

An illustration featuring several hands of different skin tones and styles (some with jewelry like a bracelet) holding up strings of balloons. The balloons are of various sizes and shades of gray, some containing abstract patterns. In the background, a large, faint globe is visible. The overall style is minimalist and symbolic.

A LOOK AT WOMEN'S RIGHTS IN COLOMBIA



A GLANCE AT WOMEN'S RIGHTS IN COLOMBIA

ALTERNATE REPORT TO THE CEDAW COMMITTEE

2013

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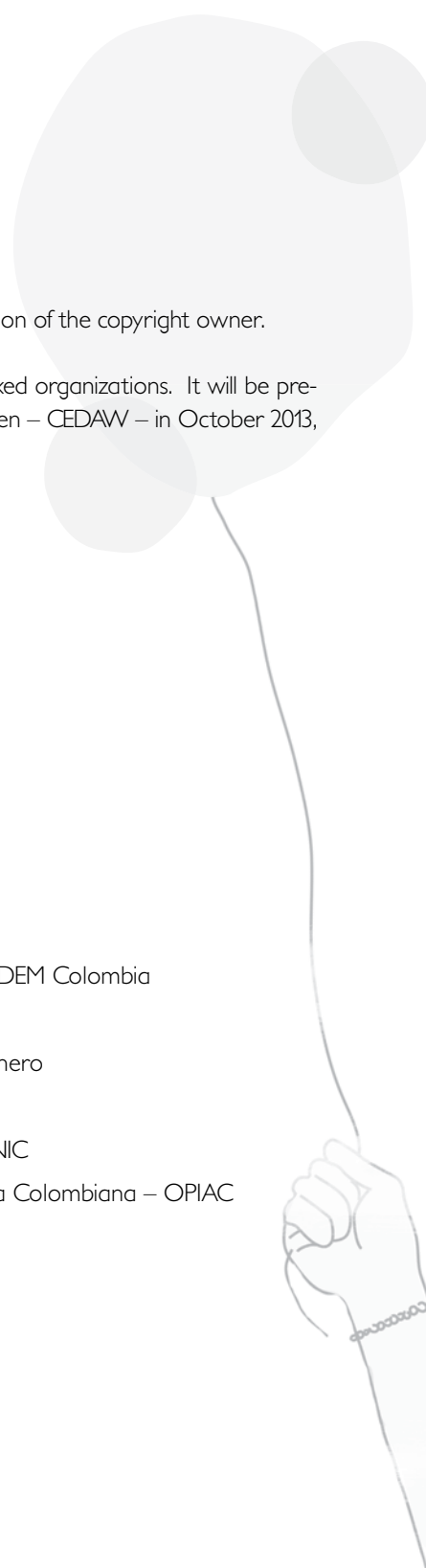
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This report is the result of the work carried out by an alliance of networks and of women's and mixed organizations. It will be presented at the 56th Session of the UN Committee for the Elimination of Discrimination against Women – CEDAW – in October 2013, where the seventh and eighth periodic reports from Colombia will be examined.

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- Asociación Colectivo Mujeres al Derecho
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- Centro de Investigación y Educación Popular / Programa por la Paz
- Colombia Diversa
- Comisión Colombiana de Juristas - CCJ
- Comité de América Latina y del Caribe para la Defensa de los Derechos de la Mujer – CLADEM Colombia
- Conferencia Nacional de Organizaciones Afrocolombianas – CNOA
- Corporación Humanas Colombia – Centro Regional de Derechos Humanos y Justicia de Género
- Corporación Sisma Mujer
- Consejería Mujer Familia y Generación – Organización Nacional Indígena de Colombia – ONIC
- Coordinación Mujer, Familia y Niñez – Organización de los Pueblos Indígenas de la Amazonía Colombiana – OPIAC
- ENI Colombia
- Iglesia Evangélica Luterana de Colombia – IELCO
- Instituto Latinoamericano para una Sociedad y un Derecho Alternativo – ILSA
- La Coalición 1325
- La Mesa Por la Vida y la Salud de las Mujeres
- Liga Internacional de Mujeres por la Paz y la Libertad – LIMPAL Colombia
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I. INTRODUCTION

In 2007, the CEDAW Committee examined the situation of women in Colombia. In 2010, the Independent Expert on minority issues visited the country, as did the Secretary General's Special Representative on sexual violence in 2012. In April 2013, Colombia took part in the Universal Periodic Review before the U.N. Human Rights Council. On each of these occasions, the State and civil society put forward achievements, challenges, and concerns with regard to discrimination and violence against women.

Between 2007 and 2013, important events left their mark on the country's reality: the difficulties in the investigations of crimes committed by demobilized paramilitaries, the passing and implementation of the Victims' and Land Restitution Law, the beginning of peace talks with the FARC guerrilla, and, finally, the passing and entry into force of several free-trade agreements, to mention just a few. Each of these events has had a significant impact on the lives of women in Colombia.

This introduction seeks to call the Committee's attention to three aspects, characteristic of Colombian reality, that affect the lives of women, and to which the present report will make reference: First, that Colombia is a country with abundant laws, but some of them are poorly implemented. Second, that public policies in Colombia are often the result of legal challenges by civil society organizations resolved through the rights-based positions of the high courts. Third, that profound contradictions exist among the branches of public power, which means that, in some cases, each authority has a different position with respect to issues of crucial importance to women's lives.

a. Regarding legislation: Colombia remains a country of laws. Between 2007 and 2013, the following legal instruments were passed, among others: The Victims' and Land Restitution Law (2011), the constitutional reform regarding Military Criminal Justice (2012-2013), the reform to the "Justice and Peace" Law (2012), and the Law for the Sensibilization, Prevention, and Sanction of Forms of Violence and Discrimination against Women (2008), just to mention a few. The abundance of norms that address each of the problems confronting Colombian women does not have the impact it should. Although recognition must be given the State for its efforts to put into operation institutions and mechanisms to implement these laws, such efforts remain insufficient. The absence of political will, of funds, and of interinstitutional coordination, in addition to the persistence of the armed conflict in many cases, leads to a reality that does not reflect what the norms establish.

b. Regarding public policies and civil society: It was thanks to civil society actions before the Constitutional Court that this tribunal issued an important ruling on displaced persons (T-025) and a judicial decree on displaced women in particular (092). This judicial decree recognized the impact of displacement on women and ordered the State to put into place different programs to meet their needs. Among other issues, the judicial decree referred to sexual violence in the armed conflict and has given rise to important, although still insufficient, progress on the matter.

The possibility of having legal access to voluntary termination of pregnancy in three specific circumstances is also the result of civil society efforts before the Constitutional Court. The public policies that have been implemented in this regard are the corollary of this citizen initiative, and not of the will of the government or of parliament.

c. Regarding the deep contradictions among the branches of power: Voluntary termination of pregnancy is one example of such contradictions. The Constitutional Court's decision to protect women in three special cases allowing an abortion to take place has been rejected openly and publicly by the Inspector General, representative of the Public Ministry (the Inspector General's Office is not part of the three powers since it is a control organ). His constant opposition to the Constitutional Court's decision continues to put women's lives at risk when they require access to voluntary termination of pregnancy.

What has occurred regarding same-sex marriage is further evidence of such contradictions: The legislative power refuses to legislate on the matter; the judicial power demands legislation; and the Inspector General's Office is opposed to the Constitutional Court's decision to allow such marriages to take place and announces that public servants who formalize such unions will be investigated.

In this context, Colombia's women continue to face various forms of discrimination, violence and poverty, but no official, consolidated, trustworthy figures are available regarding their situation. In the cities and the countryside, the rights of women of different social classes, ethnic groups, age groups, and capacities are violated. The armed conflict exacerbates this situation; and the lack of women representatives at the negotiations being carried out since late 2012 between the government and the FARC is yet another source of concern.

II. WOMEN'S RIGHTS

1. The right to live a life free of violence

Although it is evident that the Colombian State has made progress regarding legislation to address the multiple violences against women, a wide gap remains between the law and its application and implementation. The Colombian State continues to ignore the CEDAW Committee's 2007 recommendation urging the State Party to confront the underlying causes of violence against women and improve access by the victims to justice and to protection programs¹ in order to advance toward the eradication of all forms of violence against women based on their sex.

In its recommendations to the Colombian State in 2007, the CEDAW Committee expressed its concern regarding the lack of information systems that account for the general climate of violence against women in the country². In the State's report to the Committee, the findings are laid out that were arrived at through new information systems, with figures on violences against women that show an increase in all types of violence. According to the report, the causes of the increase are strengthened institutions better able to produce information and indicators, and a rise in complaints by the women themselves.³ However, these two reasons are insufficient in order to explain the structural causes of the upsurge in violences against women. It is not possible to determine the reason for the upturn, nor to dismiss as a cause a possible rise in aggressions. It is a topic in which huge information gaps persist; and in spite of the fact that the Colombian State is compelled to investigate exhaustively and impartially the reasons for the increase, no reliable information is available. To be ignorant of the causes of the increase in the figures on violence against women shows a lack of due diligence on the part of the State when it comes to the structural investigation of the issue.

The situation of women deteriorates as a result of the internal armed conflict in the country; that is the case of indigenous, Afro-Colombian or lesbian women, given the double or triple discrimination against them. As to peasant women, the discrimination and disregard for their historic role in the agrarian economy and in the struggle for land lead to an intensification of the violations and exclusion in a context characterized by armed conflict, such as Colombia.⁴ In addition, the country is not equipped with reliable systems of information to give a proper account of their living conditions.

In the context of the armed conflict, the many human rights violations and breaches of international humanitarian law, forced internal displacement, and sexual violence remain the most alarming crimes for women. According to official figures, between 1997 and May of 2011, the armed conflict left 3.7 million displaced persons, of which 51% are women.⁵ However, according to the most recent report by the Internal Displacement Monitoring Centre (IDMC), with seat in Geneva, the number of displaced persons in Colombia adds up to between 4.9 and 5.5 million persons.⁶ Nearly 80% of all internally displaced persons in Colombia are women, girls, and boys. According to the seventh report by the Commission for Monitoring Public Policy on Forced Displacement, women head 43% of the displaced families.⁷

Between 2002 and 2011, 14,630 assassinations of women were reported, simply for being women in Colombia.⁸

1 Observaciones finales del Comité para la Eliminación de la Discriminación contra la Mujer: Colombia 2007, **CEDAW/C/SR.770 (A yB)**

2 *Ibid.*

3 VII Y VIII Informes Combinado del Estado Colombiano sobre el Cumplimiento de la Convención Para La Eliminación de todas las formas de Discriminación contra La Mujer, Julio de 2011, Publicado En *Cedaw/C/Col/7-8*, Noviembre De 2011. pág 31.

4 **Colectivo Mujeres al Derecho**. Il Informe sobre la situación de mujeres víctimas del conflicto armado en la región Caribe: Departamentos del Magdalena y el Atlántico, 2009.

5 Departamento para la Prosperidad Social, Unidad de Atención a Víctimas, Estadísticas de la población desplazada, *vínculo en línea*: <http://www.dps.gov.co/contenido/contenido.aspx?catID=295&conID=556&pagID=838>

6 *Internal Displacement Monitoring Centre (IDMC)*, Global Overview 2012, abril 2013, *vínculo en línea*: [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/DB8A259305B071A8C1257B5C00268DDC/\\$file/global-overview-2012.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/DB8A259305B071A8C1257B5C00268DDC/$file/global-overview-2012.pdf)

7 **ACNUR**, Violencia de género y mujeres desplazadas, 2009, *Vínculo en línea*: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/7269>

8 *Mesa Nacional de Seguimiento al Auto 092 de 2008*, Respuesta a los informes del gobierno nacional a la Corte Constitucional, de marzo 16, julio 1 y noviembre 8 de 2011.

1.1. Sexual violence against women

a. Sexual violence in daily life

Sexual violence in general, and not only in the context of the armed conflict, has seen a considerable increase, about which the State has acknowledged that it is not exclusively due to an increase in complaints.⁹ The National Institute for Legal Medicine and Forensic Science (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF, in Spanish) reported that the 2011 rate was 49 cases for every 100,000 inhabitants, making it “the highest of the last decade”¹⁰

Sexual Violence According to Sex (2010- 2011)

Year	Men		Women		Total
	Number	%	Number	%	
2010	3,226	16%	16,916	84%	20,142
2011	3,615	16%	18,982	84%	22,597
Total	6,841	16%	35,898	84%	42,739

Source: Drawn up by Corporación Sisma Mujer on the basis of information obtained from SIAVAC-DRIP, National Institute for Legal Medicine and Forensic Science (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF), *Revistas Forensis 2010 – 2011*. Available at: <http://www.medicinalegal.gov.co/index.php/estadisticas/forensis>

During the years 2010 and 2011, INMLCF carried out 42,739 specialized medical examinations for cases of sexual aggression against women and men. Women were victims in 84% of the cases against 16% of men, which represents a man-woman ratio of 1 to 5. In the period studied (2010 and 2011), the cases of sexual violence against women that gave rise to INMLCF specialized examinations were 16,916 in 2010 and 18,982 in 2011, which means that approximately 1,496 women were victims of that crime per month – that is, 50 women every day and more than two every hour.¹¹

In order to understand this situation, the INMLCF invites consideration “(...) of programs to prevent sexual violence and the need to carry out research that measures, or makes it possible to understand adequately the effects of these programs, on the prevalence of sexual violence.”

In 2011, the Institute reported 94 medical-legal examinations for sexual crimes whose alleged perpetrators were members of combatant groups.¹² In 81 cases

(86,17%) the victim was a woman. Of these, 58,02% were attributed to the public security forces, 27,16% to paramilitary groups, and 14,81% to guerrilla groups.¹³

9 Quintero Benavides Alexandra, “Derechos en femenino, ¿hacia un real camino a la igualdad?” *VI informe de derechos humanos de las mujeres de la Red Nacional de Mujeres 2010-2012, Corporación Sisma Mujer, Impresión Nomos, julio de 2013, pág. 51.*

10 Corte Constitucional de Colombia. *Relatoría. Auto 092 de 2008*. En: <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>

11 Quintero Benavides Alexandra, *Derechos en femenino... Ob Cit pág. 53*

12 Instituto Nacional de Medicina Legal y Ciencias Forenses (INMLCF), *Forensis 2011, cuadro 3, pág. 215*. See: http://www.medicinalegal.gov.co/index.php?option=com_content&view=article&id=193:forensis-is-2011&catid=19:forensis&Itemid=154
Instituto Nacional de Medicina Legal y Ciencias Forenses (INMLCF), *Forensis 2011, citado, cuadro 3. 215*. See: http://www.medicinalegal.gov.co/index.php?option=com_content&view=article&id=193:forensis-is-2011&catid=19:forensis&Itemid=154

13 Percentages taken from the Report to the Universal Periodic Review, September 2012. *Situación de derechos humanos y derecho humanitario en Colombia 2008-2012*. In: http://coljuristas.org/documentos/libros_e_informes/examen_periodico_universal_2012.html

b. Sexual violence in the context of the armed conflict

Sexual violence against women remains a routine, widespread, systematic, and invisible practice in the context of the armed conflict,¹⁴ one in which all combatant groups take part. The rate of impunity regarding these crimes remains at 98%, in addition to the high percentage of underregistration, the invisibility of these crimes, and the constant fear of reporting them.

In spite of the many recommendations addressed to the Colombian State by national and international human rights defense and protection bodies¹⁵ to adopt protective measures for women, this crime remains not only a weapon of war in the armed conflict but also an instrument for the control of the bodies and lives of women.

The State continues to disregard the recommendations with respect to systems for standardizing variables and indicators for this crime; deficiencies abound in the compilation, analysis, and production of rigorous, up-to-date, and reliable quantitative and qualitative information on sexual violence in the context of the armed conflict.¹⁶

Likewise, the State fails to comply with Law 1257/08 regarding the need for a differential system of protection for victims, institutional adjustments, allotment of resources, offer of services, and an adequate articulation among institutions, so that the women victims (and their families) can have access to judicial proceedings as well as to health services, food, housing, and psychosocial care.

The right of victims of sexual violence to reparation has not materialized yet in terms of resources, budgets or infrastructure,¹⁷ although the Victims' Law (Law 1448 of 2011) represents progress. Regarding Sentence C-355 of 2006 on partial decriminalization of abortion, the State continues blocking women's right to an abortion in cases "in which the pregnancy is the result of rape", arguing for conscientious objection on the part of institutions, and demanding months of paperwork from the victims so the period approved for the termination of the pregnancy will run out.

It is striking that members of the State security forces show the highest number of cases of sexual violence in the context of the armed conflict, and that the majority of the victims of this type of violence are between 0 and 17 years of age, as can be observed in the INMLCF 2011 report, according to which 85% of the specialized medical examinations for cases of sexual aggression carried out on female subjects belong to girls and adolescents between 5 and 17 years of age, with the highest-ranking age group between 10 and 14 years.¹⁸

In this regard, the National Indigenous Organization of Colombia (ONIC) reports a high impact of armed conflict on indigenous women, whose situation is aggravated by the discrimination they suffer for being women, indigenous, and displaced. Between 2003 and 2011, 13 cases of sexual violence against indigenous women were reported in the context of the conflict (the greater part of the victims was between 11 and 16 years old). In six cases, the alleged aggressors were members of the military and troops belonging to the national army.¹⁹

¹⁴ *It was recognized as such by the Constitutional Court in its Judicial Decree 092 of 2008*

¹⁵ *See Report by the Secretary General of the United Nations Security Council A/67/792–S/2013/149.*

¹⁶ *Taken from the campaign "Violación y otras violencias. Saquen mi cuerpo de la guerra" ("Rape and other violences: Remove my body from the war")*

¹⁷ *The offer of protection and justice still lacks a women's rights approach and there are no guarantees of sufficient, adequate, and timely information. The victims in Justice and Peace, for example, are sent from one institution to another without any comprehensive solution to their claims*

¹⁸ *Instituto de Medicina Legal y Ciencias Forenses, "Forensis 2011", Colombia, 2011, p. 213-214. Ver Cuadro 1, Exámenes médico-legales por presunto delito sexual, según edad y sexo.*

¹⁹ *Quoted from the report on monitoring Resolution 1325 in Colombia, in Organización Nacional Indígena de Colombia – ONIC –Consejería Mujer, Familia Y Generación: "Mujeres Indígenas, Víctimas Invisibles Del Conflicto Armado en Colombia" presented to U.N. Representative in May 2012.*

All the above occurs in the midst of the adoption of legislative measures of transitional justice that do not address adequately the rights of the victims of the armed conflict²⁰ - including those of women victims of sexual violence - and of the recent passing and regulation of military criminal justice.

Absence of state response regarding measures to care for, repairs, and protects women victims of sexual violence

Beyond their right to justice, women victims of sexual violence require other measures to satisfy their right to attention, protection, and comprehensive reparation. The Colombian State has yet to put forth any adequate responses to women victims, as will be shown by the following:

- 1) Lack of a national system of health care and psychosocial support for women victims of sexual violence in the context of the armed conflict: Different legal mandates make it compulsory to provide differential attention from a gender perspective to all women victims of sexual violence.²¹ However, each of these mandates is carried out independently of the others, and the responsibility for providing care is assigned to the Health Services System without adequate State intervention. The health-service providers – EPS – are called upon to provide health care, but they are not required to provide differential care. The EPS have no medical or psychological personnel specialized in the care of women victims of the various violences.
- 2) Lack of the appropriate mechanisms for comprehensive reparation: In Colombia, a purely economic approach determines the administrative reparation of the victims, and the State does not go beyond monetary compensation when repairing the victims. In this system dominated by claims for administrative financial reparations, women victims of sexual violence still meet obstacles when making claims: Of all the claims for administrative reparation that have been approved, only 0,14%, that is, 15 cases, correspond to cases of sexual violence.²² In addition, the present approach does not consider the concepts of collective harm or collective protection, which in practice leads to the reproduction of gender stereotypes that consider as the only victims of sexual violence individual women, with no understanding of the fact that women as a social group must be repaired comprehensively for the acts of sexual violence in the context of the armed conflict.

1.2 Violence against female human rights defenders

The persecution and stigmatization of female human rights defenders is systematic.²³ Their situation worsened in the years 2009,²⁴ 2010,²⁵ and 2011.²⁶

Beginning in the second semester of 2009, threats, attacks and harassment were directed against women leaders through flyers distributed by presumed paramilitary groups, the self-proclaimed “Black Eagles” and “Stubble” (“Las Águilas Negras” and “Los Rastrojos”). More than 93 women, 12 organizations of women victims of forced displacement, and several accompanying organizations were threatened, among them five members of the Roundtable for Monitoring Judicial Decree 092. On December 2010, women’s, feminist, and human rights organizations reported death threats against four female human rights defenders by new paramilitary groups.²⁷ The last case of threat was reported on June 2, 2012.

20 *Legal framework for peace and Law 1592 of 2012 which amends Law 975 of 2005.*

21 *Auto 092 de 2008, Ley 1148 de 2011 y Ley 1257 de 2008.*

22 *Figures from Corporación Sisma Mujer, September 2013.*

23 *OAS/Ser. L/V/II, Doc. 51 corr. 1,30 diciembre 2009, Informe Anual de la CIDH, Capítulo V; A/HRC/13/22/Add.3, 4 de marzo de 2010; Report by the U. N. Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya; United Nations, A/HRC/16/44, December 20 2010. Annual Report of the U.N. High Commissioner on Human Rights on the human rights situation in Colombia, 2009, párr. 22 and ff.*

24 *Ibid.*

25 *Annual Report of the U.N. High Commissioner on Human Rights on the human rights situation in Colombia., A/HRC/16/22, February 3 2011, párr.10 y 11.*

26 *www.somosdefensores.org.* The information system on aggressions against human rights defenders in Colombia -SIADDH- for the year 2011 shows a significant increase of 36% compared with 2010. In 2011 an attack against human rights defenders took place every 36 hours. Of a total of 239 persons attacked, 77% were men and 23% women. In comparison with 2010, we went from 109 to 140 cases of threats, from 32 assassinations to 49, from 11 arbitrary detentions to 23.

27 *Secretaría Técnica: Casa de la Mujer. “Comentarios de la Mesa de Seguimiento al Auto 092 de 2008, a los informes del Gobierno Nacional de Marzo 16, Julio 1 y noviembre 8 de 2011”.*

Decree 4912 of 2011 unified government protection programs under the umbrella of the National Protection Unit; and Resolution 0805 of 2012 institutionalized the protocol for the protection of women. The Committee for Risk Evaluation and Recommendation of Measures for women, CERREM,²⁸ was created, and important progress was registered in terms of norms for the protection of female human rights defenders. However, significant obstacles persist when women exercise the right of defending human rights; for example, the absence of results of the prevention strategy, and the total lack of articulation between prevention, legal prosecution, and guarantees of non-repetition.

Likewise, difficulties persist for women in terms of access as a result of the lack of knowledge by local civil servants about the existence of the protection program and its procedures, and the disregard by the territorial entities of their obligations. There is much need for outreach and information on these mechanisms in the municipalities and in remote areas, where women are vulnerable and have no possibility of requesting protective measures. The program has other flaws, among them the following: the lack of timely and appropriate notification about the decisions and interventions in the framework of the program, the precarious or nonexistent communication from the civil servants charged with carrying out the proceedings, the absence of a gender approach in risk analysis, violations of legal confidentiality, the difficulties in finding out the results of risk evaluations, and the impossibility of questioning those results, among others.²⁹

1.3 Domestic and/or family violence³⁰

According to the 2010 National Demography and Health Survey,³¹ in Colombia 37% of all women who have been married or lived with a male partner have suffered physical aggressions on the part of their husbands or partners. It was found in this survey that this type of violence is more frequent among women 45 years or older in urban areas, and that it is less common among women who have higher education and higher income levels. However, such differences are not very significant, and women belonging to these population groups are victims of this type of violence as well.

Most worryingly, the survey revealed also that 85% of women victims suffered serious lesions or physical or psychological sequels as a consequence of the violence. 71% of them indicated that they had lost interest in sex, 58% reported having bruises or strong pain, 51% lost their self-esteem, 42% became physically ill, 39% reported psychological symptoms, 39% reported a lower level of work performance or productivity, 30% said their relationship with their children was affected, 23% felt the urge to commit suicide, 23% said that they had stopped talking to anyone, 14% stated that they were left with a serious injury or a broken bone, 2% lost the use of an organ or member, and 2% suffered a spontaneous abortion or loss as a result of the physical aggression.

In spite of the high figures of personal injuries or sequels as a consequence of the violence, only 21% of the victims (one-fifth) turned to a doctor or health establishment for treatment or information. Of this 21%, a third received no information about legal assistance or about the possibility of filing a complaint for family violence.

With regard to psychological violence, the survey reported that 65% of all women who have been married or lived with a male partner have been victims of control on the part of their husbands or partners; 26% of the women have suffered their husbands' or partners' disabbling remarks against them in public or private spaces; and 32% have been victims of threats from their husbands or partners. None of these results showed significant variations with regard to the results of the 2000 and 2005 surveys.

28 *Committee on risk evaluation and recommendation of measures.*

29 *Asociación Colectivo Mujeres al Derecho: Intervención en Audiencia Pública sobre la situación de las víctimas de desplazamiento forzado y el escenario de tierras despojadas en Colombia. Comisión Interamericana de Derechos Humanos, 46 período de sesiones ordinarias, Washington, Noviembre 02 de 2012.*

30 *There is debate on whether to use the concept of family violence ("violencia intrafamiliar") or domestic violence ("violencia doméstica"), as the question remains whether the concept of "violencia doméstica" is sufficiently broad to cover the entire phenomenon.*

31 *This survey has been carried out every five years since 2000. The results are published in: <http://www.profamilia.org.co/encuestas/Profamilia/Profamilia/>*

For its part, the information system of the INMLCF reports that in the year 2011, 70,139 women were victims of family violence. The main form of family violence is between partners: 51,118 women were attacked by their present or former partner (it must be noted that violence between partners in a couple is not necessarily family violence).³²

According to the Institute, in that same year 1,415 women died throughout the country. Family violence was the main cause of homicides of women, although there is recorded information only about 28% of the cases. The partner or former partner was reported as the main aggressor of the assassinated women in a total of 130 cases. However, the alleged aggressor is unknown in 361 cases of this variable.

According to the INMLCF, in the area of family violence,³³ in 2010 89,436 persons were evaluated; and in 2011, 89,807, for a total of 179,243 victims of family violence for the period between 2010 and 2011 – that is, an average of 7,468 persons monthly and 249 daily. According to the INMLCF, in 2010 “violence in the couple was the most important context of the crime, with 64.7% of all the cases of violence involving other family members; next came violence against boys, girls, and adolescents; and last, violence against the elderly.”³⁴ In 2011, violence in the couple remained on top with 64.3% of the recorded cases,³⁵ and the order of the other types of violence remains the same as in 2010.

Table 1 Family Violence According to Sex (2010-2011)³⁶

Year	Men		Women		Total
	Number	%	Number	%	
2010	19,723	22%	69,713	78%	89,436
2011	19,673	22%	70,134	78%	89,807
Total	39,396	22%	139,847	78%	179,243

Source: Drawn up by Corporación Sisma Mujer on the basis of information obtained from SIAVAC-DRIP, National Institute for Legal Medicine and Forensic Science (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF), *Revistas Forensis* 2010 – 2011. Available at: <http://www.medicinalegal.gov.co/index.php/estadisticas/forensi>

Table 2 Abuse by Partner and Former Partner According to Sex (2010-2011)

Year	Men		Women		Total
	Number	%	Number	%	
2010	6,693	12%	51,182	88%	57,875
2011	6,669	12%	51,092	88%	57,761
Total	13,362	12%	102,274	88%	115,636

Source: Drawn up by Corporación Sisma Mujer on the basis of information obtained from SIAVAC-DRIP, National Institute for Legal Medicine and Forensic Science (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF), *Revistas Forensis* 2010 – 2011. Available at: <http://www.medicinalegal.gov.co/index.php/estadisticas/forensi>

³² Information from *Corporación Humanas*, September 2013.

³³ Includes mistreatment of minors, partner, other family members, and seniors.

³⁴ Instituto Nacional de Medicina Legal y Ciencias Forenses (INMLCF), “*Forensis* 2011. Datos para la vida”, 2012, p.100 Available at: <http://www.medicinalegal.gov.co/index.php/estadisticas/forensis/193-forensis-2011>

³⁵ *Ibidem.*, p. 145.

³⁶ Source: Tables prepared by Alexandra Quintero Benavides, researcher at Sisma Mujer based on information obtained from SIAVAC-DRIP, Instituto Nacional de Medicina Legal y Ciencias Forenses, *Revistas Forensis* 2010 – 2011. Available at: <http://www.medicinalegal.gov.co/index.php/estadisticas/forensi>

The figures show that family violence and/or violence between partners still affects Colombian women disproportionately. During the period in question (2010-2011), the ratio remained constant of two injured men for each seven women examined for family violence. During the two years studied (2010 and 2011), an annual average of 88% of the women were mistreated by their spouses, permanent partners, or current or former partners, as against 11% of the men. The cases of ill treatment by the partner against the woman reported to the INMLCF³⁷ that gave rise to expert medical opinions from the Institute were 51,182 in 2010 and 51,092 in 2011, for a total of 102,274; which means that in those two years 142 women were mistreated each day by their partners or former partners, or at least 6 every hour.³⁸

The preliminary results of the information registered in the year 2012 by the Institute are that 1,146 women were assassinated that year, with no information as yet about the presumed aggressor or the circumstances of the act. With regard to family violence, 71,485 cases were reported, of which 77,8 percent had women as its victims. Violence between partners reported the highest number of women victims, with a total of 40,831 cases.

With regard to justice, even though in 2011 the Legal Medicine Institute reported 70,139 women victims of family violence, the Attorney General's Office reports only 30,471 cases open in ordinary jurisdiction for this crime. Likewise, regarding homicides, even though in 2011 INMLCF reported as alleged perpetrator the partner or former partner in 130 cases, the Attorney General's Office reported only six active cases of aggravated homicide by reason of the fact of being women.³⁹ Figures available in the judicial branch on violence against women are scarce, inconsistent, and confusing, and therefore no general overview exists about the actual state of impunity in the country.

1.4 Violence resulting from prejudice against LBT women

In Colombia, violence due to prejudice is a widespread but invisible phenomenon that affects in a dramatic way persons with diverse sexual orientations and identities.

Of the total of homicides against LGBTI persons known for the years 2010 and 2011 (280), at least 20.7% (58) can be categorized as prejudice-based homicides;⁴⁰ and, because of their visibility, these tend to affect in greater proportion transsexual women and activists for LGBTI rights. However, the State has not given these crimes adequate attention in order to prevent their occurrence, guarantee the rights of the victims, and eradicate impunity.

Substantial underregistration exists of violent episodes against persons of the LGBTI community. This happens due to the absence of complaints by the victims themselves, for fear of reprisals and/or of suffering discrimination, and because inadequate information systems do not register in a differentiated manner the various violences committed against lesbians, gays, bisexuals, and transgenderists. In addition, the few data that exist are incomplete, making it impossible to carry out an appropriate analysis of the phenomenon. The absence of useful information not only makes human rights violations against LGBTI persons invisible, but it also makes it impossible to formulate legislative measures and policies necessary to address and correct the situation in a timely way.

The lack of an adequate response on the part of the State is evidenced also by the level of impunity regarding the crimes against the LGBTI population. Impunity exists, among other reasons, because the institutions carrying out the investigations and prosecutions do not take into account discrimination and

³⁷ INMLCF includes within the category of partner and former partner the following: lover, permanent partner, husband, former husband, former lover, former fiancé, fiancé and partner.

³⁸ Quintero Benavides Alexandra, "Derechos en femenino. Ob. Cit. pág 52.

³⁹ Fiscalía General de la Nación. Informe a la ciudadanía sobre el desarrollo de la política de igualdad y no discriminación con enfoque de género y diferencial, 5 de enero de 2012.

⁴⁰ Fiscalía General de la Nación. Informe a la ciudadanía sobre el desarrollo de la política de igualdad y no discriminación con enfoque de género y diferencial, 5 de enero de 2012.

prejudice as relevant factors in their analysis of violence against persons with diverse sexual orientations and identities. Thus, although the extreme violence with which such acts are committed is evident, the majority of the criminal investigations do not incorporate these factors among the hypotheses of the investigation, which hinders an effective prosecution of the cases.⁴¹

1.5 Institutional obstacles to the implementation of a comprehensive model of intervention in cases of violence against women

In 2007, the Cedaw Committee highlighted the normative progress made in addressing violence against women in the country,⁴² but it also expressed its concern regarding what it saw as insufficient measures to mitigate the risks run by women in the face of the violence perpetrated against them.⁴³ The Colombian State emphasized as its main legislative step forward the passing of Law 1257 of 2008 and its regulatory decrees in compliance with Article 1 of the Convention.⁴⁴ However, five years since the passing of the law, the model for addressing violence against women has not materialized effectively. More than a year and a half since the issuing of the regulatory decrees⁴⁵ on matters such as health, work, justice, and education, the care and protection model for women victims has not been implemented in a comprehensive and coordinated way due to:

The lack of interinstitutional coordination for the implementation of Law 1257: In the recommendation by the Cedaw Committee in 2007, the State Party is encouraged to continue deepening coordination among all institutions that provide assistance and support in cases of domestic violence against women.⁴⁶ In response to this recommendation, the State reports on its mechanism for institutional coordination in cases of the various violences against women, regulated by Decree 164 of 2010.⁴⁷ However, the mechanism did not establish clear strategies to link the institutions: In 2011, the Ministries of Health, Labor, Education, and Justice, each with its specific mandate ordered by Law 1257, regulated their own area of applicability without establishing coordination mechanisms with the other Ministries in order to act jointly against violence against women.

No unified provision exists for the care and protection of women victims of violence; hence, the women must go through different procedures at various institutions in order to demand their rights.

The lack of participation by women's organizations and by the Committee monitoring Law 1257 of 2008:⁴⁸ In 2007, the Cedaw Committee recommended that the Colombian State link up with women's organizations in the definition of strategies to eliminate gender stereotypes.⁴⁹ In its report, the State declares that the Committee monitoring the implementation of Law 1257 has strengthened its dialogue with women's organizations, with three democratically elected representatives of these organizations taking part in that scenario.⁵⁰ However, it is important to point out, first, that the State does not consult with the Monitoring Committee on issues related to the implementation of Law 1257;⁵¹ and, second, that the State on several occasions has blocked direct participation of women's organizations in the process of implementation of Law 1257 of 2008, with the argument that such participation takes place exclusively through the Committee.

41 *Ibid.*

42 *Observaciones finales del Comité... Ob. Cit. párr 8.*

43 *Ibid párr 10.*

44 *VII Y VIII Informes Combinado del Estado Colombiano... Ob. Cit. Pág. 30*

45 *The regulatory decrees were issued three years after Law 1257 was promulgated, in December 2011.*

46 *Observaciones finales del Comité para la Eliminación de la Discriminación contra la Mujer: Colombia 2007, CEDAW/C/SR.770 (A yB).*

47 *Answers from Colombia to the list of questions, CEDAW, 56th period of sessions, September 30 to October 18 2013, CEDAW/C/COL/Q/7-8/Add.1*

48 *The Monitoring Committee on Law 1257 of 2008 is an interinstitutional body in which women's civil society organizations participate, and its mandate is to oversee the implementation and enforcement of the law.*

49 *Observaciones finales del Comité... Ob. Cit. Parr 20.*

50 *VII y VIII Informes Combinado del Estado Colombiano... Ob. Cit.Pag. 44*

51 *In its list of questions, the Cedaw Committee asks the State to give information on the mandate and activities of the Monitoring Committee on Law 1257. List of questions on Colombia's Combined Reports 7 and 8, March 18, 2013, CEDAW/C/COL/Q/7-8*

The Ministries of Education, Justice, and Labor presented for consideration of the Monitoring Committee and the women's organizations the regulatory decrees before they were issued, which allowed the Committee and the organizations to offer their inputs for adjustments of the new mandates in accordance with international human rights protection standards.

In contrast, the Ministry of Health issued Regulatory Decrees 2734 of 2012 and 4796 of 2011 without previous consultation with the Monitoring Committee on Law 1237 or with the women's organizations. In addition, the Ministry of Justice issued guidelines for the implementation of protective measures for the Family Commissariats in the framework of Regulatory Decree 4799 of 2011, again without previous consultation either with the Committee or with the organizations. This made it impossible to overcome the serious obstacles with regard to access to the health and justice measures included in the decrees and guidelines.

Flaws in the health system prevent implementation of the refuge mechanism: The Committee expressed interest in the refuge mechanism stipulated in Law 1257 of 2008.⁵² The State indicated that Law 1257 stipulates the provision of food, accommodations, and transportation to women victims, and that the Ministry of Health established the procedures for requesting such services as per Decrees 4796 of 2011⁵³ and 2734 of 2012. However, although Resolution 1895 of May 31 2013 of the Ministry of Health and Social Protection allotted the necessary resources to each Department in the country, there are serious problems that keep the procedure from being implemented.

Decree 2734 of 2012 established a procedure that blocks access to measures regarding food, accommodations, and transportation: i) It requires a medical examination certifying that the measure is in keeping with the harm suffered by the woman, and it requests a risk evaluation by the Police, which takes more than 10 days to carry out, and it therefore blurs the urgent character of the measures. ii) The intervention by the National Police is inconvenient, since it takes away from the civil authorities (judge or family commissar) the function of risk evaluation and puts it in the hands of an armed authority that does not have the tools to identify the specific risks women are subject to. iii) The Decree contains requirements not stipulated in Law 1257.

The prevalent application by Family Commissariats of internal family law in detriment of the human rights of women and Law 1257: In 2007, The Cedaw Committee expressed concern that the transfer of functions from the courts to the Family Commissariats could, in practice, restrict access to justice for women victims.⁵⁴ The Colombian State did not refer to the matter in the VII and VIII combined reports, but it did emphasize that the Family Commissariats protect the victims of domestic violence,⁵⁵ forgetting to report the specific duties of the Commissariats regarding women's rights in the framework of Law 1257 of 2008. This shows that in the Family Commissariats the family-oriented approach persists when addressing gender violence. The supposed protection of the family prevails over the protection of the life and integrity of women.

Non-compliance with, and non-implementation of, the norms that apply to the various types of violence against women in the workplace: The Cedaw Committee, in its list of questions, asked about special measures of a temporary nature regarding the core topics of business development and employment,⁵⁶ among others. In its response, the State referred to some poorly developed laws,⁵⁷ and it failed to refer to the provisions of Decree 4463 of 2011, which regulates Law 1257 in the area of labor and, among other issues, regulates the type of treatment that the labor sector must give to women victims of sexual harassment.

⁵² *List of questions... Ob. Cit. párr. 8 .*

⁵³ *Decree 4796 of 2011 established that women's right to food, lodging, and transportation as component of the right to health will be made effective by the State mainly through safe houses and shelters.*

⁵⁴ *Final observations of the Committee... Ob. Cit. párr 18*

⁵⁵ *VII Y VIII Informes Combinado del Estado Colombiano... Ob. Cit. pág.25*

⁵⁶ *List of questions... Ob cit párr. 7.*

⁵⁷ *Colombia's answers to the list of questions... Ob cit. Pág 10.*

Decree 4463 of 2011 establishes as legal duties: i) including sexual harassment in the workplace as a professional risk of women; ii) generating strategies to prevent sexual harassment in the labor sector; and iii) establishing a mechanism for reporting cases of sexual harassment.⁵⁸ To implement de decree, the Ministry of Labor issued the equal treatment in the workplace program,⁵⁹ in which no measures were included to implement the norm related to sexual harassment in the workplace.

2. The right to justice for women victims of violences

The Cedaw Committee requested the results, in figures, of the mechanisms to guarantee access to justice by women victims of domestic and sexual violence in reference to the increase in official records.⁶⁰ The Colombian State informed about issuing Decree 4799 of 2012, which regulates Law 1257 of 2008 in matters of justice,⁶¹ and stated that the results of its implementation were to be found on Annex 3 of the report. The Colombian State did not respond to the Committee's questions with the accuracy and precision required.

Also, in its final observations for 2007, the Committee congratulated Colombia for its ratification of the Optional Protocol to the Convention of January 23, 2007.⁶² However, and in spite of the 2006 Constitutional Court decision declaring the Protocol in conformity with the Colombian Constitution, at the time of the deposit of the instrument the government declared that it did not recognize the competence of the Committee in Articles 8 and 9 to investigate "serious or systematic violations" of the Convention. In addition, it declared that the provisional measures adopted in relation to ESC rights must be applied in line with the progressive nature of these rights. Finally, Colombia declared that neither the Protocol nor the Committee could require the State to decriminalize "crimes against life or personal integrity." Thus, in practice Colombia restricted considerably the Committee's capacity to act with regard to the Colombian situation.

Discriminatory patterns persist in the judicial system on the grounds of sex, blocking access to justice by women victims of violence. The rates of impunity are high in cases of sexual and family violence, and the measures taken by the State are clearly insufficient to address a problem of such magnitude.

2.1 Insufficient measures adopted by the State to eliminate the obstacles to access to justice

The Cedaw Committee asked about legal complaint mechanisms in cases of violences against women, and about mechanisms to facilitate access to justice, specifically with regard to the legal representation of women victims of violences, and the results of the evaluations of Law 1257, if available.⁶³ The Colombian State offered no concrete responses to the Committee's questions.⁶⁴

In the majority of cases, women victims of violences lack legal representation and legal counsel. The entity called upon to guarantee this right is the Ombudsman's Office (Defensoría del Pueblo), where there is a tendency to strengthen the system of public defense for perpetrators and aggressors, while the system for the legal representation of victims has neither budget allocation nor sufficient professional staff. This institutional weakness is shown by the fact that each lawyer represents nearly 340 victims at the same time, which makes it impossible to provide an adequate service. In addition, the lawyers representing the victims are not specialists in women's human rights and do not work from a gender perspective, which means that the legal representation is not specialized or preferential. Some regional administrative institutions⁶⁵ provide

58 *Artículo 3, literal, numeral 1 literal m, Decreto 4463 de 2011.*

59 *Ministerio del trabajo, Programa Nacional para la Equidad Laboral con Enfoque Diferencial de Género 2012 -2018.*

60 *CEDAW Committee, List of questions... Ob. Cit. párr 4.*

61 *Respuestas de Colombia a la lista de cuestiones... Ob Cit. pág 5.*

62 *Committee on the Elimination of all Forms of Discrimination Against Women, CEDAW. Final Observations from the Committee: Colombia, February 2, 2007, Doc. CEDAW/C/COL/CO/6.*

63 *CEDAW Committee, List of Questions... Ob Cit párr 4.*

64 *Response to the list of questions... Ob Cit. pág. 5.*

65 *This legal assistance service is offered, among others, by Houses of Justice mentioned by the Colombian State in its Report presented to the CEDAW Committee. Seventh and Eighth Combined. ... Ob. Cit. pág 24. February 2, 2007, Doc. CEDAW/C/COL/CO/6.*

specialized legal assistance to women, but they do not act directly within the judicial system, which is where most sexist institutional obstacles are reproduced.

Victims continue to report patterns of institutional violence in the approach to violence against women.⁶⁶ The State has taken steps to raise awareness of civil servants at all levels about “gender equity”, as the report to the Cedaw Committee states.⁶⁷ However, these efforts do not suffice to fulfill the State’s accountability, since the “sensitivity to gender equity” approach is handled from the subjective perspective of the civil servants and not as a State responsibility. The State has not set up a system to monitor the impact of these trainings in the patterns of institutional violence against women victims. There are few posts specialized in violences against women, and not all the civil servants who hold these posts understand the subject matter.

For all the reasons shown, the Colombian State continues neglecting to comply fully with General Recommendation No. 19 of the Cedaw Committee, which states that crimes against women must be adequately investigated and the perpetrators punished.⁶⁸

a. Impunity in cases of sexual violence in the context of the armed conflict

On the list of questions, information is requested from the Colombian State regarding the number of cases of sexual violence registered in the context of the armed conflict, the number of criminal investigations of such crimes, and the number of perpetrators punished.⁶⁹ The Colombian State did not provide these figures.⁷⁰ Although the Committee asked the State about the prosecution of these cases in the context of the armed conflict, it is important also to highlight the numbers of complaints, investigations, and sentences produced in cases of violences against women in everyday life.

Cases Known to the Attorney General's Office According to Procedural Stage (2009 – 2012)

Crime	Imputation	Prosecution	Acquittal	Indictment	TOTAL
<i>Domestic violence</i>	9.491 (58%)	4.418 (27%)	108 (1%)	2.281 (14%)	16.298 (100%)
<i>Violent carnal abuse</i>	3.008 (42%)	2.470 (35%)	340 (5%)	1.255 (18%)	7.073 (100%)
<i>Violent sexual act</i>	1.244 (43%)	984 (34%)	115 (4%)	543 (19%)	2.886 (100%)
<i>Carnal abuse of, or sexual act with, a person incapable of resisting</i>	317 (41%)	271 (35%)	41 (5%)	144 (19%)	773 (100%)
<i>Violent carnal abuse with a minor under fourteen years old.</i>	5.743 (42%)	4.889 (35%)	567 (4%)	2.663 (19%)	13.862 (100%)
<i>Sexual acts with a minor under fourteen.</i>	7.651 (41%)	6.443 (35%)	830 (5%)	3.511 (19%)	18.435 (100%)
<i>Violent carnal abuse or abusive sexual act with a person incapable of resisting.</i>	614 (41%)	524 (35%)	67 (5%)	283 (19%)	1.488 (100%)
<i>Sexual harassment</i>	39 (52%)	26 (35%)	2 (3%)	8 (10%)	75 (100%)
<i>Aggravated homicide if committed against a woman for the fact of being a woman.</i>	7 (39%)	7 (39%)	0 (0%)	4 (22%)	18 (100%)

Source: Prepared by Corporación Sisma Mujer on the basis of the answer from the Attorney General's Office on February 16, 2013, to a request for information from Sisma Mujer.⁷¹

66 See: “Obstáculos para el acceso a la justicia de las mujeres víctimas de violencia sexual en Colombia”, Corporación Sisma Mujer, 2011. Disponible en: www.sismamujer.org

67 VII Y VII Informe... Ob Cit Págs 36, 28 y 41

68 General Recommendation No. 19 adopted by the CEDAW Committee, 11th period of sessions, 1992, U.N. Doc. HRI\GEN\11Rev.1 at 84 1994, parr 9.

69 CEDAW Committee, List of questions... Ob Cit. Párr 18.

70 Colombia’s answers to the list of questions ... Ob Cit. Pág 27.

71 Fiscalía General de la Nación, Dirección Nacional de Fiscalías. Oficio No. 03364, 16 de febrero de 2013.

“According to the information reported by the Attorney General's Office, the procedural state of the investigations of sexual crimes and domestic violence registered between 2009 and 2012 shows impunity in between 81% and 90% of the cases.”⁷²

“In 14,017 investigations, or 86%, the administration of justice has not been able to determine the guilt of the perpetrator or perpetrators, and the investigations have not progressed.”⁷³

“Of 44,592 sexual crimes (including rape and abusive sexual acts) (...) in 36,181 investigations, or 81%, the Attorney General's Office has yet to determine the responsibility of the perpetrator or perpetrators, and the investigations have not progressed.”⁷⁴

There has been no significant increase in the investigations for the crime of sexual harassment after the passing of Law 1257 of 2008; 90% of the cases of sexual harassment remain unpunished.

In 2007, the Cedaw Committee urged the State Party to address the underlying causes of violence against women and to improve access by the victims to justice and protection programs.⁷⁵ The State, in the combined reports VII and VIII, presented as main step forward the project Fight against Impunity in Cases of Sexual Violence in the Context of the Armed Conflict 2010-2013⁷⁶ as an interinstitutional strategy to address the problem. In its response, the State does not give information on progress and results of the project, and it is therefore impossible to measure whether it has brought about an improvement in institutional interventions regarding impunity in cases of sexual violence.

Colombia passed a Victims' Law (Law 1448 of 2011), which stipulates measures for the care and reparation of victims of serious human rights violations perpetrated by illegal armed groups.

In the framework of the implementation of this law, the compensation for crimes of sexual violence is still too low, keeping in mind that this type of violence is a widespread phenomenon in the context of the armed conflict. In 2011, of a total of 593 registered victims of crimes against sexual freedom and integrity, only 27 were granted administrative reparation.

2.2 Impunity in crimes of sexual violence in the context of the armed conflict

The norms of so-called transitional justice have been adopted through dissimilar mechanisms that depend on piecemeal negotiation processes with various illegal armed actors, all in the framework of the procedure known as Justice and Peace, regulated mainly through Law 975 of 2005. This legal framework concentrates on granting benefits to demobilized armed actors in detriment of the rights of the women victims of sexual violence to truth and justice; the mechanism is incapable of identifying the real universe of cases of sexual violence committed by demobilized paramilitary groups and is unworkable to guarantee the rights of women victims. This is evidenced by the low number of cases of sexual violence in the armed conflict heard by the Attorney General's Office, and the low number of cases prosecuted in the framework of the Peace and Justice mechanism.

In the context of the prosecution processes in the framework of Law 975 of 2005, known as Law of Justice and Peace, the crimes of sexual violence have been denied by the majority of the demobilized members of the different paramilitary blocks. Those who have acknowledged them have said that the sexual relations were consensual, while the commanders, faced with the evidence of sexual aggressions, have pointed out that they happened “due to lack of control among the troops.”⁷⁷

72 Quintero Benavides Alexandra, *Derechos en femenino... Ob Cit* pág 60.

73 *Ibid* pág 61

74 *Ibid* pág 62.

75 *Final observations of the Committee... Ob Cit* parr 18

76 VII Y VIII Informes Combinado del Estado Colombiano sobre el Cumplimiento de la Convención Para La Eliminación de todas las formas de Discriminación contra La Mujer, Julio de 2011, CEDAW/C/Col/7-8, Noviembre de 2011. pág 144.

77 *Verdad Abierta*, (2008, 6 de noviembre), *Graves casos de abuso sexual del Bloque Norte*, en <http://www.verdadabierta.com/justicia-ypaz/529-graves-casos-de-abuso-sexual-del-bloque-norte>.

However, there are sufficient arguments to affirm that sexual violence was part and parcel of the actions of the paramilitary groups in Colombia to achieve their war objectives, and therefore their prosecution must reflect not only the gravity of the acts of sexual violence but also the other crimes committed in parallel and simultaneously, such as torture, forced displacement, and threats, among others.

In spite of the gravity of the situation, judicial actions against those responsible are minimal. The institutions charged with the investigation and prosecution of these crimes are reluctant to consider the hypothesis of sexual violence in the conflict as a systematic and generalized practice, both in the ordinary justice system and in the framework of the so-called Law of Justice and Peace. Of 183 cases of sexual violence against displaced women that the Constitutional Court, in its Judicial Decree 092 of 2008, ordered the Attorney General to investigate, only 5 cases have actually been tried.⁷⁸

In its most recent report, Amnesty International points out that:

According to the data published by the Attorney General's Office in January 2012 (...), the Bogotá Human Rights Unit was investigating 89 cases of sexual violence related to the conflict, of which 24 were included in Judicial Decree 092. However, given the fact that, according to the reports, the regional public prosecutors are investigating 110 of the 183 cases in Judicial Decree 092, there are 49 cases about which nothing is known. The data of December 2011 refer to convictions in five cases investigated by the Human Rights Unit; three of them appear to be included in Judicial Decree 092. The same data indicate that there have been convictions in six cases included in Judicial Decree 092 that were being investigated by regional public prosecutors.⁷⁹

In the context of Law 975 of 2005, the statistics of the Justice and Peace Unit of the Office of the Attorney General as of December 1, 2012, account for 39,546 confessed acts, of which only 96 refer to crimes of sexual violence.⁸⁰ Of 14 sentences passed in this system in eight years, only two have to do with sexual violence.

The scarce results for women in the justice system became evident to the Special Representative of the Secretary General on Sexual Violence on her visit to the country in 2013: she pointed out that in spite of the fact that Colombia has a complex and well developed regulatory framework on gender, women still face great difficulties in trying to gain access to justice, and the great majority of their complaints remain unpunished.

Institutional weaknesses hinder prosecution of cases of sexual violence in the context of armed conflict

Laws 1257 of 2008 on violence against women and 1448 of 2011 regarding the assistance and reparation of victims of the armed conflict and land restitution include measures to guarantee the right to justice for women victims of sexual violence in the context of armed conflict, but they are not complied with satisfactorily by the State. Among those measures, we can highlight first the legal order to the Ombudsman's Office (Defensoría del Pueblo) to provide differential, specialized accompaniment and offer strengthened information⁸¹ with regard to the human rights of women. However, that agency does not provide the services required in an effective way, since the system of legal representation of victims is notoriously weak.

Second, Law 1448 of 2011 foresees among guarantees of non-repetition the following: 1) the adoption of measures to overcome stereotypes that encourage discrimination and violence against women in the context

⁷⁸ *Monitoring Roundtable to Judicial Decree 092 of 2008 Annex reserved. Acceso a la justicia para mujeres víctimas de violencia sexual. Fourth follow-up report, May 2011*

⁷⁹ *Amnistía Internacional. Colombia: Invisibles ante la justicia Impunidad por actos de violencia sexual cometidos en el conflicto: Informe de seguimiento. Página 26.*

⁸⁰ *See: Estadísticas Unidad Nacional de Fiscalías para la Justicia y Paz. Gestión de la Unidad Nacional de Fiscalías para la Justicia y la Paz a 01 de diciembre de 2012, en <http://www.fiscalia.gov.co/jyp/unidad-de-justicia-y-paz/>*

⁸¹ *Parágrafo 1° y numeral 6 del artículo 35 y artículo 43 de la ley 1448 de 2011. Y literal b artículo 8° ley 1257 de 2008.*

of armed conflict,⁸² and 2) the development of a policy of zero tolerance vis-à-vis sexual violence.⁸³ However, in December 2011, the Government regulated Law 1448 and these measures were not included in the decrees that were issued to that end, which means that up to now there are no concrete actions targeted specifically toward implementing and complying with these legal provisions.

Third, the Attorney General's Office established a policy of prioritization of cases,⁸⁴ by which it sets criteria for investigating and punishing certain crimes, among them some related to sexual violence. Among the criteria mentioned are the gravity of the crime, its representativeness, the nature of the victim, and the characterization of the perpetrator, but there are no parameters to define each criterion.⁸⁵ Also, the policy does not specify what happens with crimes that are not of priority interest, and it suggests that they may simply not be investigated.

Last, there is no unified policy of assistance and investigation in cases of sexual violence in the armed conflict on the part of the Attorney General's Office. This Office is called upon to comply with different legal, constitutional, and international obligations regarding the human rights of women victims of sexual violence in the context of armed conflict. Thus, the Attorney General's Office must comply with the Cedaw Convention, the Rome Statute, the Belem do Pará Convention, Law 1257 of 2008, Law 1448 of 2008, Judicial Decree 092⁸⁶ of 2008, and other related provisions. The Attorney General's Office has not put into operation a comprehensive policy to comply with the entire legal framework regarding the human rights of women in Colombia, but rather has undertaken isolated steps such as drafting a protocol for action or creating specialized units for assistance and investigation, which, although they include some norms, they exclude other mandates of the legal framework itself for the protection of the human rights of women. This entails also, that the application of the legal framework is not an institutional policy but, rather, is left to the will of the public servants.

3. The right to participate in politics and in peace-building processes

3.1. Political participation

In spite of the norms and policies referred to by the Colombian Government in its report to the Committee, in the most recent period no significant progress was registered in the political participation of women in the country. On the contrary, evidence shows the lack of political commitment on the part of the Executive and the political parties with regard to equal participation of women and to an effective compliance with the norms that seek to promote such participation, as described below.

The best example of the lack of concrete progress in women's political participation is their scarce presence in Congress. In that institution made up of 102 Senators and 168 Representatives, the participation of women has never exceeded 16%. Although in the elections for the periods 2002–2006 and 2006–2010 women's participation fell from 12,6% (with 34 female Congress members) to 10,45% (with 28), in the elections for the period 2010–2014 the percentage rose to 14,18% with 38 female Congress members.⁸⁷

82 *Artículo 149 literal d, ley 1448 de 2011.*

83 *Artículo 149 literal, ley 1448 de 2011.*

84 *Directive 01 of 2012 issued as part of the legal framework for peace, amending Article 22 of the Constitution.*

85 *Document drafted by Viviana Rodríguez Peña, lawyer at Corporación Sisma Mujer for the Inter-American Commission on Human Rights in the framework of its visit in loco to Colombia December 4, 2012.*

86 *In 2008 the Colombian Constitutional Court issued Judicial Decree 092, recognizing the disproportionate impact of forced displacement on women, and determined the specific risk factors women are exposed to because they are women. It ordered the government to establish 13 programs to address these risk situations and create the conditions for the full enjoyment of their rights by forcibly displaced women. The 13 programs must address: prevention of the disproportionate gender-based impact of displacement, promotion of women's health, support to displaced women heads of household, easier access to work and productive opportunities and prevention of labor exploitation, educational support to displaced women over 15 years of age, easier access to land ownership, protection of the rights of indigenous displaced women, protection of the rights of Afro-Colombian displaced women, protection of displaced women and prevention of sociopolitical violence against women leaders of the displaced population, psychosocial accompaniment of displaced women, removal of barriers to access to the protection system for displaced women. Programs have not yet been designed regarding access to justice, truth, reparation and non repetition, and the program for the prevention of family and community violence ordained in Judicial Decree 092 of 2008.*

87 *Registraduría Nacional del Estado Civil. <http://www.registraduria.gov.co/-Historico-de-Resultados-.html>*

Added to these low percentages is the fact that the laws adopted to promote women's participation in political life in the country have not been adequately implemented or fully complied with. In the first place, one of the measures that the State shows off as compliance with its international obligations with respect to women's political participation is Law 581 of 2000, which establishes a series of affirmative measures to promote such participation in the State's decision-making positions.⁸⁸ However, as has been recognized by the Cedaw Committee,⁸⁹ this formal guarantee is quite distant from reality.

Since its passing, the above-mentioned law has been systematically broken by all branches of the public powers and at all territorial levels, but especially by the national Government.⁹⁰ In the year 2012, of the 14 existing ministries, only two were headed by women; and none of the superintendences, social State enterprises and scientific and technological institutes had a woman as its highest authority. In view of this situation, beginning in early 2012, Dejusticia, Sisma Mujer, and the National Women's Network (Red Nacional de Mujeres) promoted several legal actions before the Council of State challenging the President's non-compliance with the quota. This shows that, up to now, the only way of guaranteeing compliance by the national Government with the 30% mandate in the Quotas Law has been through legal challenges.⁹¹

Second, with respect to women's participation in elected office, the Colombian State reports the passing of Law 1475 of 2011,⁹² an overall political reform that includes the quota system that makes it mandatory for political parties and movements to include at least 30% of women in its lists for multi-member positions. The implementation of the quota system foreseen in Law 1475 of 2011 first took place in the local elections of October 30, 2011.⁹³ In these elections, although a positive impact was indeed felt with respect to women's nominations, the widening of the choice did not lead to a statistically significant increase in the election of women.

Thus, with the implementation of the new law, the number of women candidates to municipal and district councils doubled to 28,556 female candidates, equal to 36.10% of the total electoral offer. However, this increase did not translate into a substantial rise in the number of elected women, since only 1,940 women, or the equivalent of 16.08% of the contested seats, actually won a seat. With regard to the department assemblies, of a total of 1,151 women candidates (the equivalent of 36% of total candidacies), only 75 were elected deputies; in other words, at present only 17.94% of the assembly seats are filled by women.

In order to understand these poor election results, it is worth noting that the State has not taken concrete action to overcome the obstacles to the implementation of the electoral quota system. There are three levels of obstacles: 1) the legal gaps of Law 1475; 2) the characteristics of the Colombian electoral system, that admits lists with preferential vote; and 3) the low level of acceptance by the political parties and movements of the inclusion of women. In general, the parties and movements show a marked resistance against implementing the quota system, in large measure due to the persistence of discriminatory patterns and stereotypes against women's political participation.⁹⁴

88 *The most recognized measure ordains a minimum of 30% participation of women at top decision-making levels of the State, and the same at other levels of all branches of government, and at all territorial levels.*

89 See: http://www.sdp.gov.co/portal/page/portal/PortalSDP/SeguimientoPoliticasyEquidadDeG%E9nero/MarcoNormativo/RECOMENDACIONES_CEDAW_PARA_COLOMBIA.pdf

90 Several studies reach this conclusion when all levels of positions are disaggregated and specifically the highest decision-making levels of the State are analyzed. See, for example, Guzmán, Diana Esther & Molano, Paola. (2012). *Ley de Cuotas en Colombia: avances y retos. Diez años de la Ley 581 de 2000*. Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia), available at: <http://dejusticia.org/index.php?modo=interna&tema=antidiscriminacion&publicacion=1238>

91 *The implementation of this law has met normative, cultural, and institutional obstacles.*

92 *"By which rules for the organization and functioning of political parties and movements, and electoral processes are adopted."*

93 *Local elections are those in which governors, mayors, deputies, and councilmen and women are elected for all regions of Colombia.*

94 See: Cardozo, Florentina & Quintero, Alexandra (2012). *La implementación del sistema de cuotas electorales y su impacto en la participación de las mujeres en Colombia*. Corporación Sisma Mujer.

Evidence of this obstacle is one of the results of the Second Ranking of Equality between Women and Men in political parties and movements. With regard to the programmatic dimension of the political parties and movements, the study concludes that, although half of political organizations have entities charged with developing actions specifically for women, on average only 2% of the parties' and movements' budgets is allocated to support those entities and the activities they carry out. In addition, in 5 of the 12 legally constituted political parties and movements there are no women at the decision-making level, either politically or administratively.⁹⁵

3.2. Peace-building processes

On August 26, 2012, the Government and the FARC signed a "General agreement for the termination of the conflict and the building of a stable and lasting peace" ⁹⁶ in which they acknowledged that building peace is a matter for the whole of society, including other guerrilla organizations (who were invited to join forces for that purpose);⁹⁷ that human rights are a State goal; that economic development must be accompanied by social justice and harmony with the environment; and that there must be an expansion of democracy in order to build solid foundations for peace.

The two parties agreed to begin conversations on the following points: 1. A comprehensive rural development policy. 2. Political participation. 3. An end to the conflict. 4. A solution to the problem of illicit drugs. 5. The victims. 6. Implementation, verification, and endorsement of the agreements. Up to now the discussion has centered on the first two topics on the agenda, and in neither of them have the negotiators incorporated a gender approach.

United Nations Resolution 1325 of 2000 emphasizes the participation of women in peace processes and in the post-conflict phase. It is striking that the Colombian government has not foreseen the participation of women in this process. It did not include women in the front line of the negotiating table with the FARC, and there are only two women as second-level advisors. This leads us to predict that a gender approach will not be incorporated in the accords, and that the crimes against women in the context of the conflict will probably not be part of the discussion.

Nevertheless, it is worth noting that, thanks to the initiative of the Congressional Peace Commission, several mechanisms have been set up for civil society participation in bringing up proposals to the negotiating table; this initiative has given rise to a significant participation by women in different regions.

Regarding the mechanisms for verification and endorsement of the accords, it is necessary to guarantee the equitable participation of women in national and local scenarios.

4. Economic, Social, and Cultural Rights

The women of Colombia continue being particularly affected by State failure to guarantee economic, social, and cultural rights. In remote or rural areas, or where territories where indigenous and Afro-Colombian women live, the situation is worse.

⁹⁵ This study is carried out by the U.N. Development Program (UNDP) in alliance with IDEA International and the Dutch Institute for Multiparty Democracy (NMDI), with support from the Swedish Embassy. See: <http://www.pnud.org.co/sitio.shtml?x=67478#.UgMh6WRajU4>.

⁹⁶ The agreement is the result of the "exploratory meeting that took place in Havana, Cuba, between February 23 ad August 26, 2012, with the participation of the governments of Cuba and Norway as guarantors, and of the government of Venezuela for logistical support and accompaniment.". See Annex n.º 2.

⁹⁷ On September 3, 2012, the guerrilla group ELN issued a communiqué in which it states that the prospect of peace is positive, and it presents its point of view on the content of that concept and adds that, in those terms, the country "can count on the ELN for that important challenge and aspiration." See in: http://www.eln-voces.com/index.php?option=com_content&view=article&id=1344:la-paz-que-todos-queremos-pero-que-es-tan-esquiva&catid=26:articulos&Itemid=69.

4.1. The right to health

Colombia faces a serious crisis in its health system, acknowledged as such by the Constitutional Court in its Sentence T-760/08: There is no comprehensive prevention policy, the public hospital network is increasingly precarious, the private health services providers (EPS) profit the most from the situation, and health care is limited, since only those able to pay can have access to complementary health care plans. In addition, there are two aspects specifically related to women's health where differential impact is evident:

a. Sexual and reproductive rights / Access to voluntary termination of pregnancy

In spite of the existence of a legal-normative framework favorable to health and sexual and reproductive rights (SRR), a significant gap still persists between the formal and the practical, expressed in the absence of a consistent, coherent, and comprehensive public policy on sexual and reproductive education that would contribute to preventing adolescent pregnancies, sexually transmitted diseases, unwanted pregnancies, unsafe abortions, and forced prostitution, among others.

In this sense, in Colombia a wide dispersion still persists in terms of State commitments with regard to SSR: government policies are far from being coherent or cohesive regarding the responsibilities of each of the institutions charged with protecting those rights. The influence of protagonists and religious views limits progress on comprehensive policies on health and sexual and reproductive rights in accordance to Colombia's international commitments in agreements, conferences, and conventions, as well as in national norms, laws, and jurisprudence on the matter.⁹⁸

Although the Constitutional Court has made favorable pronouncements regarding women's sexual and reproductive health on several occasions, even stating that the penalization of abortion implies placing a disproportionate burden on women and disregarding their fundamental rights, the Court's decisions are blocked by barriers put up by public institutions, in particular by those charged with providing health care services.

The high tribunal itself has identified those barriers: demanding additional requirements such as legal authorizations for the practice of voluntary termination of pregnancy (VTP);⁹⁹ not taking into account the autonomy of the woman at the moment of deciding on the convenience of carrying out a VTP necessary in order to undergo other medical procedures she requires to protect her health and her life;¹⁰⁰ not carrying out the required medical examinations in order to diagnose whether the woman fulfills the criteria of one of the three hypotheses under which abortion is legal;¹⁰¹ putting up administrative hurdles that delay in an unjustifiable manner access to the service of voluntary termination of pregnancy;¹⁰² invoking conscientious objection by health entities and by medical personnel and judges in order to refuse to practice or to prescribe an abortion.¹⁰³

In addition to the above, estimates show that six out of ten health-care institutions in Colombia with the capacity to provide post-abortion services do not offer them; nearly nine out of ten of those institutions do not offer legal abortion services.¹⁰⁴ Between May 2010 and June 2012, 387 cases were monitored in which obstacles or unjustified denials were raised against the provision of the services.

98 *Sentence T-388 of 2009 of the Constitutional Court that ordains the implementation of massive campaigns on sexual and reproductive rights and sexual and reproductive health.*

99 *Constitutional Court of Colombia, Sentence T-388 of 2009.*

100 *Constitutional Court of Colombia, Sentence T-009 of 2009.*

101 *Constitutional Court of Colombia, Sentence T- 585 of 2010.*

102 *Constitutional Court of Colombia, Sentence T-841 of 2011.*

103 *Constitutional Court of Colombia, Sentence T-209 of 2008.*

104 *Gutmacher Institute y Fundación Oriéntame. Embarazo no planeado y aborto inducido en Colombia: causas y consecuencias, Bogotá, 2011, pág. 6 – 18.*

The Inspector General's Office has abstained from complying with several of the orders issued by the Constitutional Court. It has censored mass campaigns promoting sexual and reproductive rights; it has censored, covered up, or distorted intentionally information related to health, including health education and information on the subject; it has distorted the content of rulings of the Constitutional Court itself related to sexual and reproductive rights, in particular regarding abortion. The Inspector Delegate for the Defense of the Rights of Children, Adolescents and the Family has demanded explicitly that the National Superintendence of Health revoke guidelines on voluntary termination of pregnancy¹⁰⁵ aimed at health-care providers, administrators of health benefits, and territorial entities that mention the rulings of the Constitutional Court with regard to VTP.

b. Women and HIV/AIDS in Colombia

In Colombia, data from the National Observatory on HIV/AIDS show that between 1988 and 2010 the ratio of women infected versus men has increased almost five times. While in 1988 the ratio was 13 men per woman, in 1998 it was four men per woman, and in 2012 it was estimated that for every infected woman there were two men, although there are regions in the country where for every man there is one infected woman. Thus, at present almost 50% of the people who live with HIV/AIDS in our country are women.

The HIV/AIDS epidemic in Colombia remains concentrated among the most vulnerable population groups, particularly men who have sexual relations with men (MSM) and women from 25 to 49 years of age. In spite of the underregistration and the delay in notification, among the cases reported there is a growing proportion of younger women being infected. However, according to the results of the seventh sentinel study carried out on gestating women, the prevalence among the general population is estimated at 0,22% (2009).

According the Millennium Goal 6 (combating HIV/AIDS, malaria, and other diseases), the goal for the general population is to keep the prevalence of the epidemic below 1% among the population group between 15 and 49 years of age.

Ultimately, the HIV/AIDS epidemic in Colombia affects the sexually and productively active population. 76.4% of the cases reported in 2011 (6,129 cases) are in the 15 to 44 age group.

Although the greatest prevalence of infection can be found among men, figures show that the proportion of women affected by HIV is growing steadily and that the rate of infection among women grows more rapidly than among men; this fact has been called the “feminization of the epidemic,” and shows the greater vulnerability of women and, therefore, the need to analyze the factors that increase the susceptibility of women to the HIV infection where inequality between genders constitutes a fundamental factor.

In addition, it is worth mentioning that, although all women suffer in one way or another from gender discrimination, there are other factors – such as race and skin color, class, age, ethnicity, language, sexual orientation, religion, socio-economic class, capacities, culture, geographic location, and status as migrant, indigenous person, refugee, displaced, girl, or person living with HIV/AIDS – that combine to determine the social standing of women, in this case.¹⁰⁶

Parker and Galvão (2001) state that the impact of the epidemic in the lives of women is particularly harsh, since they are at a disadvantage economically, culturally, and socially, which translates into the feminization of poverty, difficult access to health services, and exclusion from the power structures and the decision-making processes. Additionally, frequently they are subjected to laws, norms, and practices that impose control over their bodies, their sexual relations, and their reproductive potential.¹⁰⁷

¹⁰⁵ EL ESPECTADOR.COM, *1.250 peticiones contra el aborto legal*, 27 de junio de 2013, 10:13 pm [<http://www.elespectador.com/noticias/actualidad/vivir/articulo-430542-1250-peticiones-contra-el-aborto-legal>], CARACOL RADIO, *www.caracol.com.co*, *Supersalud no revocará circular del aborto pese a más de 1.200 derechos de petición*, 28 de junio de 2013. <http://www.caracol.com.co/noticias/actualidad/supersalud-no-revocara-circular-del-aborto-pese-a-mas-de-1200-derechos-de-peticion/20130628/nota/1924435.aspx>

¹⁰⁶ *Guía de Prevención VIH/Sida; Mujeres en contextos de vulnerabilidad*, UNFPHA 2011.

¹⁰⁷ (Viveros, 2003).

It should be noted that violence against women is a public health issue, and it is also cause and consequence of HIV infection. Violence and the threat of violence raise dramatically the vulnerability of women and girls to HIV/AIDS. In the face of violence, it becomes impossible to abstain from having sexual relations, demand fidelity in the couple, or use condoms. Violence constitutes, likewise, an obstacle for women when seeking services for the prevention, care, and treatment for HIV/AIDS.

Women's participation is still a challenge not met and necessary for society as a whole, a key strategy in the processes of prevention of the infection and response to the HIV/AIDS epidemic. Women who live with HIV/AIDS understand, based on their own personal experience, the realities about services for HIV/AIDS - both their strengths and their flaws.

Strengthening women's participation must be a fundamental principle in the processes developed to respond to the epidemic, and a basic tool to transform the conditions that underlie their vulnerability to HIV/AIDS and restrict their access to social services.

4.2. The right to education

a. Coverage

According to the UNDP National Report on Human Development (2011), "with regard to the urban-rural gaps in the Development Goals, the gross coverage rates in middle education in the predominantly rural municipalities are 2,7 times lower than in urban centers. The long distances that boys, girls, and adolescents still must cover to get to school, and the opportunity costs of getting into and staying in the educational system in comparison to working, determine dropping out in secondary school, thereby, according to the human capital theory, perpetuating the circles of poverty."

According to the report on the achievement of the National Development Plan 2010-2014 "Prosperity for All," the State provided schooling to 402,183 boys and girls, giving priority to vulnerable population groups, indigenous, and Afro-descendant groups.¹⁰⁸ These data are not disaggregated by sex or other variables that can give an account of the number of girls who benefit from the program, nor is there evidence of a differential approach according to ethnicity.

In order to guarantee access and permanence of girls, boys, and young people in the school system, the coverage was increased at the various educational levels. In 2012, the following numbers of school children were recorded: 5,292,319 female and 5,382,290 male students. By ethnic group and gender: 181,978 indigenous females and 196,150 indigenous males. Afrodescendants: 232,237 females and 231,283 males.¹⁰⁹

b. Illiteracy

According to the 2011 National Survey on Quality of Life (National Statistics Department, DANE), the illiteracy rate for the total population 15 years of age and older was 6.4%. In 13 urban areas it was 2.3% among men and 2.9% among women; in the municipal capitals, 4.2%, while in the rest of the country (rural sectors), the rate was 14.2%. The region with the highest illiteracy rate was the Pacific, with 9,9%, followed by the Atlantic, with 9,5%. In those areas, there is a high concentration of Afro-Colombian and indigenous populations, especially in the Pacific region.

c. School drop-out situation

According to the Ministry of Education, in 2012 155,280 women and 196,725 men dropped out of school. Dropping out of school is associated with differentiated gender roles: girls are compelled to leave their schooling behind in order to carry out household duties, under someone else's care, or because they get

¹⁰⁸ *Informe de Rendición de cuentas Diciembre 2011 – septiembre 2012. Ministerio de Educación Nacional Colombia. Pág. 32.*

¹⁰⁹ *Ibid*

pregnant; boys leave school in many cases because they are attracted by the possibility of earning money in agricultural work. It is mentioned, also, that women who have been victims of violence are more vulnerable and therefore more “susceptible of withdrawing from schooling.” In the case of boys, generally the causes have to do with the regional context: the internal armed conflict, forced recruitment, participation in illegal groups, or reasons of work or survival.

According to figures released by the Ministry of Education, 50% of cases of school desertion of adolescent women were caused by pregnancy.

d. Sex education

The Program for Sex Education and Citizenship-Building (Programa de Educación para la Sexualidad y Construcción de Ciudadanía –PESCC)¹¹⁰ is an initiative of the Ministry of Education and the United Nations Population Fund (UNPF). It seeks to “contribute to strengthen the education sector in the area of education for sexuality, with a focus on building citizenship and the exercise of human, sexual, and reproductive rights.” The Program is aimed at boys, girls, adolescents, and young people, as well as to teachers and parents.

However, in spite of the efforts, the will, and the ethical and political commitment of some public servants, cultural imagery, gender roles, and religious convictions, among other factors, hinder and block an adequate and full implementation of existing plans, programs, and laws in matters related to sexuality and reproduction in the school system.

4.3. The right to work

a. Figures

Colombian women face multiple obstacles when it comes to effectively enjoying the right to work in conditions of equality and gaining access to productive resources. In the case of the formal labor market, in spite of the fact that women represent 51.2% of the working-age labor force, and they surpass men with regard to educational level, their position remains precarious. Thus, the overall rate of participation of women is more than 20 points below that of men,¹¹¹ and female unemployment is almost double that of male unemployment.¹¹² Women are overrepresented in the informal sectors of the labor market.¹¹³ This is also true in some sectors traditionally badly remunerated, or not at all, such as domestic employment (96,1%), community, social, and personal services (69,2%), and unpaid household tasks (60,9%).¹¹⁴

Even women who enter the formal labor market and who, therefore, enjoy better guarantees face a different treatment, even discrimination. Thus, in Colombia salary gaps persist between men and women,¹¹⁵ oscillating between 15 and 20% for equivalent work. This gap widens even more for women who are mothers, who earn on average 17,6% less than women who are not.¹¹⁶ In a survey of 135 countries, Colombia ranks 94 on the index of equal pay for similar work.

This situation is more dramatic for indigenous, Afro-Colombian and peasant women. These last tend to face worse economic conditions than women in cities,¹¹⁷ and their unemployment levels are generally higher than those of men. In fact, the average income of rural women is 41% that of men.¹¹⁸

110 <http://www.colombiaaprende.edu.co/html/productos/1685/w3-article-286932.html>

111 Men 74,2% and women 52,9% (DANE, Mercado laboral por sexo, febrero 2013 - abril 2013).

112 Men 8,3% and women 13,9% (DANE, Mercado laboral por sexo, febrero 2013 - abril 2013).

113 Of all employed women, 53,0% are in the informal sector, while the figure for men is 46,7% (DANE, Seguridad social y empleo formal, febrero 2013 - abril 2013)

114 Ministerio de Trabajo, Cifras de Equidad en el Mercado Laboral, 2012

115 Reporte Global de Diferencias de Genero de 2011.

116 See for example (Badel & Peña, 2009; Bernat Díaz, 2005; Galvis, 2010; Olarte & Peña, 2010; Tenjo G., Ribero M., & Bernat D., 2005)

117 Rate of labor force participation of rural women: 37,9% ; men: 74,6% (DANE, Mercado laboral por sexo, febrero 2013 - abril 2013)

118 In 2010, the unemployment rate for women in the rural sector was 18%, while that of men was 3,7%.

In addition to the above, women are disproportionately affected by poverty. According to the 2005 census, 51.6% (7,857,876) of them are poor. This situation leads us to state that inequalities persist between men and women in terms of working conditions, work opportunities and income, reflected in the prevailing poverty, social exclusion, and obstacles in gaining access to economic and social rights.

b. Public policies

Important steps forward have been taken in the past few decades in Colombia, particularly with regard to employment guarantees for women.¹¹⁹ However, although the country has laws that recognize formal guarantees for women, they remain without power to enjoy the right to work in conditions of equality, and they continue being victims of multiple forms of discrimination. Implementation of existing legislation has been insufficient and, in general, does not promote effective equality for women. For example, more than ten years after the passing of the law on rural women (Law 731 of 2002), it has not been regulated and no budget has been allocated for it, and therefore there are no effective mechanisms to promote an improvement in rural women's quality of life.

Furthermore, policies in this regard have been inconsistent and their implementation has not been regarded as a priority. The only concrete political action taken to improve conditions for female employees is the Agenda for Equality in the Workplace (2009), in which 17 trade associations and 17 private companies participate (CPEM, 2009). That agenda is supposedly a commitment to boost the role of women, take concrete steps for their effective inclusion in the labor sector, and prevent discrimination against them. However, monitoring activities following the signing of the agreement have been minimal, which shows that it has never really been implemented.

In 2012, two official policies with gender approach were launched. On the one hand, the National Public Policy for Women's Gender Equity, under the responsibility of the High Presidential Advisory Office for Women's Equity (ACPEM); and on the other, the National Program for Labor Equity with a Differential Gender Approach, 2012-2018. However, they were conceived late, have not really been implemented, and there are no resources earmarked to put them into operation.

These policies have many flaws. They have been largely ineffective;¹²⁰ they lack a real mainstreaming capacity, since they are considered only sector-based and therefore do not reach key sectors of the economy; they consist mostly of isolated actions that benefit specific groups and therefore have had little impact. Also, they are fundamentally badly formulated, since they do not include differential approaches and are primarily assistance-oriented. In fact, these policies are geared toward programs for the satisfaction of basic needs and income generation, and not toward correcting structural factors that determine the situation of subordination and discrimination. The legal instruments and public policies continue to reflect gender stereotypes and a family-based approach with regard to access and control of land and other goods,¹²¹ which is one of the biggest obstacles to their development.

c. The Free-Trade Agreements (FTA) and their impact on women

At the moment, two Free-Trade Agreements (FTA) are in force: one with the United States (ratified in May 2012) and another with Canada (August 2011).¹²² The non-binding mechanisms foreseen for the protection

¹¹⁹ *Worthy of mention: i) Law 1257 of 2008 by which legal norms were established regarding awareness, prevention, and sanction of forms of violence and discrimination against women, also in the workplace; ii) Law 1496 of 2011 which reinforced wage equality between women and men; iii) Law 1468 which extended maternity leave to 14 weeks, thus adapting Colombian legislation to the minimum level established in international recommendations (ILO, C183 – Convention to protect maternity, 2000. Not ratified by Colombia); and iv) Law 1413 of 2010, called the law of care economics, which attempted to measure the contribution of women to the economic and social development of the country.*

¹²⁰ *For example, the land subsidies created through Law 160 of 1994 and amended by Law 812 of 2003, Law of Rural Women 731 of 2002.*

¹²¹ *Contributions by Colectivo Mujeres al Derecho: Meeting of Working Group MAPP – OAS and civil society with Justice Commission of the Gender Roundtable of international cooperation. Bogotá, June 21, 2012.*

¹²² *In the process of ratification: European Union, Korea and Costa Rica. Likewise, there are negotiations with Japan, Turkey, Panamá, and the Pacific Alliance.*

of human rights in the treaties with the United States and Canada do not include women's rights. The Colombian State has not identified the effects that the treaties and the changes in internal legislation derived from their implementation have on Colombian women, in spite of the call in that respect by the Cedaw Committee in its 37th period of sessions, held between January 15 and February 2, 2007, in Washington. Furthermore, social conflicts have emerged derived from the application of these treaties in strategic sectors of the Colombian economy, such as the production of milk, potatoes, rice, textiles, footwear, auto parts, and coffee. These sectors affect directly the way of life of peasant women and female industrial workers, since they cannot compete with products imported at low prices and, therefore, they are unable to generate the incomes needed to live. The policies that the Colombian government has been required to develop as a consequence of social pressure do not include specific compensatory measures in support of women producers that would guarantee that the FTAs do not violate their rights, thus ignoring the above-mentioned recommendation.

d. Situation of the community mothers¹²³

Until a few months ago, the money that the community mothers received in exchange for their work was considered a bonus, a "voluntary contribution" and not a salary. Each of the mothers is responsible for her affiliation and permanence in the social security system, and that is why at present there is a sizeable number of older women who worked more than 20 but who did not pay social security contributions and they find themselves unprotected.

The National Strategy for Comprehensive Assistance to Early Childhood ("From Zero to Always"), created by the government of President Santos in 2011, has brought unfavorable consequences to community mothers, instead of supporting their efforts or recognizing their rights as workers.

Colombia's Constitutional Court, in Sentence T-628 of 2012, highlighted for the first time that the bonus that the community mothers receive constitutes discriminatory treatment¹²⁴ and, in consequence, recognized the mothers' right to a minimum wage; it ordered that the necessary measures be designed and adopted, with participation by the mothers, for effective payment. In April 2013, the government created a subsidy for persons who cease to be community mothers and do not meet the requirements to claim a pension. The amount of the subsidy, which is not a pension, is insufficient: it is the equivalent of half a minimum wage.

At the present moment the Court's sentence has been complied with in the sense that the minimum wage has been implemented for the mothers enrolled in the Program and, in consequence, they have access to social security and a pension. However, the decision favors only young mothers who are now contributing; those with many years of work behind them, who cannot claim access to a pension, not even to the minimum wage recognized by the Court, and who have only the subsidy, remain unprotected as before.

III. WOMEN IN CONDITIONS OF SPECIAL VULNERABILITY

1. Afro-Colombian women

Visit in Colombia of the Expert on minority issues

The Independent Expert on minority issues, Ms. Gay McDougall, visited Colombia in February 2010. In her report (Document A/HRC/16/45/Add.1), she laid out her primary concerns with regard to the Afro-Colombian, black, raizal and palanquero population groups. She pointed out that slavery is still latent in the

¹²³ *The Community Homes of Family Welfare are part of a program of non-formal education to support the education of boys and girls between 0 and 7 years of age from the lowest socioeconomic groups in Colombia, led by neighborhood women, known as community mothers, who carry out their work in their homes.*

¹²⁴ *The Court pointed out that this activity is a form of work that allows people who carry it out to lead a dignified life through an occupation and allow their families to have access to better material conditions, with financial compensation and access to social security, in exchange for rendering a personal services.*

social marginalization of persons who are part of these communities, and that they continue to be affected by the armed conflict, a conflict aimed at taking away their lands and involving them in drug trafficking. Regarding the women of these communities, she expressed her concern because, although there is legislation that protects them, there is no evidence of a decrease in the violence or forced displacement against them.¹²⁵ Although the report gives an account of the situation as it was in 2010, some of the problems highlighted by the Expert have not been addressed fully, and Afro-Colombian women continue facing discrimination, violence, and poverty.

Two of the most serious types of violence suffered by Afro-Colombian women are racial discrimination and racism, which reduce the possibilities for equity and for the true fulfillment of the right to equality with regard to the other women of Colombia.

Victims' and Land Restitution Law

As was mentioned elsewhere in this report, in June 2011 Law 1448 of 2011 was passed, which foresees measures for the assistance and comprehensive reparation of the victims of the armed conflict. In its Articles 114 and 118, this law establishes specific norms for women and has a regulatory decree (Decree 4635 of 2011) stipulating measures for assistance and reparation of black, Afro-Colombian, raizal and palanquero communities, issued after a process of consultation with these groups. However, the implementation of this legislation has been insufficient for women, and in particular for Afro-Colombian women.

In addition, these norms take into account only women victims of the armed conflict, excluding those who have been victims of other types of violence. For those who have suffered discrimination outside of the conflict, there are no guarantees. In this sense, and with respect to compliance with the racial convention of 1965, the Colombian State has totally failed to meet its obligations.

Public policy on gender equity

As for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001), the most significant breakthrough has been Law 1482 of 2001, the Antidiscrimination Law, which, in general terms, refers to all those “socially excluded groups” (LGTBI, disabled, blacks, indigenous people, etc.); but it doesn't have a specific approach regarding women. This norm has not been sufficiently disseminated or applied, and the position of the Inspector General, who put forward normative justifications for its repeal, only makes matters worse.

In September of 2012, the government issued “Guidelines for Public Policy on Gender Equity for Women in Colombia,” which aims to ensure the full enjoyment of women's rights in the country, guaranteeing the principle of equality and non-discrimination.

These guidelines highlight the racial discrimination and racism that racialized women face. It is a phenomenon of violence against women that affects them physically, psychologically and in the workplace, among other areas, due to the existence of ethno-racial stereotypes that translate into the submission or supposed inferiority of women.

¹²⁵ “The legacy of slavery is still visible in social and economic marginalization of the members of the Afro-Colombian, black, raizal, and palanquera communities. Although the hostilities and the armed conflict may have diminished in the rest of the country, many Afro-Colombian communities and their leaders continue to be the targets of violent attacks. (...). The victims think that those who commit these crimes against them enjoy impunity (...) Acts of violence and intimidation are aimed at dispossessing black communities of their land in order to, among other purposes, put it to use for the illegal cultivation and trafficking of coca. The new macroeconomic development plans and commercial interests trying to secure land and exploit natural resources have also encouraged the dispossession. Displaced persons who return to their land discover that others have claimed ownership or the right to usufruct in their absence. (...) In spite of a multitude of legislative and political initiatives, and programs adopted by the government, their inadequate application and the scarce resources make the results insufficient to respond to the needs of Afro-Colombians.” Document A/HRC/16/45/Add.1, Summary.

The fact that the guidelines acknowledge that in Colombia there is little statistical information about the situation of ethnically differentiated women is already an indicator of the problem. The systems for measuring population in Colombia must be improved, with population-based variables and other characteristics that are important to bring to light the levels of inequity and noncompliance on the part of the State with its mandate to fulfill the right to equality of all human beings and, in this case, of women.

There is little official statistical information with disaggregated data by population groups that makes it possible to observe clearly the behavior of the ethnic variable, and there are even fewer data that cross this variable with that of sex; therefore, there is no differentiated statistical information on indigenous, Afro-Colombian, black, raizal, palanquero and Rom women. However, other studies and sources have established the special impact on women belonging to various ethnic groups, at the crossroads of multiple types of discrimination, affecting their capacity to exercise their rights.¹²⁶

The right to work

In the realm of work, statistics provide data on women in general; but black women, and to a lesser extent indigenous and peasant women, have occupied work spaces that are badly paid (also stratified according to origin, race, and education) and not yet taken into account in the country's legislature – such as domestic service and caring activities. There are no strategies to overcome this situation.

The right to participation

In decision-making processes and in the power spheres, racialized women have less spaces to participate, make decisions, and represent our communities. Therefore, the strategy must be differentiated. This problem is acknowledged in the Guidelines document.

Peacebuilding / Women victims

In the area of peacebuilding, the fact that women are not identified as belonging to an ethnically differentiated group is a delicate matter and is evidence of the weakness of the systems for measuring the population of the country. In the universe of victims of the armed conflict, there is a great percentage of ethnically-differentiated women, since the greatest impact of the armed conflict has been felt in territories where black, indigenous, and peasant women live.

The right to health

Regarding comprehensive health and sexual and reproductive rights, the situation is not less serious. The majority of racialized women can be found in territories that don't have an adequate and relevant infrastructure or human capital to treat women. Women's mortality rate can be high, but perhaps it is not reported due to the inadequate conditions in the context. This increases the State's accountability and its contribution to the death of women, the feminicides where race and class intersect.

In the areas of quality education with a differential approach, women's access to new technologies, the rights to the territory, habitat, and environment, public management, institutional development, cultural transformation and communications, the situation of Afro-Colombian women is not any different. In these areas, they are more vulnerable than the rest of the women of Colombia.

Family violence (Law 1257 of 2008)

Among the principles laid out in Law 1257 of 2008, the following can be found: 1) Real and effective equality; 7) No discrimination; 8) Differentiated assistance. These have not materialized in the measures contained in the law, nor in its implementation or its regulatory decrees. The only mention of ethnic specificity appears

¹²⁶ Guidelines document, p. 14 and 15. See <http://www.equidadmujer.gov.co/Documents/Lineamientos-politica-publica-equidad-de-genero.pdf>

in Article 4 of Chapter V, on Protective Measures: “In cases of family violence in indigenous communities, the competent authority to examine these cases is the respective indigenous authority, in pursuit of the special jurisdiction enshrined in the National Constitution in its Article 246.” This law remains unknown to a great number of racialized women.

The State, through its different offices, is not doing its work sufficiently well in order to do away with social discrimination against women. On many occasions it does not realize that a single woman can be the object of multiple discriminations; that is, there is no intersectional approach in the formulation, application, and strategies of public policy.

2. Indigenous women

Although Colombia recognizes itself as a multi-ethnic and multi-cultural country, in spite of State efforts, the many spaces for “dialogue and consultation,” and the legal provisions that seek to protect indigenous communities, their situation is serious because the State does not guarantee their protection or the fulfillment of their collective and individual rights.

No public policy has been worked out for the comprehensive protection of indigenous peoples that takes into consideration the impact of the internal armed conflict affecting indigenous men and women in their own territories. Also, the development model is based on mining policies that do not guarantee the successful conduct of consultation processes, or prior free and well informed consent. Mining initiatives invade, expropriate and plunder the indigenous peoples’ habitat. In addition, a model of society persists that is based on cultural images and practices that disdain and discriminate not only women, for their gender condition, but also indigenous and Afro-descendent peoples for their ethnic and racial condition. Thus, the discrimination experienced by indigenous women is deeper and harder, precisely because of their ethnic identity.

In general, there are no reliable demographic data available in Colombia providing an accurate account of the indigenous population. The figures provided by ONIC ¹²⁷ give a total indigenous population of 1,4 million people, or 3.43% of the total population, of which 49% are women. It was pointed out that of the 102 indigenous peoples contacted in Colombia,¹²⁸ 66 are at risk of physical or cultural extermination (that is, 62,7% of all existing peoples); of these 66 peoples, 31 are made up of less than 500 persons, 18 have less than 200 individuals, and 10 less than 100. All of them suffer disproportionately from the armed conflict, discrimination, the implantation of economic policies, and institutional negligence, factors that aggravate the situation of imminent physical and cultural extinction.¹²⁹

The data that give an account of the human development and human rights situation are not disaggregated by ethnicity and sex, which makes it impossible to rely on official information showing the reality of indigenous women and their enjoyment of their rights.

However, thanks to the work of indigenous and women’s organizations, situations have become known that make it clear that they suffer in a disproportionate way the impact of impoverishment, armed, social, and political conflicts, and the effects of the introduction of the current development model. Geographic dispersion and low education levels, which intensify ethnic and racial inequalities, aggravate this situation.

According to the National Report on Human Development 2011, 63% of the indigenous peoples live below the poverty line (as compared to the national rate of 34,1%) and 47,6% below the extreme poverty line.¹³⁰

¹²⁷ *Organización Nacional Indígena de Colombia.*

¹²⁸ *The Colombian government recognizes the existence of only 84 indigenous peoples.*

¹²⁹ *See Organización Nacional Indígena de Colombia –ONIC, Palabra dulce aire de vida”. Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia. Pag1. Ediciones ONIC 2010.*

¹³⁰ http://escuelapnud.org/biblioteca/documentos/abiertos/05_indh2011co.pdf

With regard to education, 28,6% of indigenous women older than 15 years of age are illiterate, as compared with the national average of 5,8%. Although the prejudiced thinking that women do not need schooling has been widely overcome and an important number of indigenous girls go to school, the low levels of completion of the basic cycle among adolescents, and the even lower access and completion of higher education are striking. Poverty, early pregnancy, the armed conflict (militarization, antipersonnel mines, combat, bombings...) and displacement, among other factors, are obstacles to gaining access to schooling and remaining in school; to which we can add that in many cases the school systems, curriculums, and dynamics are culturally inappropriate.

Maternal mortality in Colombia remains, according to official data, one of the major causes of inequity in the country.¹³¹ The departments with the greatest inequity are those where the majority of the population is indigenous. In those departments, the female mortality rate is 115,2 women per 1,000 live births, well above the average of 79,5 in the less poor departments. According to the UNDP report on the Millennium Goals, the 2009¹³² rates in the poorest departments are: Amazonas: 391,8; Vichada: 235,5; Guajira: 220,4; Guainía 162,8; Vaupés 161,8, followed by Nariño and Cauca, which show rates above 100. These figures are alarming because they show rates up to five times the national average.

Although these data are up to date, it is worrying not to have access to statistics broken down by ethnicity and sex, since all this information is inferred from the regional results. This makes it impossible to establish clearly the state of sexual and reproductive health of indigenous women, but it does provide some alarming indicators.

Barriers exist that keep indigenous women from a health system that would coordinate with, and act in accordance to, traditional health care practices: difficulties that keep indigenous women from being treated in their communities, absence of adequate personnel, medications, instruments, and infrastructure to provide care in situations of moderate and high seriousness in the indigenous hamlets. Neither the conditions nor the means of transportation are available to guarantee the displacement of sick people to health care facilities. Care in such facilities is not culturally adequate: there is no translation to indigenous languages, no conditions for the women to be accompanied by family members, no friendly information systems to help the women understand the procedures they are undergoing.

The internal armed conflict has turned the indigenous villages into victims. Although in many cases the figures are not higher than the national average, they are highly worrying precisely because of the demographic fragility. It is important to mention that there is a general sub-registration that is greater in cases of human rights violations of indigenous women.

From 1985 until now, there have been 2,628 registered assassinations of indigenous persons, and this situation persists. In the first half of 2013, according to ONIC (Organización Nacional Indígena de Colombia), of 22 people assassinated in the context of the armed conflict, four were women.

With regard to violent forced displacement, in spite of orders issued by the Constitutional Court (Judicial Decrees 092 y 004), the population victimized by this scourge remains alarmingly high:

“Between 2007 and 2010, 79,000 indigenous persons were displaced from their territories. According to ONIC, in 2011, 33 displacement events were registered affecting members of indigenous peoples, or 5,327 persons. It is primarily girls, boys, and women who are banished, widows and women heads of households. The prevailing attitude on the part of the Colombian State is an absence of assistance in such situations.”

It is estimated that in 2012, at least 18,154 indigenous persons had to leave their place of residence; and, even though the greater part of these displaced persons stay within their territory or in

¹³¹ *Análisis de Situación de Salud según regiones Colombia. Ministerio de Salud y Protección Social 2013.*

¹³² *Data taken from: "Pueblos Indígenas y los ODM. Objetivos del Desarrollo de Milenio", PNUD 2012.*

near-by places in order to avoid the seizure of their lands, many members of these communities arrive at urban settings that necessarily remove them from their cultural practices and cause a break up in their means of subsistence and in the meaning of life itself.¹³³

This means that these indigenous people represent 7,08% of the total displaced population.

Rapes and sexual crimes against indigenous women and girls are not recorded and not investigated: “A reality that is little documented, not quantified, there are no data to express faithfully this reality; complaints are often heard that are later dismissed because “it wasn’t true” or “it was a misinterpretation of the facts,” or “they imagined it.”¹³⁴ According to ONIC, between 2011 and 2012, 11 cases were reported of sexual violence against indigenous girls and women. All of them remain unpunished. The majority has not even been taken to court.

Access to justice is another of the rights of indigenous women that is violated. Generally, neither indigenous justice nor the ordinary justice system is responsive to their complaints. This is due to the fragility of indigenous justice and the ineffectiveness of ordinary justice. When the women are finally able to lodge a complaint, there are often no translators available for the judicial proceedings and no specific protocols for assistance to indigenous women. Many times, cases are heard collectively, disregarding basic norms about the protection of the right to intimacy of the victims of sexual violence.

In Judicial Decree 092 of 2008, the Constitutional Court orders the Colombian State to investigate at least nine cases of indigenous women victims of sexual violence. According to the response of the Attorney General’s Office to ONIC, none of these cases is being investigated. There is no knowledge of any sentences for sexual violations or any other types of violence against indigenous women.

In spite of the many agreements and spaces for dialogue between the Colombian State and the indigenous peoples, the fact remains that:

- The Colombian State has not set up information systems reflecting the human rights situation of indigenous women. It could be said that the “multiethnic and multicultural nation” with institutions, information systems, policies, and programs that acknowledge this diversity does not exist.
- In spite of the agreements for the formulation of public policies favoring Colombian women and indigenous peoples, the topic of indigenous women has become crosscutting, to the point that attention is no longer focused on indigenous women as such, which ends up making them invisible.
- State institutions and civil servants do not have the tools or the appropriate training to respond to an intervention with a differential ethnic or gender approach.
- Regarding Law 1257, indigenous women do not find a favorable framework for the defense of the rights. There is no coordination between ordinary national justice and indigenous justice, and the women remain unprotected and with nowhere to turn. Also, the implementation of this law does not take into account the specificities of indigenous women, and the measures adopted do not contemplate special approaches for them.
- Decree 4633 of 2011, which regulates the Victims’ Law in what concerns indigenous peoples, has not gone beyond formulation, and its implementation is delayed by meetings and negotiations that do not lead to concrete actions.

¹³³ *La crisis humanitaria en Colombia persiste. Informe desplazamiento forzado en 2012, CODHES.*

¹³⁴ *Report Mujeres indígenas, víctimas invisibles del conflicto armado en Colombia, La violencia sexual, una estrategia de guerra, 2012, presented to the UN Special Representative of the Secretary-General on Sexual Violence in Conflict by the Women, Family and Generation Support Office of ONIC.*

- The crisis in the country's health system affects indigenous women dramatically, and they face innumerable obstacles that keep them from gaining access to the right to health.
- There is little political participation by women in national politics. In spaces of indigenous government, there is more participation; however, these spaces are rare and precarious, and entail the same difficulties that Colombian women in general have to face. According to the Constitution, indigenous peoples have their own space in the Colombian Congress. However, men have always headed this minor representation. By law, in the legislative organs women must be represented by at least a third of their members. This led to women in some municipalities being invited to be part of lists for municipal councils, departmental assemblies, Chamber of Representatives and Senate. This invitation in many cases was made simply as a formality to comply with the legal requirement and with little possibility of the women being elected. There is no information about how many indigenous women were elected to the municipal councils or to other regional bodies. And they are absent from such settings at the national level.

In spaces of local indigenous government, the number of women who are elected as indigenous “governors” or authorities is growing. However, there is no quantitative information in this regard.

3. LGBT Women

In Colombia there are no information systems on the human rights situation of the LGBT community. In consequence, the State has no data, mappings, patterns, characterizations, etc. to allow it to become familiar with the problems that this population faces and thus be able to design and implement actions for the protection of its human rights.

In addition, there is no national LGTB public policy. Decree 4530 of 2008 stipulated that the Ministry of the Interior, through its Office for Indigenous, Minority, and Rom Affairs, should design programs for the LGTB population related to technical and social assistance.¹³⁵ However, there are no concrete results because:

1. There is no agreed-upon agenda for the formulation of public policy.
2. No progress has been made on a draft public policy.
3. The team appointed by the Ministry of the Interior is inadequate, since it has no decision-making power, is not familiar with the formulation of public policies, and does not know the specificities of the LGBT population.
4. No budget has been allotted.

On the other hand, due to the lack of a national public policy, a “Roundtable on Urgent Cases” was set up, which, beginning on November 7, 2012, is presided by the Vicepresident of the Republic. Participants are various official agencies, such as the Attorney General's Office, the Police, and the Public Ministry. However, this roundtable is insufficient, since no clear criteria have been worked out about which cases must be evaluated. Also, it inspires little credibility because of the lack of progress and because of the participation of the Inspector General, Alejandro Ordóñez, who has openly opposed recognition of the rights of LGBT persons.

Although the National Police issued Memorandum 006 of 2010 promoting “guarantees and respect for the rights of the LGBT community,” no effective tools are available to end or reduce discriminatory practices on the part of that institution.

Of the criminal proceedings for homicides of LGBT persons registered by Colombia Diversa between 2008 and 2012 (a total of 580), in only 20 cases have definitive sentences been passed (18 convictions and two acquittals). In the majority of cases, the criminal investigations are filed away or processed as crimes of passion, so no investigations are pursued about possible motivations related to the sexual orientation or gender identity of the victims.

¹³⁵ Article 13 of Decree 4530 of 2008.

Although it is widely known that the illegal armed groups apply so-called “social cleansing,” the real impact on the LGBT population in the context of the armed conflict remains unknown. Since 2008, Colombia Diversa has been warning about the massive circulation of flyers in various departments of the country. Between 2010 and 2012, at least 32 flyers have circulated containing death threats against LGBT persons.

The National Institute for Legal Medicine and Forensic Sciences (INMLCF) reported that between 2010 and 2011, at least 60 LGBTI persons were victims of sexual violence. With respect to lesbians, gays, and bisexual persons, no specialized programs or counseling exist on sexual and reproductive health.

The situation of defenders of the human rights of the LGBT population

Furthermore, between 2007 and 2012 Colombia Diversa learned about the assassination of at least nine defenders of the human rights of the LGBT population. Among the human rights defenders assassinated are four lesbian and two transsexual women. In accordance with the recommendation by the Inter-American Human Rights Commission,¹³⁶ a specialized unit should be created for the analysis and investigation of crimes committed against LGBT persons.

The specific situation of lesbian women

a) Figures on human rights violations of lesbian women

In spite of the lack of official information systems, Colombia Diversa¹³⁷ has been able to record, for the period 2007-2012, 580 homicides of LGBT persons. Of these, 22 were lesbian women.

Between 2007 and 2012, at least 158 cases became known of police abuse (which includes such acts as arbitrary detention, cruel, inhuman or degrading treatment, torture, and violations of due process); however, it is not possible to provide the exact number of lesbian women victims of abuse. Nonetheless, it can be said that the cases of police abuse against lesbian women occur most often when they are in couples.

b) Detained lesbian women

Lesbian women who are detained have lodged complaints about: 1. Prohibition or restrictions and obstacles regarding the enjoyment of the right to conjugal visits between same-sex couples; and 2. Disciplinary punishment for displays of affection between same-sex couples in prison. The State has not complied with the general directives of the Constitutional Court in its Sentence T-062 of 2011, in particular about amending Decree 11 of 1995, “the general regulations that all internal rules in detention centers and prisons must observe,” in order to make them more sensitive to the needs of detained LGBTI persons.¹³⁸

c) Lesbian women’s right to a family

Lesbian women have suffered in particular the violation of their right to a family. Although since 2007 the Constitutional Court has been developing a line of case law on the rights of same-sex couples, there are still problems in its implementation because many civil servants refuse to apply it or don’t know how to do so. In addition, the Inspector General has been a strong opponent of the recognition of these rights, making use of the concept of conscientious objection,¹³⁹ whereby the notaries public can refuse to pronounce de-facto marital unions among same-sex couples.

¹³⁶ *Comisión Interamericana de Derechos Humanos, Segundo Informe sobre la Situación de las Defensoras y los Defensores de Derechos Humanos en las Américas, OEA/Ser.L/V/II.Doc. 66, 31 diciembre 2011, párrafo 337.*

¹³⁷ *Colombia Diversa has a database with violations against LGBY persons, among them violations o the right to life and personal integrity. The database is fed periodically from 1) radio, press, and television information; 2) complaints from non-governmental organizations and activists; 3) individual complaints about which Colombia Diversa has direct knowledge; and 4) official information provided by State institutions through answers to official requests for information from Colombia Diversa.*

¹³⁸ *Although there are guidelines or resolutions of the penal authorities (Instituto Nacional Penitenciario, INPEC) that order public servants in penal institutions to respect the rights of LGBTI persons (in particular Circular 011 dated February 18, 2003 and Permanent Guideline 0010 of July 5, 2011), the complaints continue.*

¹³⁹ *See: <http://www.caracol.com.co/noticias/actualidad/colombia-no-esta-preparada-para-uniones-maritales-entre-homosexuales-procurador/20111202/nota/1587191.aspx> y <http://m.eltiempo.com/politica/proyecto-de-ley-para-regular-la-objecin-de-conciencia/10039067>*

In what refers to adoption,¹⁴⁰ the Inspector General has appointed special commissions to keep watch in an unusual way over the adoption processes initiated by LGBT persons, in particular with regard to a request for adoption presented by a lesbian couple. In addition, the Inspector Delegate for the Defense of the Rights of Children, Adolescents, and the Family has issued written directives requesting the Attorney General Office to investigate all individual adoptions carried out by LGBT persons, considering that they might be guilty of the crime of irregular adoption.¹⁴¹ Likewise, she has addressed notices to the Family Welfare Institute (ICBF) in order to investigate if LGBT persons have undertaken any individual adoptions.

In addition, in its Sentence C-577 of 2011, the Constitutional Court urged the Congress to legislate on same-sex marriage. The debates in Congress turned into a platform for the senators to expand on their discriminatory positions without any type of sanction; in the end, Congress did not legislate on the matter. At present, and on the basis of the Constitutional Court's sentence, a suit is being filed before the judges in order to obtain recognition of the marriage of several lesbian couples, in spite of the opposition of the Inspector General and the ignorance of the association of notaries public regarding the Constitutional Court's sentence on same-sex marriages.

The specific situation of transgender women

a) Data on human rights violations of transsexual women

Of the total number of homicides of LGBT persons recorded between 2007 and 2012 (580), 107 victims were transsexual women. Transsexual women are one of the main victims of homicides among the LGBT population. The patterns observed regarding such homicides are the following: 1. The great majority occurred in the victims' workplace (areas of prostitution or beauty salons) or in public spaces. 2. The majority was committed with a bladed weapon. 3. The majority was committed using special violence or extreme cruelty.

Cases of police abuse against transsexual women present the following characteristics: 1. They occur in places where the women practice prostitution, and the goal is to keep them from such practice; 2. They involve more than two victims; and 3. They take the form of physical and verbal aggression and, in some cases, arbitrary detention.

b) Detained transsexual women

With respect to detained transsexual women, complaints continue to be heard about illegal restrictions to their right to express their gender identity (cutting their hair, keeping them from wearing make-up, etc.). Also, transsexual women have been victims of sexual abuse in prison.

c) Economic, social, and cultural rights of transsexual women

In Colombia there is no law on gender identity or legal provisions that recognize the specificities of the transgender population or guarantee their rights, particularly their health rights. In addition to implants practiced by non-professionals, transsexual women resort to the use of medications to alter the physical characteristics of their bodies. The restrictions that the health-care providers impose on them compel them to resort to practices that put their health and their lives at risk. Thus, situations arise that are typical of the transsexual population, such as calling themselves by a different name than the one registered, not having an identification document, moving frequently from one city to another – in the case of those who practice prostitution – which means that they are excluded from the health care system because they are simply not registered.

¹⁴⁰ *Colombian law does not forbid the adoption of boys and girls by persons with a different sexual orientation or gender identity (Article 68 of Law 1098 of 2006) and does not say that there must be inquiries about the sexual orientation of the persons who wish to adopt as an eligibility requirement. However, the Inspector General seeks to prevent that members of the LGBT population adopt underage children, individually or as a couple.*

¹⁴¹ *Procuraduría General de la Nación, Procuraduría General de la Nación solicita a la Fiscalía General y al ICBF investigar adopciones irregulares llevadas a cabo por parte de personas homosexuales, Boletín 176, 24 de febrero de 2011 <http://www.procuraduria.gov.co/portal/Procuraduria-General-de-la-Nacion-solicita-a-la-Fiscalia-General-y-al-ICBF-investigar-adopciones-irregulares-llevadas-a-cabo-por-parte-de-personas-homosexuales.news>*

The work situation of transsexual women is disturbing: even if they've had to get around all kinds of obstacles in their families and schools because of prejudice, and have achieved levels of education that would qualify them for decent employment, even then they find it impossible to get a job that does not compel them to renounce their gender identity. In the most unfortunate cases, which are the majority, the only option left to them is the practice of prostitution. The link between discrimination, violence, and lack of work opportunities is very tight in the case of transsexual women. The stereotypes that link them to delinquency results in many doors closing for them as they look for employment.

4. Girls, adolescents, and young women

In the inequitable and unequal context prevailing in Colombia, young and adolescent women and girls from different populations – such as campesino, Afro-descendant, and indigenous groups – constitute one of the most discriminated sectors, with the least possibility of access to economic, social, and cultural rights. Discrimination because of age, added to reasons of race, ethnicity, political affiliation, sexual preference, and religion, is systematic and exacerbated by conditions of vulnerability in the political and social context, without a clear willingness on the part of the State to correct the situation.¹⁴²

According to the Secretary General of the United Nations, Human Rights Watch, and UNICEF, Colombia is in fourth place in the world with the greatest number of children and adolescents involved in an internal war. The legal framework conceived by the Colombian state for assistance and reparation to victims does not guarantee the implementation of principles of effective reparation and guarantees of non-repetition of the rights violated. The policy of land restitution for boys, girls, and adolescents, which should be included in a program developed by the Social Directorship of the Unit for Land Restitution, has yet to be formulated or implemented by the State.

Regarding violence, the situation is critical, and sexual violence remains the most dramatic problem. According to official figures, 40% of the reported cases of sexual abuse affect girls younger than 14. Attention to this type of cases by civil servants is precarious and not very professional, and the adolescents must face new risk situations and be re-victimized. Regarding other types of violence against girls, adolescents, and young women, the IMLCF in its last four reports has stated that the group most seriously affected by violence are girls between the ages of 10 and 14, with 34,5%, followed by those between 15 and 17 years of age, with 25%. Education and health services, especially in sexual and reproductive health, are deficient, and in rural areas they are absolutely nil. There are no guarantees for the participation of young women in decision-making processes, particularly for young women in rural areas; young women continue to be perceived as mere beneficiaries of state policies and programs and not as subjects of their own development.

5. Rural women in mining areas

In the past few decades, the national government strengthened its commitment to link its economic development strategy to the growth of the extractive mining industry. As described in the National Development Plan 2010-2014, the mining-energy sector is considered one of the five motors of the country's development.¹⁴³ Today the mining-energy sector makes up 7% of the GNP and more than 50% of total Colombian exports.¹⁴⁴

In the same way as the institutional emphasis on mining has grown stronger, so has a critical attitude on the part of civil society and public opinion against a model that is inequitable, exclusive, and predatory of natural resources. This model not only affects the environment but it also impairs the quality of life of the communities and, in particular, of women.

¹⁴² Document prepared and presented by Semillero de Niñas y Jóvenes, Colectivo Mujeres al Derecho, in the framework of the first meeting of the Regional Conference on Population and Development in Latin America and the Caribbean, Montevideo, Uruguay - August 2013.

¹⁴³ The so-called motors are the strategies of the government for the development of the country, such as big mining, agro-industry, construction, and infrastructure.

¹⁴⁴ Taken from: <http://www.razonpublica.com/index.php/conflicto-drogas-y-paz-temas-30/3591-proceso-de-paz-y-sector-minero-energetico.html>. August 18, 2013.

In Colombia, rural women represent 46% of the total number of women; however, in spite of the recommendations and observations on rural women by the Cedaw Committee,¹⁴⁵ the majority of them suffer discrimination resulting from the rural debt and the gender debt.¹⁴⁶ These types of discrimination – an expression of authoritarian power relations in the dispute over land and territory, in the current model of rural development, and in the armed conflict – are significantly deeper in the case of rural women in mining areas, not only for being women but because of their being campesinas, indigenous, and Afro-Colombian, to the point that the violations of their rights, particularly the right to land and territory, keeps them from overcoming the obstacles generated by discrimination and from living a decent life. Although there are no data on the situation of rural women in mining areas at the national level, the discrimination against them in mining contexts expresses itself in at least five types of acts of violence.

Impact on rural women in mining areas

a. Patrimonial violence: Infringement of rights to land and territory

This violence derives, on the one hand, from threats, fraudulent ploys, and forced displacement by the armed parties in the conflict and by State and private enterprises, often after the assassination of their colleagues, leading to plundering of land later destined for mining. And on the other, from displacement and resettlement of communities as a result of the environmental consequences of mining.

Added to the marginal nature of female property of land ¹⁴⁷ is the loss of territory, of cultural identity and, in particular, of the cultural practices of the indigenous, Afrodescendent, and peasant communities, practices historically preserved by the women. Along with this, the rights to collective property, to prior consultation, and to the self-determination of peoples have also been infringed upon, in particular in the case of indigenous and Afro-Colombian communities, for whom the land is the source of all forms of life.

b. Economic violence: Low level of labor ties and caring activities

In Colombia, “in the year 2001, women represented 18.6% of the labor force in the mining sector, while in 2006 they represent 19.8%, moving from 17,000 to 43,000 women working in this branch of industry. In contrast, the men went from 74,000 to 174,000 employed in this sector during the same period; that is, from representing 81.4% of the total of those employed in the mining sector they went on to represent 80% in this period.”¹⁴⁸

Added to this low level of labor ties are precarious working conditions, employment in “typically” female activities, and a low level of income for women who work for mining companies. Also, rural women perform care activities (a major proportion of rural women are heads of household, many of them without any support ¹⁴⁹), work longer hours than men, and make up the majority of the poor in the country.

c. Sexual violence: human trafficking, sexual exploitation, and forced prostitution

Other types of gender violence are sexual violence and physical violence, expressed in an increase in the number of cases and of networks involved in human trafficking, sexual exploitation, and forced prostitution in mining areas. For example, in Bosconia, Cesar department, 30 to 40 cases of child prostitution related to

¹⁴⁵ *Article 14, General Recommendation 19 of 1992 and Observations 21, 22, 23, 30 and 31 (CEDAW/C/COL/CO/6).*

¹⁴⁶ “The rural debt is characterized by the discrimination suffered by men and women, rural dwellers, in contrast to the urban population. The gender debt refers to discrimination for being a woman in the rural context. In addition to the impacts related to the violence against women in the armed conflict.” *United Nations Development Program, UNDP. Informe Nacional de Desarrollo Humano. Bogotá, 2011.*

¹⁴⁷ “Deere and León (2005: 404) point out that the gender gap in the ownership of resources, in particular in land tenure, is significant in the region”. *PNUD. INDH. Cuaderno Mujeres Rurales. Gestoras de esperanza. Bogotá. 2011. P. 46 and 47.*

¹⁴⁸ *These figures, the most up to date available, can be found in Bermúdez, Rosa Emilia (Coord.). Mujer y Minería. Ámbitos de análisis e impactos de la minería en la vida de las mujeres. Enfoque de derechos y perspectiva de género. Sensat Agua Viva. 2011.*

¹⁴⁹ *Programa de Naciones Unidas para el Desarrollo PNUD. Informes Nacional de Desarrollo Humanos. Cuaderno Mujeres Rurales. Gestoras de esperanza. Bogotá, 2011.*

mining have been detected,¹⁵⁰ and in other departments, such as Santander, the number of cases has soared.¹⁵¹ As was recently pointed out in a press investigation, “in Cartagena, Pereira, Medellín, Armenia, and Cali, “contact offices” are set up to recruit minors and prostitutes of up to 26 years of age (...). These criminal networks have established camps near the mines in order to provide entertainment services to the workers.”¹⁵²

d. Impact on health: Infringement of sexual, reproductive, and food rights

Although there are no detailed studies at the national level, women report ¹⁵³ that they suffer impacts on their health typical of mining areas, among them skin and eye diseases, and cancer, derived from the pollution and the deterioration of the natural resources, particularly of the sources of food and agricultural production. Concerning sexual and reproductive health, sexually transmitted diseases, premature pregnancies, and spontaneous abortions are frequent,¹⁵⁴ as well as other diseases of the women’s reproductive organs and infections due, for example, to the contamination of water sources and to the low level of education, attention, and prevention in sexual and reproductive health.

The right to food is affected too, since mining not only reduces access to food and productive sources, but it transforms the models of production in the communities and the ancestral practices of the community women.¹⁵⁵ As a result, levels of mother-child malnutrition rise, and the decision-making capacity of the women in the family is reduced, as well as their participation in food production and their access to land.

e. Political violence: exclusion from decision-making spaces and weakening of social organizations

Political violence is practiced against women in the mining areas with the aim of weakening civil society organizational processes through threats, stigmatization, criminalization, forced disappearance, and assassination of women defenders of the right to the land and the territory, and of women’s rights. Likewise, the exercise of their right to political participation and representation has been affected, either through exclusion from decision making, the low level of support or the weakening of their organizational processes, or the reduced capacity and opportunities to influence public policy.

In view of the precariousness of the information on these issues, it becomes necessary to identify at the national level the impact of mining in the lives and bodies of women, particularly social, economic, environmental, and cultural conflicts, as well as the effects on women and on the processes of participation and advocacy that they have been carrying out regarding mining. Likewise, it is the responsibility of the State to guarantee adequate living conditions and eliminate risks and impacts of mining on rural women, according to Cedaw’s 1992 Article 14 and General Recommendation 19.

6. Women with disabilities

In spite of the positive changes regarding the protection of persons with disabilities in Colombia, women with disabilities are still victims of human rights violations, both for being women and for their disabilities. At the moment, an alarming number of women and girls with disabilities are sterilized by force and without informed consent.¹⁵⁶ Generalized and persistent discrimination against women and girls with disabilities results

¹⁵⁰ Taken from: <http://www.rcnradio.com/noticias/mineria-y-desempleo-causan-prostitucion-infantil-en-bosconia-cesar-70239>. August 18, 2013.

¹⁵¹ Taken from: <http://www.vanguardia.com/santander/barrancabermeja/142663-prostitucion-infantil-se-disparo-en-zonas-mineras-de-san-pablo-y-si>. August 18, 2013.

¹⁵² Taken from: http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12824463.html. August 18, 2013.

¹⁵³ TCINEP/PPP – Fuerza de Mujeres Wayuú. Investigación “Impacto de las políticas mineras a las mujeres y sus derechos a la tierra y el territorio en La Guajira”, realizada en el marco de la ENI Colombia. Entrevistas mujeres Resguardo Provincial, Pueblo Wayuú, Municipio de Barrancas, Departamento de La Guajira. Visita de campo, 28 de julio de 2013.

¹⁵⁴ CINEP/PPP – Fuerza de Mujeres Wayuú. Investigación “Impacto de las políticas mineras a las mujeres y sus derechos a la tierra y el territorio en La Guajira”, realizada en el marco de la ENI Colombia. Septiembre de 2013.

¹⁵⁵ “This is the situation: when there is no rain, there is no food; when there is no food, there is no nutrition; if there is no nutrition, there is disease. And where does that come from? From mining.” CINEP/PPP – ILC. Impacto de las políticas mineras a las mujeres y sus derechos a la tierra y el territorio en La Guajira” Research in the framework of ENI Colombia.

¹⁵⁶ See Open Society Foundation, *Sterilization of Women and Girls with Disabilities* (2011), Available at <http://www.opensocietyfoundations.org/sites/default/files/sterilization-women-disabilities-20111101.pdf>. CEDAW Comm., General Recommendation No. 19: Violence Against Women, ¶ 22, U.N. Doc. A/47/38 (11th Sess. 1992).

in a systematic denial of their rights to sexual education, to living their sexuality, to having sexual relations, and to starting and keeping a family. For women and girls, sterilization is irreversible and, hence, when it is forced it becomes an act of gender violence,¹⁵⁷ a form of social control, and a violation of the right not to be subjected to torture or other cruel, inhuman, or degrading treatment.¹⁵⁸

Forced sterilization

In its General Recommendation No. 18, the Committee, taking into consideration Article 3, expressed its concern regarding women with disabilities, who “suffer a double discrimination due to the specific situation in which they live,” and recommended that the State parties “include in their periodic reports information on women with disabilities and on the measures taken to address their specific situation, (...) and ensure that they can participate in all aspects of social and cultural life.”

In contravention of the Committee’s recommendations, Colombia has allowed a full guardianship of persons with disabilities through a judicial process called interdiction. Law 1309 of 2009 allows the full guardianship of persons with “absolute mental disability” and a partial guardianship of persons with “relative mental disability.”¹⁵⁹ Although this law describes interdiction as a protective measure, it is used routinely to carry out surgical sterilizations of women with disabilities without their informed consent. Once the guardian obtains an interdiction order, he/she has the power to ask the judge for an order allowing the sterilization of the person with disability.

In Colombia this practice is generally applied only to persons with disabilities, and is justified using erroneous concepts seeking to protect this population group. The practice reinforces the stereotype of persons with disabilities as unable to be parents and needy of protection from sexual violence.¹⁶⁰ It is a particular form of violence promoted by the relatives of the women with disabilities, allowed by the State and the judicial system through policies and legislation that legalize it and promote it.

In its General Recommendation No. 27, the Committee recognized that age and sex make older women more vulnerable to violence, and that age, sex, and disability make older women with disabilities particularly vulnerable.

The Colombian government provides information on gender violence in its periodic report, but it does not mention gender violence against women with disabilities and, more specifically, the practice of forced sterilization.¹⁶¹

Discrimination against women with disabilities is present also in their family structures; parents and caretakers often argue that sterilization is necessary because persons with disabilities are more vulnerable to sexual violence. However, it is clear that the reason for forced sterilization is not sexual violence but rather it is promoted because the victims are unable to become pregnant.

Another stereotype that is frequent in society is that women with disabilities are incapable of being mothers. In a case examined by the Constitutional Court,¹⁶² it was argued that if a person cannot understand or give her consent to forced sterilization because of cognitive impairment, then the person cannot agree to, or be aware of, the consequences of having a child.

¹⁵⁷ CEDAW Comm., *General Recommendation No. 19: Violence Against Women*, ¶ 22, U.N. Doc. A/47/38 (11th Sess. 1992).

¹⁵⁸ *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶¶ 38-39, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak); *Convention Against Torture Comm., General Comment No. 2: Implementation of Article 2 by State Parties*, ¶ 22, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (39th Sess. 2007).

¹⁵⁹ TL. 1306, June 5, 2009, DIARIO OFICIAL [D.O.].

¹⁶⁰ *Testimony of service providers obtained through PAIS, Asdown, and Fundamental Colombia, Bogotá* (2012).

¹⁶¹ CEDAW Comm., *Colombia Periodic State Report*, ¶ 137-155 (2013) U.N. Doc. CEDAW/C/COL/7-8.

¹⁶² *Constitutional Court, Jan, 23, 2003, Sentence T-024/03*

Accepting and giving rise to this type of practices, the State is not only not complying with its obligation to modify cultural patterns that lead to discrimination, but it is also promoting them, thereby violating Article 5.

The right to legal capacity

Law 1412 of 2010 violates the right of women with disabilities to exercise their legal capacity. It is widely recognized that the law presumes that women with disabilities who are under interdiction are incapable of giving their consent to a sterilization procedure. They are subjected to a process of “substitute consent,” in which the guardian is the one who makes the decision and signs the document of informed consent.¹⁶³ The legal interdiction process and its consequences in sterilizations violate the right to legal capacity of women with disabilities.

The process of assisted consent, instead of substitute consent, would protect the right of women with disabilities to legal capacity and would recognize that women with disabilities require support in order to understand the sterilization procedure and its effects. The Constitutional Court has established and applied this methodology in cases of surgery for sex reassignment of intersexual children.¹⁶⁴ A medical and interdisciplinary team, including social workers and psychologists, must work with the child to explain the procedure to him/her and verify whether the child is giving his/her valid consent. The process of obtaining consent for the sterilization procedure could be based on this support system, in which the woman with disability and her family are given a comprehensive and interdisciplinary explanation of the procedure to help her decide whether or not she wishes to undergo it. The woman with disability must have the last word on the decision and sign the consent document herself.

Sexual and reproductive health education

Colombia has made efforts on paper to acknowledge that women with disabilities have a right to sex education. Law 1618 of 2013 calls on the Ministry of Health and Social Protection to “ensure that sexual and reproductive health programs are accessible to persons with disability.”¹⁶⁵ Although legislative initiatives have been pursued to provide sex education and family planning information to women with disabilities, in practice these have not been implemented.

At present, current policies have not applied a differential approach to strategies of sex education for women with and without disabilities, which translates into an absence of norms or guidelines concerning sex education for girls or women with disability.

When the Colombian government has focused on persons with disability with its family planning and sex education programs, it has been in a disjointed and haphazard way. For example, the Ministry of Health reported in a response to a request for information that it had carried out a series of sex education workshops with the National Institute for the Blind, the National Institute for the Deaf, and other groups that promote the rights of persons with disabilities. However, these efforts are not part of a coordinated policy or strategy, and they do not promote specific rights to sexual education nor consistent policies in reproductive health.

7. Women detained for drug-related crimes

In Colombia, as in other countries in the Americas,¹⁶⁶ drug policies have shown to have disproportionate effects on the lives of women. Proof of this is that something like a feminization of drug crimes has come about in the past few years. An analysis of the statistics on prison population in the country shows that,

¹⁶³ L. 1412, Oct. 19, 2010, *DIARIO OFICIAL* [D.O.].

¹⁶⁴ *Constitutional Court*, May 12, 1999, *Sentence SU-337*

¹⁶⁵ L. 2618, Feb. 27, 2013, *DIARIO OFICIAL* [D.O.].

¹⁶⁶ In Argentina, for example: http://www.clarin.com/politicas/Argentina-cumplen-condenas-trafico-drogas_0_920308348.html

although the majority of people detained for crimes against public health (the legal category under which drug crimes are placed) are men, the majority of detained women are in prison for these types of crimes. In fact, between 2003 and 2010 they represented between 45% and 48% of female detainees. That is, it is the set of crimes for which the largest proportion of women are incarcerated.¹⁶⁷

This is particularly problematic if one takes into account, on the one hand, that the majority are women who have had a marginal and non-violent participation in the drug business;¹⁶⁸ and, on the other, that the effects of incarceration tend to be disproportionate for women in comparison with men.¹⁶⁹ This is so, among other reasons, because, due the traditional roles women carry out in society, being deprived of their freedom exposes them to separation from their families and losing contact with their children.

In addition to the above, the antidrug policies in the country have generally not been structured to include an approach that is sensitive to the rights of women. For example, regarding assistance and treatment of drug consumers, there are practically no programs or alternatives in the country thought out specifically for female drug users, nor any that take into account the effects of treatment on their lives.

IV. ARMED CONFLICT

“(…) the armed conflict in Colombia has evolved in the past few years – the names of the actors, the mechanisms for financing these structures, the modalities and objectives of victimization. However, the war continues to affect the greater part of the population and, although the violations continue, the forms they take are different, less visible, and therefore more complex to identify, to record, and to report.”¹⁷⁰

1. Non implementation of Resolution 1325

In spite of the Colombian government’s international commitment to support the U.N. Security Council Resolution 1325 on Women, Peace, and Security and subsequent resolutions (1820, 1888, 1889, 1960 and 2016), no clear strategies have been worked out yet for their implementation, and neither has a National Plan of Action been designed for follow-up and monitoring, as requested by the women’s movement in Colombia.

Despite the absence of a National Plan of Action for the implementation of Resolution 1325, some strategies have been developed in Colombia related thematically to that Resolution, particularly in Law 1448 of 2011 and Judicial Decree 092 of 2008. However, it must not be forgotten that the design and implementation of the National Plan of Action takes on particular importance in the transition and post-conflict phases, and it must therefore be formulated.

From the information gathered in order to review compliance by the Colombian State with Resolution 1325 and subsequent resolutions, what stands out is non-compliance and little progress in providing the necessary and relevant information on the indicators of the Security Council. There are no statistics for monitoring violence against women (Indicator 1a), the security and physical and mental health of women and girls, their economic security and their human rights (Indicator 14). Information is incomplete and not disaggregated, making it impossible to determine whether there are operational mechanisms and structures available to strengthen the physical integrity and security of women and girls (Indicator 16). Also, there are no records on the existence and transfer of small arms and light weapons (Indicator 17). No State records are on hand to evaluate women’s access to justice (Indicator 19).¹⁷¹

¹⁶⁷ Guzmán, Diana Esther & Uprimny, Rodrigo. (2010). *Políticas de drogas y situación carcelaria en Colombia*. En: *Sistemas Sobrecargados: Reformas a las leyes de drogas en América Latina*. Wola. Disponible en: <http://www.drogasyderecho.org/assets/rld-colombia.pdf>. Págs. 26-28.

¹⁶⁸ *Ibíd.* Págs. 31-32

¹⁶⁹ See for example: Herrera Carmen M. & Expósito Francisca. (2010). *Una Vida entre Rejas: Aspectos Psicosociales de la Encarcelación y Diferencias de Género*. *Intervención Psicosocial* Vol. 19 No. 3. Págs. 235-241.

¹⁷⁰ *Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO)*, *Boletín de Monitoreo N° 10, junio de 2013*, en: <http://www.coalico.org>.

¹⁷¹ *Corporación Humanas, Cumplimiento del Estado Colombiano con la resolución 1325, Febrero de 2013, pág. 7.*

The information to determine whether the personnel charged with assisting women victims of violence and gender-based violence is being trained is deficient (Indicator 20). The data suggested by the system of indicators to assess whether or not women's access to justice has improved are incomplete; in particular, there is no indication of the position of function of the beneficiaries of the trainings, or of the contents covered by the training.¹⁷²

2. “New” criminal groups

The process of demobilization of the paramilitaries between 2002 and 2005 did not bring about, as it should have, the removal of one of the parties in the war. On the contrary, it produced a proliferation of groups. Even though the government and police authorities make great efforts to conceal the failure of the process, the criminal activities of these groups has compelled the authorities to rename them “criminal gangs” (“bandas criminales,” Bacrim) and refer to a proliferation of structures and kingpins. To achieve their ends, they make contact with common crime organizations and gangs, since it is these who exert power and are familiar with the city environment. Many of the acts of violence against women are nowadays committed by these post-mobilization (paramilitary) groups.

3. Guarantees of non-repetition of the violations

The State is not complying with the guarantees of non-repetition of violations. In spite of the measures taken to protect women, and of the abundant resources available to the protection programs, public servants recognize the serious situation of violence that women continue to suffer, including feminicides, sexual violence, threats, and forced displacement, as well as the serious limitations they face to confront it.

Protective measures are not appropriate for the needs of women. In spite of the fact that the Constitutional Court has, on several occasions, emphasized the importance of incorporating a gender approach in the protection programs, this has not been achieved, especially in indigenous and Afro-Colombian territories.

The presence of armed groups throughout the territory, and in particular the persistence of paramilitary groups who in many regions continue acting in connivance with the State security forces, is another of the major obstacles to the implementation of the Victims' Law and the land restitution program. According to UNHCR, in 2012 more forced displacements took place than in 2010 and 2011. The Director of the Unit for Land Restitution referred to the difficulty of restituting land in the midst of the armed conflict.

In addition, the “National Consolidation Plan” (the security policy of the Santos administration) was created to protect the “motors of development” and not the citizens. Its implementation has brought about an important increase in the militarization of the regions where it is applied and, consequently, greater risks for the women in those areas.

4. Forced displacement

In 2008, the Colombian Constitutional Court issued Judicial Decree 092, which recognized the disproportionate impact that forced displacement has on women and established ten risk factors, considered specific circumstances that women are exposed to that make them vulnerable because of their being women and they do not share with forcibly displaced men. The Court ordered the national government to generate 13 programs to address these risk situations and create the conditions for an effective enjoyment of their rights by displaced women. The government of Juan Manuel Santos has shown its interest in applying these programs through a Comprehensive Plan for the Prevention and Attention to the Differential and Disproportionate Impact of Displacement on Women in Colombia – a plan that would fuse the 13 programs in the interest of a more efficient action on the part of the State.

¹⁷² *Ibid.*

In this process, administrative reforms of the institutions and entities that make up the National System for Comprehensive Assistance to Forcibly Displaced Populations (SNAIPD in Spanish) have been undertaken. However, these changes, which began in January of 2012, are still flawed with regard to institutional coordination, availability of resources, and gaps in the implementation of plans and programs to guarantee comprehensive protection and assistance as well as economic and social rights such as the right to health, housing, education, land, work opportunities, and an effective participation by forcibly displaced women.¹⁷³

5. The rights of women victims: the Victims' and Land Restitution Law

Law 1448 of 2011, "by which measures are issued for the attention, assistance and comprehensive reparation of victims of the internal armed conflict" – also known as the Victims' and Land Restitution Law – represents a step forward in acknowledging the internal armed conflict and its victims. Although with some gaps, the Law establishes measures for the differential assistance and reparation in favor of women victims of breaches of international humanitarian law and serious human rights violations, especially for those women who have been victims of sexual violence, abandonment, or illegal seizure of land.

Even if this law constitutes a fundamental element in the recognition of the rights of the victims of the internal armed conflict, its implementation carries enormous risks. Measures will have to be adopted to guarantee its effective application, as well as full participation by the victims and organizations who represent them, in the development of mechanisms to apply them. Also, the institutional framework will have to be adapted and competent civil servants trained on the rights of victims, on protection instruments, mechanisms and procedures, as well as on the differentiated impacts of armed violence depending on ethnicity, sex, and age.

The differential approach is an issue that is reiterated in Law 1448. However, it is not clearly established what would be a differential approach for women; and when it comes to implementation, what is mentioned most often is priority in attention. Some measures could be indicative of a new discrimination and marginalization, for example the restitution of real estate property in the name of the couple even though the greatest number of claimants for land restitution in the country are women, and it is they who are taking on the costs and the risks of demanding their rights. When a woman has a partner, the property should be in the name of both.

Because of all of the above, the differential approach went only as far as the legal formulation and no measures were developed to concretize the concept and guarantee the restitution of lands with a differential approach that meets the needs and takes into account the realities of landless or displaced women.¹⁷⁴

The regulation of Law 1448 presented by the government does not include a differential approach to meet the specific needs of the victims, and some of its provisions could lead to perpetuating the patterns of discrimination and marginalization. Such is the case of the absence of regulation on the forgiveness of debts incurred in purchasing land.¹⁷⁵

Land restitution for women

In Law 1448 the concept still prevails of "home" or "family" as a nucleus that claims the right to restitution; the law ignores the inequalities that women face in the context of a family relationship and the previous and subsequent situations that, in cases of land usurpation or displacement, influence the changing roles in the couple. In many cases, the context after displacement contributed to the women being abandoned by their partners, or becoming widowed, and being the ones who claim or demand their rights.

To peasant women in Colombia, land is an element of social cohesion that allows them to support their families. Their concept of rural development is closely linked to the social function of the soil. The territory is linked to the culture of the indigenous and Afro-Colombian women and their way of looking at the world.

¹⁷³ National Roundtable for Monitoring Judicial Decree 092. Informe a la Corte Constitucional. February 2013.

¹⁷⁴ Corporación Humanas, Cumplimiento del Estado Colombiano con la resolución 1325, Febrero de 2013, pág 7.

¹⁷⁵ National Roundtable for Monitoring Judicial Decree 092. Informe a la Corte Constitucional, November 2011.

That is why they speak of collective territories.

Peasant, Afro-Colombian and indigenous women see with concern the way their lands and territories have been affected by large-scale economic projects such as, for example, mining and palm-oil production, which have been developed without any regard for their rights. For many of these women, the future does not lie in mining but in food autonomy.

Inequity in land distribution in Colombia is worrying and even more so when it comes to women. The Gini index of land concentration is 0,8.¹⁷⁶ However, up to now no government has taken into account the work of rural women in the design of rural development policies. As the latest UNDP Human Development Report points out, the present rural development model makes gender differences invisible and discriminates against women.

Access to restitution

The restitution proposed in Law 1448 does not take into consideration the specific needs of women with regard to the right to land, making it necessary to show how they are specifically affected and the particular forms of expropriation they are subjected to, such as sexual violence in the context of the armed conflict. "According to information gathered during field work for the organization Corporación Humanas, alias Tijeras used sexual violence to displace families. He would take one or two girls from a family, abuse them sexually, and then the family had to flee the area."¹⁷⁷

Ignorance about the relation between sexual violence in the context of the conflict and expropriation of land from women is putting at risk the effective restitution of their property. Judicial staff ignores the specific impact of the conflict in the lives of women and the role that this violence played in the dispossession and forced land abandonment the women have gone through.

On the other hand, in most cases women don't have titles that back up their ownership of the land, and when they do have them, most often they are in the name of male family members or a male partner, which makes it extremely difficult for women to request restitution of their properties.

There is still no real interinstitutional coordination, and the formalities take precedence over effective justice. The principles of pro victima, good faith, and reversing the burden of proof in favor of the victim must be applied with more decision, prioritizing attention to requests from women.

The enormous distance between the Victims' Law on paper and its effectiveness in practice is a reflection of the lack of a public policy that really takes into account the rights of rural women and acts upon them. There is little support from the State for projects led by women for overcoming poverty, and this opens up questions regarding the sustainability of those who return to the properties restored to them. There is a worrying lack of coverage by the entities charged with the implementation of the Law and the land restitution program with regard to women outside of the urban centers.

In the 25 land restitution processes analyzed by CINEP,¹⁷⁸ 518 persons were beneficiaries, of which 259 are women, claiming 110 properties that vary in size from 0,08 to 1000 hectares. These claims were the product of 105 episodes of land usurpation. In spite of this fact, in only one sentence of land dispossession in Pasto, department of Nariño, does the judge order that rural women should be priority beneficiaries of Law 731 of 2002; this is evidence of the absence of a gender approach and the precariousness of the measures established by the judges with regard to land restitution and women.

Women who claim their right to the land are persecuted, threatened, and assassinated in Colombia.

¹⁷⁶ PNUD, en: http://pnudcolombia.org/indh2011/pdf/informe_completo_indh2011.pdf

¹⁷⁷ Corporación Humanas (2009). *Guía para llevar casos de violencia sexual: Propuesta de argumentación para enjuiciar crímenes de violencia sexual cometidos en el marco del conflicto armado colombiano*. Bogotá, pág. 31.

¹⁷⁸ *Selected sentences up to July 25, 2013 by the system of information and monitoring of sentences from land restitution processes, CINEP/PPP.*

As for refugee women, they have been practically excluded from the benefits of the Law up to now, and their return is the condition for their inclusion.

6. Protection of women and female leaders in the context of the armed conflict

In spite of the efforts by the Colombian state to guarantee effective protection of women and female leaders victims of sexual violence in the context of the armed conflict, in practice the growing body of regulations has not offered adequate protection to minimize the risks faced by the victims or guarantee their rights and eradicate impunity.

In the past few years, the Colombian government has, through legislation, tried to move forward with regard to protection with a gender approach for women and female leaders victims of the armed conflict affected by crimes such as sexual violence.

This is reflected in the creation of protection programs under the responsibility of the Attorney General's Office and the Protection Unit, regulated respectively by Resolution N° 0-5101 of August 15, 2008 and Decree 4912 of 2011, complemented by the Constitutional Court's Judicial Decree 092 of April 2008, as follow up to Sentence T-025 of 2004, which emphasizes the ten specific risk situations that displaced women are exposed to and that would give rise to the immediate constitutional presumption of risk and, therefore, to the implementation of emergency measures in their favor.

Another step forward is Sentence T-496 of 2008, which emphasizes and recalls the minimum elements that are basic to protection programs: they must allow for a differential response that addresses not only the specific women targeted by the programs in the context of the conflict, but also the various levels of impact that the armed conflict has on gender, age, health, etc. It insists on the fact that in protection programs gender must be treated and recognized in a special way.

The most recent breakthrough comes in Resolution 0805 of May 14, 2012, "by which a specific protocol is issued with the gender and women's rights approach Article 50 of Decree 4913 of 2011 refers to." This resolution aims to acknowledge the specific prevention and protection needs of particular population groups, women in this case.

In practice, many of the protection models still don't recognize the specific realities of women and don't cover or address aspects that are not visible "at first glance," such as psychological damage. Protection is limited to physical measures such as telephones, safety vests, or armored vehicles, or the permanent company of police personnel. No measures are included to cover the families of the women leaders, or to protect effectively indigenous or Afro-Colombian women.

7. Military criminal justice and sexual violence against women

Sexual violence against women, adolescents, and girls by members of the State security forces

Available figures (see chapter on violence against women) show a large number of records related to sexual violence attributed directly to the State security forces, making it the armed group primarily responsible for this type of violation.

Girls and adolescents are the population group most affected by sexual violence. It is striking that the State security forces show the greatest number of records for this act, and this calls attention to the danger that minors are exposed to in territories where the official forces are present. This close relation between militarization of territories and the recurrence of acts of sexual violence against women and girls in Colombia is made evident by the fact that the cases of sexual violence committed by members of the State security forces tripled, in percentage terms, since the implementation of the Democratic Security policy:¹⁷⁹ from four

¹⁷⁹ *Democratic Security was the security policy of President Álvaro Uribe Vélez (2002-2010) which consisted, among other elements, on a strong militarization of the national territory.*

cases in the period 1997-2002, the number of cases attributed to them rose to 45 in the period 2002-2007.¹⁸⁰ The close link between sexual violence and other human rights violations and breaches of IHL, such as forced displacement, extrajudicial executions, massacres, and arbitrary detentions, cannot be ignored. This link is particularly important, since in many of the cases the sexual violence factor remains hidden (or is concealed) under those other crimes during the investigation, thereby favoring impunity.

Reform of the military criminal justice system and “Protocol for the State Security Forces on Handling Sexual Violence with Emphasis on Sexual Violence in the Armed Conflict”

In December 2012, Congress passed a reform of the military criminal justice system which to international oversight bodies and civil society constitutes “(...) a historical step backward in the Colombian State’s struggle against impunity and for respect and guarantees for human rights.”¹⁸¹

One of the main concerns regarding the changes introduced in the Constitution have to do with the fact that all breaches of international humanitarian law (IHL) committed by the State security forces will be heard exclusively by courts martial or military tribunals, with the exception of crimes against humanity, genocide, forced disappearance, torture, extrajudicial execution, forced displacement, and sexual violence.¹⁸²

The list of exceptions included in the reform is insufficient, since it leaves out various human rights violations that should be under the jurisdiction of the ordinary justice system, such as arbitrary detentions, cruel and degrading treatment, taking of hostages, discrimination and violence (other than sexual) against women, war crimes, and crimes against civil, political, social, cultural, economic, or environmental rights, for example.

Exclusive jurisdiction is handed over to the military criminal justice system of all abuses committed by the military related to the conflict, in spite of its historical incapacity to define if the acts constitute human rights violations. The lack of independence and autonomy that characterizes this institution is due, in part, to its make up: it is a branch of the Ministry of Defense, and the judges that make it up must judge an institution they are part of and have sworn to defend.

Before the reform, in case of doubt over jurisdiction, cases had to be sent to ordinary justice. Now, a technical commission and a tribunal, both made up of civilians and members of the military, deal with disputes over jurisdiction. The commission will have its own judicial police organ for gathering and analyzing evidence. In other words, military criminal justice will decide if crimes have been committed that fall under its competence or not, based on the evidence that it itself gathers. The reform entrusts the investigation almost exclusively to military criminal justice, making it practically impossible for a case to be moved to the ordinary justice system.

There is an additional source of concern regarding the reform of military criminal justice: the issuing by the Ministry of Defense in November 2012 of the “Protocol for the State Security Forces on Handling Sexual Violence with Emphasis on Sexual Violence in the Armed Conflict,”¹⁸³ which confers responsibilities to the military concerning assistance to women victims of sexual violence that are contrary to the law and to standards of protection of women’s human rights. Among other issues, the protocol includes as a responsibility of the military to fill out a document on assistance to women victims of sexual violence when they encounter such cases. It suggests that the military authorities should assess the credibility of the victim, the probability that the act took place, and the responsibility of the perpetrator, issues that should not fall within their competence.

¹⁸⁰ *Roundtable on Women and Armed Conflict, VIII Report, p.13. contributed by the Colombian Commission of Jurists, La violencia contra las mujeres y las niñas en Colombia agravada por la Política de “Seguridad” del Estado”.*

¹⁸¹ *Office of the U.N. High Commission for Human Rights, Colombia: Expertos de Naciones Unidas hacen un llamamiento a las autoridades para que reconsideren la reforma constitucional del fuero penal militar” press release, Geneva, October 22, 2012. This press release is signed by eleven holders of mandates of special procedures, among them the Special Rapporteur on violence against women, Rashida Manjoo.*

¹⁸² *Acto Legislativo No. 02/2012 (Diciembre 27) “Por el cual se reforman los artículos 116, 152 y 221 de la Constitución Política de Colombia”.*

¹⁸³ *Issued by the Ministry of Defense in November 2012.*

The protocol urges the military to gather the facts, and they can thus ask the victim for a detailed account of the facts of the case of sexual violence (the act itself, the place, if it took place more than once), which entails an unnecessary exposure for the victim, since this account is not in itself either a complaint or the statement that the woman will have to make when the prosecutor hears the case. Additionally, the military who registers the case is requested to establish “whether the act occurred in the context of the armed conflict,” “whether it occurred while on duty or off duty,” and “whether [the perpetrator] took advantage of his position as member of the Forces to commit the alleged crime” – all of which clearly goes beyond a general account of crimes that may have been committed by members of the military and turns into an instrument that demands a formal declaration from the victim; also, it gives power to the person who records the case to make assessments of transcendental importance, which fall under the competence of the legal branch: to establish whether a crime took place and to assess the individual criminal liability of a person.¹⁸⁴

In spite of the fact that sexual violence is included in the list of exceptions that would formally keep it from coming under the competence of the military criminal justice system, the following are issues of concern about the possible effects that the application of military justice could have on the prosecution of persons liable for that crime:

Potential effects of the reform of the military criminal justice system on the rights of women victims of sexual violence

a. Existing obstacles regarding access to justice for women victims of sexual violence

As was mentioned in previous paragraphs, women in Colombia experience difficulties in trying to gain access to justice. Also, the institutions that administer justice do not have sufficiently developed mechanisms to systematize and disaggregate cases of sexual violence by variables that translate into approaches that address conditions of vulnerability, ethnicity, age, incapacities, and displacement, among others.¹⁸⁵

There are also difficulties related to the lack of institutions to administer justice in rural, poor, and marginal areas, to the absence of public defense attorneys, to the lack of guarantees for the people who investigate and judge crimes against women, to the excessive importance accorded to physical proof, diminishing the relevance of other kinds of key evidence and hindering the investigations for some time after the crimes take place.¹⁸⁶

Further difficulties have to do with women victims reporting the facts of sexual violence. The women victims may have a sense of guilt that leads them to believe that they did not do enough to prevent the acts, that they provoked the aggressor, or that they did not put up sufficient resistance. Because of the high impunity rates, the fruitless experience of other women who reported their cases, the fear of stigmatization, the impossibility of paying the costs of the legal procedures, and the knowledge that the armed groups infiltrate legal entities,¹⁸⁷ there is a widespread lack of trust in the institutions that administer justice. In addition, there is the persistent inefficiency of the protection mechanisms that women can resort to.¹⁸⁸

These structural difficulties in the institutions that administer justice with regard to handling sexual violence could worsen with the implementation of the reform of the military criminal justice system.

184 *Ibid.*

185 *Roundtable on Women and Armed Conflict, IX Report, 2009, p.36. contributed by: Casa de la Mujer y Ruta Pacífica de las Mujeres, Las violencias sexuales contra las mujeres en Colombia: una realidad que no se transforma.*

186 *Ibid*, p. 41.

187 *Ibid* p. 40-42.

188 *Ibid* p.72.

b. Difficulties women will face in the context of the reform of military criminal justice

As was mentioned before, one of the present obstacles to access to justice by victims of sexual violence is the persistence of patriarchal, androcentric, and discriminatory structures that are characteristic of the military institutions, which worsens the difficulties for women's access to justice.

This is closely related to some of the contents of the reform such as, for example, the creation of a judicial police body characteristic of military criminal justice, which will be the first to determine the facts and identify the existence of a crime. This could lead to a cover up of sexual violence, or to making it invisible under other types of violations, such as torture and arbitrary detention, among others.¹⁸⁹

Second, the creation of a court of guarantees could also promote cover-up processes, to the extent that that body offers certain privileges and preferential treatment for the prosecution of members of the military, also for acts that are not under the jurisdiction of military criminal justice, such as sexual violence.¹⁹⁰ Third, the creation of a technical commission made up of military personnel to settle conflicts over competences can encourage covering up sexual violence or gloss over power relations and coercion.

Furthermore, keeping in mind that military tribunals are made up of military personnel subject to a line of command and a clear hierarchy, the lack of independence and autonomy can affect the correct development of the phases of preliminary investigation and, generally, the judicial proceedings as a whole.

It must also be kept in mind that in many of the cases of sexual violence there are also threats involved against the life and integrity of the victims and their relatives so that they do not report the facts or carry the judicial processes to their conclusion. The reform would make it easier, in cases of sexual violence committed by members of the State forces, for threats and pressure to be used – which would deepen the widespread mistrust of the women in the judicial processes and their results¹⁹¹. Furthermore, in a climate of coercion, and with the persistence of patriarchal structures such as the military institutions, the risk is great that the victims will be stigmatized or revictimized by, for example, inquiries about their sexual past.

In conclusion, it can be said that the reform of the military criminal justice system will affect even more the possibility of access to justice by women victims of sexual violence. This can bring about the consolidation of the already widespread impunity surrounding such acts in the context of the Colombian armed conflict.

8. Girls and armed conflict

Violations of girls' right to life and integrity persist during the hostilities or as a result of land mines, unexploded ammunition, confinement, denial of humanitarian care, occupation of schools, and other impacts on their economic, social, and cultural rights. A growing number of children, particularly girls, are victims of sexual violence on the part of the illegal armed groups and the State armed forces.¹⁹² The risks get higher also of sexual exploitation through forced prostitution, human trafficking, as well as physical and sexual aggression against women and girls.

Forced recruitment of boys and girls by the armed groups is a widespread and systematic practice in Colombia, and it has been increasing in recent times.¹⁹³ Irruption in schools, permanent threats, and even promises of minimal subsistence conditions, among other factors, characterize the scenario in which girls are forced each day to join the ranks of the combatant groups. Although the recruitment of girls is still carried

¹⁸⁹ See: *Roundtable on Women and Armed Conflict, IX Report, 2009, p. 45-61.*

¹⁹⁰ *Oficina del Alto Comisionado para los Derechos Humanos, Carta abierta de titulares de mandatos de los Procedimientos Especiales del Consejo de Derechos Humanos al Gobierno y a los representantes del Congreso de la República de Colombia.*

¹⁹¹ *Roundtable on Women and Armed Conflict, IX Report, p. 34. Contributed by: Casa de la Mujer y Ruta Pacífica de las Mujeres, "Las violencias sexuales contra las mujeres en Colombia: una realidad que no se transforma".*

¹⁹² *Comité de los Derechos del Niño, Observaciones finales: Colombia, 21 de junio de 2010, documento CRC/C/OPAC/COL/CO/1, numeral 34.*

¹⁹³ *Naciones Unidas, Informe del Secretario General sobre los niños en el conflicto armado en Colombia, 21 de marzo de 2012, párr 14.*

out taking them away from their homes by force, it is changing and now it takes place in schools and in recreational facilities, where they are enticed and invited by these groups to join their ranks.¹⁹⁴ In this way, the armed actors exert permanent social control and keep a census of persons under 18 years of age in their areas of influence. In spite of the gravity of the situation, there are no official figures on the phenomenon of forced recruitment in Colombia.¹⁹⁵ The investigation and punishment of the crime of recruitment is another outstanding debt toward the victims. There have been only two sentences passed by the special jurisdiction of Justice and Peace that include charges for the crime of illicit recruitment, and approximately 48 cases in the ordinary justice system.

¹⁹⁴ *Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO), Boletín de Monitoreo N° 10, junio de 2013, en: <http://www.coalico.org>.*

¹⁹⁵ *Comité de los Derechos del Niño, Observaciones finales: Colombia, 21 de junio de 2010, documento CRC/C/OPAC/COL/CO/1, numerales 16 y 17, y Comité para la Eliminación de la Discriminación contra la Mujer, Respuestas a la lista de cuestiones y preguntas relativas a los informes periódicos séptimo y octavo combinados, Colombia, documento CEDAW/C/COL/Q/7-8/Add.1, página 33.*

V. CONCLUSIONS

In spite of its abundant issuing of regulations, Colombia still has not taken the necessary steps to guarantee in practice an effective improvement in the situation of women. The serious scenario regarding almost all rights makes it obvious that the majority of recommendations formulated by the Committee have not been complied with, or not enough to transform the reality of Colombian women in a positive way.

The impulse that the Constitutional Court has wanted to give to international standards is praiseworthy. However, it is not reflected satisfactorily in adjustments to current policy nor in a commitment by other State institutions to put into practice the rights of women.

The report makes it clear that the main initiatives that have given rise to change in the struggle against violence and discrimination toward women have come mainly from civil society. This shows two things: i. The lack of political will on the part of the State in the matter. ii. The importance of the contributions of women in the conversations between the national government and the FARC to reach an agreement for a sustainable peace.

VI. RECOMMENDATIONS

In view of the situation described above, and with the aim that the Colombian State complies with the obligations contained in the Convention, we suggest that the CEDAW Committee formulate the following recommendations to the Colombian State:

1. To eradicate violences against women

- Design a Unified System of Information on violences against women, in which all the information from the State entities is gathered and articulated, also at regional and local levels. This system should articulate statistics on acts and forms of violence, characteristics regarding ethnic group, age, and/or sexual orientation of the victims, with information on judicial and disciplinary investigations.
- Assign a specific budget allocation to all State entities that carry out activities of prevention, attention, protection, investigation, and reparation of violence against women for the implementation of policies to eradicate discrimination and violence against women, prioritizing in this allocation the Ombudsman's Office (Defensoría del Pueblo) in order to guarantee legal assistance to women victims.
- Promote a criminal policy based on Judicial Decree 092 of 2008, Law 1257 of 2008, and international standards, in which are included prevention of the violences, prosecution of the acts, punishment for the perpetrators, physical and psychosocial care with a differential approach, comprehensive reparation, as well as effective protection for women victims and human rights defenders.
- Keep spaces open for dialogue with women's and civil society organizations on policies and initiatives related to women's rights.
- Establish transparent mechanisms for monitoring and follow up of implementation of the various policies related to women's rights; civil society organizations will participate in the design and operation of these policies.

2. To guarantee access to justice for women victims

- Develop a comprehensive, interinstitutional strategy to overcome the high levels of impunity in cases of violences against women, in particular in cases of sexual violence in the context of the armed conflict, including measures such as: specialization of civil servants in the investigation of such cases, interdisciplinary analysis of violences against women, application of international standards in the investigation of sexual violence in the context of the armed conflict and outside of it, or internal legislative alignment on sexual crimes with those recognized by the Rome Statute.
- Implement a strategy to eliminate gender prejudices and stereotypes in the system of assistance and administration of justice, making it possible to identify the impact of discriminatory attitudes in legal decisions and judicial review, as well as adoption of punitive measures against judicial officers who continue to reproduce such prejudices and stereotypes in their decisions and actions.

- Adapt and strengthen existing protection programs to incorporate effective protective measures with a differential and comprehensive approach for women victims, leaders, and human rights defenders, in order to guarantee access to legal services free of charge, participation of the victims in every judicial procedure, and effective reparation for women. These measures must include protection for the families, physical and psychosocial care, access to education and work opportunities or productive projects, as well as take into account the specificities of ethnicity and sexual orientation of the beneficiaries.
- Define a strategy for dismantling emerging paramilitary groups, prioritizing prosecution of perpetrators of threats against female human rights defenders and leaders and women's organizations.
- Strengthen dialogue with women human rights defenders for monitoring present protection policies and norms as well as progress in the investigation of attacks against them.
- Remove from the Colombian judicial system all legal provisions that involve the military forces in the processing of cases of sexual violence in the armed conflict and assistance to women victims of violence.
- Establish monitoring mechanisms to ensure that any act of violence against women carried out by agents of the police or the military, in the armed conflict or outside of it, will be referred to the Attorney General's Office or to other civil authorities. In this context, guarantee that in the application of the reform of the military criminal justice system and its subsequent regulatory norms, military judges will not hear cases of sexual violence committed by State agents, and that only the ordinary justice system will process such crimes and there will be no conflicts of jurisdiction, except to correct any assignment of cases to military judges.

3. To guarantee political participation of women

- At all levels, from the appointment of top State officials by the President of the Republic to government structures at the regional and local levels, apply laws that promote the political participation of women and foment compliance with such laws through political action leading to cultural transformation and punitive measures against non compliance.
- Design and promote approval of a political reform to guarantee an increase in female participation in elected office at national, regional, and local levels.

4. To guarantee the exercise of ESC rights by women

Education

- Put into effect measures to guarantee an education for women that is free of gender prejudices and stereotypes, among them those approved in Law 1257 of 2008 (and Decree 4798 of 2011), setting goals toward true equality between men and women, access to education in subjects traditionally associated with men, allotment of specific resources for the education of women, in particular for adapting educational programs to the specific geographic, physical, social, political, and cultural contexts in which women live, as well as to conditions of poverty.
- Establish a mechanism for impact evaluation of educational measures with a gender approach, based on complete and up-to-date information, making it possible to analyze the progress of vulnerable population groups such as indigenous, Afro-Colombian, peasant, disabled and LGBTI women.

Health: Sexual and reproductive rights

- Abstain from supporting or reproducing gender misconceptions, prejudices, stereotypes, as well as particular ideologies or beliefs as arguments to obstruct sexual and reproductive rights for women, specifically services for voluntary termination of pregnancy (VTP) in the framework of the three types of grounds decriminalized by the Constitutional Court; and see to it that all public servants who render that service, especially those in the areas of health and justice, act according to their legal obligations in a State of social and democratic rule of law that is multiethnic, multicultural, and secular, and the main guarantor of women's rights. Carry out actions to identify and overcome the obstacles that women face in gaining access to health services, particularly VTP.
- Design and execute public policies related to women's sexual and reproductive rights that go beyond the prevention of pregnancy and sexually transmitted diseases, on the basis of the principles of a secular State, guarantor of autonomy of will, sexual freedom, and unhindered development of personality. Include measures for the differential care of indigenous and Afrodescendent women, giving special attention to maternal mortality and sexual and reproductive health among these population groups, as well as among transsexual women.

5. To guarantee the rights of women in conditions of special vulnerability

Indigenous and Afrodescendent women

- Carry out actions in all State institutions to guarantee the right to prior consultation as a fundamental right in the life of indigenous and Afrodescendent women, in accordance with international standards, and promote in every scenario an increase in the political participation of women of ethnic groups at national, regional, and local levels, and in the context of the governing bodies of the ethnic groups and communities, and allocate specific resources to that end.
- As established by the Constitutional Court, adopt and develop a comprehensive policy for indigenous peoples and a comprehensive policy for Afrodescendent peoples that combine the perspective of women of indigenous and African descent for overcoming discrimination, and guarantee ethnic rights, particularly regarding political autonomy (a government of their own), territorial autonomy (secure territories with freedom of movement for women and their families), and cultural autonomy, as well as to face the risk of physical and cultural extinction of the indigenous peoples as a result of the impact of the armed conflict and the risk of impoverishment and dispossession of Afrodescendent communities.

LBT Population

- Put into practice the rulings of the Constitutional Court to modify and adapt internal regulations in penal institutions to accommodate the needs of incarcerated lesbian, bisexual, and transsexual women.
- Design and implement public policies regarding LGBT women, in consultation with representatives of this population group, with specific actions to accommodate their particular needs, and promote differential access to economic, social, and cultural rights.
- Abstain from basing administrative and judicial decisions on prejudices, and guarantee the independence of the authorities that deal with complaints filed by the LGBTI population, particularly decisions by judges and notaries public with respect to requests for same-sex marriage, or in solving cases of violence against transsexual women.

Women and girls with disabilities

- Guarantee that women and girls with disabilities exercise their right to sexual and reproductive health, recognizing their full legal capacity to make decisions autonomously, providing full and timely information about their rights and legal action for their protection, demanding that all public servants and private-sector employees show respect for the physical and mental integrity of this population group, and penalizing those who do not respect their rights.

6. On the legal framework for transitional justice

- Guarantee that all legal norms related to the prosecution of human rights violations in the armed conflict include the participation of women victims exercising their rights to truth, justice, and reparation, so that the measures contained in so-called transitional justice do not ignore the rights of women, do not reinforce gender discrimination, and do not ignore the disproportionate impact of the conflict on the lives of women.
- Design and implement mechanisms for monitoring and follow up of the application of transitional justice, guaranteeing access to information related to investigations on sexual violence in all jurisdictions, making it possible to analyze the impact of these norms on the rights of women to truth, justice, and reparation, as well as the levels of impunity generated.

7. Approaching forced displacement

- Comply with the orders issued by the Constitutional Court regarding appropriate attention to displaced women and victims of the armed conflict, and implement the 13 public policy programs, identifying obstacles confronted by women when trying to gain access to official assistance in reestablishing their rights.
- Put into effect a model for the systematization, monitoring, and evaluation of health care activities for the displaced population, particularly women, as demanded of the Ministry of Health and Social Protection. Ensure that, as part of an initial assistance to women victims, psychosocial and health care is provided with continuity until their recovery.
- Speed up the process of recognition and allocation of land ownership titles to women, without affecting the restitution processes being carried out by displaced women, and without a duplication of procedures for the victims or disregard of their rights.
- Require that all judicial and administrative authorities apply the postulate of presumption of law in favor of forcibly displaced women, as established by the Constitutional Court, Law 1257 of 2008, and international standards as tools to resolve doubts that may come up in the application or interpretation of the Victims' Law or any other transitional justice mechanism.

8. To implement U.N. Security Council Resolution 1325

- Formulate the National Action Plan, NAP, foreseen in United Nations Resolution 1325, in the framework of the peace dialogues, so that progress can be measured regarding guarantees of truth, justice, and reparation for women victims of the armed conflict.
- Promote, within official institutions at municipal and department level, awareness of the content of Resolution 1325 and Judicial Decree 092, their application, and implementation of monitoring and follow up mechanisms.
- Design specific mechanisms for women's participation in peace negotiation scenarios, both national and regional, making their capacities visible in the negotiation and decision-making arenas, and guarantee the inclusion of a gender perspective and a prominent role for women both in the implementation of the agreements and in the design of the post-conflict phase.

9. To guarantee land restitution and the rights of peasant women

- Adopt a model of rural development that recognizes women's specificities and their relations with the land and the territory, taking into consideration that many of them have no legal protection. The model must make it easier for them to have access to fallow lands, uncultivated lands, or lands under expiration of ownership and under State authority, or that the State must recover, and protect subsistence agriculture, including women as active subjects in the development of the Colombian countryside.
- Establish mechanisms to facilitate agricultural debt forgiveness and strengthen alternatives for the rural population, among them: provision of resources, seeds, and interest-free credits according to the financial capacity and possibilities of agricultural workers, access to machinery and technology, generation of self-produced seeds, and specific protection mechanisms in view of the Free Trade Agreements.
- Implement the Rural Women's Law (731 of 2002), including a rural census with qualitative and quantitative indicators on access, use, and enjoyment of land by rural women, impact on women of policies of land distribution, restitution, and redistribution, making it possible to establish the extent of the dispossession of peasant women in the midst of the armed conflict, and design new policies in that regard.
- Establish a framework of comprehensive measures for access to services in education, health, housing, social security, recreation, productive resources, communications, commercialization of products, as well as technical and entrepreneurial assistance, in order to improve incomes and quality of life, and support the economic stabilization of women subsequent to forced displacement.
- Design and implement true guarantees of non repetition that go beyond training activities and include structural measures such as the following: protective measures with gender perspective, dismantling paramilitary groups, guarantee of food security, or overhaul of the concept of security to establish measures different from the militarization of the territories – all measures defined in dialogue with rural women.