



# COLOMBIA: HIDDEN FROM JUSTICE

IMPUNITY FOR CONFLICT-RELATED SEXUAL VIOLENCE, A FOLLOW-UP REPORT

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*Cover photo:* Women hold up masks to draw attention to violence against women during a march to commemorate International Women's Day, Medellín, Antioquia Department, Colombia, 8 March 2011.

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## METHODOLOGY

This report is based on research carried out by Amnesty International following the launch in September 2011 of its report *"This is what we demand. Justice!": Impunity for Sexual Violence against Women in Colombia's Armed Conflict* (Index: AMR 23/018/2011). The focus of the research was to monitor the efforts made by state and government authorities to make good on their commitments to comply with their national and international legal obligations to end all forms of sexual violence, including those committed in the context of the conflict, and to end impunity for such crimes. As part of this evaluation, Amnesty International visited Colombia in April and May 2012 to meet with government and state authorities, members of the international community, women's organizations, human rights groups, victims' families and survivors of conflict-related sexual violence.

Amnesty International would like to thank those civil society organizations and individuals who assisted Amnesty International, not only in the preparation of the initial report, but also in continuing to provide information and support to the organization's campaign against impunity for conflict-related sexual violence.

# 1. INTRODUCTION

Women in Colombia, as elsewhere, face many forms of physical and psychological gender-based violence in many contexts – in the home, at work and in the community. They are not alone in facing a situation where such violence, and in particular sexual violence, is so entrenched that it is viewed almost as a normal part of life. However, women and girls in Colombia face particularly acute dangers because of the way in which gender-based violence has been used in the context of the armed conflict.

For more than 45 years, people in Colombia have endured an internal armed conflict that has pitted the security forces, acting alone or in collusion with paramilitaries, against a range of guerrilla groups. Civilians have been the main victims of the conflict and the human rights consequences have been catastrophic for some sectors, such as Indigenous Peoples, Afro-descendent and peasant farmer communities, human rights defenders, trade unionists, and women and girls.

While some women are targeted for reasons other than their gender, many are singled out simply because they are women and for reasons inherently linked to the conflict – to sow terror within communities to force them to flee; to wreak revenge on the enemy; to control the sexual and reproductive rights of female combatants; or to exploit women and girls as sexual slaves. Women human rights defenders are also targeted to silence or punish them when they expose abuses. Over the last few years there has been a marked increase in threats against such women leaders, especially those working with forcibly displaced communities, campaigning for land restitution, or representing survivors of conflict-related sexual violence.

This was the situation highlighted in Amnesty International's September 2011 report, *"This is what we demand. Justice!": Impunity for Sexual Violence against Women in Colombia's Armed Conflict*. Based on interviews with women's organizations, human rights groups, victims' families and survivors of sexual violence, the report detailed some of the appalling consequences of the authorities' failure to protect women from sexual violence. It also highlighted the many obstacles women and girls who survive sexual violence face in their struggle for truth, justice and reparation. The report concluded with more than 70 recommendations – to Colombia's state and government authorities, guerrilla groups, the international community, and the Office of the Prosecutor of the International Criminal Court – which, if effectively implemented, would contribute to ending conflict-related sexual violence and the almost total impunity that those who commit these crimes have for so long enjoyed.

In response to the report, the authorities in Colombia made a series of commitments to ensure the rights to freedom from violence and to justice. Several senior officials, including

the High Presidential Counsellor for Women's Equity and the Defence and Justice ministries, issued press releases condemning conflict-related sexual violence, affirming their commitment to combat impunity in such cases, and highlighting some of the measures they were taking to address the situation.

Since the launch of the report, the silence in public debate surrounding sexual violence and impunity for such crimes has been partly broken. There has been greater media coverage and the authorities have developed a number of initiatives to tackle the issue. Women's organizations and survivors also told Amnesty International of the positive impact of exposing these human rights abuses. As one Colombian woman human rights defender told Amnesty International: "there is still talk about the effects of the report in our country... [the report] made [the survivors] feel that you are a vehicle to amplify their voices in a difficult environment for them."

The compelling accounts from survivors of the violence inflicted on them and of their courageous and determined struggle for justice forced the authorities to respond more positively and proactively to the report than they might otherwise have done. A very detailed response was issued almost immediately by a number of key state and government authorities outlining measures they had taken to combat sexual violence and the impunity that has marked such cases. For the first time, the authorities did not seek to deny or downplay the seriousness of the issues raised. This is a positive and welcome development, as is their stated willingness to combat impunity in cases of conflict-related sexual crimes.

Although there have been few tangible improvements in the overall human rights situation since President Juan Manuel Santos took office in August 2010, his government has expressed its commitment to human rights and to end impunity. The government's relationship with human rights groups has also generally been constructive compared to the hostile stance of the previous administration.

In the year since the launch of its report, Amnesty International has tracked efforts by state and government authorities to fulfil their commitments to comply with their national and international legal obligations to end all forms of sexual violence, including those committed in the context of the conflict, and to bring those responsible for such crimes to justice.

The government and state authorities have to some extent demonstrated a greater level of willingness to tackle impunity in cases of conflict-related sexual violence. However, the problem in Colombia has not primarily been the lack of good laws, resolutions, decrees, protocols and directives, but rather the failure to implement them effectively and consistently across the country. As some of the individual cases in this report show, a plethora of institutional measures, old and new, are still failing to have a positive impact on the experiences of survivors, too many of whom are still waiting for the state make good their right to truth, justice and reparation. There is also no evidence to suggest that such measures have led to a significant reduction in the numbers of conflict-related sexual violence cases.

This report details what progress has been made over the past year and what still remains to be done. It ends with a series of recommendations that again urge government and state authorities to take effective measures to tackle conflict-related sexual violence and impunity.

## 2. A YEAR OF PROGRESS?

Following the launch in September 2011 of Amnesty International's report on conflict-related sexual violence and impunity, various officials responded by making commitments to address the abuses highlighted.

- Vice-President Angelino Garzón stressed the government's commitment to end sexual violence and the impunity that surrounds such cases. He emphasized how the Victims and Land Restitution Law (see below) incorporated gender-specific measures for women and girl survivors of conflict-related sexual violence and how the security forces had adopted a policy of zero tolerance towards sexual violence committed by its personnel. (Meeting with Amnesty International on 22 September 2011, and a letter to Amnesty International dated 30 December 2011.)
- The Defence Ministry issued a press release on 21 September 2011 restating its obligation to prevent all forms of violence against women and girls, especially sexual violence. In its statement, the ministry also outlined the measures the institution had taken to combat sexual violence, including Permanent Directive No. 11 of November 2010, and measures to ensure effective collaboration with the prosecuting authorities.
- The Presidential High Counsellor for Women's Equity, Cristina Plazas Michelsen, made a commitment to review Amnesty International's recommendations and noted that she was coordinating efforts to develop a "National Public Policy for the Gender Equity of Women". (Meeting with Amnesty International on 19 September 2011 and a letter to Amnesty International, dated 24 November 2011.)
- The then Justice Minister, Juan Carlos Esguerra, expressed concern about domestic violence and said his ministry would closely examine Amnesty International's recommendations, but that the issue was already a priority for the government. (Meeting with Amnesty International on 23 September 2011.)
- The then Deputy Attorney General, Juan Carlos Forero, highlighted the Office's new training manual and protocols for investigating conflict-related sexual violence, which was due to be implemented. [Meeting with Amnesty International on 22 September 2011.]
- The then Attorney General, Viviane Morales, sent a report to Amnesty International in October 2011 outlining measures her Office had taken to combat impunity in such cases, many of which were referred to in Amnesty International's report. She also noted that her

Office was developing an equality and non-discrimination policy, with a focus on gender, and was improving gender-specific training and protocols for prosecutors working on cases of sexual violence.

## DEVELOPMENTS – ONE YEAR ON

### LEGISLATIVE INITIATIVES

Several legislative initiatives have been presented over the past year that could, if implemented effectively, have a positive impact with regards to victims' right to truth, justice and reparation.

The most high-profile of these is Law 1448 of 2011 – the Victims and Land Restitution Law – which came into force in January 2012. This law, which forms the centrepiece of President Santos' human rights agenda (see below), is designed to offer reparations to many, although not all, the victims of the armed conflict. If implemented, it could result in the return to their rightful owners of some, although not all, of the millions of hectares of land misappropriated, mainly by paramilitary groups, in the course of the conflict. The Victims and Land Restitution Law also includes special provisions for women and children survivors of human rights abuses, including sexual violence.

On 25 July 2012, two legislators from Colombia's Chamber of Representatives, Iván Cepeda and Ángela María Robledo, with the support of Pilar Rueda, the Human Rights Ombudsman's Delegate for Children, Youth and Women, officially presented a legislative bill in Congress "to guarantee access to justice for victims of sexual violence, especially sexual violence in the context of the armed conflict."<sup>1</sup> If approved, this legislation will, among other things, amend the Criminal Code to reflect international standards by making conflict-related sexual violence a war crime and/or a crime against humanity. This was a key recommendation in Amnesty International's 2011 report. If the bill is adopted, it will mark the first specific and comprehensive law to tackle impunity in cases of conflict-related sexual violence in Colombia.

Other initiatives, although not directly related to combating conflict-related sexual crimes, could have a positive impact on combating impunity for sexual violence generally. These include Law 1542 of 2012 – the "Law Against Domestic Violence"<sup>2</sup> – which came into force on 5 July 2012. Under this law, which was promoted by the Women's Caucus in Congress, sexual violence is a crime of public interest, which means that the state can prosecute whether or not the survivor reports the crime.

On 1 August 2012, the "Rosa Elvira Cely" Bill (No. 49 of 2012) was presented to Congress by opposition Senator Gloria Inés Ramírez. It is named after a woman who was raped and tortured in a Bogotá park on 24 May 2012 and who subsequently died of her injuries. The killing provoked an outcry in Colombia and sparked massive demonstrations in Bogotá. The Bill classifies femicide (the killing of a woman because of her gender) as a separate offence in the Criminal Code and increases the prison sentences for such offences.

### OFFICE OF THE ATTORNEY GENERAL

Women's groups reported that over the past year the frequency and quality of dialogue with the Office of the Attorney General – the prosecuting authority and a key institution in the



fight against impunity – had improved. Until her resignation in March 2012, Attorney General Viviane Morales had demonstrated a greater commitment to fighting impunity in cases of conflict-related sexual violence than her predecessors.<sup>3</sup>

On 5 January 2012, the Office of the Attorney General published its equality and non-discrimination policy. This detailed how it would implement a differentiated approach, including on gender, in the investigation of crimes. According to the Office, the aim of this policy, adopted on 12 March 2012 (Resolution No. 00450), is to improve access to justice for groups and communities at risk, such as women; lesbian, gay, bisexual, transgender and intersex people; Indigenous Peoples; children, and Afro-descendent communities.

In a meeting with Viviane Morales' successor, Eduardo Montealegre, in April 2012, Amnesty International again stressed the importance of acknowledging the specific obstacles to justice faced by women survivors of conflict-related sexual violence. It highlighted the importance of maintaining improvements set in train by his predecessor, Viviane Morales. Attorney General Montealegre restated his commitment to combating sexual violence.

#### OTHER OFFICIAL BODIES AND INITIATIVES

On 28 December 2011, the Office of the Procurator General – which has oversight over state agents and can adopt disciplinary measures against them – published a detailed evaluation of the progress made by state and government institutions in combating impunity in cases of conflict-related sexual violence (see below).<sup>4</sup>

In July 2012, Colombia ratified the International Convention for the Protection of All Persons from Enforced Disappearance. However, it did not recognize the competence of the Enforced Disappearance Committee to receive and consider communications from or on behalf of victims or from other states parties. This will leave victims and their families, including survivors of conflict-related sexual violence, without an important recourse to justice.

On 12 September 2012, President Santos presented the government's National Public Policy for the Gender Equity of Women, which he claimed would help "guarantee the comprehensive rights of women". The government has stated that the new policy will lead to the development of strategies on, among other things, health, sexual and reproductive rights, and the protection of the rights of women at risk or victims of the armed conflict.

### 3. THE ARMED CONFLICT: HUMAN RIGHTS ABUSES AND IMPUNITY

The human rights consequences of Colombia's long internal armed conflict have been catastrophic, especially for communities and groups at particular risk, such as Indigenous Peoples, Afro-descendent and peasant farmer communities, human rights defenders, trade unionists, and women and girls.

Over the course of the conflict, millions of civilians have been forcibly displaced, unlawfully killed, tortured, forcibly disappeared or abducted, and sexually abused by all the warring parties.

In 2011 alone, more than 259,000 people were forced to flee their homes, largely as a result of the hostilities. More than 305 civilians were kidnapped or taken hostage, mainly by common criminal groups but also by the guerrilla. During the year, 111 Indigenous people were killed,<sup>5</sup> as were at least 45 human rights defenders and community leaders, many of whom had campaigned on land restitution issues, and at least 29 members of trade unions. In 2011, the security forces also reportedly directly carried out at least 38 extrajudicial executions. Landmines, laid mostly by guerrilla groups, were responsible for the deaths of 20 civilians and 49 members of the security forces. Threats against human rights, social and community organizations, mainly from paramilitary groups, as well as judicial persecution and the theft of sensitive case information, continue to undermine the ability of human rights groups to carry out their legitimate work.

Impunity for human rights abuses and violations of international humanitarian law is a defining feature of Colombia's armed conflict. Although in recent years progress has been made in bringing to justice a few of those responsible for international crimes, especially in several emblematic human rights cases, this remains the exception rather than the rule. This widespread impunity sends a powerful message to human rights abusers that they can continue to threaten and kill without fear of repercussions. Ongoing threats against and killings of some of those participating in human rights criminal investigations – such as witnesses, survivors, victims' families, human rights defenders, lawyers, prosecutors and judges – highlight all too clearly how impunity in Colombia continues to be both a cause and a consequence of serious human rights abuses and violations.

## THE VICTIMS AND LAND RESTITUTION LAW

The Victims and Land Restitution Law (Law 1448) came into force on 1 January 2012. This acknowledges the existence of an armed conflict and, therefore, the relevance of international humanitarian law, which sets out the right of the population to certain protections. The law also provides for reparations for some survivors of human rights abuses committed in the context of the conflict. It contains measures to return millions of hectares of stolen land to their rightful owners. It also includes special provisions for women and children targeted for abuses, including sexual violence, and recognizes the importance of protection measures for victims.

In recent months, the Office of the Attorney General has met with human rights NGOs to help develop a protocol for investigating conflict-related sexual violence, as required under the Victims and Land Restitution Law.

However, the law has several shortcomings and excludes certain categories of victims.<sup>6</sup> The law has been presented as a transitional justice mechanism when in reality the conflict is still continuing. As a result, many victims of abuses that occurred in the recent past or after the law came into force will be excluded from its protections because, following the supposed demobilization of paramilitary groups in the mid-2000s, they are seen as victims of criminal gangs rather than of the warring parties. Although the government asserts that paramilitary groups no longer exist, these groups in fact continue to be responsible for the largest number of forced displacements in the country and for numerous other human rights violations, yet many of the victims of paramilitaries will be excluded from the law. In addition, its impact may be undermined by a number of additional factors, including the increase in threats and killings of those campaigning for land restitution or returning to their lands.

## OTHER LEGISLATION

Two legislative proposals supported by the executive and by the Office of the Attorney General raise serious concerns about the government's commitment to end impunity.

The first, which was being debated in Congress at the time of writing, will extend the military justice system's role in investigating and prosecuting human rights violations in which members of the security forces are implicated. Military courts in Colombia have a shameful history of closing such investigations without holding those responsible to account. Although the proposed law states that conflict-related sexual crimes and other crimes against humanity are excluded from military jurisdiction, it gives the military justice system greater control over the initial stages of the investigation, such as securing the crime scene. This risks allowing human rights violations to be defined in the early stages of investigation as purely combat-related actions and thus the responsibility of the military justice system. This is of particular concern as the current Military Criminal Code (Law No.1407 of 17 August 2010), which came into force soon after President Santos assumed office, does not explicitly exclude sexual crimes from the remit of the military justice system.

The second legislative initiative, known as the "legal framework for peace", was passed by Congress in June 2012 and was signed into law by President Santos soon after. The law could allow human rights abusers, including members of the security forces, to benefit from de facto amnesties. It will give Congress the power to suspend the prison sentences of members of the warring parties, including of the security forces. The law also allows the

Attorney General to prioritize some investigations over others. While states may prioritize cases, under international law they are still obliged to investigate all cases of serious human rights abuses and violations of international humanitarian law.

## THE JUSTICE AND PEACE PROCESS

The Justice and Peace process, which began in 2005, is an example of how the Colombian state is still failing to meet international standards on the right of victims to truth, justice and reparation. The process continues to fail victims, especially survivors of conflict-related crimes of sexual violence.

The process was created by Law 975 of 2005, the Justice and Peace Law. Under its provisions, some 10 per cent of the more than 30,000 paramilitaries who supposedly demobilized in a government-sponsored process that began in 2003 can qualify for reduced prison sentences in return for laying down their arms, confessing to human rights violations and returning misappropriated land and property to their rightful owners. However, there is no guarantee that demobilized combatants who fail to provide full and truthful confessions will not receive the benefits of the law. Members of guerrilla groups can also benefit from the law's provisions, but few have done so.

There is clear evidence that paramilitary groups continue to operate and are again consolidating their presence in many areas of the country, sometimes in collusion with the security forces. However, the government continues to deny that paramilitaries still exist, and classifies human rights violations committed by such groups as the actions of criminal gangs (*bandas criminales*, Bacrim).

According to data from the Office of the Attorney General from May 2012, of the 31,668 paramilitaries who demobilized, only 4,140 were registered in the Justice and Peace process. Of these, only 1,620 had confirmed their participation. This means that more than 90 per cent of those who supposedly demobilized were never investigated over their possible participation in human rights violations and still received de facto amnesties. According to figures from the Office of the Attorney General, by 30 June 2012 only 13 paramilitaries had been convicted in the process; many of these had appeals pending at the time of writing.

The current and previous governments have repeatedly sought to extend the provisions of the Justice and Peace Law, which was supposed to be transitional, so that illegal combatants who had not demobilized in time for previous deadlines were nevertheless eligible for the benefits of the Justice and Peace process. Illegal combatants have, therefore, been sent a dangerous message that even if they continue to commit serious human rights abuses, they would still receive generous benefits.

The failure to bring to justice through the Justice and Peace process those responsible for crimes of sexual violence has been exacerbated by the lack of an effective institutional strategy for investigating conflict-related sexual violence. One of the most serious weaknesses of the process is that prosecutors, with some exceptions, investigate only those cases to which paramilitaries have already confessed. This is problematic given that women's organizations and some prosecutors have repeatedly expressed serious concerns over the reluctance of the vast majority of paramilitaries to confess to crimes of sexual violence.

Some efforts are being made by some prosecutors in the Justice and Peace process to investigate paramilitaries' role in sexual violence even if there has been no confession, and to investigate the commanders for chain-of-command responsibility for such crimes.<sup>7</sup> However, these are the exception rather than the rule, and such alternative investigatory strategies have yet to translate into many actual convictions.

## 4. SEXUAL VIOLENCE AND THE ARMED CONFLICT

Gender-based violence in all societies feeds off a general acceptance that violence against women is not a crime but a normal part of life. Sexual violence, including rape, falls into a special category for one fundamental reason: it is the most invisible of crimes. Social attitudes that blame survivors rather than the abuser have the effect of silencing most of those who have sexual violence inflicted on them, whether conflict-related or not.<sup>8</sup> Rape, in all parts of the world, is significantly under-reported for a variety of reasons, including the shame and stigma associated with such violence, the fear of further violence, and a lack of confidence in the judicial system and the police.

In Colombia, many women and girls face dangers in addition to the gender discrimination prevalent in many societies and the normalization of sexual violence that such attitudes engender, because of the armed conflict. Colombia's Constitutional Court, in its landmark 2008 Judicial Decision 092 (*Auto 092*) on women and displacement, has acknowledged that sexual violence against women has been "a habitual, extensive, systematic and invisible practice in the context of the Colombian armed conflict."

### CONSTITUTIONAL COURT JUDICIAL DECISION 092

Issued in April 2008, Constitutional Court decision 092 (*Auto 092*) made an explicit link between displacement and sexual violence. It concluded that the conflict and displacement had had a disproportionate impact on women and highlighted how some victims faced multiple forms of discrimination – as women and girls, as victims of displacement, and as members of Afro-descendent or Indigenous communities.

*Auto 092* obliged the authorities to implement 13 specific programmes to protect women displaced by the conflict. The 13 programmes were meant to cover diverse yet inter-related issues such as sexual violence; health promotion; educational assistance; access to land; assistance for Indigenous and Afro-descendent displaced women; the prevention of violence against women leaders; the right to truth, justice and reparation; and psycho-social assistance for victims of the conflict. The Court also ordered the Office of the Attorney General to investigate 183 individual cases of mostly conflict-related sexual violence against displaced women and to ensure their right to truth, justice and reparation. It also called on the authorities to create individual protection schemes for a further 600 named displaced women.

Human rights and women's NGOs set up two follow-up working groups (*mesas de seguimiento*) in response to *Auto 092*. One sought to evaluate progress in implementing the 13 programmes and the other to track progress in the Office of the Attorney General's investigations into the 183 individual cases. Lack of co-operation by the Offices of the Attorney General and Procurator General with the working group on the

individual cases – a concern highlighted in Amnesty International’s 2011 report – has been partly addressed over the past year. The former Attorney General, Viviane Morales, made several commitments to members of the working group and regular meetings have been held. Amnesty International hopes that the current Attorney General, Eduardo Montealegre, will continue the dialogue and good working relationship with women’s organizations.

In April 2012, Amnesty International met with members of the Constitutional Court responsible for following-up on implementation of *Auto 092*. They reported that progress by the Office of the Attorney General in investigating the 183 cases had been poor (see below for more details), as had efforts by the authorities to implement the 13 programmes. They noted that the government had apparently abandoned plans to implement the 13 programmes and would instead develop a “comprehensive plan” to comply with *Auto 092*. The Court also reported that the authorities had said they had offered protection schemes to 550 of the 600 additional women named in *Auto 092*, but had failed to provide any specific details.

Armed conflict affects women in different ways to men and the displacement, which has affected millions in the course of the armed conflict, has a disproportionate impact on them. For example, women and girls are often responsible for obtaining food, water, and other daily necessities for the family; displacement makes this more difficult. What refuge there is in towns and cities is often insecure and, as highlighted by the Constitutional Court in *Auto 092*, displaced women are at greater risk of sexual violence. Most of the survivors whose experiences inform this report as well as Amnesty International’s 2011 report, were either displaced at the time they were attacked or were forced to flee after they were attacked.

Access to goods and services also often poses serious difficulties for displaced women. Some are treated as guerrilla sympathizers simply because they have fled conflict areas. Others face retaliation because of a coercive, accidental or deliberate association with a member of an armed group. Paramilitary and guerrilla groups also use coercive codes of conduct to control the behaviour of women, both civilians and their own combatants, including through rape and forced contraception, pregnancy and abortion.

Sexual violence, particularly in the context of the conflict, is often not reported to the authorities. Widespread under-reporting coupled with the failure of state institutions to gather accurate statistics make it very hard to assess the extent of these crimes. The most reliable data available is managed by the National Institute of Legal Medicine and Forensic Sciences (*Instituto Nacional de Medicina Legal y Ciencias Forenses*, INMLCF), but this only records the number of physical examinations carried out, rather than the number of women and girls actually targeted for rape and other kinds of sexual violence, and so is likely to seriously understate the problem. Nonetheless, in 2011, the INMLCF carried out a total of 22,597 examinations into suspected cases of sexual violence, compared to 12,732 in 2000. In 2011, five times as many cases involved women and girls as men and boys. Some 94 per cent of the male victims were boys; 85 per cent of female victims were girls. In the case of conflict-related sexual violence, the level of under-reporting appears even greater. According to the INMLCF, in only 72 examinations was the alleged perpetrator a combatant (50 cases were attributed to members of the security and intelligence services; 19 to unidentified members of “illegal armed groups”; and three to members of guerrilla groups).<sup>9</sup>

## 5. OBSTACLES TO JUSTICE

### RAPE OF AN INDIGENOUS WOMAN IN PUTUMAYO DEPARTMENT

A 40-year-old Indigenous woman with a learning disability, left her home on the reservation (*resguardo*) where she lived in Putumayo Department to look for food for her livestock on 18 May 2012. As she was returning home, an army soldier at the side of the road, grabbed her. She managed to get away, but he caught her again, dragged her into some bushes and raped her. The army unit to which the soldier belonged – the Special Energy and Highways Battalion No.9 – was reportedly only 100m away at the time. Two days later, she told her family what had happened. On 26 May, she went with her family to the army battalion to report the rape. After listening to her testimony, a captain and a lieutenant called in the unit so she could identify the perpetrator, but she was too frightened to make a positive identification. The captain said that without a positive identification there was nothing he could do. On 29 May, the family reported the rape to the local ombudsman (*personero*), and on 31 May they reported the rape to the judicial police (*Dirección Central de Policía Judicial e Inteligencia*, DIJIN). The case is now being investigated by the local Office of the Attorney General in the municipality where the attack took place.

Survivors of human rights abuses face numerous obstacles when seeking justice. These include the authorities' historical lack of political will; lack of security for victims and for those involved in legal proceedings; and the role of the military justice system. Bureaucratic inefficiencies, underfunding and infiltration by illegal armed groups and organized crime also impede the ability of the civilian justice system to deliver justice. Such obstacles have a disproportionate impact on survivors of sexual violence.

Such often seemingly insurmountable obstacles, coupled with the fact that women and girls have little confidence that the justice system will ensure their safety and bring their attackers to justice, help explain in part why so many do not report these crimes. The silence that surrounds crimes of sexual violence has many and complex causes. These include cultural factors where the “shame” of the crime is felt by the survivor rather than the abuser. Such attitudes give rise to a justice system that often does not believe survivors' accounts, dismisses the violence as a “crime of passion”, or blames the survivor. In addition, many survivors live in poverty, often in remote and conflict-ridden areas with little information about, or access to, the justice system. The failure of the state to offer survivors effective after-care, such as medical, psycho-social and financial assistance, has further dissuaded survivors from reporting sexual violence to the authorities. Survivors of conflict-related sexual violence face additional hurdles, such as the fear that the armed group to which the perpetrator belongs will target the survivor for further attack or even threaten their relatives, accusations from the authorities that survivors are in fact the girlfriends of combatants or have collaborated with them, or are told by prosecutors that they are too ugly to be raped by a combatant, who has the power to have sex with anyone they want.



Of the few survivors who do report sexual violence to the authorities, some have felt able to do so only years after the attack and after intense psycho-social therapy from women's organizations. The lapse of time means that they have faced additional barriers to justice, leading to some to abandon their struggle for truth, justice and reparation.

## LACK OF EFFECTIVE PROTECTION

The lack of protection for survivors is one of the principle obstacles to justice. The authorities have implemented a number of physical protection programmes for victims of the conflict, witnesses, human rights defenders, trade unionists and journalists. Recent changes to some of these programmes – including Decree 4065 of 31 October 2011 to unify all the Interior Ministry's protection mechanisms under a National Protection Unit, and related Decree 4912 of 26 December 2011 – have incorporated a gender perspective requiring the authorities to take into account the specific needs of women survivors. The Victims and Land Restitution Law also incorporates a gender perspective for the protection of women survivors of conflict-related sexual violence. However, these mechanisms simply state that they are gender sensitive, but they fail to define what this means or what specific measures will be taken in practice to address the needs of women survivors.

In reality, little has been done to facilitate women's access to the protection programmes, which still fail to take into account their specific needs and demonstrate a lack of understanding of the needs and rights of survivors of sexual violence.<sup>10</sup> There are also concerns that no effective controls are in place to ensure that private security companies, some of which may be providing bodyguards for human rights defenders, do not employ former paramilitaries or members of guerrilla groups. Many staff of the new National Protection Programme, including bodyguards, are former members of the civilian intelligence service (*Departamento Administrativo de Seguridad, DAS*). The DAS was disbanded in October 2011 following a "dirty tricks" scandal involving the illegal surveillance and wiretapping of journalists, human rights defenders, judges and opposition politicians, as well as death threats and even killings, carried out in collusion with paramilitary groups.

## BLANCA NUBIA DÍAZ

Blanca Nubia Díaz has been seeking justice for her daughter, Irina del Carmen Villero Díaz, ever since the 15-year-old was raped and killed by paramilitaries working with the security forces in May 2001 in the Cuestecitas area of Albania Municipality, La Guajira Department.

Blanca Nubia Díaz, a member of the Wayúu Indigenous community and at the time an activist with the National Association of Peasant Farmer and Indigenous Women of Colombia (*Asociación Nacional de Mujeres Campesinas e Indígenas de Colombia, ANMUCIC*), was able to establish the whereabouts of her daughter's body, but had to leave La Guajira following threats from paramilitaries. In 2010, she was finally able to reclaim her daughter's body and the burial according to Wayúu ritual took place in August 2010. The investigations into the rape, torture and killing of her daughter have made little progress in over a decade. Many witnesses also continue to be too frightened to come forward. However, earlier this year, a paramilitary in the Justice and Peace process has reportedly come forward with information about the case.

On 23 January 2012, Blanca Nubia Díaz was followed in broad daylight in Bogotá by a car. A woman got out of the car and told her: "Doctor Irene has sent us to tell you to come with us". When Blanca Nubia Díaz replied that she did not know this person, the woman insisted she get in the car: "Get in, how could you not know her, she is handling your case". The woman tried to force Blanca Nubia Díaz into the car, but eventually left when Blanca Nubia Díaz started to call for help. Irene López Garzón, Blanca Nubia Díaz's lawyer and a director of the human rights NGO Corporación Jurídica Yira Castro, denies sending someone to pick her up. She, too, has received repeated death threats because of her work.

Blanca Nubia Díaz is a member of the National Movement of Victims of State Crimes (*Movimiento Nacional de Víctimas e Crímenes de Estado*, MOVICE). She reported her daughter's rape and murder to the local Office of the Attorney General in Maicao, La Guajira Department, but there was no progress in the case. However, the investigation was transferred to the Human Rights Unit in Bogotá after it was included among the 183 cases presented by the Constitutional Court in its *Auto 092* ruling. Blanca Nubia Díaz and her family have been threatened repeatedly. On 28 July 2011, her grandson was stopped by two men in Bogotá and told: "We know your mother, and we know about your granny Blanca Nubia, and what she does and who she is with".

Women supporting land restitution processes, accompanying displaced communities, and representing survivors of conflict-related sexual violence continue to be targeted, principally by paramilitary groups.<sup>11</sup> Some have been raped in order to punish and silence them. Most do not report the attacks, but many of those who do have seen scant progress in criminal investigations into their cases.

Death threats against women human rights defenders have increased. In 2008, the Constitutional Court, through *Auto 092*, ordered the authorities to create a special protection programme for women leaders. This has yet to be created. One women's NGO, *Corporación Sisma Mujer*, has received nine death threats since 2010, the latest in February 2012 (see below). As requested by the NGO, the Human Rights Unit of the Office of the Attorney General is investigating these threats as a single case, but at the time of writing, no progress had been made in the investigation.

## PILAR RUEDA JIMÉNEZ

Pilar Rueda Jiménez, the Human Rights Ombudsman's Delegate for Children, Youth and Women, has worked closely with survivors of conflict-related sexual violence. She has received written, email and telephone death threats from paramilitary groups such as Los Rastrojos and the Black Eagles (*Águilas Negras*) since June 2011.

In February 2012, the Black Eagles Capital Bloc sent a death threat to several women human rights defenders, including Pilar Rueda and several human rights NGOs, including women's organizations. Among those threatened in February were the NGOs Casa de La Mujer, Ruta Pacífica de las Mujeres, National Foundation for the Defence of Women's Human Rights (Fundación Nacional Defensora de los Derechos Humanos de la Mujer, FUNDHEFEM), Corporación Sisma Mujer, and the Afro-Women's Association for Peace (Asociación Afro Mujeres por la Paz, AFROMUPAZ). Several women human rights defenders were also named in the death threat, including Pilar Rueda.

The threat was similar to one sent to the same groups and individuals in June 2011. It read: "A death sentence on the guerrilla bitches of the FARC that are opposing the policies of our government." However, unlike previous threats, which were sent by email, the February threat was left at the offices of one of the named

women's NGOs. It was sent days before the celebration in Bogotá of International Women's Day, the focus of which was an event in Congress on impunity for conflict-related sexual violence.

Pilar Rueda was threatened again on 7 March 2012 when another woman human rights defender who was due to visit her that day received a phone call: "Look, it's a warning. If you love your Doctor Pilar so much, it would be best if you don't return to the Ombudsman's [office], because otherwise it will be your *doctorcita* who will pay". That evening, as she was leaving her office, Pilar Rueda received a call on her mobile. The caller said: "Only leaving now, bitch?" indicating that her office was under direct surveillance.

Pilar Rueda received identical threatening phone calls on 16 and 18 May in which the caller said: "Bitch, carry on looking after your protégés." At the time, Pilar Rueda was organizing a meeting for survivors of sexual violence who are also displaced leaders. Pilar Rueda's office had been supporting them in their efforts to seek justice, protection and health care and education for their children.

Physical measures to protect survivors can only be effective if perpetrators are arrested, investigated and, if there is sufficient admissible evidence, prosecuted. Without this basic commitment to the rule of law by the state, physical protection programmes will remain ineffective.

## DISCRIMINATION BY JUDICIAL OFFICIALS

The Office of the Attorney General has devised a specific methodology for investigating conflict-related sexual violence.<sup>12</sup> It has also carried out specialist gender training for prosecutors,<sup>13</sup> and created a Gender Committee to facilitate inter-institutional co-operation. It has also complied with the Constitutional Court's order to appoint three prosecutors specializing on conflict-related sexual violence cases, although at the time of writing it was not clear if these were working full-time on the 183 cases.

However, few of these changes appear to have had any discernible impact on survivors' experiences. The gender training programme continues to be implemented in an ad-hoc manner and is still not a pre-requisite for working on such cases so that many prosecutors working on sexual violence cases have not been appropriately trained. While prosecutors in the large cities may be aware of the relevant protocols and apply these, to varying degrees, the experience of survivors, especially in more remote areas, suggests that many prosecutors working on cases of sexual crimes are not aware of or are unwilling to implement them consistently and effectively.

Stereotypical and discriminatory attitudes by officials towards women survivors of sexual violence persist.

Laws and protocols to combat impunity in cases of conflict-related sexual violence will have little impact unless the judicial and other state officials responsible for applying them are properly informed and trained and held accountable for their implementation.

## RAPE OF TWO WOMEN IN TUMACO

Eight heavily armed men, hooded and in civilian clothes, entered an Afro-descendent community in rural Tumaco, Nariño Department, on the night of 16 March 2012. They threatened and beat residents and raped two women and sexually abused a 16-year-old girl.

After the unidentified group of men left, a woman from the community phoned the police to report the rapes. The call was never answered. She then called the army's anti-kidnapping unit, the Joint Action Units for Personal Liberty (*Grupos de Acción Unificada por la Libertad Personal*, GAULA), who told her this was not their responsibility and to phone the police or the army instead. Another resident then called the emergency services' number. An operator told him that the army had been informed and that were on their way. They never arrived.

Later on the following morning, 17 March, a member of the community living in the urban centre of Tumaco went to the police and the Office of the Attorney General to report the attacks. An officer at the police station said he would refer the issue to a superior to see if there was anything they could do. At the Office of the Attorney General they told him there was nothing they could do since it was a holiday and to return later. No state institution visited the community, despite the fact that an army unit was only 30 minutes away by boat. As a result of the authorities failure to respond, on 21 March the community of 24 families, fled the area, some to urban Tumaco and others across the border into Ecuador.

That same day, one of the women survivors of rape went to the Office of the Attorney General in Tumaco to report the crime, but was refused entry by an official and told to make an appointment. She then phoned two human rights NGOs for advice. She returned to the Office of the Attorney General and gave them the name of an NGO lawyer, after which officials agreed to see her. She took with her the clothes she was wearing when raped, but was told by an official that they were not necessary. These were never examined.

She was told to visit the National Institute of Legal Medicine and Forensic Sciences (*Instituto Nacional de Medicina Legal y Ciencias Forenses*, INMLCF) for a forensic examination, but because it was already late, she returned the following day. However, INMLCF staff refused to see her, incorrectly telling her that she needed to have someone accompanying her. After further obstacles and delays, she decided not to return.

A week later, on 28 March, the second survivor of rape and the 16-year-old girl visited the Office of the Attorney General to report the crimes. Officials refused to see them saying there was no need since they already had the other woman's testimony. An official told them they were wasting their time reporting since it would be very difficult to identify the perpetrators. Instead, they should just return home and get the men in the community to protect them and other women with shotguns. In May, the woman and girl were finally able to report the attacks to the Office of the Attorney General but at the time of writing had not been examined by the INMLCF.

The Attorney General's Office in Tumaco claims the attack was an isolated incident, and has suggested that a neighbouring community or common criminals were responsible. However, the community has stated that paramilitaries are active in the area and were responsible for the attack against them. At the time of writing, none of the community, including the survivors, has returned home. If the authorities conclude the attack was committed by common criminals, they will not qualify for state assistance as internally displaced people.

## LACK OF ACCURATE INFORMATION

Accurate data on conflict-related sexual violence does not exist. This is a result of both under-reporting and the failure to develop an effective single, comprehensive database.

In recent years, the Office of the Attorney General has improved existing information systems and begun to collect data on the incidence of sexual violence. But this database, which was created by Resolution No. 0266 of 9 July 2008, is incomplete and out of date. According to information from the Office of the Attorney General, in May 2012 only 124 cases (110 of them from *Auto 092*) had been recorded in a disaggregated manner, including the gender and ethnicity of the survivor.

An effective database is vital for tackling sexual violence and impunity. It should include information on the causes, consequences and frequency of sexual violence, in order to evaluate the effectiveness of the state's responses.

## CONCERNS ABOUT LOCALIZED INVESTIGATIONS

Regional prosecutors, rather than specialized units in Bogotá, continue to investigate most cases of conflict-related sexual violence, including most of the 183 cases listed in *Auto 092*. This dispersal of cases continues to raise a number of concerns.

Most, though not all, cases are still being investigated in isolation, without examining the patterns of abuses carried out by the parties to the conflict. If the crimes are not contextualized in this way it can make it difficult to attribute chain-of-command responsibility or ensure that investigations acknowledge the case is conflict related.

Investigating sexual violence in the place where it occurred also increases the risk to the survivor, as well as witnesses and judicial officials. This is particularly so in an armed conflict situation where paramilitary and guerrilla groups have sometimes infiltrated local state and judicial institutions and where they often maintain absolute military control.

Local judicial offices also often lack the expertise and resources to carry out highly sensitive and specialized criminal investigations.

## RAPE OF INDIGENOUS WOMAN IN CAUCA DEPARTMENT

On 10 June 2009, two army soldiers from the III Brigade's Pichincha Battalion reportedly raped a 22-year-old Indigenous woman in Jambaló Municipality, Cauca Department. At the time, the two soldiers' superiors apologized to the family and offered them 100,000 pesos (around US\$50) in compensation. The survivor reported the case, but had to flee the area following threats. In May 2010, the Inter-American Commission on Human Rights granted her precautionary (protection) measures.<sup>14</sup>

However, in March 2012, the authorities revealed that on 14 October 2011 the local Office of the Attorney General in Santiago de Cali, Valle del Cauca Department, had closed the case arguing that the survivor had consented to sexual intercourse with the two soldiers, despite evidence to back her claim that she had been the victim of sexual violence. On 14 March 2012, the Office of the Procurator General called for the case to be reopened. The case was subsequently reopened and, at the time of writing, was being investigated by the Office of the Attorney General in Cali.

## LACK OF CONTINUITY IN THE OFFICE OF THE ATTORNEY GENERAL

Some survivors continue to experience a lack of continuity, with new prosecutors often appointed to handle their cases at key moments in the investigation. This can undermine the trust built up over time between the survivor and the prosecutor, which is so important for successful prosecutions of these crimes.

As is common practice when institutions undergo changes in leadership, the new Attorney General has removed from their posts key officials nominated by his predecessor.

The Office of the Attorney General has also suffered from a lack of institutional continuity at the highest level, with four different Attorney Generals exercising the role in the two years that President Santos has been in office. As a result, important reforms have been put on hold or abandoned. This uncertainty could continue as it is still unclear whether Attorney General Eduardo Montealegre will serve for a full four-year term.

## LACK OF EFFECTIVE AFTER-CARE

Sexual violence can have a devastating impact on the lives of survivors, especially if they do not receive the physical and mental support and care they need. Apart from the immediate physical injury and mental anguish, women who are raped are at risk of sexually transmitted infections (STIs), injuries and pregnancy.

## RAPE OF A 10-YEAR-OLD GIRL IN CAUCA DEPARTMENT

A 10-year-old Afro-descendent girl from rural Buenaventura Municipality, Valle del Cauca Department, was abducted in October 2011 by unidentified armed men and repeatedly raped. She became pregnant, but this was not confirmed until December when her family carried out a home pregnancy test.

Armed men then appeared in her neighbourhood demanding that the girl be turned over to them so that she would not be able to report the attack. In mid-December, under cover of night, her family put her on a bus to Bogotá so she could go and stay with a relative, because her family felt they could not protect her in Buenaventura.

On her arrival in Bogotá, her relative immediately took her to hospital to be examined. However, even before any treatment could be administered, officials from the state Colombian Institute for Family Welfare (*Instituto Colombiano de Bienestar Familiar*, ICBF) took the child into protective custody.

By the end of January, more than two weeks after she was put under ICBF protection, the family had still not been informed whether the girl had received treatment, whether a termination had been arranged as the girl had requested, or whether the case had been reported to the prosecuting authorities.

Correspondence from the ICBF centre holding the girl appears to suggest that staff at the centre were not aware of the official protocols which have to be followed in cases of sexual violence committed against children and had to ask for this information from the ICBF head office.

During a visit by the girl's relative to the ICBF centre, she was told that the girl would not be returned to the family nor would they authorize a termination since the girl was not willing to talk, and if the girl needed to remain in the ICBF's custody, then so be it.

The family's representatives were forced to make a written request to the ICBF and the Office of the Attorney General to release information to the family, which they did a few days later. This confirmed that the pregnancy had been terminated and that the case had been assigned to the Office of the Attorney General in Cali, which they claimed had jurisdiction over the case, rather than the Office in Bogotá.

International standards require states to provide survivors of sexual violence with health care and rehabilitation.<sup>15</sup> Under Colombian law the state has an obligation to provide health care to survivors of sexual violence, including psychological and psychiatric assistance; access to examinations and treatment to prevent HIV/AIDS and STIs; and treatment for physical and mental trauma. But most survivors do not seek help immediately because of fears about being stigmatized; because of a lack of information about or access to the limited services available; and because of concerns about security. Access to health services is particularly difficult in rural areas, where much of the conflict-related violence occurs.

Although abortion in cases of rape, serious foetal deformity or where the mother's health or life is at risk was decriminalized by the Colombian Constitutional Court in 2006, many survivors of rape who choose to terminate a pregnancy are not able to do so, either because of family or community pressure or because the facilities are simply not available. Women seeking legal abortions face a number of obstacles, including the refusal of some doctors to carry them out, often citing moral objections; the lack of official information on how to obtain a legal abortion; and threats and attacks against women human rights defenders working on sexual and reproductive rights. In any event, for many women and girls gaining access to certain services is limited for economic reasons. For example, women who live far from health centres or in areas of armed conflict cannot afford or are too frightened to travel to the few facilities available.

## MONICA ROA

On 7 May 2012, the power supply to the Women's Link Worldwide (WLW) office in Bogotá was cut, and minutes later an unidentified person fired a shot into the office. Monica Roa, a human rights defender and Programme Director of WLW, and two other colleagues were working in the office at the time. The bullet broke the security glass above Monica Roa's head.

In 2006, the work of Monica Roa and the WLW, together with other Colombian women's rights organizations, led to the partial decriminalization of abortion in Colombia. This recent attack occurred on the eve of the sixth anniversary of the Constitutional Court ruling on abortion as Monica Roa and her colleagues were working on preparations for a campaign to highlight the failure to properly implement the Court's ruling.

The May 2012 attack was the latest in a series of acts of intimidation against Monica Roa and the WLW. Their office in Bogotá has been broken into and computers stolen on three different occasions, the latest being on 23 April 2012. They have also been the targets of death threats and harassment since 2005. On several occasions human excrement has been left in front of the main door of their offices. After the first acts of intimidation in 2005, the government granted Monica Roa protection measures.

## FAILURE TO INVESTIGATE CONFLICT-RELATED SEXUAL VIOLENCE AS INTERNATIONAL CRIMES

One of the many reasons why impunity for human rights abuses and violations of international humanitarian law, including conflict-related crimes of sexual violence, prevails in Colombia is that investigations into such crimes do not reflect their status as war crimes and/or as crimes against humanity.

Colombia ratified the Rome Statute of the International Criminal Court (ICC) in 2002. This states that certain acts – including murder, torture, enslavement, sexual violence and other inhumane acts – may amount to war crimes when committed in the context of an armed conflict. Such acts may also constitute crimes against humanity if they form part of a widespread or systematic attack directed against the civilian population.<sup>16</sup>

Although some of the conduct amounting to crimes under international law may be prosecuted as ordinary crimes, this alternative is not satisfactory for a number of reasons. For example, it can leave gaps where conduct amounting to crimes under international law is not subject to criminal responsibility under national law. In addition, unlike ordinary crimes, crimes under international law are not subject to statutes of limitations. Prosecuting alleged perpetrators of serious human rights violations for ordinary crimes such as murder, assault, rape or abduction when they are suspected of being responsible for crimes against humanity or war crimes does not satisfy Colombia's obligations under the Rome Statute.

Colombia has yet to define crimes against humanity as crimes under national law and only some war crimes have been codified. The Criminal Code, which defines rape, has also not been amended to reflect the criminalization of rape and other crimes of sexual violence in international criminal law.

Amnesty International continues to call on Colombia to fulfil its obligations under the Rome Statute, in particular with regards to its obligation to investigate conflict-related sexual violence as crimes under international law (war crimes and crimes against humanity) and not as ordinary crimes.<sup>17</sup> The appointment of Ruth Stella Correa, a specialist in labour and human rights, as the new Justice Minister in July 2012 has raised hopes that the government will use this opportunity to take concrete steps to comply with Colombia's obligations in this area.



## 6. THE STATISTICS – A REVEALING CONFUSION

Inconsistencies in data from the Office of the Attorney General have made it difficult to assess what, if any, progress has been made over time in the investigations, both in the 183 cases listed in *Auto 092* and in other cases of conflict-related sexual violence being investigated by the Office of the Attorney General.<sup>18</sup>

Amnesty International's report "*This is what we demand. Justice!*": *Impunity for Sexual Violence against Women in Colombia's Armed Conflict* cited data from Office of the Attorney General from September 2010 that indicated that only five of the 183 *Auto 092* cases had been concluded, with guilty verdicts reached in four. In these four cases, all the perpetrators were civilians. In the one conflict-related case that had been completed, the accused, a paramilitary, was acquitted. A further 140 of the 183 cases were still in the preliminary stages of investigations and the perpetrator had yet to be formally identified. Only 68 cases (in addition to the 182 *Auto 092* cases) of conflict-related sexual violence were under investigation by the Office of the Attorney General. All were being investigated by regional prosecutors, rather than by specialized units in Bogotá. None had resulted in a conviction; indeed, in 65 of these 68 cases the perpetrator had yet to be identified.

In the past year, the Office of the Attorney General has shown a greater degree of openness with regards to making public statistical information. However, this has not resulted in a greater degree of clarity and comparison of data across time remains difficult.

According to data published by the Office of the Attorney General in January 2012, the latest relatively detailed figures available at the time of writing, 89 cases of conflict-related sexual violence were under investigation by the Human Rights Unit in Bogotá; 24 of these were *Auto 092* cases. However, given that regional prosecutors are reportedly investigating 110 of the 183 *Auto 092* cases, this leaves 49 cases apparently unaccounted for. The December 2011 data refers to convictions in five cases being investigated by the Human Rights Unit; three of these appear to be *Auto 092* cases. The same data also suggests that there have been convictions in six *Auto 092* cases investigated by regional prosecutors.<sup>19</sup>

To add to this confusion, in early 2012, Amnesty International members received a document sent by various Colombian embassies quoting data from January 2012 which differs from the information above. For example, with regard to the *Auto 092* cases, the document claims the Human Rights Unit was investigating 179 cases, rather than the 24 quoted in other documents, and refers to 707 victims, when *Auto 092* refers to 183 cases.

Statistics from the Office of the Attorney General's website, dated 30 June 2012, suggest that paramilitaries in the Justice and Peace process had confessed to more than 37,000 different crimes; only 84 of these related to sexual violence. However, again, the statistics are not consistent. An earlier document from the Office of the Attorney General, from March 2011, gives a higher figure of confessions, 57,000, of which 86 related to sexual crimes.

What is clear, however, is that seven years on from the start of the Justice and Peace process, only one paramilitary has been convicted of sexual crimes.

Press reports from early 2012 also suggest that the Justice and Peace Unit has documented 119 cases of sexual violence committed by members of guerrilla groups.<sup>20</sup> However, this information does not feature in any of the statistics from the Office of the Attorney General. The only official data on guerrilla participation in sexual violence seen by Amnesty International makes reference to only two former combatants who have confessed to sexual crimes, out of some 500 guerrillas reported to be in the Justice and Peace process. At the time of writing, none had been charged with sexual crimes.

Despite the apparent inconsistency of the data a clear picture emerges: there has been very little progress in the investigations into conflict-related sexual crimes. The vast majority of conflict-related cases of sexual violence have not been investigated and perpetrators continue to enjoy impunity.

The Office of the Attorney General and government representatives continue to argue that investigations are impeded by survivors' unwillingness to report. However, this further highlights the failure of the government to fulfil its human rights obligations. It is the responsibility of the authorities to remove the barriers that prevent survivors from reporting conflict-related sexual crimes and the obstacles that force many of those who do report such crimes to abandon their fight for justice.

## 7. UPDATES TO INDIVIDUAL CASES

For many of the survivors and victims' families whose stories are at the heart of Amnesty International's 2011 report *"This is what we demand. Justice!": Impunity for Sexual Violence against Women in Colombia's Armed Conflict* (Index: AMR 23/018/2011) the fight for justice continues.

### THE TORRES FAMILY

In one of the few cases to reach trial, on 27 August 2012 army sub-lieutenant Raúl Muñoz Linares was sentenced to 60 years in prison by a civilian judge for raping 14-year-old Jenni Torres; killing her two brothers, nine-year-old Jimi and six-year-old Jefferson; and raping another girl in Tame, Arauca Department, in October 2010.

In the initial stages of the judicial process, the repeated resignation of defence lawyers caused severe delays while new counsel was appointed, while in March 2011 the presiding judge was shot dead in Saravena, Arauca Department. In recent months, the defence team had used other delaying tactics that were criticized by the judge overseeing the case.<sup>21</sup> Right to the end, the defence team also persisted with the allegation, which was discredited by prosecutors and the judge, that the children were killed by members of the FARC. At the start of the process, the defence used the testimony of supposedly demobilized members of guerrilla groups to falsely argue that Jenni Torres had sexual relations with members of the FARC and that her family had close ties to the group. The army also caused delays at the end of 2011 when it failed to ensure the presence of army witnesses ordered to attend by Office of the Attorney General.

The Torres family continue to experience hardship. They were forced to flee from Tame and at the time of writing were still living in a hostel. The Interior Ministry provided some temporary assistance in the first few months, but this has stopped. The family relies on financial support from NGOs and the ICBF, but this is insufficient. The NGOs supporting the family have been forced to present a number of writs of fundamental rights (*petición de tutela*) to compel the authorities to offer additional assistance, especially to cover the father's pressing medical needs. The family of the other girl whom Raúl Muñoz raped also fled the area, and are suffering similar hardships. According to the NGO supporting the family, the girl has not received psycho-social assistance from the state.

## SHIRLEY

Shirley, who was raped by paramilitaries in Antioquia Department, continues her fight for justice. At the time of writing, her case was being investigated by the Human Rights Unit in Bogotá. In October 2011, Shirley formally identified her attackers, and their names and aliases were confirmed. Her lawyers asked the Office of the Attorney General to formally link the relevant paramilitaries to the process, but, so far, only three have been formally linked, two of whom were charged with the crime of sexual slavery/forced prostitution in August 2012. Following the removal of the prosecutor in charge of the case in January 2012, Shirley was forced to repeat her original testimony. The new prosecutor asked questions that seemed to have little to do with the allegation and to focus on raising questions about her sexual background. As a result, her lawyers called an end to the interview. Shirley has told the women's NGO assisting her that she has no confidence in the new prosecutor. Her lawyers have, therefore, requested that a new prosecutor be appointed.

## MARI

Mari, a community leader from Valle del Cauca Department, was raped by paramilitaries in 2001. Mari and the women's organization she works with continue to receive threats because of their fight for justice. In late 2011, three men dressed in black approached Mari and her son in the street just after they had visited her mother in Cali. Mari and her son managed to get on a bus, which was forced to stop after a taxi drove in front of it. The three men got out of the taxi, but the bus driver managed to lock the door and drive away. On several occasions this year, unidentified men have also visited Mari's apartment building asking for her by name. Mari was also named in one of the death threats received by women's NGOs earlier this year. Her lawyers have asked for the investigations into these threats to be brought together into a single process; they are currently dispersed which has made it difficult to investigate the context behind the threats. The investigation into one of the threats was closed after prosecutors claimed Mari lacked credibility and was paranoid. Her lawyers have sought to overturn this decision. No progress has been made in the investigation into the killing of her son in 2009. She still benefits from state protection measures, but these have proved insufficient, and her lawyers have asked for her protection to be strengthened. Although Mari has still not felt able to report the rape, she has told colleagues that she feels she ought to and that it is her responsibility to do so, for the sake of other survivors. But she is frightened that, so long after the attack, the authorities will not believe her.

## THE GALÁRRAGA SISTERS

Four members of the Galárraga family – 19-year-old Jenny Patricia, 18-year-old twins Nelsy Milena and Mónica Liliana, and 13-year-old María Nelly – were abducted by paramilitaries in Putumayo Department in 2001. Their bodies were not found until 2010. Forensic experts reported that their bodies were partially clothed and that the four had been tortured; three had been dismembered before they died, and the fourth had been bludgeoned to death. The authorities also concluded that they had been raped or subjected to other sexual abuse.

The prosecuting authorities initially refused to investigate whether the four had been victims of sexual violence and have only recently acknowledged that sexual crimes were committed. However, at the time of writing only one of the 10 paramilitaries thus far implicated in the case has been charged with sexual crimes following his confession. The other nine are under investigation for the forced disappearance of the Galárraga sisters but not for sexually abusing them. Repeated requests by the family's lawyers to have the investigation transferred from La Hormiga in Putumayo, where little if any progress has been made, to Bogotá have been rejected. However, in February 2012 the case was transferred to the Office of the Attorney General in the city of Cali.

## **LISBETH AND CLARA**

Eighteen-year-old Clara and 15-year-old Lisbeth were at a party in Clara's home in Putumayo Department in August 2008 when soldiers burst in to the house. Both were sexually assaulted during the raid. In June 2010, seven of the soldiers who took part in the raid were convicted of killing a young man prior to the raid. The prosecuting authorities only agreed to open an investigation into the sexual assault in November 2010. At the time of writing, the case was still under investigation by the Human Rights Unit in Bogotá. However, two years after the decision to investigate the sexual assault, none of the soldiers had been charged despite the fact that Clara and Lisbeth have positively identified their attackers.

## **DORA**

Dora, who was 14 years old when she was raped by a police officer in 2009 in Antioquia Department, still does not know if the police ever passed on her complaint to the prosecuting authorities. At the time of the attack, the perpetrator's superiors tried to pressure Dora to reach an agreement with him and convinced her not to report the rape.

## **ANDREA AND HER SISTER**

Seventeen-year-old Andrea and her sister were raped by paramilitaries in Putumayo Department in 2009. At the time they had been too frightened to report the attack, especially as they were subsequently threatened. In November 2011, soon after the launch of Amnesty International's report, they reported the rapes to the Office of the Attorney General. The case was assigned to a prosecutor in Putumayo. However, the Office of the Attorney General is only investigating the attempted enforced disappearance of the two sisters, and not the rapes. In March, the sister's lawyers asked for the case to be transferred to the Human Rights Unit in Bogotá, but at the time of writing had not received a response to their request.

## LEIDY

Leidy, who was 17-years-old when she was abducted, drugged and raped in 2001 by paramilitaries in Santander Department is still too afraid to report the attack.

## ANGÉLICA

For more than 10 years, Angélica was kept as a domestic and sexual slave by a man she believed to be a member or collaborator with the FARC. She finally fled from the man in 2005. In 2008 her 13-year-old daughter was sexually assaulted by a neighbour. He was arrested but released a year later on mental health grounds. In 2010, the same man raped Angélica's daughter. Because of fear and a lack of confidence in the justice system, the girl is still refusing to report the rape. Although in July 2012 Angélica finally told the story of the sexual violence she herself suffered to the Office of the Human Rights Ombudsman, she has still not reported it to the prosecuting authorities.

## 8. CONCLUSION AND RECOMMENDATIONS

Many of Colombia's state and government authorities have demonstrated a greater degree of commitment to combat conflict-related sexual violence and impunity over the last year. This is necessary and welcome. However, Colombia is still failing to effectively tackle this serious problem, which the Constitutional Court has affirmed is widespread as well as systematic.

The multiple barriers that survivors of sexual violence face in their fight for justice remain as strong as ever. State and government authorities are still failing to implement existing laws, protocols, resolutions and decrees designed to remove the barriers faced by survivors in their day-to-day lives, especially those living in rural areas and in small towns and villages.

Official studies also support this assessment of the situation. For example, in December 2011, Colombia's Office of the Procurator General acknowledged efforts by state institutions, but stated there was still an "institutional vacuum with regards to prevention, attention and victims' access to justice" and that these deficiencies "continue to affect their rights in a special and disproportionate manner". The report also noted that, given the low rates of convictions, a pattern of impunity persisted and that this "impunity is a cause of violence [and] contributes to cultural and social dynamics that stimulate violence against women, boys and girls." The Office of the Procurator General asserted that the state had not yet developed an effective strategy to overcome the problem.<sup>22</sup>

In a statement on 30 May 2012, following the rape and subsequent death of Rosa Elvira Cely (see page 10), the Human Rights Ombudsman, Volmar Pérez, said it was "urgent that the competent authorities implement immediate and effective measures to end acts of sexual violence against women in the country, as well as investigate and sanction those responsible."<sup>23</sup> He also said the state needed urgently to implement "effective measures against gender violence that would produce deep seated changes in the fight against the discrimination against women, the adoption of gender equality measures, the construction of a culture of non-violence and speedy and effective justice for women."

Following a four-day visit to Colombia in May 2012, Margot Wallström, the UN Secretary-General's Special Representative on Sexual Violence in Conflict, reiterated these concerns at the end of her trip: "I understand that the country as a whole wants to look to the future, instead of dwelling on the past, but there can be no lasting peace without security and peace for women. More needs to be done to support these survivors, both in terms of access to justice, assistance and to help them reintegrate into society. Additional resources are required to strengthen the capacity of the judicial system in order to address the issue of sexual violence."<sup>24</sup>

The UN High Commissioner for Human Rights, in her latest report on Colombia, published on 31 January 2012, noted that: "the fight against impunity in cases of conflict-related sexual crimes continues to require additional efforts by the justice system" and that "prejudice continues to have a negative impact on legal processes".<sup>25</sup>

What seems abundantly clear is that the various measures adopted by the authorities, before and since publication of Amnesty International's September 2011 report, have had as yet no discernible impact on survivors' experience of the justice system. However, legislation on combating impunity in cases of conflict-related sexual violence currently before Congress could offer some hope to survivors. Presented by a number of Congresspeople and by the Office of the Human Rights Ombudsman, the legislation appears qualitatively different to previous legislative efforts to overcome the obstacles to justice and, if implemented effectively in its current form, could develop into an effective blueprint that makes a real difference to women's lives. It is crucial that the government support the bill in Congress.

As a state party to the Rome Statute of the ICC, as well as under customary international law, Colombia has an obligation to investigate sexual crimes that may amount to crimes against humanity or war crimes, including conflict-related sexual violence. If Colombia is unwilling or genuinely unable to do so, then this could require the ICC to step in. Although the previous ICC Prosecutor, Luis Moreno Ocampo, opened a preliminary examination into Colombia, he never sought authorization to open a full investigation, and it has yet to be seen whether his successor, Fatou Bensouda, will do so. The evidence of widespread impunity for crimes of sexual violence contained in this report should prompt the Office of the Prosecutor to consider whether the Colombian authorities are genuinely able and willing to investigate and prosecute war crimes and crimes against humanity committed in the country and decide whether it would be justified to launch an investigation.

## RECOMMENDATIONS

To effectively combat impunity in cases of conflict-related sexual violence, the Colombian government and the prosecuting authorities must:

- develop and effectively implement a comprehensive and inter-disciplinary plan of action to address violence against women, including in the context of the armed conflict. This should have a clear timeframe and be developed in close co-operation with human rights organizations, victims' associations, survivors and women's groups. It should address all facets of state action to implement the relevant recommendations made by numerous UN human rights bodies and special procedures, as well as those made by the Inter-American human rights system, and those included in Amnesty International's 2011 report, *"This is what we demand. Justice!": Impunity for Sexual Violence against Women in Colombia's Armed Conflict* (Index: AMR 23/018/2011). Such a plan should encompass the effective implementation of a national data collection process that conforms to international standards, and effective measures to end discriminatory stereotyping in the protection programmes, in the investigation and prosecution processes, and in the care and rehabilitation of survivors.
- support the bill before Congress "to guarantee access to justice for victims of sexual violence, especially sexual violence in the context of the armed conflict."

The authorities must also ensure the non-repetition of human rights violations, including by:

- protecting civilians from the human rights consequences of the conflict;



- repealing constitutional reforms, such as the “legal framework for peace” and measures to strengthen the military justice system, which will increase impunity;
- protecting human rights defenders, trade unionists and community leaders;
- bringing to justice all those responsible for crimes under international law:
- breaking the links between state agents, including members of the security forces, and paramilitary groups, which continue to operate;
- amending the Criminal Code so that crimes against humanity and all war crimes are defined as crimes under national law;
- recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or from other state parties to the International Convention for the Protection of All Persons from Enforced Disappearance.

Amnesty International also calls on guerrilla groups to:

- end gender-based violence, including rape and other forms of sexual violence, against women and girls, whether civilians, their own fighters, or members of the “enemy”, as well as putting an end to the practice of forced abortions, pregnancy and contraception with respect to female members of guerrilla groups;
- put an immediate and unconditional end to all violations of international humanitarian law, including hostage-taking, the recruitment of children as combatants, and the use of anti-personnel mines and other improvised explosive devices.

## ENDNOTES

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<sup>1</sup> Ley 037 de 2012 “Por el cual se modifican algunos artículos de las leyes 599 de 2000, 906 de 2004 y se adoptan medidas para garantizar el acceso a la justicia de las víctimas de violencia sexual, en especial la violencia sexual con ocasión al conflicto armado, y se dictan otras disposiciones”.

<sup>2</sup> Ley No.1542 de 2012 “por la cual se reforma el Artículo 74 de la Ley 906 de 2004, código de procedimiento penal”.

<sup>3</sup> One of the concerns Amnesty International had highlighted in its 2011 report was the lack of cooperation and dialogue between women’s organizations and the Office of the Attorney General.

<sup>4</sup> Office of the Procurator General, *La Violencia Sexual en Colombia*, December 2011.

<sup>5</sup> According to the National Indigenous Organization of Colombia (*Organización Nacional Indígena de Colombia*, ONIC), at least 54 Indigenous people were killed between January and July 2012.

<sup>6</sup> Victims of forced displacement and other human rights abuses that took place before 1985 may only qualify for symbolic reparation, not land restitution or financial compensation. Victims of abuses committed between 1985 and 1991 will be eligible for financial compensation, but not land restitution. Only victims whose lands were misappropriated or illegally occupied through abuses after 1991 will be eligible for land restitution and financial compensation.

<sup>7</sup> Command responsibility is a modality concerning individual criminal responsibility under international law. It is basically designed to permit the prosecution of superiors for crimes committed by subordinates or other persons under their control if they knew, or had reasons to know, that subordinates or other persons under their control were committing or were going to commit a crime under international law and they did not take all feasible measures within their power to prevent or repress such a crime or to submit the matter to the competent authorities for investigation and prosecution (see, for example, articles 86(2) and 87(3) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; article 28, Rome Statute of the International Criminal Court; article 6(1)(b), International Convention for the Protection of All Persons from Enforced Disappearance).

<sup>8</sup> For a more detailed analysis of the issues covered in this section see Amnesty international reports, *Colombia: “Scarred Bodies, Hidden Crimes”: sexual violence against women in the armed conflict* (AMR 23/040/2004) and *This is What we Demand. Justice! Impunity for sexual violence against women in Colombia’s armed conflict* (AMR 23/018/2011).

<sup>9</sup> INMLCF, *Forensis 2011, datos para la vida*, August 2012.

<sup>10</sup> For more information about the problems faced by survivors when seeking to access the protection programmes, see “*This is What we Demand. Justice!*”: *Impunity for sexual violence against women in Colombia’s armed conflict* (AMR 23/018/2011).

<sup>11</sup> See the following Amnesty International Urgent Actions: UA 26/12, (Index: AMR 23/004/2012); UA 72/12, (Index: AMR 23/012/2012); UA 133/12 (Index: AMR 23/020/2012); UA 141, (Index: AMR 23/021/2012); UA 190/12 (Index: AMR 23/024/2012); UA 361/11 (Index: AMR 23/038/2011); and UA 199/11 (Index: AMR 23/022/2011).

<sup>12</sup> Resolution 0266 of 2008 and Memorandum 0117 of 2008.

<sup>13</sup> Resolution 3788 of 2009.

<sup>14</sup> Through the use of precautionary measures, the Inter-American Commission on Human Rights makes requests to states to implement physical protection schemes for specific individuals or groups which the Commission has concluded are under threat.

<sup>15</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 14 states: "Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means". Principle 15 states: "Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them".

See also, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 18 of which states: "In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."

<sup>16</sup> Crimes against humanity and war crimes are subject to universal jurisdiction; that is, states are permitted and sometimes required to investigate and prosecute people suspected of these crimes under international law, no matter where they occurred and regardless of the nationality of the suspects or victims.

<sup>17</sup> In March 2012, Amnesty International met with officials from the Justice Ministry to reiterate its recommendations, outlined in its 2011 report, that Colombia implement its obligations under the Rome Statute.

<sup>18</sup> The follow-up working group on the 183 cases has cited these discrepancies as one of the main challenges in evaluating whether the Office of the Attorney General has made progress in complying with the orders of the Constitutional Court.

<sup>19</sup> The Office of the Attorney General released some new figures in May 2012, but the data does not appear consistent with previous statistics released by the Office. Further clarification is needed on these figures before they can be verified.

<sup>20</sup> <http://m.eltiempo.com/justicia/con-119-casos-se-abre-capitulo-de-violencia-sexual-de-las-farc/11620446/1/home>, last visited on 23 August 2012.

<sup>21</sup> [http://www.humanidadvigente.net/index.php?option=com\\_content&view=article&id=425:dilaciones-injustificadas-de-la-defensa-en-el-caso-de-los-ninos-y-ninas-tame&catid=6:ninez&Itemid=9](http://www.humanidadvigente.net/index.php?option=com_content&view=article&id=425:dilaciones-injustificadas-de-la-defensa-en-el-caso-de-los-ninos-y-ninas-tame&catid=6:ninez&Itemid=9), last visited on 23 August 2012.

<sup>22</sup> Office of the Procurator General, *La Violencia Sexual contra la Mujer*, December 2011.

<sup>23</sup> The Office of the Human Rights Ombudsman is responsible for guaranteeing, promoting, disseminating, defending and protecting human rights.

<sup>24</sup> <http://www.un.org/apps/news/story.asp?NewsID=42051&Cr=sexual+violence&Cr1=>, last visited on 23 August 2012.

<sup>25</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/19/21/Add.3, 31 January 2012.



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## COLOMBIA: HIDDEN FROM JUSTICE IMPUNITY FOR CONFLICT-RELATED SEXUAL VIOLENCE, A FOLLOW-UP REPORT

Conflict-related sexual violence against women and girls in Colombia has long been a largely hidden human rights tragedy. Members of all parties to the conflict – paramilitaries, the security forces and guerrilla groups – have been responsible for these crimes, and almost all have evaded justice.

This was the picture painted in Amnesty International's September 2011 report, "*This is what we demand. Justice!*": *Impunity for sexual violence against women in Colombia's armed conflict*. Following publication of that report, the authorities in Colombia made a number of commitments to comply with their national and international legal obligations to end all forms of sexual violence, including those committed in the context of the conflict, and to bring those responsible for such crimes to justice.

This report details what progress has been made over the past year and what still remains to be done. It ends by calling on the government to intensify its efforts to ensure the rights of women and girls in Colombia to freedom from violence and to justice.

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