Bu nedenle, OHCHR'nin yıllık raporları, barış anlaşmasından bu yana insan hakları ve uluslararası insancıl hukuk durumunun ulusal düzeyde önemli ölçüde iyileşmesine rağmen, birçok bölgenin bazı alanlarda zor durumlarla karşı karşıya kalmaya devam ettiğini açıklamaktadır. Bazı bölgelerde güç boşlukları, toprak anlaşmazlıkları ve halka yönelik gelişigüzel saldırılar nedeniyle durum daha da kötüleşmiştir.

Santos'un sekiz yıllık başkanlığı sırasında OHCHR yıllık raporlarında endişe verici sayılarda görülmeye devam eden cezasızlık vakalarıyla ilgili büyük endişelerini dile getirmiştir. OHCHR, özellikle 2002 ile 2008 yılları arasında meydana gelen "yanlış pozitif" yargısız infaz vakalarında adli süreçlerin çok yavaş olduğunu ve Başkan Juan Manuel Santos'un ikinci döneminde bu süreçlerin aktif olmadığını açıklığa kavuşturmuştur. Raporda ayrıca hükümetin, sistematik uygulama olarak kabul edilen ve devletin silahlı kuvvetlerindeki üst düzey yetkililerin sorumlu tutulması gereken bu korkunç eylemlerden sorumlu üst düzey yetkilileri bulma konusunda kararlı olmadığı da tespit edilmiştir. Ancak üst düzey güvenlik güçlerinin dahil olduğu davalar engellenmiş ve yavaşlatılmıştır, bu ise yargı sistemlerinin etkisiz kalmasına ve cezasızlıkla sonuçlanmaktadır; bu da ciddi insan hakları ve uluslararası insancıl hukuk ihlallerinin mağdurlarının haklarını doğrudan etkilemektedir.



Bu araştırma sırasında OHCHR'nin yıllık raporlarının farklı hükümetlerin ve silahlı çatışmanın farklı aktörlerinin sunduğu dinamiklere göre geliştiği ortaya konulmuştur. OHCHR yavaş yavaş genişlemiş ve çatışmaların insan haklarını en çok etkilediği stratejik alanlarda alt ofisler oluşturmuştur; insan hakları ve uluslararası insancıl hukuk ihlallerini ilk elden gözlemlemeyi başarmıştır. Aynı şekilde, Ofis devletin dinamikleri içerisinde büyümüş ve Kolombiya'nın farklı devlet kurumlarına insan hakları ve uluslararası insancıl hukuk konularında destek ve tavsiye sağlayan bir kuruluş haline gelmiştir.

OHCHR, çeşitli yardım mekanizmaları sunarak ve insan hakları barış sürecine ilişkin tartışmaları dikkate alarak silahlı çatışmada olumlu bir aktör olarak kendini kanıtlamayı başarmıştır. Aynı zamanda barış anlaşmasının uygulanmasının ülkenin farklı bölgelerindeki insan hakları durumu üzerindeki etkisini analiz ederek barış anlaşmasının bölgelerde uygulanmasıyla da ilgilenmektedir. Benzer şekilde OHCHR'den yıllık raporlarında barış anlaşmasının çeşitli noktalarının uygulanmasına ilişkin özel bir bölüm hazırlaması istenmiştir.

İncelenen döneme ait OHCHR yıllık raporlarının analizine bakıldığında, OHCHR'nin görüşüne göre insan hakları ve uluslararası insancıl hukuk ile ilgili durumun her başkanlık döneminde kademeli olarak iyileştiği sonucuna varılabilir. OHCHR'nin yardım ve işbirliği mekanizmaları aracılığıyla yaptığı çalışmaların yanı sıra hükümete yönelik eleştirileri ve tavsiyeleri, ülkedeki insan hakları ve uluslararası insancıl hukuku durumunun iyileşmesine yardımcı olmuştur.

Ancak OHCHR'nin yıllık raporları, Kolombiya'daki silahlı çatışmalarda insan hakları ve uluslararası insancıl hukuk açısından temel sorunlardan birinin cezasızlık olduğunu ortaya koymaktadır. Cezasızlık incelenen dönem boyunca devam etmiş ve bunun özellikle iki vakada açıkça görüldüğü sonucuna varılmıştır: Bunlardan ilki, silah bırakma süreçlerindeki yasal boşluklardan kaynaklanan, mağdurların adalet, hakikat ve tazminat haklarını tehdit eden ve ciddi insan hakları ihlallerinde risk yaratan cezasızlık olmuştur. Ağır uluslararası insancıl hukuk ve insan hakları ihlalleri faillerinin mevzuattaki boşluklardan yararlanma riski, cezasızlıkla ilgili en büyük sorunlardan biri haline gelen bu suçların bedelini ödemekten kaçınma riskini

yaratmaktadır. İkinci dava, çatışmalarda öldürülen gerilla kılığında masum sivillerin yargısız infazına karışan güvenlik güçleri mensuplarına karşı yürütülen adli işlemlerle ilgilidir. Süreçlerin yavaşlığı ve bu olaylar nedeniyle çok az sayıda üst düzey askeri komutanın adalet önüne çıkarılması da bunu yıllık raporlarda kanıtlamaktadır.

Son olarak hükümet ile FARC gerillaları arasındaki barış anlaşması, ülkedeki insan hakları durumunda olumlu değişikliklere yol açmıştır. Ancak barış süreci devlet için başka sorunlar da ortaya çıkarmıştır; ülkenin çeşitli yerlerinde, özellikle de FARC'ın daha önce mevcut olduğu ve çatışmaların en yoğun olduğu bölgelerde insan hakları durumunu etkilemiştir. Dolayısıyla, barış anlaşmasının FARC tehdidini (Kolombiya'nın en önemli gerilla tehdidi) ortadan kaldırarak insan hakları durumunda ve genel olarak uluslararası insancıl hukukta olumlu değişiklikler yarattığı, ancak yarattığı güç boşluğunun ortaya çıktığı ve diğer yasadışı silahlı aktörler arasında çatışmaya yol açarak ülkenin çeşitli yerlerinde olumsuz sonuçlara yol açtığı sonucuna varılabilir. Son olarak OHCHR, barış anlaşmasının etkili bir şekilde uygulanmasının ülkedeki insan hakları durumunda önemli iyileşmelere yol açacağına kesinlikle inanmaktadır. Ancak o döneme (2017-2018) ilişkin nihai raporlarda uygulamanın yavaş ve etkisiz olduğu, bunun da barış anlaşmasının sürdürülebilirliği açısından büyük riskler oluşturduğu belirtilmiştir.

Sonuç olarak, bu çalışma, OHCHR'nin yıllık raporlarının, Kolombiya'da silahlı çatışmayla bağlantılı olarak insan hakları ve uluslararası insancıl hukukun durumunu etkileyen başlıca konuların tespit etmiştir: Birincisi, analiz dönemi boyunca, özellikle güvenlik güçleri mensupları tarafından işlenen insan hakları ihlalleri ve uluslararası insancıl hukuk ihlallerinde cezasızlık oranının ısrarla yüksek olması ve silah bırakma süreçlerinde cezasızlığa izin verilmesidir. Bu silah bırakma süreçlerinde, mağdurların hakikat, adalet ve onarım haklarının güvence altına alınması ve büyük insan hakları suçları işleyen kişilerin af ve bağışlanmamasının sağlanması için uygun mekanizmaların bulunmadığı görülmüştür.

İkincisi, devlet kurumları arasında daha verimli ve insan hakları ve uluslararası insancıl hukuka ilişkin uluslararası standartlara uygun bir şekilde çalışmak için

koordinasyon ve izleme eksikliği. OHCHR, insan haklarının önlenmesi ve korunmasına yönelik mekanizma ve düzenlemelerin varlığına rağmen, bunların çeşitli durumlarda verimsiz bir şekilde uygulandığını veya sahada önemli bir etkiye sahip olmadığını ve düzenlemelerin varlığına ve bilinmesine rağmen, silahlı çatışma sırasında yürütülen operasyonlarda bunlara uyulmadığını kanıtlamıştır.

Üçüncüsü, yasadışı silahlı gruplar silahlı çatışmalarda insani yükümlülükleri tamamen göz ardı etmiş ve hor görmüştür ve devletin silahlı kuvvetleri, özellikle de ordu, ayrımcılık ilkesini göz ardı ederek, sivilleri gereksiz yere etkileyerek ve onları silahlı çatışmaya dahil ederek uluslararası insancıl hukuku ihlal ederek birçok kez başarısız olmuştur. Dördüncüsü, çatışma insan hakları savunucularına orantısız bir şekilde zarar vermiş, onları Kolombiya'daki silahlı çatışmanın tüm aktörleri tarafından öldürülme, tehdit ve zulüm hedefi haline getirmiş ve kritik çalışmalarını yürütmelerini engellemiştir. Beşincisi, devlet mağdurların adalete erişimi ve tazminat ve toprak iadesi mekanizmaları için yeterli güvence sağlamamıştır ve mağdurlar kendilerini yeniden mağdur eden ve yeni insan hakları ihlallerine yol açan tehdit ve saldırıların hedefi olmuşlardır. Altıncısı, barış anlaşması uygulanmasını sağlayacak gerekli mekanizmalardan yoksundu, bu da uygulamanın yapıldığı bölgelerde riskler yarattı ve özellikle silah bırakma bölgelerinde ve daha önce FARC tarafından kontrol edilen bölgelerde insan haklarını baltalayan yeni sorunlara yol açtı.

Son olarak bu araştırma, OHCHR yıllık raporlarının Kolombiya'da silahlı çatışmayla bağlantılı olarak insan hakları ve uluslararası insancıl hukukun durumuna ilişkin bir perspektif sunduğu ve yıllık raporların yıllar içindeki gelişiminin silahlı çatışmadaki dönüşümlerin ve özellikle de Uribe Velez ve Santos'un başkanlık dönemlerinde çatışmayla ilgili politikadaki değişikliklerin bir yansımasına karşılık geldiği sonucuna varmaktadır. Benzer şekilde, hükümet ve FARC gerillaları arasında varılan barış anlaşması, anlaşmanın çeşitli önemli noktalarının uygulanmasını izleme görevini üstlenen ve çalışmalarının çoğunu, ülkedeki insan hakları durumunu önemli ölçüde iyileştirecek olan anlaşmaya uyumu sağlamada devlet kurumlarına yardımcı olmak için uygulamada tespit edilen eksiklikleri ve sorunları değerlendirmeye odaklayan OHCHR'de bir değişime neden olmuştur.