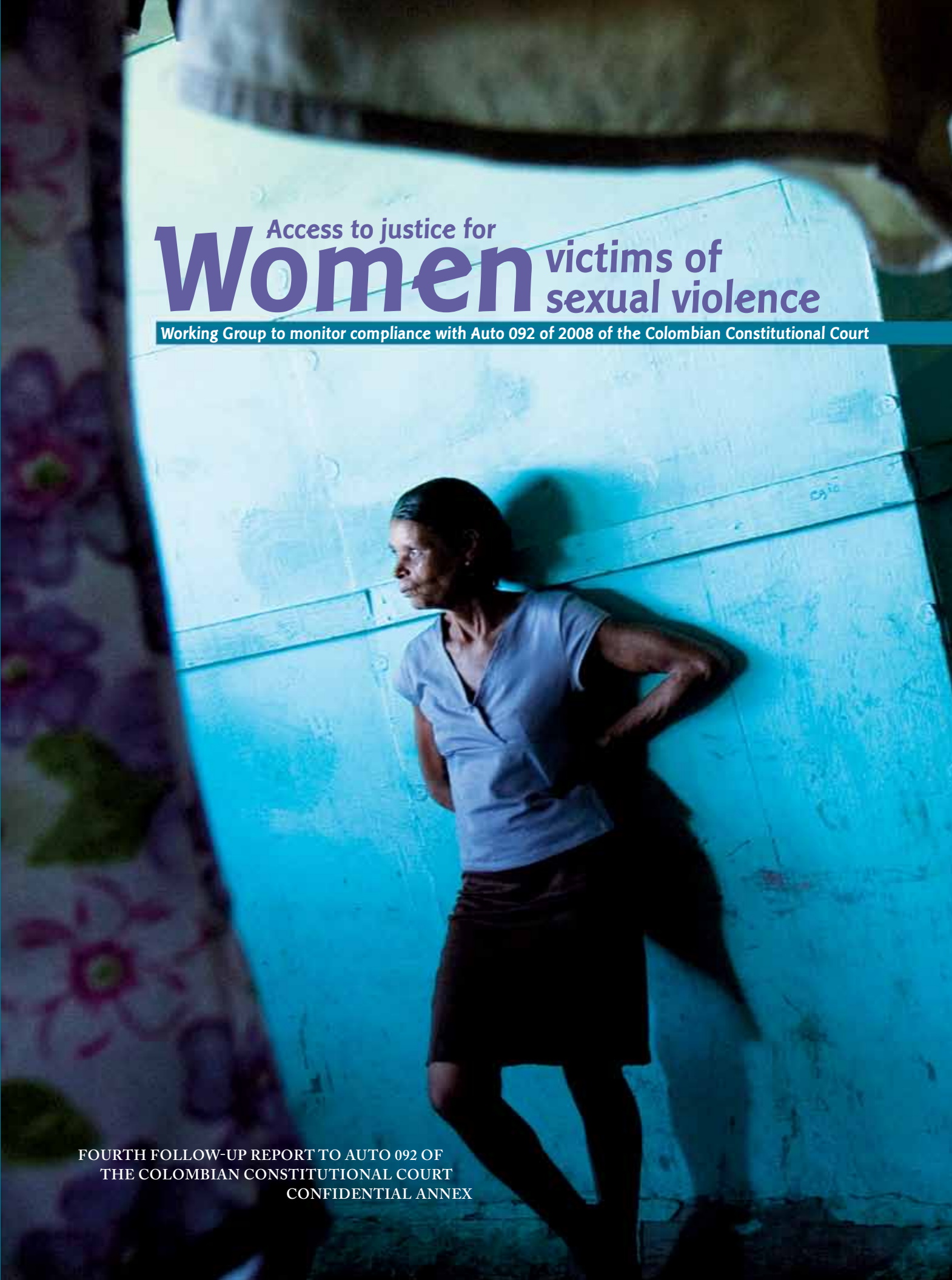

Access to justice for Women victims of sexual violence

Working Group to monitor compliance with Auto 092 of 2008 of the Colombian Constitutional Court

FOURTH FOLLOW-UP REPORT TO AUTO 092 OF
THE COLOMBIAN CONSTITUTIONAL COURT
CONFIDENTIAL ANNEX

Working Group to monitor compliance with Auto 092 of 2008
of the Colombian Constitutional Court, confidential annex
Access to justice for women victims of sexual violence
Fourth Follow-up Report to Auto 092 of the Colombian Constitutional Court

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CONTENTS

INTRODUCTION

The Center for the Study of Law, Justice and Society, the Colombian Commission of Jurists, the Consultancy for Human Rights and Displacement, the Foundation "Casa de la Mujer", the Foundation "Sisma Mujer", the José Alvear Restrepo Lawyers' Collective, the League of Displaced Women, the Movement "Ruta Pacífica de las Mujeres", the Observatory for Gender, Democracy, and Human Rights, the Partnership "Colombian Women's Initiative for Peace", and the Working Group on women and armed conflict, members of the Working Group to monitor compliance with the order remitted to the Office of the Prosecutor General of the Nation and the invitation to the Office of the Inspector General of the Nation as regards the confidential annex to Auto confidential annex to Auto (Order) 092 of 2008 of the Colombian Constitutional Court, present the Working Group's fourth follow-up report, "Access to justice for women victims of sexual violence". The Working Group is supported by the Office in Colombia of the United Nations High Commissioner for Human Rights and UN Women.

On 14 April 2008, the Colombian Constitutional Court issued a paradigmatic decision in which it noted inter alia the risk of sexual violence faced by Colombian women in the context of the armed conflict[1]. In Auto 092 of 2008, the Court stated that "[s]exual violence against women is a common practice which is widespread, systematic and invisible in the context of the Colombian armed conflict […]" (Section III.1.1.1, original in Spanish). The Court identified 183 cases of alleged sexual crimes committed during or on the occasion of the Colombian armed conflict for which there were factual, repeated, consistent and coherent accounts. For the Court, the most serious issue is that for this type of violence there is "a triple process of official and unofficial invisibility, victims' silence, and impunity for perpetrators" (Section III.1.1.6., original in Spanish, emphasis in original).

The Court remitted the cases identified to the Office of the Prosecutor General of the Nation in a confidential annex, ordering the latter to adopt "as soon as possible all necessary measures in order to ensure that the investigations which are underway make accelerated progress" (section "Orders", second order, original in Spanish). It also ordered the Prosecutor General's Office to "include the response to the phenomenon of sexual violence to which Colombian women have been and are exposed in the context of the

1 In Judgment T-025-2008, the Constitutional Court had signalled the existence of an unconstitutional state of affairs as regards assistance to displaced persons and had reserved its authority to continue monitoring the implementation of the judgment. In Auto 092, the Court follows up to Judgment T-025, focusing on the differential and acute impact the armed conflict has on women, and detects ten gender risks and vulnerabilities linked to gender which women face in this context.

armed conflict at the highest level of priority in the official agenda of the Nation" (Section III.1.1.l, original in Spanish). The Court has also notified the Office of the Inspector General of the Nation of the decision, inviting it, "in the exercise of its constitutional attributes, to guarantee the realization of particularly strict supervision" (Section III.1.1.1, original in Spanish).

Three years after this Auto was issued, the Working Group continues to observe persisting patterns of impunity in investigations of sexual violence, as well as the existence of barriers which render victims' access to justice and progress of the investigations more difficult. These conclusions are presented in the present report, the fourth report of the Working Group on compliance by the Prosecutor General's Office with the Auto.

When writing this report the following were taken into account: various answers to rights to petition filed with public entities, reports written by different institutions and monitoring working groups, and interviews with lawyers, judicial officials, specialists on sexual violence, and women victims of sexual violence. Although the report focuses on monitoring the group of cases referred by the Constitutional Court, the information which is analyzed also includes references to cases not included in the confidential annex.

This report is directed principally at the Colombian Constitutional Court in the framework of the orders described above, but it is also directed at the Office of the Prosecutor General of the Nation so that it may know and apply the standards on guarantee and protection for sexual violence against women and overcome the barriers which hinder the investigations' progress identified by the Working Group; at State entities so that they may take measures which guarantee the prevention, attention, investigation, and punishment of sexual violence; and at society in general so that it may know of the continuing level of impunity in the investigation of these cases and the barriers which women must face when acceding to the protection of their rights, and participate actively in defending women's rights.

The report is divided in four parts. The first chapter presents international and constitutional standards as regards sexual violence against women. It describes the legal framework used by the Working Group for the analysis that runs throughout the report. The second chapter is divided in three sections: section one presents a quantitative study which reveals the high level of underreporting which still persists for such events and the deficient progress in the investigations in the cases referred by the Constitutional Court; section two exposes the barriers for accessing justice identified in the Working Group's analysis; and section three studies in depth the barriers related to the lack of protection measures and health care. The third and fourth chapters of the report offer some conclusions and requests directed at the Colombian Constitutional Court.

The Working Group wishes to thank everyone who collaborated in conducting interviews, as well as in collecting, analyzing and discussing information. The Working Group particularly appreciates the courage of the women victims of sexual violence whose testimony contributed to writing this report.

I. STANDARDS ON GUARANTEE AND PROTECTION FOR SEXUAL VIOLENCE AGAINST WOMEN

1. Sexual violence as a human rights violation

Sexual violence is a human rights violation, particularly a violation of women's human rights. Various international instruments have emphasized the need to protect women against all forms of violence and against sexual violence especially. The Colombian State has ratified the main treaties in international human rights law, international humanitarian law and international criminal law, whereby it has committed to protect women against sexual violence. These treaties are incorporated into domestic law through the 'constitutional block', as a result of which they are binding on public officials (Political Constitution of Colombia, 1991, art. 93). The following sections present some of the international commitments of the Colombian State regarding sexual violence.

1.1 United Nations system

The United Nations (UN) system has characterized violence against women, including sexual violence, as a form of discrimination on the basis of sex. The International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) require States to respect and guarantee the rights enshrined in both Covenants without "distinction of any kind, such as race, color, sex" (ICCPR, art. 2.1; ICESCR, art. 2.2)[1] and to "ensure the equal right of men and women to the enjoyment of all […] rights" (ICCPR, art. 3; ICESCR, art. 3). Similar provisions can be found in the Convention on the Rights of the Child (art. 2.1)[2], the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 7)[3], and the Convention on the Rights of Persons with Disabilities (arts. 5 and 6)[4]. The ICCPR further contains an independent clause which guarantees "to all persons equal and effective protection against discrimination on any ground such as […] sex" (art. 26).

As regards women, the Convention on the Elimination of All Forms of Discrimination against Women[5] (CEDAW) defines discrimination against women as

> […] any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (art. 1)

On the basis of the general principle of equality and non-discrimination, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) characterized violence against women as a form of sexual discrimination. In its General Recommendation

1 The ICCPR and ICESCR were ratified by Colombia on 29 October 1969.
2 Ratified by Colombia on 28 January 1991.
3 Ratified by Colombia on 24 May 1995.
4 Ratified by Colombia on 10 May 2011.
5 Ratified by Colombia on 19 January 1982.

12 this Committee made reference to Articles 2, 5, 11, 12 and 16 of the CEDAW, which "require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life" (1989, para. 2). In General Recommendation 19, the CEDAW Committee explicitly recognizes that "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (1992, para. 1). According to this General Recommendation:

> The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. (UN, CEDAW Committee, 1992, para. 6)

The Declaration on the Elimination of Violence against Women (1993) provides a similar definition:

> […] the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. (UN, General Assembly, 1993, art. 1)

The Report of the Fourth World Conference on Women (Beijing, 1995) states that "[a]ll violations of this kind, including in particular murder, rape, including systematic rape, sexual slavery and forced pregnancy require a particularly effective response" (UN, 1996, para. 132).

Several resolutions of the United Nations Security Council complement these obligations, drawing attention to the phenomenon of sexual violence especially in conflict situations. Resolution 1325 recognizes the "need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts" and "[*c*]*alls on* all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse" (UN, Security Council, 2000, Preamble and para. 10).

Resolution 1820 specifically calls upon member States to:

> […] comply with their obligations for prosecuting persons responsible for such acts [rape and other forms of sexual violence], to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation. (UN, Security Council, 2008, para. 4)

Similar provisions can be found in Resolutions 1888 and 1960. In the latter, the Security Council expresses its concern that acts of "violence against women and children in situations of armed conflict […] continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality" (UN, Security Council, 2010, Preamble).

1.2 Inter-American human rights system

The American Convention on Human Rights or Pact of San José, Costa Rica[6], establishes general obligations for States to respect human rights without any discrimination for reasons of sex, as well as the duty to adopt such legislative or other measures as may be necessary to give effect to rights and freedoms.

As regards violence against women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women or Convention of Belém do Pará[7] establishes the right of every woman to "be free from violence in both the public and private spheres" (art. 3), which includes the right of every woman to be free from discrimination (art. 6.a). This Convention defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere" (art. 1). This Convention requires States parties, among other obligations, to "refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation" (art. 7.a), and to "apply due diligence to prevent, investigate and impose penalties for violence against women" (art. 7.b).

In the *Cotton Field* case the Inter-American Court of Human Rights (Inter-American Court) recognized that the disappearance and subsequent death of three women in the context of discrimination in Ciudad Juárez (Mexico) constituted a case of violence against women. The Court drew upon the American Convention on Human Rights and the Convention of Belém do Pará for the definition of "violence against women"[8].

As regards sexual violence specifically, the Inter-American Court has recognized that the latter infringes women's right to dignity. In the case of the *Castro-Castro Prison* (2006) the Court considered that the forced nudity to which several inmates were subjected represented a form of sexual violence and as such a violation of the right to humane treatment (IACtHR, 2006a, para. 308). In the case of *Rosendo Cantú* (2010) the Court also recognized that the rape of a me'phaa indigenous woman by Mexican soldiers represented a violation of the right to personal integrity, to personal dignity, and to private life (IACtHR, 2010a, para. 121).

Other international standards in the European human rights system have also determined that rape constitutes a breach of the prohibition of degrading treatment and respect for private life. In the case of *M.C. v Bulgaria* a 14-year-old girl was raped after she met several men at a party. They subsequently invited her to go out with them and on the way back

6 Ratified by Colombia on 31 July 1973.
7 Ratified by Colombia on 15 November 1996.
8 *Cotton Field* case (IACtHR, 2009, paras. 224-231).

stopped at a reservoir under the pretext of going for a swim. The European Court of Human Rights (European Court) found that the criminal investigations and the interpretation of the elements of rape had not taken into account the fact that the victim was a girl below the age of majority in a situation of coercion. According to the Court, the essential element in the definition of rape is lack of consent, which can be inferred from the circumstances of the case[9].

In those cases in which sexual violence is intentional, causes severe physical or mental suffering and is committed purposefully, it can also amount to an act of torture[10]. In the *Castro-Castro* case the Inter-American Court of Human Rights (2006a, para. 312) held that a finger vaginal examination carried out by several hooded people on a female inmate constituted rape and as such torture. It must be emphasised that in the case of *Rosendo Cantú* the Court (2010a, para. 110) does not mention as a requisite of torture that the act be perpetrated or instigated by a State agent or that it be carried out with the State's consent or acquiescence[11].

1.3 International criminal law

The Rome Statute also sets an important framework for prosecuting cases of sexual violence[12]. According to the Statute (UN, Rome Statute, 1998, art. 5.1), the International Criminal Court has jurisdiction with respect to the crimes of genocide, crimes against humanity, war crimes, and aggression. The Statute considers that sexual violence is a war crime and a crime against humanity. Following the Statute, crimes against humanity include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (art. 7.1.g). Likewise, war crimes include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions (art. 8.2.b).

Other international courts such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have considered rape, along with other sexual crimes, as a crime against humanity or a component of genocide[13], or as an act of torture[14], amongst others.

On the other hand, the developments of international criminal law must be highlighted as regards the consideration of evidence in cases of sexual violence. Norms as well as jurisprudence have indicated that it is not necessary to corroborate the testimony of victims of sexual violence[15], that evidence of the sexual conduct of the victim may not be admissible in the process[16], and that lack of specificity in the victim's account of the facts, details of events and dates, may not be used to discredit the victim's testimony[17]. It should be emphasized that the investigation of rape domestically as well as internationally must always take into account and comply with international human rights standards (Viseur Sellers, undated).

2. Due diligence in the prevention, investigation and punishment of sexual violence

The Colombian State is responsible for acting with due diligence in preventing, investigating, punishing and repairing human rights violations. This implies that the State must not only abstain from committing human rights violations but also act with due diligence and in compliance with international standards for human rights violations, including when such violations are committed by non-State agents. This obligation acquires a fundamental dimension for the protection of the rights of women who frequently suffer from violations of their rights by their husbands, partners, armed groups and other non-State actors. In this regard the CEDAW (1994) established that States parties undertake:

> (e) To take all appropriate measures to eliminate discrimination against women by *any person, organization or enterprise*. (art. 2.e, emphasis added)

Other documents of the UN system explicitly include the obligation of due diligence in cases of violence against women. In its General Recommendation 19 on violence against women, the CEDAW Committee (1992) stated that:

> Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with *due diligence* to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. (para. 9, emphasis added)

The CEDAW Committee recommended States to adopt all legal and other measures that may be necessary to effectively protect women against violence. These include, amongst others, effective legal measures, such as penal sanctions, civil remedies, and compensatory

9 Case of *M.C v Bulgaria* (ECtHR, 2003, paras. 163-166).

10 Case of *Rosendo Cantú* (IACtHR, 2010a, paras. 110 and 118), see also IAComHR (1996, Conclusions, para. 2.a; 2001a, para. 94).

11 In this regard, Judge Cecilia Medina in her Concurring Opinion to the *Cotton Field* case argued that the definition of torture should be guided by the concept of *jus cogens* (IACtHR, 2009, Concurring Opinion, para. 16).

12 This statute entered into force for Colombia on 1 November 2002 for crimes against humanity, and for the crimes of genocide and aggression, and on 1 November 2009 for war crimes. This is due to the fact that the Colombian State made use of the provision of Article 124 of the Rome Statute which deferred the entry into force of the Statute for seven years (Declarations made by Colombia upon ratification of the Rome Statute of the International Criminal Court, 2 August 2002, para. 5). The Rome Statute was declared constitutional by the Constitutional Court in Judgment C-578 of 2002.

13 ICTR (1998).

14 ICTY (1998a, 1998b, 2001).

15 ICTY (1997, paras. 536-539; 2001, para. 566); UN, ICC (Rule 63.4).

16 UN, ICC (Rule 71), referred to by the Constitutional Court of Colombia in Judgment T-453-2005.

17 ICTY (1997, para. 534; 1998b, paras. 108-115; 2001, paras. 564-565).

provisions to protect women against all kinds of violence, including sexual violence, as well as preventive and protective measures (UN, CEDAW Committee, 1992, para. 24.t).

The United Nations Declaration on the Elimination of Violence against Women also recognizes States' duty to "[e]xercise *due diligence* to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" (UN, General Assembly, 1993, Art. 4.c, emphasis added).

Consequently, the Declaration establishes States' obligation to grant victims "access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered" (UN, General Assembly, 1993, art. 4.d). From this obligation, the Declaration develops a series of specific State duties as regards prevention (art. 4.f), rehabilitation (art. 4.g), and redress (art. 4.d) for women subjected to violence.

The Inter-American system has also emphatically stated that the lack of due diligence in preventing or responding to a human rights violation can incur a State's international responsibility[18]. The Inter-American Court of Human Rights has established that the duty of due diligence includes the obligation to prevent, investigate, punish and repair human rights violations[19].

As regards facts which constitute violence against women, this obligation has been particularly developed by the Convention of Belém do Pará. Article 7 establishes States' duty to "apply due diligence to prevent, investigate and impose penalties for violence against women" (Convention of Belém do Pará, 1994, art. 7.b). Developing this duty, the Convention establishes obligations attributable to States in distinct areas. As regards the normative aspect, the Convention of Belém do Pará provides that States must:

> […] include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women. (Convention of Belém do Pará, 1994, art. 7.c, d and e)

In terms of administration of justice, the Convention of Belém do Pará requires States to:

> f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures, g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies. (Convention of Belém do Pará, 1994, art. 7.f and g)

18 Case of *Velásquez Rodríguez* (IACtHR, 1988, para. 172).

19 Case of *Velásquez Rodríguez* (IACtHR, 1988, para. 166).

In several cases the Inter-American Court has found that the failure to prevent, investigate, punish and repair in cases of violence against women constitutes a violation of the Convention of Belém do Pará, and particularly of its Article 7.b which establishes States' duty to "apply due diligence to prevent, investigate and impose penalties for violence against women"[20].

As the Colombian State has ratified the CEDAW, the American Convention on Human Rights and the Convention of Belém do Pará, it is obliged to comply with the standard of due diligence in preventing and responding to human rights violations in general and in cases of violence against women in particular. For each obligation which flows from this generic duty, specific standards exist. These are developed further below.

2.1 Obligation to adopt measures on sexual violence

Article 2 of the American Convention on Human Rights provides that States undertake to adopt "in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms". As for violence against women, Article 7.c of the Convention of Belém do Pará establishes States' duty to "include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women […]".

As regards the duty to adopt measures, in the *Cotton Field* case the Inter-American Court of Human Rights expressly stated that "States should adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they should have an appropriate legal framework for protection that is enforced effectively […]" (IACtHR, 2009, para. 258).

Colombia developed a legal framework which criminalizes various forms of sexual violence. Articles 138-141 of the Colombian Criminal Code (Law 599 of 2000) punish sexual offences committed against persons protected by international humanitarian law, while Title IV defines offences against freedom, integrity and sexual formation. This normative framework, however, does not criminalize nudity, forced abortion and sterilization or other forms of sexual violence.

As regards positive measures which protect women against sexual violence, Law 1257 of 2008 establishes concrete norms in terms of awareness-raising, prevention and punishment of violence and discrimination against women. This law defines sexual violence as "any action or omission which causes death, harm, or physical, sexual, psychological, economic

20 In the *Castro-Castro* case, the IACtHR for the first time found a violation of Article 7.b of the Convention of Belém do Pará (IACtHR, 2006a). See also *Cotton Field* case (IACtHR, 2009, Operative Paragraphs, paras. 4 and 5); case of *Rosendo Cantú* (IACtHR, 2010a, Operative Paragraphs, para. 3).

or patrimonial suffering which is gender-specific, as well as threats of such acts, coercion or arbitrary deprivation of liberty, whether carried out in the public or private sphere" (art. 2, original in Spanish). This law represents a step forward in women's protection against sexual violence which must be effectively implemented by State officials. Nevertheless, it does not contain any provision designed to address the causes and consequences of sexual violence in the context of armed conflict, nor for displaced women.

Last, other procedural provisions establish specific rights in order for victims to access justice. Article 11 of Law 906 of 2004 establishes a number of victims' rights, such as respect for their safety and intimacy, and the rights to reparation, to be informed, and to legal assistance and an interpreter, amongst others. Article 10 of Law 600 of 2004 signals the State's duty to guarantee to all persons effective access to the administration of justice. Article 15 of Law 360 of 1997 refers to victims' right to receive treatment for the prevention of sexually transmitted diseases and for physical and emotional trauma, and free access to the body of medical evidence. Articles 38, 39 and 58 of Law 975 of 2005, in turn, establish special measures for the protection of the safety, private life and intimacy of victims and witnesses. Although these norms establish generic duties in favour of victims which do not necessarily take into account the specific situation of women, they establish concrete duties for officials in charge of investigating sexual violence, who are therefore obliged to comply with these norms.

2.2 State obligations to prevent sexual violence

The Inter-American Court of Human Rights established that the duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are investigated, prosecuted and punished[21]. The obligation to prevent has also been internationally recognized by the Declaration on the Elimination of Violence against Women (UN, General Assembly, 1993, art.4.c) and the Beijing Declaration (UN, 1996, 124.b).

For the Inter-American Court, the obligation to prevent is a duty of means rather than a duty of result. The Inter-American Court as well as the European Court have established that the duty to prevent is violated in cases where the State knows or ought to know of the existence of a real and immediate risk but does not act with due diligence through concrete actions aimed at avoiding the occurrence of a human rights violation[22].

In the *Cotton Field* case against Mexico (2009), the Inter-American Court of Human Rights considered that the Mexican State had violated the duty to adequately prevent the death and assault of a group of disappeared women in Ciudad Juárez. According to the Court, given the context of generalized violence against women in that city, the State was aware that there was a real and imminent risk that following their disappearance the victims would be sexually abused and even killed, yet it failed to carry out search operations during

21 Case of *Velásquez Rodríguez* (IACtHR, 1988, para. 175); *Cotton Field* case (IACtHR, 2009, para. 252).

22 *Cotton Field* case (IACtHR, 2009, para. 284); case of *Opuz v. Turkey* (ECtHR, 2009, para. 130).

the first hours and days that they were reported as missing by their relatives (IACtHR, 2009, para. 283).

The European Court of Human Rights considered that the duty to prevent is violated by public authorities who, when they know or ought to know of a real threat against victims of domestic violence, fail to pursue criminal investigations and protect victims even when the latter withdraw their complaint. Indeed, in the case of *Opuz v. Turkey* (2009), the European Court stated that local authorities breached the positive duty to prevent as they failed to act with due diligence in the criminal investigation of a case of domestic violence against a woman and her mother, arguing that the victims had withdrawn their complaint (ECtHR, 2009, para. 153).

The Inter-American Commission on Human Rights (Inter-American Commission) has also determined that producing statistical data for designing and assessing public policies is an obligation derived from the duty of due diligence to prevent situations of violence, especially where widespread or deeply-rooted practices are concerned (IAComHR, 2007, para. 42). This is crucial in preventing sexual violence during armed conflict, especially if its systematic nature is taken into account, as recognized by the Constitutional Court in the case of Colombia (Constitutional Court, Auto 092 of 2008).

2.3 State obligations to investigate, prosecute and punish sexual violence

The Inter-American Court has reiterated that the failure to investigate and punish is a breach of the State's obligation to guarantee the human rights contained in Article 1.1 of the American Convention on Human Rights[23]. Such an investigation must be immediate and exhaustive and undertaken in a serious and impartial manner, and not as a mere formality preordained to be ineffective[24]. The investigation must explore all lines of inquiry which may lead to a clarification of the facts and the trial of the perpetrators. This obligation is binding on States to the extent that their international responsibility may be incurred for failing to order, practice or evaluate evidence which could be fundamental for the investigation[25].

Likewise, in the case of *Aydin v. Turkey* (ECtHR, 1997, para. 103 and following), the European Court determined that the right to an "effective remedy" entails not only the right to receive economic compensation but also the right to an effective investigation capable of leading to the identification and punishment of those responsible. In this case, a 17-year-old girl had been raped while in the custody of State agents. The Court determined that she had been denied access to an effective investigation of the sexual violence which she reported. Among other irregularities, the public prosecutor did not thoroughly investigate the facts

23 Case of *Velásquez Rodríguez* (IACtHR, 1988, para. 166).

24 Case of *Velásquez Rodríguez* (IACtHR, 1988, para. 177); case of the *Pueblo Bello Massacre* (IACtHR, 2006b, para. 143).

25 *"Street Children"* case (IACtHR, 1999, para. 230).

described by the victim and the medical examinations focused on her prior sexual conduct rather than determining whether she had been raped.

Within the Inter-American system, the Inter-American Court of Human Rights has noted that, especially in cases of violence against women, the duty to investigate "has a wider scope when dealing with the case of a woman who is killed or, ill-treated or, whose personal liberty is affected within the framework of a general context of violence against women"[26].

For each aspect of the investigation and prosecution process, international standards of due diligence have been developed[27]. The following standards are particularly relevant in relation to the investigation and prosecution of violence against women.

The investigation must be conducted within a reasonable time

The jurisprudence of the Inter-American system has noted that States have the duty to punish those responsible for human rights violations and avoid impunity[28]. In the case of *Maria da Penha v. Brazil*, in which 17 years had passed without a final decision being issued, the Inter-American Commission on Human Rights held:

> The failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered by Maria da Penha, and this failure by the Brazilian courts to take action is exacerbating the direct consequences of the aggression by her ex-husband. (IAComHR, 2001b, para. 55)

The realization of medical examinations must follow international standards

As regards the investigation of cases of sexual violence, the Inter-American Court of Human Rights has referred to the United Nations Principles on the Effective Investigation and Documentation of Torture (UN, OHCHR, 2000) and to the Istanbul Protocol (UN, OHCHR, 1999) as relevant standards applicable to the investigating authorities, doctors and other professionals in charge of investigating reports of sexual violence[29]. These documents establish minimum standards for undertaking medical examinations, for the investigation team in cases of sexual violence, for confidentiality of the examination, review of symptoms, follow-up, and genital examination, amongst others. They include, for instance, the importance of having specialists of both genders in the investigation team, permitting victims of sexual violence to choose the gender of the doctor, investigator or interpreter. Where this is not possible, the presence of another person of the same gender must be guaranteed throughout at least the physical examination and, if the victim wishes, throughout the entire interview (UN, OHCHR, 1999).

26 *Cotton Field* case (IACtHR, 2009, para. 293).
27 For a summary of the standards of the Inter-American system on due diligence, see CEJIL (2010).
28 Case of *Velásquez Rodríguez* (IACtHR, 1988, para. 188).
29 *Cotton Field* case (IACtHR, 2009, para. 502); case of *Rosendo Cantú* (IACtHR, 2010a, para. 242).

Revictimization must be avoided when practicing evidence

In the case of the *Sisters Ana, Beatriz and Celia González Pérez v. Mexico*, the Inter-American Commission on Human Rights established:

> Rape is an aberrant act, which, because of its very nature, requires evidence that is different from other crimes. Subjecting the victim to another episode of humiliation or one that causes that person to relive the events involving the most private parts of the person's body in the form of review proceedings should be avoided. (IAComHR, 2001a, para. 75)

The Inter-American Court has also accepted victims' declarations about sexual violence as entirely true, even when they did not report such acts in their first interviews with judicial authorities or doctors. In the case of *Rosendo Cantú*, the Court took into account the victim's declarations regarding acts of sexual violence even though during the first medical visits she did not mention such acts. According to the Court, "this omission can be due to the lack of sufficient safety or confidence to be able to talk about what happened" (IACtHR, 2010a, para. 95, original in Spanish).

Duty to consider the whole evidence and the context in which sexual violence occurs

In the *Cotton Field* case the Inter-American Court established that the failure to investigate the context or systematic pattern in which the disappearances took place represents an irregularity in the process which involves the international responsibility of the Mexican State (IACtHR, 2009, paras. 366-368).

> […] the Court finds that, even though the individualization of the investigations could, in theory, even advance them, the State should be aware that all the murders took place in a context of violence against women. Consequently, it should adopt the necessary measures to verify whether the specific murder that it is investigating is related to this context. Investigating with due diligence requires taking into consideration what happened in other murders and establishing some type of connection with them. This should be carried out ex officio, without the victims or their next of kin being responsible for taking the initiative. (IACtHR, 2009, para. 368)

Likewise, in the case of *M.C. v. Bulgaria* (ECtHR, 2003), the European Court established the international responsibility of the State for closing an investigation of sexual violence against a girl under the age of majority for not having found direct proof of the use of force or physical resistance by the victim. According to the Court, the authorities failed to explore all the surrounding circumstances of the case and especially the fact that it concerned a minor in a situation of coercion (ECtHR, 2003, paras. 178-187).

Prohibition to infer a victim's consent in cases of coercion

The Rules of Procedure and Evidence of the International Criminal Court develop several procedural principles relevant to cases of sexual violence. According to the latter, consent

cannot be inferred by reason of any words or conduct of a victim where force undermined the victim's ability to give voluntary and genuine consent, nor by reason of lack of resistance by the victim (UN, ICC, 2000, Rule 7.a and b). The Colombian Constitutional Court recognized this principle in its Judgment T-458 of 2007, in which a 14-year-old girl had been raped while she was drunk. For the Court, the decision of the Judge of First Instance was deliberately unmotivated as it ignored the expert opinion and the testimony of the girl, and argued that the lack of violence indicated consent.

Prohibition of the use of evidence related to the sexual conduct of the victim in the judicial process

In accordance with the Rules of Procedure and Evidence of the International Criminal Court, evidence of the prior or subsequent sexual conduct of a victim or witness may not be admitted in the process (UN, ICC, 2000, Rule 71). The Colombian Constitutional Court has implemented this rule by incorporating it into domestic law. In its Judgment T-453 of 2005, the Constitutional Court concluded that the request for evidence aimed at establishing the victim's prior sexual conduct was contrary to the Constitution.

Prohibition for military criminal courts to investigate sexual violence

The Inter-American Commission and Court have emphasized that cases of sexual violence committed by members of the armed forces may not be considered to be part of the discharge of their duties and therefore do not fall under the competence of military criminal courts. This was found in the cases of the sisters *Ana, Beatriz and Celia González Pérez v. México* (IAComHR, 2001a, para. 82) and in the cases of *Valentina Rosendo Cantú* (IACtHR, 2010a, para. 161) and *Inés Fernández Ortega v. México* (2010b). All are indigenous women victims of sexual violence by members of the armed forces. Likewise, the Colombian Constitutional Court indicated that conducts which constitute human rights violations or breaches of international humanitarian law, as may be the case for sexual violence, cannot be considered acts of duty (Judgments C-578 of 1995, C-358 of 1997 and C-578 of 2002).

Prohibition of discriminatory practices by judicial officials

In this regard the Inter-American Court has stated:

> […] gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women […] The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women[30].

Stereotypes are a particularly serious obstacle to victims' access to justice since they may cause a victim's credibility to be questioned during the criminal process in cases involving violence, and lead to a tacit assumption that she is somehow to blame for what happened, "whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant" (IAComHR, 2007, Introduction and para. 155). Stereotyping by judicial officials has thus been interpreted as a form of discrimination[31]. In the *Cotton Field* case, the Court considered that stereotypes included, inter alia, the following: "the comments made by officials that the victims had gone off with a boyfriend or that they led a disreputable life, and the use of questions about the sexual preference of the victims" (IACtHR, 2009, para. 208).

Duty to adopt protection measures to guarantee victims' safety

Personal safety is an indispensable guarantee for victims to access justice and an effective legal remedy[32]. The Inter-American Commission has noted that protection measures must be adopted during the criminal procedure in order to protect the safety, privacy and dignity of victims (IAComHR, 2007, Introduction and para. 54). The Inter-American Court has referred explicitly to the guarantee of personal safety as an obligation derived from the principle of due diligence.

States have the duty to initiate ex officio, without delay, and with due diligence, a serious, impartial and effective investigation designed to fully establish responsibility for violations. In order to achieve this objective, it is necessary, inter alia, that an effective system exist to protect judicial branch officials, as well as victims and their next of kin[33].

This obligation takes on a special dimension in relation to women's access to justice, as has been noted by the Inter-American Court:

> […] there should be no obstacles in the search for justice [...], therefore, the State must continue to adopt all necessary measures to protect and guarantee the safety of the victims, ensuring that they can exercise their rights to judicial guarantees and to judicial protection without restrictions[34]. (original in Spanish)

Within Colombia's constitutional framework, Judgment T-496 of 2008 ordered the Government to adapt the Victims and Witnesses Protection Program of the Justice and Peace Law to some "basic principles and elements of rationality which, in line with international jurisprudence and practice, must orient and include a comprehensive strategy which protects victims and witnesses satisfactorily in those processes in which serious crimes are investigated"[35] (original in Spanish).

30 *Cotton Field* case (IACtHR, 2009, para. 401).

31 *Cotton Field* case (IACtHR, 2009, para. 402).

32 Political Constitution (arts. 29 and 229), ACHR (arts. 8 and 25), and ICCPR (art. 14).

33 Case of *La Rochela* (IACtHR, 2007, para. 194).

34 Case of *Rosendo Cantú* (IACtHR, 2010a, para. 196).

35 Constitutional Court, Judgment T-496 of 2008, section "Orders", third order, para. 2.

Duty to provide physical and mental health assistance with a psychosocial perspective in the context of access to justice

Psychosocial assistance for victims plays a determinant role in their ability to access justice. The Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, held that "[s]tates must ensure that quality physical and psychological health services and legal assistance are provided to victims of violence" (Human Rights Commission, 2006, para. 83). In the case of *Fernández Ortega* the Inter-American Court of Human Rights explicitly recognised:

> […] Among other requirements, in the course of a criminal investigation for rape: [...] the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape. (IACtHR, 2010b, para. 194)

In its Follow-up Report - Violence and discrimination against women in the armed conflict in Colombia, the Inter-American Commission recognised that "the specialized psychosocial assistance that women victims of sexual violence receive is still deficient" (IACom-HR, 2009, para. 83). This obligation is in agreement with Judgment T-045 of 2010, in which the Colombian Constitutional Court ordered the design and implementation of health care plans and policies which respond to the specific needs of victims of the armed conflict, especially as regards the recovery from psychosocial impacts.

2.4 State obligation to repair victims of sexual violence

The duty to repair victims of human rights violations has been recognised in several international instruments (UN, General Assembly, 2005 and Human Rights Council, 2010). In relation to women victims of sexual violence, the Declaration on the Elimination of Violence against Women establishes States' duty to guarantee access to the mechanisms of justice and to just and effective remedies for the harm that they have suffered (UN, General Assembly, 1993, para. 4.d). The Convention of Belém do Pará likewise determines States' duty to establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies (1994, art. 7.g).

In the *Cotton Field* case, the Inter-American Court of Human Rights made an important step forward in this regard by including a gender perspective and transformative objectives in the reparations it ordered (IACtHR, 2009, paras. 450-451). The Court ordered, inter alia, specific measures designed to enable family members of the victims to access justice. Concretely, it ordered the State to conduct a criminal investigation to identify, prosecute and punish those responsible for the disappearances which shall include a gender perspective (para. 455).

This decision also establishes reparation measures which go beyond economic compensation. As guarantees of non-repetition the Court ordered the State to continue standardizing all its protocols, manuals, expert services, and services to provide justice that are used to investigate the crimes relating to the disappearance, sexual abuse and murders of women in accordance with the Istanbul Protocol[36], to implement search and localisation programs for disappeared women[37], to create a database which contains personal and genetic information[38], and to provide training for judicial officers including a gender perspective[39]. As in other cases, as rehabilitation measure the Court ordered the State to provide free medical and psychological treatment to the victims, taking into account the severe emotional impact caused by the violence[40].

In terms of monetary compensation, the Inter-American Court has also established relevant standards. In the *Castro-Castro* case for example it granted higher amounts of compensation to victims of rape and sexual violence (IACtHR, 2006a, para. 433.c.ix-x). In recent cases, the Court has recognised as injured parties not only women who suffered gender-based and sexual violence but also their family members, including parents, siblings, nephews/nieces, and children, who are consequently entitled to receive compensation[41].

2.5 Special State obligations towards vulnerable population groups

Several international principles and treaties, as well as Colombia's own Constitution, establish special State duties in favour of vulnerable population groups. The latter include, amongst others, indigenous communities (ILO, 1989) and Afro-descendant[42], "raizal" and Roma people[43], children[44], displaced persons (UN, OCHA, 1998), LGBT persons, and persons with disabilities[45]. These obligations are additional to those described above related to gender, leading to specific obligations for the Colombian State to avoid multiple discrimination.

In this regard the CEDAW Committee has noted that:

> [c]ertain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors.

36 *Cotton Field* case (IACtHR, 2009, Operative Paragraphs, para. 18); case of *Rosendo Cantú* (IACtHR, 2010a, Operative Paragraphs, para. 16).
37 *Cotton Field* case (IACtHR, 2009, Operative Paragraphs, para. 19).
38 *Cotton Field* case (IACtHR, 2009, Operative Paragraphs, para. 21.ii).
39 *Cotton Field* case (IACtHR, 2009, para. 541).
40 Case of the *Plan de Sánchez Massacre* (IACtHR, 2004, paras. 106-107); *Castro-Castro* case (IACtHR, 2006a, paras. 449-450).
41 *Cotton Field* case (IACtHR, 2009, para. 448); case of *Rosendo Cantú* (IACtHR, 2010a, para. 207); case of *Fernández Ortega* (IACtHR, 2010b, para. 224).
42 International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Colombia on 2 October 1981.
43 The Political Constitution (art. 8) establishes the State's duty to protect the nation's cultural wealth.
44 Convention on the Rights of the Child, ratified by Colombia on 28 January 1991.
45 Convention on the Rights of Persons with Disabilities, ratified by Colombia on 10 May 2011.

> Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. (UN, CEDAW Committee, 1999, para. 12)

Likewise, Article 9 of the Convention of Belém do Pará establishes that States must take "special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons" (Convention of Belém do Pará, 1994, art. 9).

In terms of sexual violence and access to justice, the Inter-American Court of Human Rights in the case of *Rosendo Cantú* recognised that indigenous women face greater difficulties to access justice and therefore should benefit from special conditions which facilitate their access, such as the availability of an interpreter in their own language at all stages of the process (IACtHR, 2010a, para. 185).

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II. BARRIERS TO ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE

This chapter analyses the response of the Colombian State to the obligations of guarantee and protection for sexual violence presented in the previous chapter on standards. Taking into account the high rates of impunity in the cases referred by the Colombian Constitutional Court in Auto 092, it seeks to identify some of the obstacles which hinder the progress of the investigations. While the Working Group's analysis focuses particularly on monitoring the cases referred by the Court, the barriers identified extend beyond this group of cases and point to the Colombian State's failure to prevent, investigate, punish and repair sexual violence.

1. Lack of safeguards for reporting and impunity for sexual violence

In its analysis of the cases referred by the Court in the confidential annex, the Working Group confirmed that impunity continues as regards the investigation and punishment of sexual violence. This situation affects not only the cases referred by the Court but rather sexual violence in the armed conflict more generally. For the Working Group, precarious punishment of these facts is related, on the one hand, to the lack of safeguards required to pursue the complaint and, on the other, to poor progress in the investigations by the judicial institutions. Each of these issues is addressed, in turn, in the sections below.

1.1 Lack of safeguards for making a complaint of sexual violence

Although no unified figures are available about sexual violence in Colombia nor about the magnitude of underreporting, several surveys have attempted to show the size of the problem. The National Demography and Health Survey[1] reported that 73% of physically ill-treated women did not report the violence they suffered (PROFAMILIA, 2010, p. 388). According to the Ombudsman's Office[2], 70% of women victims of physical violence and 81.7% of victims of sexual assault did not go to any institution to make a complaint about the attack (2008, pp. 164 and 176). As regards sexual violence in armed conflict specifically, the First Survey on the prevalence of sexual violence driven by OXFAM and realized by the Foundation "Casa de la Mujer" found that 82.1% of surveyed women did not report the acts they were victims of (2010, p. 26).

The reasons which explain the lack of complaints include, inter alia, women's fear for their safety, shame, guilt, lack of knowledge, lack of confidence in the justice system, and lack of financial resources (PROFAMILIA, 2010, p. 397). These factors are increased exponentially when sexual violence occurs in the context of the Colombian armed conflict. As is developed further below, the presence of armed actors in the region increases the risk of retaliations against women and their families, which is why many prefer not to make a complaint and thus protect their safety. The pain of the traumatic memories, rejection or stigmatization by their family, partner or community, and more generally the psychosocial consequences related to sexual violence lead many women to opt for remaining silent. In other cases pov-

1 This survey focuses on domestic violence.

2 This study focuses on forcibly displaced women who are victims of domestic and sexual violence.

erty, lack of knowledge about official care institutions, language, distance, the appearance of normality as regards human rights violations, as well as other factors, may influence the lack of reporting. These become barriers to women's access to justice in a formal sense when they impede women from informing a public authority about the commission of a crime (Saffón and Guzmán, 2008, pp. 34-35).

The absence of complaint does not exempt the authorities from responsibility as regards their duty to guarantee victims' access to justice. On the contrary, the high rates of underreporting can be explained to a great extent by the State's failure in complying with its duties to promote women's knowledge of their rights and to guarantee minimum conditions of safety, and health and psychological care with a psychosocial perspective, amongst others[3]. All of these factors contribute to women not feeling confident and safe to pursue a complaint. The progressive visibilization of these facts, increasing information on this subject and increasing actions which enable the eradication of sexual violence in the context of the armed conflict are dependent on progress made as regards these conditions.

1.2 Persisting impunity in the cases of sexual violence referred in Auto 092

The majority of the cases of sexual violence reported or known by the public authorities do not lead to a successful outcome. An important number of investigations of sexual violence do not reveal substantial progress or are closed without a judgment on the merits, thereby creating a situation of impunity. This renders access to justice impossible in a material sense, which is understood as ensuring that victims can realize their rights to truth, justice and reparation through judicial proceedings (Saffón and Guzmán, 2008).

Despite the Constitutional Court's order to the Prosecutor General's Office (Auto 092 of 2008, Section III.1.1.9) to accelerate the progress of the investigations and the recommendation of the United Nations High Commissioner for Human Rights on Colombia (UN, General Assembly, 2011, para. 109.c), the Working Group's analysis presents a grim picture of impunity in the investigation of crimes of sexual violence and punishment of perpetrators.

The figures analyzed in this section are based on information provided by the national unit of the Prosecutor General's Office on 29 September 2010 in response to a right to petition and subsequent writ of amparo (*tutela*) filed by the Working Group, as well as the follow-up reports to Auto 092 which the Prosecutor General's Office presented to the Constitutional Court on 13 January and 24 August 2009.

Before starting the analysis, it must be highlighted that generally the figures provided by the Prosecutor General's Office present serious deficiencies as regards clarity and presentation of the information. The lack of clarity is reflected in the following: 1) according to the Prosecutor General's Office, on 29 September 2010 it was dealing with 191 cases of sexual violence belonging to Auto 092; this number does not coincide with the total number

3 For some of these barriers see third section of this chapter.

of cases referred by the Constitutional Court in Auto 092 (183 cases). 2) According to the information reported by the Prosecutor General's Office, on 20 August 2009 the latter was in charge of 177 cases of sexual violence included in Auto 092; this number does not coincide with the number of cases reported by the Prosecutor General's Office in 2010 (191 cases) nor with the number of cases referred by the Constitutional Court (183 cases). 3) In its analysis of alleged perpetrators, the Prosecutor General's Office does not clarify whether it refers to a group to which the alleged author belongs or to individualized persons. If it refers to a group to which the alleged author belongs, the total number of cases reported by the Office (201 cases) does not coincide with the total number of cases reported as belonging to Auto 092 (191 cases). In none of these three cases does the Prosecutor General's Office clarify the reasons for these differences.

Despite the inconsistencies of the data, as the Prosecutor General's Office is the only official entity from which information about the state of the criminal investigations can be obtained, this data forms the basis of the present analysis. Thus, for the analysis of alleged authors the universe of 201 alleged perpetrators will be used, while the analysis of progress in the investigations will be based on the universe of 191 cases referred in Auto 092, as indicated by the Prosecutor General's Office.

1.2.1 Group to which the alleged author belongs

According to the Prosecutor General's Office, on 29 September 2010 this entity was conducting 191 cases of sexual violence belonging to Auto 092 of 2008. In its analysis of the group to which the alleged author belongs[4], the Prosecutor General's Office reported that 45.8% correspond to paramilitaries; 19.4% to the armed forces; 8.5% to the guerrilla; 4.5% to unidentified armed groups; 4% to "common crimes"; 1.5% to the family; and in the remaining cases (16.4%) the authors had not been identified. Table 1 shows the number of cases belonging to Auto 092 differentiated by group to which the alleged author belongs and by unit of the Prosecutor General's Office.

The three cases referred by the Prosecutor General's Office as "domestic violence" correspond to displaced girls who have been sexually abused by their father or stepfather. Furthermore, the cases referred to as "common crimes" are related to displaced girls and/or women, some of whom have an intellectual disability, and who have been subjected to sexual violence by hooded persons, relatives, people who live in the same settlement, permanent companions or neighbors. In one of the cases the Working Group found out that the alleged author is an active member of the armed forces, yet the case was classified as "common crime".

As to the use of categories such as "domestic violence" and "common crimes", it must be clarified that, although in the majority of cases the alleged author is not an armed actor, they

4 It is assumed that the information refers to the group to which the alleged author(s) belong(s) in a given case, as information provided by the Prosecutor General's Office differentiates between alleged perpetrators and persons linked to the case. The universe used for this analysis is of 201 alleged perpetrators.

refer to displaced women. The Working Group deems that displacement is a consequence of armed conflict which places victims in a heightened situation of vulnerability (such as lack of financial resources, loss of support networks, and overcrowding) and therefore increases the risk of sexual violence. Qualifying these offences as "domestic violence" or "common crimes" renders invisible the condition of displacement and the context of armed conflict which form the wider framework.

TABLE 1 GROUP TO WHICH THE ALLEGED AUTHOR BELONGS, CASES AUTO 092, SEPTEMBER 2010

	Human Rights Unit	Sectional units	Total	%
Paramilitaries[a]	32	60	92	45.8
Guerrilla[b]	7	10	17	8.5
Armed forces[c]	22	17	39	19.4
Unidentified illegal armed groups[d]	9		9	4.5
"Common crimes"[e]		8	8	4.0
Family[f]		3	3	1.5
Unidentified authors[g]	12	21	33	16.4
Total	**82**	**119**	**201**	**100.0**

a. This category contains one case attributed to the "Black Eagles" and 59 cases attributed to the "AUC" (united self-defence forces of Colombia) reported by the sectional units of the Prosecutor General's Office, and 32 cases of "paramilitaries or self-defence forces" reported by the Human Rights Unit.
b. This category contains eight cases attributed to the "FARC" (Revolutionary Armed Forces of Colombia) and two cases attributed to the "guerrilla" reported by the sectional units of the Prosecutor General's Office, and seven cases attributed to the "guerrilla or subversion" reported by the Human Rights Unit.
c. This category contains 16 cases attributed to the "national army" and one case to the "armed forces" reported by the sectional units of the Prosecutor General's Office, and 22 cases attributed to the "national military forces" reported by the Human Rights Unit.
d. This category contains nine cases attributed to "illegal armed groups operating in the zone – unidentified (FARC-ELN-EPL-AUC)" reported by the Human Rights Unit.
e. This category contains 8 cases attributed to "common crimes" reported by the sectional units of the Prosecutor General's Office.
f. This category contains three cases of "domestic violence" reported by the sectional units of the Prosecutor General's Office.
g. This category contains 12 cases of "unidentified authors" reported by the Human Rights Unit and 21 cases reported as "N/A" by the sectional units of the Prosecutor General's Office.

SOURCE: Table by the Working Group to monitor compliance with Auto 092 of 2008, based on data obtained from the right to petition answered by the Prosecutor General's Office on 29 September 2010.

1.2.2 Allocation of cases within the Prosecutor General's Office and procedure for conducting cases

In terms of distribution, the Prosecutor General's Office had assigned 82 cases (43%) to the National Human Rights and International Human Rights Law Unit (Human Rights Unit) and 109 cases (57%) to the sectional units of the Office. As regards procedures, 166 cases (87%) are processed under Law 600 of 2000 and 25 cases (13%) under Law 906 of 2004. Table 2 shows the status of the cases related to Auto 092. It differentiates the type of procedure under which they are conducted, the unit carrying out the investigation and the procedural stage at which they find themselves.

DISTRIBUTION AND PROCEDURAL STAGE CASES AUTO 092 DIFFERENTIATED BY PROCEDURE, SECTIONAL UNITS AND HUMAN RIGHTS UNIT, SEPTEMBER 2010 **TABLE 2**

	Human Rights Unit	Sectional units	Total cases
Law 600	67	99	166
Law 906	15	10	25
Total cases	**82**	**109**	**191**
LAW 600			
Cases under investigation without identified author (*previa*)	43	78	121
Cases under investigation with identified author (*instrucción*)	5	10	15
Cases on trial	3	11	14
Cases with condemnatory sentence	2	0	2
Cases preliminarily closed – archived (*inhibitorio*)	12	0	12
Cases definitively closed – archived (*preclusión*)	2	0	2
Total Law 600	**67**	**99**	**166**
LAW 906			
Cases under investigation without identified author (*indagación*)	12	7	19
Cases under investigation with identified author (*imputación*)	1	0	1
Cases on trial	0	3	3
Cases with condemnatory sentence	2	0	2
Total Law 906	**15**	**10**	**25**

SOURCE: Table by the Working Group to monitor compliance with Auto 092 of 2008, based on data obtained from the right to petition answered by the Prosecutor General's Office on 29 September 2010.

1.2.3 Insufficient procedural progress in the cases referred in Auto 092

Despite the steps taken by the Prosecutor General's Office to advance in the processing of the cases[5], the analysis of the procedural status of the cases referred in Auto 092 reveals how far the Office still is from complying with the Constitutional Court's order. According to table 3, in September 2010 only four cases (2.1%) had received a condemnatory sentence.

5 According to the Prosecutor General's Office, in order to drive forward the progress of the cases, a number of them were reassigned to the Human Rights Unit, workshops led by international experts were held, Technical-legal Committees were implemented and the Gender Committee was created (Office of the Prosecutor General of the Nation, right to petition filed by the Working Group to monitor compliance with Auto 092 of 2008 answered on 29 September 2010). The Working Group deems that, although these activities are an important step in making progress in these cases, they must be translated into concrete progress in the investigations.

Fourteen cases (7.3%) had been archived, either because the Prosecutor General's Office refrained from opening investigations (12 cases which represent 6.3%) or because they were definitively closed (two cases or 1%)

Of the cases which are still active, 140 -which amount to 73.3% of the total number of cases reported by the Prosecutor General's Office- were under investigation without identified author, only 17 cases (8.9%) were on trial, while 16 cases (8.4%) were under investigation with identified author.

The fact that after three years only four cases have received a condemnatory sentence (2.1%), while 140 are still under investigation without identified author (73.3%) accounts for the meager results in the investigations and the persistent impunity in those cases.

Table 3 shows the total number of cases included in the Auto conducted by the sectional units as well as by the Human Rights Unit of the Prosecutor General's Office under the two current criminal procedures (Law 600 of 2000 and Law 906 of 2004)[6].

TABLE 3 TOTAL CASES AUTO 092, SECTIONAL UNITS AND HUMAN RIGHTS UNIT BY INVESTIGATION STAGE, SEPTEMBER 2010

	Human Rights Unit	Sectional units	Total	%
Cases under investigation without identified author[a]	55	85	140	73.3
Cases under investigation with identified author[b]	6	10	16	8.4
Cases on trial	3	14	17	8.9
Cases with condemnatory sentence	4	0	4	2.1
Cases closed without judgment (preliminarily or definitively)[c]	14	0	14	7.3
Total	**82**	**109**	**191**	**100.0**

a. This category contains cases under investigation without identified author: *previa* (Law 600 of 2000) and *indagación* (Law 906 of 2004).
b. This category contains cases under investigation with identified authors: *instrucción* (Law 600 of 2000) and *imputación* (Law 906 of 2004).
c. This category contains cases which were preliminarily closed or archived (Law 600 of 2000).

SOURCE: Table by the Working Group to monitor compliance with Auto 092 of 2008, based on data obtained from the right to petition answered by the Prosecutor General's Office on 29 September 2010.

These findings are even more discouraging if they are contrasted with the information provided by the organizations of the Working Group (table 4). By March 2011, of the 21 cases belonging to Auto 092 which these organizations are dealing with, only four had received a condemnatory judgment, and in only one case has a judgment on the merits been

6 Although Law 906 of 2004 provides for an accusatorial criminal procedure which is different from the criminal procedure provided by Law 600 of 2000, in order to assess the progress in both types of procedure, they will be considered equivalent: for cases under investigation without identified author, *previa* (Law 600) is considered equivalent to *indagación* (Law 906), while for cases under investigation with identified authors, *instrucción* (Law 600) is considered equivalent to *imputación* (Law 906).

issued against an armed actor (paramilitary). This sentence is an acquittal and is currently on appeal.

As to the cases which have been definitively closed (*preclusión*), the Working Group notes with concern that this option may be used to close cases without the investigating body having pursued all possible efforts, imposing an additional evidentiary burden on the victims. Among the cases dealt with by the organizations of the Working Group, two have been definitively closed (*preclusión*) following the argument that there was a "lack of collaboration" by the victims when the latter did not supplement their statements. This situation is worsened when one takes into account that in these cases the victims were not notified of the decisions in the process. In this regard, it is necessary to insist on the State's duty to investigate sexual violence. The State must take the initiative for driving the investigation forward, not the victims.

TABLE 4 CASES REFERRED IN AUTO 092 BROUGHT BY ORGANIZATIONS OF THE WORKING GROUP, MARCH 2011

	Cases	%
Cases under investigation without identified author	12	57.1
Cases under investigation with identified author	0	0.0
Cases on trial	1	4.8
Cases with condemnatory sentence (final)	4	19.0
Cases with acquittal (under appeal)	1	4.8
Cases closed without judgment (*inhibitorio - preclusión*)	3	14.3
Total	**21**	**100.0**

SOURCE: Table based on data obtained from the organizations of the Working Group to monitor compliance with Auto 092 of 2008 in February 2011.

1.2.4 The activity of the Human Rights Unit and sectional units

The figures analyzed in this section rely on the information provided by the Prosecutor General's Office on 29 September 2010 in response to the right to petition filed by the Working Group and on the follow-up report to Auto 092 presented to the Constitutional Court by the Prosecutor General's Office on 24 August 2009.

Before starting the analysis, it must be clarified that the number of cases reported by the Prosecutor General's Office as referred in Auto 092 in 2009 (177 cases) does not coincide with the number of cases reported in 2010 (191 cases). The Prosecutor General's Office does not explain the reason for this difference. Nevertheless, as these are official sources, the basis for the analysis of the units' activity is the total of 177 cases for 2009 (68 corresponding to the Human Rights Unit and 109 to the sectional units) and 191 for 2010 (82 corresponding to the Human Rights Unit and 109 to the sectional units).

As regards the actions undertaken by the Prosecutor General's Office, the analysis reveals very limited progress by the Human Rights Unit and no progress at all for the sectional

units. Tables 5 and 6 show that in 2009 the Human Rights Unit was in charge of 68 cases, the majority of which were under investigation without identified author (59 cases) while a few cases were under investigation with identified authors (7 cases). In 2010, the number of cases of which the Human Rights Unit was aware increased (82 cases), the number of cases under investigation without identified author diminished (55 cases) and the number of cases on trial increased (from zero in 2009 to three in 2010), while the number of cases with a condemnatory sentence also augmented (from zero in 2009 to four in 2010). Although this signifies progress in the procedural flow of these cases, it is worrying that in 2010 the number of preliminarily closed cases (*inhibitorio*) also increased (from one in 2009 to 12 in 2010), as did the number of definitively closed cases (*preclusión*) (from one in 2009 to two in 2010). In other words, the number of cases in which the Prosecutor General's Office decided not to continue a criminal investigation on the merits increased.

Three years after the Court issued Auto 092, more conclusive progress could be expected from this unit, not only because these cases have received the attention of the Colombian Constitutional Court, but also because they are conducted by the unit of the Prosecutor General's Office which is specialized in human rights violations and which therefore should have greater experience in conducting cases of sexual violence in the armed conflict.

TABLE 5 AUTO 092
COMPARATIVE TABLE OF PROCEDURES BY THE HUMAN RIGHTS UNIT

Investigations	**20 August 2009**
Law 600	61
Law 906	7
Total cases Human Rights Unit	**68**
Total victims	**106**
LAW 600	
Cases under investigation without identified author (*previa)*	52
Cases under investigation with identified author (*instrucción*)	7
Cases on trial	0
Cases with condemnatory sentence	0
Cases preliminarily closed – archived (*inhibitorio*)	1
Cases definitively closed – archived (*preclusión*)	1
Total cases Human Rights Unit - Law 600	**61**
LAW 906	
Cases under investigation without identified author (*indagación*)	7
Cases under investigation with identified author (*imputación*)	0
Cases with condemnatory sentence	0
Total cases Human Rights Unit - Law 906	**7**

SOURCE: Table by the Working Group to monitor compliance with Auto 092 of 2008, based on the right to petition answered by the Prosecutor General's Office on 24 August 2009.

TABLE 6 AUTO 092
COMPARATIVE TABLE OF PROCEDURES BY THE HUMAN RIGHTS UNIT

Investigations	**29 September 2010**
Law 600	67
Law 906	15
Total cases Human Rights Unit	**82**
Total victims	**135**
LAW 600	
Cases under investigation without identified author (*previa*)	43
Cases under investigation with identified author (*instrucción*)	5
Cases on trial	3
Cases with condemnatory sentence	2
Cases preliminarily closed – archived (*inhibitorio*)	12
Cases definitively closed – archived (*preclusión*)	2
Total cases Human Rights Unit - Law 600	**67**
LAW 906	
Cases under investigation without identified author (*indagación*)	12
Cases under investigation with identified author (*imputación*)	1
Cases with condemnatory sentence	2
Total cases Human Rights Unit - Law 906	**15**

SOURCE: Table by the Working Group to monitor compliance with Auto 092 of 2008, based on the right to petition answered by the Prosecutor General's Office on 29 September 2010.

As regards the sectional units of the Prosecutor General's Office, the analysis of progress in the investigations is equally disheartening (table 7). In these units, the information on the procedural status of the cases in 2010 was exactly the same as in 2009. In other words, during the period 2009-2010 it seems that no progress whatsoever was made in these cases. This finding is even more worrying for the future progress of these cases if one takes into account that in September 2010 57% of the cases (109 cases) reported in the Auto were still with the sectional units.

TABLA 7 AUTO 092
INVESTIGATIONS CONDUCTED BY THE SECTIONAL UNITS
OF THE PROSECUTOR GENERAL'S OFFICE –SEPTEMBER 2010

Stage	
Total cases Law 600	99
Total cases Law 906	10
Total cases sectional units	**109**
LAW 600	
Cases under investigation without identified author (*previa*)	78
Cases under investigation with identified author (*instrucción*)	10
Cases on trial	11
Total cases Law 600	**99**
LAW 906	
Cases under investigation without identified author (*indagación*)	7
Cases on trial	3
Total cases Law 906	**10**

SOURCE: Table by the Working Group to monitor compliance with Auto 092 of 2008, based on data from the right to petition answered by the Prosecutor General's Office on 29 September 2010.

1.2.5 Insufficient procedural progress in other cases of sexual violence

If, as was seen in the previous sections, the result of the investigations remains insufficient in the cases referred in the Auto, which are monitored by the Colombian Constitutional Court and for which there is a specific order to the Prosecutor General's Office, the picture of progress in other investigations of sexual violence in the armed conflict does not seem to be much better.

As regards other cases of alleged sexual violence in the armed conflict reported beyond Auto 092, the Prosecutor General's Office reported the existence of 68 cases. Sixty-five of these cases are under investigation without identified author and only three are on trial (Office of the Prosecutor General of the Nation, 2010, p. 6).

Within the framework of Law 975 of 2005, on 31 January 2011, only 42 of the more than 5,000 facts for which a confession took place refer to sexual crimes. Eleven acts of sexual violence and the rape of a protected person have been imputed and in six cases charges have been brought for these offences. In none of these cases have the charges been declared legal (Office of the Prosecutor General of the Nation, 2011).

The Working Group deems that the insufficient progress in those cases which are included in the Auto as well as those which do not reveals the reigning impunity that still persists for cases of sexual violence in the context of the Colombian armed conflict. This situation had already been observed by the Special Rapporteur on violence against women (UN, Human Rights Commission, 2001, para. 103), as well as by other international organizations (Amnesty International, 2004, pp. 35-37) and by the Working Group itself in previous reports[7]. The analyses of this section contain figures which reveal not only the Prosecutor General's Office's non-compliance with the Constitutional Court's order in Auto 092, but also the State's failure to comply with its duty to guarantee access to justice for all victims of sexual violence.

2. Obstacles directly related to the justice system

This section describes the obstacles directly related to the justice system which impede the investigation, prosecution, punishment and reparation of sexual violence in the context of the armed conflict. The analysis took into account not only the follow-up to the cases referred in Auto 092, but also other cases of sexual violence which are supported or represented by organizations of the Working Group. The following conclusions can be seen as indicative of the difficulties which are faced in the investigation, prosecution, punishment and reparation of sexual violence in the Colombian armed conflict in general.

2.1 Absence of an efficient and reliable register of cases of sexual violence in the armed conflict

The systems which process the information reported by women who dare to make a complaint reveal important deficiencies. Although the Prosecutor General's Office has been working on the consolidation of a specific database on sexual violence in the context of the armed conflict (Office of the Prosecutor General of the Nation, 2008a; 2010, p. 5) nearly three years after Auto 092 was issued, this database is apparently still not functional. Although data exists which indicates the status of proceedings by unit of the Prosecutor General's Office, there exists no unified, reliable, and consistent database which includes all the investigations of sexual violence in the context of the armed conflict conducted in the country.

The Working Group requested information from the Prosecutor General's Office about the register of cases referred in Auto 092. The Office provided an annex with information about the latest actions undertaken in these cases, from which the Working Group observed several deficiencies in their registration. On the one hand, the records had not been updated: in at least seven cases the Working Group identified inconsistencies between the status of the cases reported by the Prosecutor General's Office and the information known by the organizations which brought these cases[8].

On the other hand, many complaints are recorded under offences such as homicide, conspiracy, forced displacement, threats, etc., without registering the cases' sexual violence characteristics. Of the cases referred in Auto 092 and reported by the Prosecutor General's

7 Working Group to monitor compliance with Auto 092 of 2008, Third follow-up Report (Conclusions, pp. 14-20).

8 Working Group to monitor compliance with Auto 092 of 2008, Documento comparativo: Casos Auto 092 reportados por la Fiscalía y Casos Auto 092 llevados por las organizaciones [Comparative document: Cases Auto 092 reported by the Prosecutor General's Office and Cases Auto 092 brought by the organisations] (in Spanish).

Office in the annex sent to the Working Group, in nine cases sexual violence has not been recorded in any of the boxes, while in 25 cases it appears in the description of the facts but not in the "categorization" box[9]. The failure to characterize the facts as sexual violence contributes to rendering this phenomenon statistically invisible and reveals the shortcomings of the information systems within the Prosecutor General's Office.

The Prosecutor General's Office should accelerate immediately and without delay the implementation of an efficient and reliable register of cases of sexual violence in the armed conflict in accordance with international standards. This register must be designed so as to effectively contribute to making progress in the investigations in cases of sexual violence and so as to account for their systematic character where applicable.

2.2 Excessive importance attached to testimonial and physical evidence by officials responsible for conducting investigations

Either because they lack knowledge of normative standards or because of cultural stereotyping, legal investigators and prosecutors still tend to address cases of sexual violence which occurred in the context of the conflict through the exclusive use of testimonial or physical evidence.

Centering the evidential focus exclusively on testimonial or physical evidence proves to be a barrier for accessing justice in cases of sexual violence, especially in contexts of armed conflict. Although the lack of complaint or medical examinations can make the collecting of evidence more difficult, it cannot represent insurmountable barriers to making progress in investigating the cases. This would namely imply a disproportionate burden for women victims of sexual violence who have to surmount a number of barriers before making a complaint, including the lack of safety and psychosocial support, and fear of revictimization.

It is important to insist that prosecutors have the duty to investigate ex officio serious human rights violations, including sexual violence. Officials who carry out investigations under Law 975 of 2005 are moreover responsible for investigating the manner, time and place in which the criminal offences took place in order to guarantee victims' right to the truth (arts. 15 and 7). Consequently, the absence of complaint, confession, and medical examinations, or the evidential difficulties more generally, should not be an excuse for not effectively conducting investigations in cases of sexual violence.

Circumstantial evidence has been increasingly accepted by international tribunals[10]. Indirect evidence such as anthropological expert reports which evidence gender roles in the region, an increase in the number of births during a given period, a higher number of displaced

9 Working Group to Monitor Compliance with Auto 092 of 2008, Documento comparativo: Casos Auto 092 reportados por la Fiscalía y Casos Auto 092 llevados por las organizaciones [Comparative document: Cases Auto 092 reported by the Prosecutor General's Office and Cases Auto 092 brought by the organisations] (in Spanish).

10 Extraordinary Chambers in the Courts of Cambodia (2010, para. 364); ICTR (2007, para 49).

women in a given area, and the position and clothing of bodies in a grave, are some of the elements which can be used as evidence in judicial proceedings.

The Prosecutor General's Office and the justice administration more generally should thus ensure that judicial officials are effectively trained in collecting, analyzing and evaluating evidence in cases of sexual violence but also regarding its systematic nature. Trainings as well as domestic protocols should also emphasize prosecutors' duty to investigate ex officio the commission of sexual crimes when interrogating those who fall under Law 975 of 2005.

2.3 Discriminatory patterns and gender stereotyping by justice administrators

It is crucial for victims that participating in the judicial process does not imply judgments against their own conduct, doubts about their story, and more generally new forms of victimization by public officials.

Despite normative progress which tends towards the incorporation of a gender sensitive perspective in criminal investigations of sexual violence[11], discriminatory patterns and gender stereotyping persist among justice administrators. These patterns can be found in the entire judicial process, from the preliminary to the trial stage.

When interviewing them, judicial officials tend to look suspiciously upon victims, refuse to believe what they say and request unnecessary evidence from them. They believe victims tell such facts in order to take advantage or revenge against the alleged aggressors (Foundation "Sisma Mujer", 2009).

CASE 1

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" referred in Auto 092 of 2008, in which a 12-year-old displaced girl was repeatedly raped by her stepfather, the first instance judge rejected the victim's testimony, insinuating that the girl was being manipulated by her mother in order to accuse her stepfather. The judge thus asserted that "[…] given that the statement presents the facts in an improbable way, which suggests a truly badly designed script by the person who stands behind the girl, a thesis which can in no way be ruled out given that, as seen from the circumstances of the process, nobody in this home avoided taking sides in favor or against one or other of the adults who formed the couple and came into conflict" (Foundation "Sisma Mujer", 2009, p. 27, original in Spanish).

In other cases, officials have blamed victims for inciting violence by dressing in a certain way or for being prostitutes.

CASE 2

"THERE ARE MEN WHO ARE VERY MALE CHAUVINISTIC, what they say is: 'Who tells them to dress like that? Women don't dress like that; decent women must dress I don't know how' […]. One speaks to unburden oneself and what they do is point at you. […] Justice in Colombia is useless, because they

11 See for example Office of the Prosecutor General of the Nation (2008b).

believe those who did it more than they believe us who were the victims. They never put into question what they say, but what we say"[12].

CASE 3

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" not belonging to the cases referred in Auto 092 of 2008, a displaced woman was physically, sexually and psychologically assaulted by her permanent companion, causing her serious injury. The unit of the Prosecutor General's Office which investigated the sexual violence definitively closed the investigation (*preclusión*), arguing that "all these situations revealed through minimal evidence in the proceedings lead us to believe more the version given by [the aggressor] during his deposition which shows that he was not involved in any episode generated by the existence of a sexual relationship; only in the mind and words of the alleged victim are the violent sexual events being exteriorized, [...] we wonder whether her sexual liberty and her own dignity were really injured because she did not reveal the sexual problems in a concrete, detailed manner, [...] the explanation of the accused is thus viable, as an episode arose where she, a prostitute according to him, resumed said activity and had a lover and the [aggressor] caught them both, aggressed her physically, which he accepts, confessing that he hit her in the face with his fist, breaking two teeth, and kicked her, and he is willing to settle, and that is why in her pain she invented a situation of sexual abuse" (Foundation "Sisma Mujer", 2009, p. 27, original in Spanish).

It also happens that, in the absence of trust in the victim, prosecutors consider with suspicion the fact that she cannot recall all the facts or cannot give details of all the circumstances related to what happened. Frequently, the victim's statement is not considered to be sufficient proof in the proceedings, as a result of which she is requested to supplement her testimony or undergo unnecessary psychological evaluations.

CASE 4

IN ONE OF THE CASES REPRESENTED BY THE FOUNDATION "SISMA MUJER" which belongs to the group of cases referred in Auto 092 of 2008, after the victim's coherent and detailed declaration of the sexual violence she suffered at the hands of paramilitaries, and without any objective reason to infer that the victim was lying, the Prosecutor General's Office ordered that a psychiatric evaluation be practiced in order to establish, amongst others, "[...] whether her story contains signs which fall within the criteria for tendencies towards mythomania, fantasy, delusion, confabulation, or personality disorder" (Foundation "Sisma Mujer", 2009, p. 28, original in Spanish).

CASE 5

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" which was referred in Auto 092 of 2008, although the victim had to give evidence four times during the judicial process, the first instance judge considered that her testimony was not credible, because its concept did not agree with the rules of sound logic and during the process it was not proved that the aggressor had the moral capacity to commit a crime (Foundation "Sisma Mujer", 2009, p. 29).

12 Interview with a victim of sexual violence by paramilitary groups on 10 February 2011 (in Spanish). This case was not referred in Auto 092 of 2008.

CASE 6

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" belonging to the group of cases referred in Auto 092 of 2008, a 14-year-old girl was repeatedly raped by a neighbor from her sector, as a result of which she became pregnant. The Prosecutor General's Office considered that there was no evidence whatsoever which could serve to establish the existence of the reported crime, since the file only contained the victim's complaint (Foundation "Sisma Mujer", 2009, p. 29).

Moreover, the criminal justice system provides for the exceptionality of the reference evidence (Law 906 of 2004, Code of Criminal Procedure, arts. 379 and 438). Thus, even when women have reported the facts, in practice they are obliged to make another declaration during the trial, which may lead to their revictimization[13].

The State institutions in charge of conducting the judicial proceedings for victims of sexual violence have the duty to incorporate specific measures into those proceedings in order to prevent women's revictimization. Although State entities have adopted some relevant measures to ensure victims' support which incorporate a differential gender perspective, the latter have not effectively been implemented. In its Memorandum 0117 (2008b, Section 8.2.iii)[14] on sexual violence in the context of the armed conflict for instance, the Office of the Prosecutor General of the Nation established specific measures aimed at preventing revictimization when obtaining testimony in such cases. This document could have been a step forward in adopting measures which guarantee women's rights in the criminal procedure. However, the experience of the organizations of the Working Group reveals that this memorandum is neither known nor applied by all investigators and prosecutors.

In recent years, the Office of the Prosecutor General of the Nation has developed various trainings and workshops on gender issues for judicial officials[15]. Although this represents a step forward in including a perspective which takes into account the situation of women in judicial investigations, it does not form part of a continuous training program for officials. The trainings are offered by different entities, as a result of which their contents are not coordinated among each other.

Moreover, given the fact that new officials recently began work at the Prosecutor General's Office, as well as the continuous turnover of prosecutors, officials who have been trained

13 In general, the Criminal Procedure Code (Law 906 of 2004) restricts the possibility for victims to participate, given their transformation from procedural subjects into intervening parties. Despite the rulings of the Constitutional Court, victims' participation under this procedure is limited to requesting and providing evidence and requesting information, but in practice the exercise of these rights is dependent on the discretion of each judicial official.

14 This document contains rules on conducting interviews and informed consent.

15 According to the Prosecutor General's Office, a workshop by Carlos Martín Berinstain was organised in 2008, two workshops by Patricia Sellers and the School of Criminal Investigations and Studies were organised in 2009, and the topic of sexual violence as a weapon of war was included in the Human Rights and International Humanitarian Law modules of the School in 2010 (Office of the Prosecutor General of the Nation, 2010, pp. 17-8).

in previous years either no longer work at the Prosecutor General's Office or do not deal with cases of sexual violence[16].

The Prosecutor General's Office should ensure that officials –in national as well as sectional units– receive effective training on international standards on sexual violence, gender perspective and how to conduct investigations, as well as on the collection and analysis of evidence in cases of sexual violence, including its systematic nature[17].

However, applying a perspective which takes into account women's circumstances in investigations of sexual violence goes beyond sensitivity considerations. It is a legal imperative, the implementation of which can imply imposing disciplinary and criminal sanctions and may even incur the State's international responsibility.

2.4 Absence of effective reparation for victims of sexual violence

International and national regulations and jurisprudence have recognized that victims of serious human rights violations have the right to be repaired[18]. However, difficulties related to the practice of the justice system prevent victims of sexual violence from acceding to effective reparations.

As regards the cases dealt with by the ordinary criminal justice system, the Colombian Constitutional Court has enabled the payment of compensation measures aimed at repairing material and moral harm. However, in practice judges limit themselves to the payment of financial compensation, rejecting other forms of reparation. Although reparations can also be handled through civil procedures, this represents another judicial process in addition to the criminal procedure which therefore renders victims' access to justice more lengthy, onerous and complex.

CASE 7

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" not included in Auto 092 of 2008, where a girl with a disability suffered sexual abuse, the judge ordered the payment of material damages for transport costs and moral damages of 20 minimum salaries. The reparation measure was limited to financial compensation, which after two years has not yet materialized (Foundation "Sisma Mujer", 2009, p. 37).

CASE 8

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" referred in Auto 092 of 2008, the offender was sentenced to pay a sum of money for moral damages in the ruling on appeal. Other reparation measures such as psychosocial and medical care were not taken into account (Foundation "Sisma Mujer", 2009, p. 37).

16 Interview with a female official of a multilateral organisation who worked on training programmes for prosecutors, 24 January 2010.

17 According to the Inter-American Court of Human Rights, "training with a gender perspective involves not only learning about laws and regulations, but also developing the capacity to recognize the discrimination that women suffer in their daily life. In particular, the training should enable all officials to recognize the effect on women of stereotyped ideas and opinions in relation to the meaning and scope of human rights" (IACtHR, *Cotton Field* case, 2009, para. 540).

18 UN, General Assembly (2005, arts. 18-23) and Law 975 of 2005, art. 8.

As to the administrative reparations program (Decree 1290 of 2008), the small number of approved claims must be highlighted. By December 2009 the Administrative Reparations Committee had ruled favorably in 10,593 claims out of a total of 278,334 applications. Among the approved claims, only 0.14%, i.e. 15 cases, correspond to cases of sexual violence (Office of the Prosecutor General of the Nation, 2010, pp. 12-13). These numbers reveal an important gap in terms of access to administrative reparations. Although no exact information is available about the grounds of rejection of the claims, according to information from the organizations of the Working Group, in many cases there is an alleged "lack of evidence" by the victims, including in cases where they have provided detailed testimony. This shifts the burden of proof onto victims, thereby ignoring the enormous difficulties faced by victims of such crimes, while the level of detail of the testimony is recognized neither in practice nor in the text of the decree. In other cases, the organizations of the Working Group indicated that reasons for not presenting a claim under the administrative reparations program include the fact that women ignore in which form to lodge an application or do not know of the possibility of obtaining reparations for acts of sexual violence.

As to the procedure established by Law 975 of 2005, to this date none of the cases dealt with under this law have led to reparations being granted.

The failure to provide effective reparations for sexual violence in judicial settings accounts for the inefficiency of these mechanisms in ensuring women's right to reparations. It must be emphasized that victims have the right to be repaired for the violations they have suffered. In addition to other possible reparations measures, beyond compensation, free medical, psychological and psychiatric care with a psychosocial perspective should be considered as a rehabilitation measure. Medical and psychological treatment for victims as well as for their family members has been ordered by the Inter-American Court of Human Rights in various cases involving serious human rights violations[19], including acts of sexual violence[20].

2.5 Absence of differential perspective for vulnerable population groups

Difficulties in accessing justice are worsened in the case of indigenous, Afro-Colombian, and disabled women and girls, amongst others, who, in addition to their gender, must face stereotypes due to their race, ethnicity, age, sexual orientation, displacement or disability. The

19 IACtHR, case of the *19 Merchants v. Colombia* (2004a, para. 278); IACtHR, case of the *Plan de Sánchez Massacre v. Guatemala* (2004b, para 107).

20 In the *Cotton Field* case, the IACtHR's judgment ordered such rehabilitation measures for the family members of the three disappeared women (IACtHR, 2009, para. 549).

Prosecutor General's Office so far has not developed any effective measures which guarantee access to justice to women and girls belonging to vulnerable population groups. At various stages of the proceedings the organizations of the Working Group have noted the absence of technical, human and logistical resources which enable these women to access justice. This situation is particularly serious if one takes into account that 46 cases (25.1%) referred in Auto 092 concern girls, 26 (14%) concern indigenous victims and two (1%) concern women with disabilities[21].

These deficiencies are evidenced in the lack of interpreters to help women belonging to indigenous communities make their complaints, to obtain information about the investigations when the latter are underway and more generally to participate in the process.

CASE 9

IN A CASE REPRESENTED BY THE JOSÉ ALVEAR RESTREPO LAWYERS' COLLECTIVE, related to the rape attempt by a member of the armed forces of a girl under the age of majority belonging to the wiwa people, the lack of interpreters hindered the presentation of the testimonies of the victim and her family members in the criminal process. Amongst other things, this has made it impossible to show the differential impact of sexual violence in indigenous communities.

In other cases, the State did not ensure that examinations were carried out so as to take into account the differential impact of human rights violations and sexual violence in indigenous and Afro-descending communities.

CASE 10

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" and the José Alvear Restrepo Lawyers' Collective, referring to two indigenous women victims of sexual violence in the context of a military incursion by members of the army belonging to the Unified Action Groups for Personal Liberty (GAULA) and in the presence of detectives from the Administrative Department of Security (DAS) and officials of the Technical Investigation Team (CTI), evidence was not gathered with a differential perspective. The National Institute of Legal Medicine, which was requested by the Prosecutor General's Office to carry out a psychological evaluation of the victims, stated that it did not have a training program on writing expert reports about indigenous communities, nor interpreters from these communities who can write reports, which impedes the adequate evaluation of the actual effects of the violent acts from an indigenous community's own world view[22].

Moreover, it may also happen that the authorities subject victims with cognitive or mental disabilities to the same evidentiary requirements as other victims, without considering their special condition, thus revictimizing them.

21 Numbers taken from the confidential annex which the Constitutional Court referred to the Prosecutor General's Office in Auto 092 of 2008.

22 Working Group to monitor compliance with Auto 092 of 2008, Third Follow-up Report.

CASE 11

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER", the victim suffered from a severe mental disability and although her condition was known by the Prosecutor General's Office through the complaint made by the victim's mother and a medical report, the Office ordered the investigation to be definitively closed (*preclusión*) because it considered that without the victim's declaration it was not possible to establish the responsibility of the accused. A year after the first events, this woman was raped again, and in the process for this second rape, following the authorities' request that the victim give evidence, an expert medical report was requested which concluded that her testimony could not be used as evidence, since her psychological disability prevented her from adequately assessing her environment. This means that even if she had given evidence in the first process, it would not have been valid, and this disabled woman would have been revictimized (Foundation "Sisma Mujer", 2009, p. 31).

The Prosecutor General's Office should ensure the presence of sufficient and qualified personnel when investigating sexual violence against women and girls from indigenous, Afro-descending, or LGBT communities, or who are displaced, have a disability, or are part of any other vulnerable group. In particular, in regions inhabited by indigenous peoples, personnel who know the local languages should be available, as well as psychologists and experts who ensure psychosocial support and realize examinations with a differential perspective.

3. Obstacles related to the lack of protection and health care measures

Beyond the deficiencies in the administration of justice which impede the progress of investigations of acts of sexual violence, there are also structural obstacles which transcend the judicial apparatus and impede victims' access to justice. These deficiencies cannot be attributed to one single State institution; rather they are related to the State's failure to act to guarantee victims' access to justice more generally. This inaction is reflected concretely in the lack of a State policy of prevention, support, punishment and reparation of sexual violence in the context of the Colombian armed conflict. Although these are public policy obligations of the State, the administration of justice and in particular the Prosecutor General's Office have specific duties according to their functions.

Two aspects which, without being exhaustive, evidence the lack of a comprehensive policy in this regard are, on the one hand, the absence of effective protection measures and, on the other, the absence of physical and mental health care with a psychosocial perspective. Given the relevance of these aspects for accessing justice, they are developed in depth below.

3.1 Lack of effective protection measures

The persistence of the armed conflict creates important barriers to access to justice for victims of crimes committed either by illegal armed actors or by the armed forces. Victims fear that by making a complaint, their safety and that of their family members may be put at

risk[23]. In previous reports the Working Group to monitor compliance with Auto 092 of 2008 observed that women victims of sexual violence continue to receive threats from armed actors who in a majority of cases seek to intimidate them in order to prevent them from reporting or to make them withdraw their complaint[24]. In 21 of the 38 cases of sexual violence represented or advised by organizations of the Working Group there have been risks or threats as a consequence of the complaint or the victim's participation in the process. Only eight of these 21 cases have benefited from State protection, which was effective in only four cases.

Although currently three State programs are theoretically capable of protecting victims, in practice neither of them, individually or taken together, guarantees effective protection measures for women victims of sexual violence. The coverage of these programs is not sufficient for victims of sexual violence, they do not include a gender perspective, they do not ensure effective access to justice and their implementation presents serious problems. Moreover, the Working Group observed that certain practices of the Prosecutor General's Office, especially investigations being conducted by sectional units, can increase risks for victims' safety.

3.1.1 The protection programs are not designed to care for women victims of sexual violence

There are currently three protection programs which can serve to protect persons at risk who are victims of the armed conflict: i) the Victims and Witnesses Protection Program led by the Prosecutor General's Office which is aimed at victims, witnesses and intervening parties in the criminal process, as well as prosecutors and other officials at extraordinary risk[25]; the Human Rights Protection Program of the Ministry of the Interior and Justice, aimed inter alia at political leaders or activists, social and human rights organizations, witnesses in cases of human rights violations, journalists, mayors, representatives, town councilors and spokespersons, and leaders of displaced population groups[26]; and iii) the Victims and Witnesses Protection Program of the Justice and Peace Law, aimed at victims and witnesses who are threatened or at risk, either as a consequence of their participation in criminal proceedings taking place in the context of Law 975 of 2005, or because of their interest in taking part in them[27].

The problem with these programs is that, even when taken together, they cannot offer protection to women victims of sexual violence. The programs are aimed at specific population groups, as a result of which they exclude those victims which do not fall within any of the categories provided.

The Victims and Witnesses Protection Program run by the Prosecutor General's Office is designed to protect those victims who can "effectively" participate in the judicial process[28]. The effectiveness criteria are related to the victim's ability to identify and provide information which allows the perpetrators to be located. This criterion ignores that, given the very circumstances in which the armed conflict takes place, very often victims of sexual violence cannot recognize their aggressors nor provide data or evidence which demonstrates their responsibility.

CASE 12

IN A CASE LEGALLY REPRESENTED BY THE PARTNERSHIP "Colombian Women's Initiative for Peace" referred in Auto 092, the victim was raped by two members of a paramilitary group who wore baclavas. Although the victim had received and continues to receive repeated threats, she was unable to benefit from the Prosecutor General's Office's Victims and Witnesses Protection Program. According to the prosecutor who examined her request, her participation had not been *effective* as the victim had not identified the aggressors nor helped locating them[29].

"After that I went from being a victim to worse. Because the only thing they said was that I was a victim of my own imagination because it is known that they kill human rights defenders and why did you start working in that, was the response. [...] Because the only thing they told me was: 'But do you know who it was?' 'Do you recognize the guys?' I told them: 'But I don't recognize them, how should I, if they wore balaclavas, if they were abusing me, moreover with a firearm by my head'. Either they don't think or they are more intelligent than me, that's possible. Seeing that this wasn't going anywhere. […] And benefiting like from a protection program, the Prosecutor General's Office said that I don't fulfill the requisites to benefit from the Prosecutor General's Office Victims Protection Program. They have some criteria, I don't know who they are for. If I had known who they were, I would think that one gives all the information one has, so why do they say that I don't report? If I'm going to do the prosecutor's job, I'll be risking my life"[30].

The Interior Ministry's program is aimed inter alia at displaced persons, human rights defenders, and witnesses of serious human rights violations, while the Justice and Peace Program is aimed at victims of perpetrators who demobilized in the context of the Justice and Peace Law.

Indeed, a great number of victims of sexual violence who do not present any of the characteristics of the above-mentioned programs –because they cannot provide "effective"

23 According to the survey driven by OXFAM, among the women who indicated having been victims of some type of violence, 68.59% of victims who reported and 80.84% of those who did not report believe that the presence of armed groups constitutes an obstacle to reporting (OXFAM – Casa de la Mujer, 2010, p. 26).

24 Working Group to monitor compliance with Auto 092 of 2008, Third Follow-up Report.

25 Regulated by Law 418 of 1997 (art. 67) and its extensions, Decree 2699 of 1991, Law 938 of 2004 and Resolutions 550 of 2002 and 405 of 2007.

26 Regulated by Law 418 of 1997 (art. 81), modified and extended by Laws 548 of 1999, 182 of 2002 and 1106 of 2006, and Decree 1740 of 2010.

27 Regulated by Decree 1737 of 2010.

28 Resolution 0-5101 of 2008 of the General Office of the Prosecutor General of the Nation (art. 9): "Any protection measure shall be based on the existence of a direct causal link between *effective* participation in the administrative justice process and the threats and risks arising from such collaboration" (emphasis added, original in Spanish).

29 Testimony of a victim of sexual violence by alleged paramilitaries. Case referred in Auto 092. Interview realized on 11 February 2011.

30 Testimony of a victim of sexual violence by alleged paramilitaries. Case referred in Auto 092. Interview realized on 11 February 2011 (in Spanish).

collaboration (Prosecutor General's Office Victims and Witnesses Program), have not been displaced by the armed conflict, are not human rights defenders or do not belong to any of the categories mentioned in Decree 1740/2010 (program of the Ministry of the Interior), or the perpetrators have not demobilized in the context of the Justice and Peace Law (program of the Justice and Peace Law)- do not have access, in practice, to the protection programs provided by the State[31].

This situation affects not only victims of sexual violence but more generally all victims and witnesses of serious human rights and international humanitarian law violations. Faced with this situation, the State has so far failed to implement a comprehensive protection program for victims and witnesses of serious human rights and international humanitarian law violations which recognizes women's specific conditions[32]. In relation to the Victims and Witnesses Protection Program led by the Prosecutor General's Office, consideration should be given to the possibility of removing the "effectiveness" criterion in Article 9 of Resolution 0-5101 of 2008 as basis for granting protection measures.

3.1.2 Absence of an effective gender perspective

The Colombian Constitutional Court has acknowledged the lack of gender perspective in the victims and witnesses protection programs. Thus, Auto 200 of 2007 ordered the Interior Ministry to readjust the Human Rights Protection Program in order to safeguard the rights of leaders and displaced persons who are at risk. Judgment T-496 of 2008, in turn, ordered the Government to adapt the Victims and Witnesses Protection Program of the Justice and Peace Law to "minimum elements of rationality which, in accordance with international jurisprudence and practice, must orient and include a comprehensive and satisfactory protection strategy for victims and witnesses of processes in which serious crimes are investigated"[33] (original in Spanish).

The Government issued Decrees 1740 of 2010[34] which regulates the Interior Ministry's Witnesses Protection Program and 1737 of 2010[35] which modifies the Victims and Witnesses Protection Program of Law 975 of 2005, seeking to integrate a differential perspective into the protection programs. However, this integration appears to be theoretical rather than real. The decrees do not establish specific procedures, criteria or measures which could ensure

31 Amicus curiae presented to the Colombian Constitutional Court by Rodrigo Uprimny and Diana Guzmán in process T2678546, August 2010.

32 For a proposal in this regard see Working Group for a comprehensive protection program for victims and witnesses of serious human rights violations and breaches of international humanitarian law with a gender perspective (2008).

33 Constitutional Court, Judgment T-496 of 2008, section "Orders", num. 3, 2. This judgment aims to protect the rights to life and to personal integrity and security of women victims with a differential perspective which addresses their particular needs and risks in protection programs.

34 This decree regulates Article 81 of Law 418 of 1997, modified and extended by Laws 548 of 1999, 782 of 2002 and 1106 of 2006.

35 Amending previous Decree 3570 of 2007.

that this perspective is applied in practice, leaving the implementation of the gender perspective to the interpreter's discretion.

Indeed, the Victims and Witnesses Protection Program of the Justice and Peace Law (Decree 1737 of 2010) does not include concrete protection measures addressing women's needs[36]. On the contrary, it removes measures which are relevant for their protection, such as transport subsidies. Neither does it refer to other elements which are more than normative and which are necessary to develop an effective protection program with a gender perspective, such as budgeting and gender training for officials in charge of the program[37].

The program of the Interior Ministry (Decree 1740 of 2010) equally fails to apply a differential perspective in concrete measures. While at the normative level it is accepted that the program must take into account those who benefit from special protection (Decree 1740 of 2010, art. 20, para. 2), this is not translated into the integration of differential perspectives into risk evaluations and protection measures (Observatory for the Human Rights of Women in Colombia, 2010, p. 44). Instead, protection measures are limited to those which existed previously, excluding ground support and reducing the help for temporary relocation for instance (p. 45).

The protection programs for victims should include effective and not merely rhetorical measures which include a gender perspective. This implies designing measures which take into account the specific conditions of women as mothers, leaders, etc.

3.1.3 The protection measures are insufficient to guarantee women's safety in accessing justice

In the best of cases, the programs focus on physical measures, generally linked to transport and escorts, without considering specific guarantees which enable women to access justice and to participate in judicial proceedings. The Victims and Witnesses Protection Program of the Justice and Peace Law (Decree 1737 of 2010) for example does not establish specific measures which enable victims to have access to the depositions and indictment hearings, or to meet their legal representatives in safe conditions[38].

Although some advances have been made as regards confidentiality in indictment hearings (Office of the Prosecutor General of the Nation, Resolution 387 of 2007) and the

36 For example, it does not include measures to ensure that the protected person and her family do not share temporary protection sites with members of armed groups, as well as measures to ensure that the infrastructure of temporary shelters is adapted to families to avoid overcrowding. On protection measures with a gender perspective see Working Group for a comprehensive protection program for victims and witnesses of serious human rights violations and breaches of international humanitarian law with a gender perspective (2008).

37 For a comprehensive presentation of the Working Group's observations on Decree 1737/2010 see Working Group for a comprehensive protection program for victims and witnesses of serious human rights violations and breaches of international humanitarian law with a gender perspective (2010).

38 Working Group for a comprehensive protection program for victims and witnesses of serious human rights violations and breaches of international humanitarian law with a gender perspective (2010, p. 11; 2008, pp. 58-59).

guarantee of confidentiality of victims' identity in proceedings of the Justice and Peace Law (Law 975 of 2005, arts. 37.2 and 58), there are neither normative provisions nor concrete measures which would for instance enable victims to make use of technological means to give testimony, determine waiting areas exclusively for them and provide an obligation of strict confidentiality of the process, amongst others.

This is mirrored in other programs which likewise fail to establish specific protection measures during judicial proceedings. Generally there are no provisions requiring judges and prosecutors to concern themselves with victims' protection during legal proceedings, leaving the issue of safety to protection programs. The lack of adequate measures at this stage of the procedure can expose victims to new attacks against their safety.

3.1.4 Irregularities in the implementation of the programs

The women's, human rights and social organizations of the Working Group have also witnessed the deficiencies in the implementation of the protection programs. There are excessive delays between the moment a request is made and the moment when the protection measure is obtained, despite the fact that the decrees establish specific time limits for responding to requests[39]. These delays increase the danger to which victims are already exposed, leading in some cases to the threats being carried out.

In various cases known by the organizations of the Working Group, the victims have had to share protection spaces with demobilized persons who collaborate with the law, putting victims at risk. Far from protecting them, such a situation threatens victims' safety. In other cases, victims have had to relocate together with their families in very small shelters, making it difficult for them to adapt to these spaces. In this regard, protection programs should include protection spaces exclusively for victims, which should be different from the ones assigned to those who wish to collaborate with the law.

CASE 13

"AFTER I REPORTED, I DON'T KNOW, the threats began in my house. I was protected […]. But, there is always a but. Protection is not a big deal, because being protected together with the same members of the gang, that's not protection. I arrived at the shelter and I met […], one of the same block [who had detained her]. I asked to be transferred in order not to be with him, and he himself recognized me, he was also protected, I asked to be transferred, they sent me to another shelter, and I meet another one, also protected. Protecting you with the very same persons"[40].

As to the actions undertaken by the justice administration, there is no adequate physical infrastructure to ensure that victims feel safe. Many women are obliged to testify about what happened in places which offer no privacy, or in the presence of other justice officials who

39 On delays in the Interior Ministry's Program see Observatory of the human rights of women in Colombia (2010, p. 48).

40 Testimony of a victim of abduction and sexual slavery by a paramilitary group. Interview realized on 10 February 2011 (in Spanish). This case is not included in those referred in Auto 092 of 2008.

are not related to the proceedings (Foundation "Sisma Mujer", 2009, p. 30). In other cases, women –who do not have sufficient money or family support which allows them to delegate the care of their children– face difficulties in entering buildings of the Prosecutor General's Office, as children under the age of majority may not enter them.

CASE 14

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" not included in Auto 092 of 2008, the victim of multiple acts of sexual violence by paramilitaries reported the facts in a space open to the public, where she was constantly interrupted by persons who requested the judicial official. She thus had to describe what happened in these conditions to more than three persons (Foundation "Sisma Mujer", 2009, p. 30).

CASE 15

IN A CASE ADVISED BY THE FOUNDATION "SISMA MUJER" referred in Auto 092 of 2008, a woman who had been victim of sexual violence by paramilitaries in the context of a massacre saw herself obliged to make a complaint in front of more than seven men. This lead to her complaint being partial (Foundation "Sisma Mujer", 2009, p. 30).

Moreover, the Working Group has observed the lightness with which public authorities have handled information stemming from investigations of sexual violence. Throughout the procedures practices are evident which go against victims' intimacy. In some cases the judicial investigators have approached the victim's family or neighbors in order to corroborate her testimony, revealing information about the purpose of the investigation as well as confidential information about the victim.

CASE 16

IN A CASE REPRESENTED BY THE PARTNERSHIP "COLOMBIAN WOMEN'S Initiative for Peace" referred in Auto 092, the victim had been raped by hooded members of an illegal group. As a result of the rape she became pregnant and lost her baby before birth. Agents identified as belonging to the Unified Action Groups for Personal Liberty (GAULA) went to the victim's residence to ask her family members about the sexual violence, including the involuntary abortion she had suffered. Until then, the family did not know about these facts[41].

In other cases investigators have resorted to publications in mass media to summon victims, indicating why they are required. Despite the existence of normative provisions establishing the principle of confidentiality, it is necessary to insist on the duty of officials in charge of conducting the investigations to take measures to guarantee victims' intimacy and safety[42], including for instance the duty not to disclose information related to the judicial

41 Testimony of a victim of sexual violence by alleged paramilitaries. Case referred in Auto 092. Interview realized on 11 February 2011.

42 Law 1257 of 2008 establishes several provisions concerning the principle of confidentiality. It provides for instance that the victim's identity must be handled confidentially when receiving medical, legal or social sup-

process among the victim's family members, neighbors, and the general public. Information about the process should be classified as restricted in character and dissemination should only take place when it is strictly necessary to initiate a case.

CASE 17

IN A CASE REPRESENTED BY THE PARTNERSHIP "COLOMBIAN WOMEN'S Initiative for Peace", the sectional unit of the Prosecutor General's Office which conducted the investigation published a notice in the regional newspaper, indicating that the victim was summoned for legal proceedings regarding the sexual violence she had suffered[43].

All these situations put the victim's safety, privacy and intimacy at risk, which renders her participation in the procedure and the conducting of investigations more difficult. Access to justice cannot be based on the presumption that victims act in a heroic manner by daring to make a complaint even at the cost of their own lives. Victims' and witnesses' access to justice depends on their trust in the institutions in charge of investigating, judging and punishing these conducts, especially through victims and witnesses protection programs.

3.1.5 Risks for victims' safety in the investigations conducted by the sectional units of the Prosecutor General's Office

In general, having a judicial office close to the victim's place of residence is a factor which contributes to immediacy of proof, the speediness of the process and access to justice.

However, it appears that this is not the case for many victims of sexual violence in the armed conflict. On the one hand, the fact that the investigations are conducted by sectional units of the Prosecutor General's Office may put the safety of women and their families at risk in specific cases. For women who have been forcibly displaced after the acts of sexual violence, conducting the criminal process in the place where the events occurred forces them to return to territories which are still under the control of armed actors who threaten and intimidate them. In this regard, the Inter-American Commission on Human Rights (2009) asserted that "conducting investigations of cases of sexual violence in the very same place where the events were said to have occurred could pose risks for the women victims of the crime, since the actors in the armed conflict are still in control of the areas where the crimes were committed and have the women in those areas under their surveillance" (para. 85).

port (art. 8.f). Moreover, victims' whereabouts shall be kept confidential in order to ensure their protection and safety (art. 19.3). This law also mentions that in court proceedings the judge may order that hearings be closed to the public and that personal data be kept confidential (art. 33). Law 975, in turn, establishes victims' right to "protection of their intimacy and guarantee of their safety" (art. 38.2, original in Spanish). In the section on "Conservation of archives" the law also provides for the authorities' duty to adopt the necessary measures to safeguard the right to intimacy of victims of sexual violence in order not to cause more unnecessary harm to victims nor create risks for their safety (art. 58).

43 Working Group to monitor compliance with Auto 092 of 2008, Second Follow-up Report (p. 35).

On the other hand, in the case of displaced women conducting proceedings in places of origin can lead them to incur financial costs which many cannot afford.

Last, as was shown in the section on figures, the investigations conducted by the sectional units of the Prosecutor General's Office make even less progress than those conducted by the national units (see Section II.1.2.2. of this report). According to the information reported by the Prosecutor General's Office, the investigations corresponding to Auto 092 conducted by the Office's sectional units have not progressed over the past year. This is even more worrying if one takes into account that the sectional units still have knowledge of more than half of the cases (109 cases) referred by the Constitutional Court in Auto 092.

CASE 18

IN A CASE REPRESENTED BY THE FOUNDATION "SISMA MUJER" referred in Auto 092 of 2008, an 11-year-old girl was raped by what seemed to be a paramilitary. When the mother lodged the complaint, the investigation was assigned to the unit of the Prosecutor General's Office of the place where the events occurred, despite the fact that the victim and her family were forced into displacement because of threats from the aggressor. Despite the risks for the victim and her relatives which are involved in conducting the investigation at the same place where the events took place, the investigation was assigned to this unit for over two years, without collecting the necessary evidence to identify the person responsible (Foundation "Sisma Mujer", 2009, p. 25).

The Working Group deems it crucial that safety conditions are reinforced in cases conducted by sectional units of the Prosecutor General's Office and that concrete measures are implemented to accelerate their handling. Moreover, in cases where women have been displaced, where there are serious risks for victims' safety, or which concern particularly serious events, investigations should be conducted by national investigation units, without this negatively affecting the principle of immediacy of evidence nor the speed of the procedures.

3.2 Lack of physical and mental health care with a psychosocial perspective

3.2.1 The right to physical and mental health with a psychosocial perspective

The right to physical and mental health care with a psychosocial perspective for women victims of sexual violence in the armed conflict is derived, in the international framework, from Article 12 of the International Covenant on Economic, Social and Cultural Rights, which recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The "enjoyment of the highest attainable standard of mental health" standard has been recognized by various UN bodies[44]. The Committee on the Elimination of Discrimination against Women has also indicated that policies and measures on

44 "[T]he right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health" (Committee on Economic, Social and Cultural Rights, General Comment 14, para. 4).

health care must address the rights of women from the perspective of women's needs, which include psychosocial factors which vary between women and men (UN, CEDAW Committee, 1999, para. 12.c).

In recent resolutions, the United Nations Security Council has recognized the importance of health and psychosocial systems in the fight against sexual violence in armed conflict, especially in relation to women and children. In Resolution 1820 of 2008 the Security Council urged Member States, United Nations entities, and financial institutions to support "the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, [...] in order to provide sustainable assistance to victims of sexual violence in armed conflict" (para. 13). In Resolutions 1888 (2009) and 1960 (2010) the Security Council explicitly encourages and reaffirms the importance:

> […] for States, with the support of the international community, to increase *access to health care, psychosocial support*, legal assistance, and socio-economic reintegration services for victims of sexual violence, in particular in rural areas. (UN, Security Council, Preamble, emphasis added)[45]

At the constitutional level, the Colombian Constitutional Court has asserted that in addition to fulfilling the criteria of availability, accessibility, acceptability and quality inherent to the right to health, health services "must consider the particular circumstances which being a victim of armed conflict and forced displacement entails" (Constitutional Court, Judgment T-045 of 2010, num. 4.3, original in Spanish). The Constitutional Court observed that, given the extreme vulnerability and the specific needs of women victims of serious human rights violations and displacement, there is "a need to include specialized psychological and psychiatric support with a psychosocial perspective when providing health care services to victims of the armed conflict" (num. 5, original in Spanish). Consequently, the Court ordered the Ministry of Social Protection:

> […] to design and implement health care protocols, programs and policies which respond to the particular needs of victims of the armed conflict, their families and communities, especially as regards recovering from psychosocial impacts caused by their exposure to traumatic events which are triggered by the socio-political violence in the country. (num. 6.4, original in Spanish)

It must be highlighted that for the Court the provision of health care services to victims of the conflict must incorporate a psychosocial perspective which includes the situation's context and depathologizes the analysis of victims' reality (num. 5.5). A merely clinical perspective of the situation would not be in accordance with the standard established by the judgment.

At the legislative level, the following laws make reference to specific duties related to health, psychological and psychiatric care. Law 1257 of 2008 establishes victims' right to

45 See also Security Council, 2009, para. 13.

receive "clear, complete, accurate and timely information in relation to sexual and reproductive health" (art. 8.c, original in Spanish), as well as "specialized and comprehensive medical, psychological, psychiatric and forensic assistance following the terms and conditions set forth in the legal order for them and their children" (art. 8.g, original in Spanish). Law 360 complements this by establishing the right of victims of crimes against sexual liberty and human dignity to have free access to an examination and treatment for the prevention of sexually transmitted diseases, including HIV/AIDS, as well as for physical and emotional trauma care (art. 15.1 and 2).

3.2.2 Deficiencies in the coverage of the right to physical and mental health with a psychosocial perspective in judicial processes

Despite the relevance of physical, psychological and psychiatric health care for victims generally and victims of sexual violence in particular, so far the State has not developed an effective policy of psychosocial support. Despite the order provided in Judgment T-045 of 2010, there is still no effective health care policy which responds to the needs of victims of the armed conflict.

Neither is there a policy or State entity which coordinates health, psychological and psychiatric care for victims of sexual violence in the armed conflict which would ensure their access to justice. Currently there are no victim support centers or offices specialized in sexual violence in situations of conflict providing support to victims by, for instance, offering them timely information about their cases, psychological support during hearings, and assistance in obtaining health services and psychosocial support before, during and after the judicial process more generally.

While some institutions have made progress in terms of writing analyses, protocols and other such documents, these have yet to be implemented. The Ministry of Social Protection has made progress as regards a number of studies on the implementation of a psychosocial perspective in health care. Nevertheless, this policy has not yet been implemented. The Ombudsman's Office, in turn, has made progress by implementing a pilot project in psychosocial and legal support for victims of sexual violence in the context of Law 1257 of 2008 (Ombudsman's Office, 2011) and drafting a protocol for the psycho-juridical orientation of women and children victims of sexual violence in the context of the armed conflict (Ombudsman's Office, 2010). However, these actions are not aimed at covering all cases of sexual violence in the armed conflict[46] and have yet to be fully implemented[47].

46 While the pilot project is aimed at cases of sexual violence in general without necessarily focusing on armed conflict, the Protocol for psycho-juridical orientation is aimed at cases falling under the Justice and Peace Law, thereby excluding the cases which are handled under the ordinary jurisdiction.

47 The Ombudsman's Office (2011) asserted that budgetary resources are still being negotiated for the implementation of the programme for ensuring access to justice in the implementation of Laws 1257 and 1098.

Given the lack of State policies for physical and mental health assistance, in the majority of cases the latter is provided by nongovernmental organizations. Only five of the 38 cases of sexual violence represented or advised by organizations of the Working Group have benefited from psychosocial support by the State.

As regards the work of the Prosecutor General's Office, although Comprehensive Support and Investigation Centers for Victims of Sexual Violence (Centros de Atención e Investigación Integral para Víctimas de Violencia Sexual) have been implemented in several cities in Colombia (Office of the Prosecutor General of the Nation, 2010, pp. 15-17), this cannot be considered an adequate response to the psychosocial support needs of women victims of sexual violence in the armed conflict. First, these centers are designed to attend victims of sexual violence in general, which leaves out the specificities of violence in the context of armed conflict, such as exacerbated security issues, deeper psychosocial impacts, effects on health, etc. Second, given the high demand for support, the psychological support provided is very punctual, and generally linked to the interview when making the complaint. This does not respond to victims' continuous and permanent support needs. In addition, these centers are located in department capitals (28 in the whole country) (Office of the Prosecutor General of the Nation, 2011), which does not necessarily guarantee access to victims who live in the countryside.

Physical and mental health care with a psychosocial perspective for victims of sexual violence is a responsibility of the Colombian State and as such must be fulfilled across various State entities, according to their function. As regards conducting investigations for acts of sexual violence, we insist that the Prosecutor General's Office must design and implement internal guidelines aimed at ensuring access to justice to women victims of such acts which includes a physical and mental health perspective. Thus, the Prosecutor General's Office should at least ensure the availability of a sufficient number of psychologists who support victims in all judicial proceedings, in national as well as in sectional units.

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III. CONCLUSION: LACK OF A COMPREHENSIVE AND COORDINATED STATE POLICY ON ACCESS TO JUSTICE FOR VICTIMS OF SEXUAL VIOLENCE

The Colombian Constitutional Court stated that in relation to sexual violence there is "a triple process of official and unofficial invisibility, silence of victims, and impunity for perpetrators" (Auto 092, Section III.1.1.6, original in Spanish). The present report notes the persistence of this situation of impunity, taking into account that 97.8% of the cases reported by the Prosecutor General's Office have not received a condemnatory sentence. This circumstance affects not only this group of cases but rather reflects a generalized situation of impunity for investigations of sexual violence in the context of the armed conflict. This situation had already been observed by the United Nations Special Rapporteur on violence against women, its causes and consequences (UN, Human Rights Commission, 2001, para. 103), the Inter-American Commission on Human Rights (2009, para. 16), as well as by other international organizations (Amnesty International, 2004, pp. 35-37) and by the Working Group itself in previous reports[1], all of which reveals that the Prosecutor General's Office does not comply with the order issued by the Constitutional Court.

Moreover, in the present report the Working Group identifies and reiterates the different barriers to accessing justice which explain, in part, the insufficient progress made in the investigations. These obstacles include: the absence of an efficient and reliable register of cases of sexual violence in the armed conflict, the excessive importance attached to testimonial and physical evidence, persisting discriminatory patterns, the absence of effective reparation and the absence of an effective differential perspective, as well as the lack of effective protection programs and physical and mental health care programs for victims with a psychosocial perspective.

In Auto 092 the Colombian Constitutional Court indicated that sexual violence required "the immediate design and implementation of a public policy designed with the concrete aim of preventing such crimes, protecting victims and punishing those responsible" (Section III.1.1.7, original in Spanish). The organizations of the Working Group have observed that, three years after Auto 092 has been issued, there is no such policy, which contributes to maintaining impunity for sexual violence against women during or on the occasion of the armed conflict. Although some specific measures have been implemented, they do not correspond to a policy as indicated by the Constitutional Court and as such do not correspond to a comprehensive approach capable of overcoming impunity.

Such a policy must be designed and implemented urgently, taking into consideration the provisions of Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, a regards the duty to "pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence".

The necessity of adopting such a policy has also been indicated by human rights protection bodies. Thus, the Inter-American Commission on Human Rights in its Annual Report (2009) recommended the Colombian State:

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1 Working Group to monitor compliance with Auto 092 of 2008, Third Follow-up Report (Conclusions, pp. 14-20); Second Follow-up Report (p. 46); First Follow-up Report (p. 55).

1. To adopt an integral State policy to address the specific impact of the armed conflict on women in the areas of justice, health and education, among others. These policies should be guided by the logic of protecting the rights of women and should tend to guarantee their autonomy.
2. To implement and strengthen measures to comply with the duty to act with due diligence to prevent, sanction and eradicate violence and discrimination against women, exacerbated by the armed conflict, including concrete efforts to fulfill its four obligations: prevention, investigation, sanction and reparation of the human rights violations of women. (IAComHR, 2009, Recommendations 1 and 2)

As regards access to justice in particular, the Inter-American Commission recommended:

To design an integral, coordinated State policy, supported by adequate public resources, to guarantee that victims of violence and discrimination adequately access justice and that acts of violence are adequately investigated, sanctioned and repaired. (IAComHR, 2009, Recommendation 46)

The absence of a policy on access to justice must lead to the discussion not only of the role of the Prosecutor General's Office as the entity in charge of initiating and conducting investigations of sexual violence, as was discussed in sections II.1 and II.2 of the report, but also the work of other entities such as the Ombudsman's Office and the Office of the Inspector General of the Nation.

The Inspector General's Office has not exercised its duty of supervision, despite the invitation made by the Constitutional Court in Auto 092. The office represents the public interest in 22 investigations for sexual violence against members of the armed forces, the majority of which are under investigation without identified author. The Inspector General's Office has also failed to conduct any disciplinary investigations against judicial officials for using stereotypes or practices which prevent victims of sexual violence from accessing justice (Office of the Inspector General of the Nation, 2011). These findings imply that the Inspector General's Office should adopt measures to adequately exercise its supervision role, not only with regard to the cases referred in Auto 092, but also in procedures for crime of sexual violence committed in the context of the armed conflict more generally.

The findings of this report put into question the political will of the Colombian State to comply with its obligation to guarantee access to justice to women victims of sexual violence. Thus, a crucial step forward to make progress in the investigations and in reducing impunity for sexual violence is the design of a public policy which guarantees access to justice to women victims of such crimes. Such a policy should include concrete measures aimed at prevention, elimination of the barriers which affect the judicial system, protection, and physical and mental health care and support with a psychosocial perspective, as described in this report.

The Working Group requests the Colombian Constitutional Court, as follow-up to the orders in Auto 092 of 2008, to urge the different State institutions to jointly comply with the State's duty to ensure access to justice to women victims of sexual violence.

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IV. REQUESTS

By virtue of Article 23 of the Political Constitution, we respectfully present the following REQUESTS to the Honorable Constitutional Court of Colombia:

1. That it orders the COLOMBIAN STATE to design and implement a public policy on access to justice for victims of sexual violence in the context of the armed conflict, in accordance with Auto 092 of 2008;

2. That it maintains the order provided in Auto 092 of 2008 addressed to the OFFICE OF THE PROSECUTOR GENERAL OF THE NATION to "adopt as soon as possible all necessary measures in order to ensure that the investigations which are underway make accelerated progress" (Section III.1.1.9, original in Spanish); such measures must address all the barriers identified in the present report; and that it also maintains the order addressed to the Prosecutor General's Office to "include the response to the phenomenon of sexual violence to which Colombian women have been and are exposed in the context of the armed conflict at the highest level of priority in the official agenda of the Nation" (Section III.1.1.1, original in Spanish);

3. That it promotes the creation of a permanent space for dialogue between the OFFICE OF THE PROSECUTOR GENERAL OF THE NATION and the Working Group, with the aim to join efforts in making progress in the investigations and overcoming impunity;

4. That it urges the OFFICE OF THE INSPECTOR GENERAL OF THE NATION to provide information about the supervision strategy it has implemented in order to comply with the invitation of the Constitutional Court in Auto 092 of 2008; we also request that the Court reiterates its call on this institution to supervise criminal proceedings;

5. That it maintains the periodical monitoring of compliance with the second order of Auto 092 of 2008.