



## **Submission to the UN Committee on Economic, Social and Cultural Rights in Advance of its Review on Colombia**

**August 2017**

We write in advance of the United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) review of Colombia to share a range of concerns and research findings that relate to the country’s compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (“the Covenant”).

Human Rights Watch has extensively documented restrictions on economic, social, and cultural rights in Colombia, including on land restitution, malnutrition, restrictions on access to education, and killings of activists. This submission focuses on three areas of concern: (1) the malnutrition crisis affecting the Wayuu indigenous people in the province of La Guajira; (2) killings of activists in the country; (3) child recruitment and interference with education.

*For additional information about our work on Colombia, please see Human Rights Watch’s Colombia page: <https://www.hrw.org/americas/colombia>*

### **The humanitarian crisis of the Wayuu indigenous people (arts. 2(1), 11, and 12; paragraphs 7 and 8 in the lists of issues)**

For several years, the Wayuu indigenous people in the eastern province of La Guajira have suffered from high death rates due to malnutrition, particularly among children under 5 years old.

In December 2015, the Inter-American Commission of Human Rights (IACHR) requested the Colombian government to take precautionary measures, including immediate ones, to address the “emergency” of Wayuu children in Uribia, Manaure, Riohacha, and Maicao, four municipalities in La Guajira.<sup>1</sup> Following the IACHR ruling, Colombian high courts ordered the government to address the situation in multiple rulings.<sup>2</sup> In January 2017 the IACHR expanded the measures to cover pregnant women and those breastfeeding their babies.<sup>3</sup>

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<sup>1</sup> Inter-American Commission on Human Rights, “PM 51/15 – Children and adolescents of the communities of Uribia, Manaure, Riohacha and Maicao of the Wayúu people, in the department of the Guajira, Colombia,” <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC51-15-Es.pdf> (accessed July 27, 2017).

<sup>2</sup> See, e.g., Supreme Court of Colombia, Criminal Chamber, Judge Eugenio Fernandez Carlier, Case no. STP12990-2016, September 14, 2016, <http://www.cortesuprema.gov.co/corte/wp-content/uploads/relatorias/tutelas/B%20NOV2016/STP12990-2016.doc> (accessed July 27, 2017); Constitutional Court of Colombia, ruling T466/16, August 30, 2016, <http://www.corteconstitucional.gov.co/relatoria/2016/t-466-16.htm> (accessed July 27, 2017).

<sup>3</sup> Inter-American Commission on Human Rights, “PM 51/15 – Pregnant and Nursing Women of the Wayúu Indigenous Community, Colombia,” January 26, 2017, <http://www.oas.org/es/cidh/decisiones/pdf/2017/3-17MC51-15-CO.pdf> (accessed July 27, 2017).

On visits to La Guajira in July 2016 and June 2017, Human Rights Watch documented the crisis and shortcomings in the governments' response. Our research indicates that the crisis is caused by extremely limited access to food and water compounded with high levels of poverty and equally limited access to basic services. According to Human Rights Watch interviews with local prosecutors, corruption and mismanagement plays a significant role in the limited public services offered in the province, including on water.<sup>4</sup> Wayuu people's struggle with food insecurity is due to high levels of poverty preventing them from purchasing sufficient quantities of food, as well as limited access to water restricting the Wayuu from growing enough food to augment the shortfall.<sup>5</sup> Limitations in access to water for hygiene also affect peoples' health, leading to diarrhea and other sickness which could further foster malnutrition.<sup>6</sup> Wayuu leaders also attribute partial blame for the crisis to the control exercised by former paramilitary groups over more profitable sectors of the local economy, as well as restrictions in food that can be obtained from Venezuela due to the humanitarian crisis in that country, both driving up the cost of food.<sup>7</sup>

On February 21, 2017, the government of Colombia announced a plan to intervene to help provide water and health services in La Guajira.<sup>8</sup> But malnutrition deaths continue to be high. According to official statistics, 23 children under age 5 died of malnutrition in La Guajira during the first half of 2017.<sup>9</sup> While this represents a significant decrease compared to the 38 cases reported by the government in the first six months of 2016, it is an increase compared to the average deaths in the first half of the previous three years and roughly doubles the cases in 2015, when the IACHR requested the precautionary measures.<sup>10</sup>

The Wayuu people are disproportionately affected by malnutrition. Between 2014 and 2016, deaths of indigenous children comprised over 85% of all malnutrition deaths in La Guajira, although, according to the latest official figures available, from 2014, Wayuu people represent 38% of the population in that

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<sup>4</sup> Human Rights Watch interview with prosecutors in La Guajira, June 2017. Colombia's National Institute of Family Wellbeing, "Segunda fase del proceso de identificación, caracterización nutricional y sociofamiliar de los niños, niñas, adolescentes y sus familias, en los municipios de Uribia, Manaure y Maicao del departamento de La Guajira: informe final" (Second phase of process of identification and characterization of nutritional needs of children, adolescents and their families, in the municipalities of Uribia, Manaure, and Maicao y the province of La Guajira: Final report"), December 2015 (on file with Human Rights Watch).

<sup>5</sup> Human Rights Watch interview with local residents in La Guajira, July 2016 and June 2017.

<sup>6</sup> Human Rights Watch interview with local residents in La Guajira, July 2016 and June 2017.

<sup>7</sup> Human Rights Watch interview with local residents in La Guajira, July 2016 and June 2017.

<sup>8</sup> See "Gobierno interviene servicios de salud, educación y agua en La Guajira" ("Government intervenes services of health, education, and water in La Guajira"), February 21, 2017, National Department of Planning, <https://www.dnp.gov.co/Paginas/Gobierno-interviene-servicios-de-salud,-educaci%C3%B3n-y-agua-en-La-Guajira.aspx> (accessed July 27, 2017).

<sup>9</sup> See Tweet by Miguel Pulido (official of the Colombian Health Ministry), July 15, 2017, <https://twitter.com/miguelpulido/status/886305026368524288> (accessed July 27, 2017).

<sup>10</sup> According to Colombia's National Institute for Health, 16 children under five died of malnutrition in the first half of 2014 in La Guajira; 11, in the first half of 2015; 38, in the first half of 2016; and 23, in the first half of 2017. See Tweet by Miguel Pulido (official of the Colombian Health Ministry), July 15, 2017, <https://twitter.com/miguelpulido/status/886305026368524288> (accessed July 27, 2017); "Vigilancia rutinaria por evento municipal a semana 52 2016" ("Routine monitoring by event in every municipality as of week 52, 2016"), National Institute of Health, <http://www.ins.gov.co/lineas-de-accion/Subdireccion-Vigilancia/sivigila/Estadsticas%20SIVIGILA/Vigilancia%20Rutinaria%20por%20evento%20Municipal%20a%20semana%2052%202016.xlsx> (accessed July 27, 2017); "Vigilancia rutinaria por evento municipal 2015" ("Routine monitoring by event in every municipality in 2015"), National Institute of Health, <http://www.ins.gov.co/lineas-de-accion/Subdireccion-Vigilancia/sivigila/Estadsticas%20SIVIGILA/Vigilancia%20Rutinaria%20por%20evento%20Municipal%202015.xlsx> (accessed July 27, 2017); "Vigilancia rutinaria por evento municipal 2014" ("Routine monitoring by event in every municipality in 2014"), National Institute of Health, <http://www.ins.gov.co/lineas-de-accion/Subdireccion-Vigilancia/sivigila/Estadsticas%20SIVIGILA/Vigilancia%20Rutinaria%20por%20evento%20Municipal%202014.xlsx> (accessed July 27, 2017);

province.<sup>11</sup> Nationwide, Wayuu children dying of malnutrition amount to roughly 12% of the deaths of children under 5, although Wayuu people represent less than 1% of the national population, according to the latest available figures, from 2014.<sup>12</sup>

Limited access to safe water has forced Wayuu people to rely on unsafe water sources, including *jagüey*s –unprotected dug wells where Wayuu people traditionally gather rain water–and wells and watermills with salty water, for consumption, cooking, hygiene, laundry and washing.<sup>13</sup> Reliance on these sources of water have led to communicable diseases, including diarrhea which further aggravates malnutrition.<sup>14</sup> Colombia’s National Institute for Health told Human Rights Watch that 11 indigenous children died of acute diarrhea in 2015 and 21 in 2016.<sup>15</sup>

Human Rights Watch asks the Committee to call on the Colombian government to:

- Urgently put in place measures to ensure that Wayuu people in La Guajira are able to secure sufficient quantities of water and food; and
- Prioritize criminal and disciplinary investigations on cases of corruption in La Guajira, particularly, in those affecting the public supply of water and food.

### **Killings of activists (arts. 6 and 7; paragraph 2 in the list of issues)**

Reports of killings of community activists continue to be high in Colombia. The office of the UN High Commissioner on Human Rights in Colombia reported that 60 leading rights defenders were killed in 2016, a significant increase from the 41 it had documented in 2015.<sup>16</sup> The office of the UN High Commissioner on Human Rights in Colombia reported 29 cases this year as of July 2017.<sup>17</sup>

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<sup>11</sup> E-mail from an official within Colombia’s National Institute of Health. While the government does not have specific statistics on how many of the indigenous children who died from malnutrition belonged to Wayuu communities, the number of cases reported by Wayuu leaders and the fact that around 90% of the indigenous people in La Guajira are Wayuu suggest that the clear majority of the indigenous children dying in La Guajira belong to Wayuu communities. The Wayuu population could be significantly higher since a portion of the Wayuu people in La Guajira has not been registered. “Población – La Guajira” (“Population – La Guajira”), National Service of Cultural Information, no date, <http://www.sinic.gov.co/SINIC/ColombiaCultural/ColCulturalBusca.aspx?AREID=3&SECID=8&IdDep=44&COLTEM=216> (accessed July 27, 2017).

<sup>12</sup> See, e.g., Inspector-General’s Office, “La Guajira: pueblo wayuu, con hambre de dignidad, sed de justicia y otras necesidades insatisfechas” (“La Guajira: the Wayuu people, with hunger for dignity, thirst for justice, and other basic needs unsatisfied”), June 2016, [https://www.procuraduria.gov.co/portal/media/file/Informe\(1\).pdf](https://www.procuraduria.gov.co/portal/media/file/Informe(1).pdf) (accessed July 27, 2017). Our analysis assumes that Wayuu malnutrition deaths in La Guajira keep consistency with population demographics.

<sup>13</sup> Human Rights Watch interviews with local residents and doctors, July 2016 and June 2017; Colombia’s National Institute of Family Wellbeing, “Segunda fase del proceso de identificación, caracterización nutricional y sociofamiliar de los niños, niñas, adolescentes y sus familias, en los municipios de Uribia, Manaure y Maicao del departamento de La Guajira: informe final” (Second phase of process of identification and characterization of nutritional needs of children, adolescents and their families, in the municipalities of Uribia, Manaure, and Maicao y the province of La Guajira: Final report”), December 2015 (on file with Human Rights Watch).

<sup>14</sup> Human Rights Watch interviews with local residents and doctors, July 2016 and June 2017.

<sup>15</sup> E-mail to Human Rights Watch from National Institute of Health official, March 3, 2017.

<sup>16</sup> United Nations High Commissioner for Human Rights, “Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia,” March 14, 2017, [http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/A\\_HRC\\_34\\_3\\_Add%203\\_AUV.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/A_HRC_34_3_Add%203_AUV.pdf) (accessed July 27, 2017), para. 54; United Nations High Commissioner for Human Rights, “Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia,” March 15, 2016, [http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe\\_anual\\_2015.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe_anual_2015.pdf) (accessed July 27, 2017), para. 79; Human Rights Watch interview with official of United Nations High Commissioner for Human Rights, July 27, 2017.

Numerous abuses against rights activists have been committed in areas where FARC used to have military presence. As FARC demobilizes, crime and activities by other armed groups have surged in many of these areas, especially where illegal mining and drug trafficking are profitable. Among the municipalities that had FARC presence and with high levels of abuses against activists are Tumaco, in Nariño; El Tambo, in Cauca; and El Bagre, in Antioquia. According to the office of the UN High Commissioner on Human Rights in Colombia, more than 60 percent of the killings they reported in 2017 took place in areas where FARC previously had a military presence.<sup>18</sup>

Killings also frequently occur in areas where illegal economic activities, such as mining and drug production, are high. According to the office of the UN High Commissioner on Human Rights in Colombia, more than 90 percent of the killings they reported in 2016 and 2017 took place in such areas.<sup>19</sup>

Under the Covenant, Colombia is obliged to protect the right to work and the right to just and favourable conditions at work, including for human rights defenders and other social activists. In its general committee No. 23, the Committee recalled that “human rights defenders should be able to contribute to the full realization of Covenant rights for all, free from any form of harassment. State parties should respect, protect and promote the work of human rights defenders and other civil society actors towards the realization of the right to just and favorable conditions of work.”<sup>20</sup> More recently, in October 2016, the Committee issued a statement on Human Rights Defenders and Economic, Social, and Cultural Rights, where it noted that it “consider[ed] any threat or violence against human rights defenders to constitute violations of States’ obligations towards the realization of Covenant rights since human rights defenders also contribute through their work to the fulfilment of Covenant rights.”<sup>21</sup>

Human Rights Watch asks the Committee to call on the Colombian government to:

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Similarly, Somos Defensores, one of Colombia’s leading groups reporting abuses against activists, reported 80 killings in 2016 and 63 in 2015. Somos Defensores, “Informe anual 2015: El cambio,” (“Annual report: the change”) 2016, <https://www.somosdefensores.org/attachments/article/137/el-cambio-informe-somosdefensores-2015.pdf> (accessed July 27, 2017); Somos Defensores, “Informe anual 2016: contra las cuerdas,” (“Annual report 2016: Against the Wall”), 2017, <https://www.somosdefensores.org/attachments/article/144/Contra%20las%20cuerdas.%20Informe%20Anual%20Espan%CC%83ol%2020217227p.pdf> (accessed July 27, 2017). The office of the UN High Commissioner on Human Rights in Colombia considers anyone who individually or collectively seeks to promote or protect rights, including workers’ rights or social rights, to be a rights defender. However, both organizations only report killings of defenders they deem to have a leading role. Neither organization determines whether the murder was a response to the activist’s work, which they leave for Colombian authorities to determine.

<sup>17</sup> Human Rights Watch interview with official of United Nations High Commissioner for Human Rights, July 27, 2017.

<sup>18</sup> See, e.g., Todd Howland, “Como prevenir el asesinato de defensores de derechos humanos” (“How to prevent the killing of human rights defenders”), *Semana*, June 30, 2017, <http://www.semana.com/opinion/articulo/prevenir-el-asesinato-de-defensores-de-derechos-humanos/530592> (accessed July 27, 2017).

<sup>19</sup> Todd Howland, “Como prevenir el asesinato de defensores de derechos humanos” (“How to prevent the killing of human rights defenders”), *Semana*, June 30, 2017, <http://www.semana.com/opinion/articulo/prevenir-el-asesinato-de-defensores-de-derechos-humanos/530592> (accessed July 27, 2017).

<sup>20</sup> Committee on Economic, Social and Cultural Rights, “General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights),” April 27, 2016, U.N. Doc. E/C.12/GC/23, para. 49.

<sup>21</sup> Committee on Economic, Social and Cultural Rights, “Human Rights Defenders and Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights,” October 7, 2016, U.N. Doc. E/C.12/2016/2, [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1\\_Global/E\\_C-12\\_2016\\_2\\_8097\\_E.docx](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/E_C-12_2016_2_8097_E.docx) (accessed July 27, 2017).

- Put in place measures to increase the presence of the government institutions in areas formerly controlled by the FARC, including to ensure justice and security;
- Prioritize criminal investigations on homicides of activists, human rights defenders, and other social leaders;
- Continue to provide protection measures to activists in risk;
- Put in place measures to ensure additional measures of protection in areas where the Early Warning System in the human ombudsman office identifies potential risks and threats to activists.

### **Child recruitment and Interference with Right to Education (art. 13; paragraphs 2 and 28 in the list of issues)**

Human Rights Watch has extensively documented child recruitment, attacks on students, teachers, and schools, and the military use of schools in Colombia.

In 2014 and 2015, Human Rights Watch documented multiple cases of child recruitment by paramilitary successor groups in the largely Afro-Colombian city of Buenaventura.<sup>22</sup> Residents and community leaders throughout the city told Human Rights Watch that many children as young as 10 were active in the paramilitary successor groups operating in their neighborhoods.

In 2014, Human Rights Watch also documented child recruitment by Revolutionary Armed Forces of Colombia (FARC) guerrillas and paramilitary successor groups in the Afro-Colombian city of Tumaco, Nariño, and the use of schools for military action.<sup>23</sup> One day in mid-2014, for example, the FARC placed explosives roughly 10 meters from a village school's entrance when the military was in town, forcing cancellation of classes for the day, residents said. The FARC has also held meetings with students and teachers at the same school.<sup>24</sup>

More recently, in 2017, we documented extended child recruitment and restrictions in education in indigenous Wounaan and Afro-Colombian communities in the province of Chocó by members of the Gaitanist Self-Defenses of Colombia (AGC) and National Liberation Army (ELN) guerrillas.<sup>25</sup> We also received credible allegations that members of the AGC coerced girls as young as 12 to be their sexual partners. In one Afro-Colombian community, two residents said that at least five girls under 18 have become pregnant by AGC members in recent years.<sup>26</sup>

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<sup>22</sup> Human Rights Watch, *The Crisis in Buenaventura: Disappearances, Dismemberment, and Displacement in Colombia's Main Pacific Port*, March 20, 2014, <https://www.hrw.org/report/2014/03/20/crisis-buenaventura/disappearances-dismemberment-and-displacement-colombias-main>; Human Rights Watch, "Colombia: New Killings, Disappearances in Pacific Port," March 4, 2015, <https://www.hrw.org/news/2015/03/04/colombia-new-killings-disappearances-pacific-port>.

<sup>23</sup> Human Rights Watch, "Colombia: FARC Battering Afro-Colombian Areas," July 30, 2014, <https://www.hrw.org/news/2014/07/30/colombia-farc-battering-afro-colombian-areas>

<sup>24</sup> Human Rights Watch, "Colombia: FARC Battering Afro-Colombian Areas," July 30, 2014, <https://www.hrw.org/news/2014/07/30/colombia-farc-battering-afro-colombian-areas>

<sup>25</sup> Human Rights Watch, "Colombia: Armed Groups Oppress Riverside Communities," June 7, 2017, <https://www.hrw.org/news/2017/06/07/colombia-armed-groups-oppress-riverside-communities>

<sup>26</sup> Human Rights Watch, "Colombia: Armed Groups Oppress Riverside Communities," June 7, 2017, <https://www.hrw.org/news/2017/06/07/colombia-armed-groups-oppress-riverside-communities>

Armed groups in Choco also disrupt education through firefights and by seizing schools for use by fighters.<sup>27</sup> In several communities, leaders and teachers said that classes had been interrupted in 2016 and 2017, sometimes for weeks, because children and teachers feared abuses or getting caught in confrontations, which have at times taken place near schools. On February 19, 2017, for example, the Colombian navy engaged in a shootout with the AGC for 45 minutes behind the school that serves the Afro-Colombian community of Carrá, residents told Human Rights Watch.

Armed groups have at times used local schools as military bases or taken up positions in schools during hostilities. Around August 2016, ELN guerrillas temporarily occupied a Wounaan village school and threatened the teacher, an aid group that works in the area told Human Rights Watch. A teacher in an Afro-Colombian community said that AGC members, during a firefight with the Colombian army around September 2016, took cover in another school while classes were in session.

Human Rights Watch asks the Committee to call on the Colombian government to:

- Ensure that, as part of its demobilization, the FARC releases all the children in their ranks through a process that ensures that they are transferred to appropriate civilian rehabilitation and reintegration programs that include educational and vocational training as well as necessary counseling, in accordance with the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“Paris Principles”) of 2007;
- Put measures in place to ensure that the ELN guerrillas and paramilitary successor groups end all recruitment and use of children under 18 and release the children in their ranks, including by prioritizing this demand in the ongoing peace talks with the ELN;
- Put measures in place to ensure that the ELN guerrillas and paramilitary successor groups cease all military use of schools and school compounds;
- Endorse the Safe Schools Declaration, thereby endorsing and committing to use the Guidelines for Protecting Schools and Universities from Military Use in Armed Conflict;
- Ensure that child recruitment is adequately investigated, prosecuted, and punished, including in cases before the Special Jurisdiction for Peace, the judicial system created as part of the peace talks with the FARC.

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<sup>27</sup> Human Rights Watch, “Colombia: Armed Groups Oppress Riverside Communities,” June 7, 2017, <https://www.hrw.org/news/2017/06/07/colombia-armed-groups-oppress-riverside-communities>