

## VIOLENCE AGAINST WOMEN IN COLOMBIA

The structural social patterns that foster discrimination, exclusion and subordination of women in Colombia place women in a situation of disadvantage that results, among other things, in high levels of violence against them, both in public and private spaces. Daily, women in Colombia are victims of physical, psychological, sexual, patrimonial, and economic violence in the family, community, work, educational, and healthcare spheres, as well as in other spaces. This situation is exacerbated by the internal armed conflict in Colombia, since it is in this context that women, aside from tackling the general danger that armed violence entails for the entire population, must face specific risks and vulnerabilities.

Despite the disturbing expressions of violence against women in the country and their acknowledgement, by several international instruments ratified by Colombia prior to the enactment of Law 1257 of 2008, as violations of human rights and fundamental freedoms, the various forms of violence against women did not enjoy express legal recognition, nor were there any measures for effective assistance, protection, and eradication. The only legal instrument that established measures in this direction was Law 294 of 1996 on intra-family violence, which, aside from granting women the same treatment as other people in the family nucleus, did not take into account other forms of violence against women, apart from the one taking place in the domestic arena.

On its part, Law 1257 of 2008 is intended to guarantee women a violence-free life in the public and private spheres. To that end, the law begins by defining violence against women and contemplates various modalities according to the characteristics or the arena in which it takes place.<sup>1</sup> It also acknowledges the ownership of certain rights by women victims of violence and lays out the obligation of national, departmental, and municipal State agencies to prevent and sanction violence against women and to protect and provide adequate and timely assistance to women victims.

According to reports by the National Institute of Legal Medicine and Forensic Sciences (hereinafter, Legal Medicine), in Colombia, women constitute the major part of the victims in the various contexts in which violence takes place and in all age groups. For the period between 2004 and 2008, Legal Medicine reports that out of the total number of cases of child abuse, close to 53% was directed towards girls, the main aggressors being paternal and/or male figures.<sup>2</sup> During that same period, 20,735 women and 22,859 men suffered physical aggressions by their partners.<sup>3, 4</sup>

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<sup>1</sup> Article 2 of Law 1257 defines violence against a woman as “any act or omission that may cause death, harm, or physical, sexual, psychological, economic or patrimonial suffering on account of her gender, as well as the threats of such acts, the constraint or deprivation of freedom, regardless of whether they take place in the public or the private sphere.”

<sup>2</sup> Institute of Legal Medicine and Forensic Sciences, *Forensis Mujeres: Datos para la vida 2004- 2008* [Forensic women: data for life 2004 – 2008], pp. 7 and 10.

<sup>3</sup> The Institute of Legal Medicina and Forensic Sciences defines physical aggression against a partner as “(...) any bodily harm caused by a man with which there has been an erotic-affective relation and the apparent motivations for violence derived from such relations.”

<sup>4</sup> Institute of Legal Medicine and Forensic Sciences, *Forensis Mujeres: Datos para la vida 2004- 2008* [Forensic women: data for life 2004 – 2008], p. 11.

For the year 2009, Legal Medicine reports that the number of victims of violence in the family sphere rose to 93,862, with partner violence occupying the first place and women being the main victims with 88.6% of the total.<sup>5</sup>

As to the 2004-2008 five-year period, the Colombian Legal Medicine System assessed 87,360 victims, of which 73,395, or 84%, were women. Of these, 48,021, or 75%, were sex abuse cases; the rest were related to sexual assault. The highest rate for possible sexual offenses was found in girls from 10 to 14 years of age, where the indicator showed 256 cases per 100,000 girls. The aggressors linked to this type of violence were relatives in 36% of the cases; other known people, in 37%; unknown people, in 16%; and in 11% of the cases, there was no information on the perpetrator.

In 2009, Legal Medicine produced 21,288 expert reports on alleged sexual offenses in the country, in which 84.25% referred to women and only 15.75% to men. Of the total expert reports produced that year, Legal Medicine indicates that 85.67% were related to minors. This shows that sexual violence, despite being present in men and women, is a scourge that continues to affect mostly women, boys, girls, and teens.<sup>6</sup>

Finally, in regard to homicide of women in Colombia, 6,042 cases of women assassinated under different circumstances were reported. Although the causes associated with the death of women are unknown in 64% of cases, Legal Medicine reports that 12% were socio-political, 14% were impulsive common violence, and within the latter, 47 cases were identified as having a sexual offence associated to the homicide. Three percent of woman homicides resulted from robbery, and 437 women, representing 7%, were killed in the context of intra-family violence.

A total of 17,117 homicides were reported in 2009, of which men were victims in 16,155 cases and women in 1,523. The alleged perpetrators were legal and illegal armed actors in 7.9% (121) of the cases. Thus, 3.8% (58 women) died by military action; 1.6% (25 women) by guerrilla action, and 2% (31 women) in armed clashes.

In 2011, Legal Medicine begins to approach the quantification of femicide, defining it as “*the violent death of a woman, perpetrated by a man by factors associated to gender and that may take place in public or private spaces.*”<sup>7</sup> According to this definition, Legal Medicine explains that in order to measure femicide, it is necessary to have information available on the relation between the victim and the aggressor, the circumstances of the fact, the victim’s occupation, the triggering factor, and the scenario of the deed.<sup>8</sup> Of the total number of homicides in which the victim was a woman, in 2009, only 128 allowed the analysis by Legal Medicine, on account of being the only entity that recorded information in relation to the proposed variables.<sup>9</sup> Legal Medicine found that, out of these 128 cases, 43 classified as intimate partner femicides<sup>10</sup>; 7, to intimate family homicides<sup>11</sup>; 22, to femicides committed by other people known by the

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<sup>5</sup> Institute of Legal Medicine and Forensic Sciences, in “Forensis Mujeres: Datos para la vida 2004-2008”, p. 115.

<sup>6</sup> Ibid., pp. 161- 169

<sup>7</sup> Ibid., p. 25.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., p. 26

<sup>10</sup> Legal Medicine classifies as intimate partner femicide that perpetrated by a “partner or ex-partner of the victim”. Ibid., p. 26.

<sup>11</sup> Legal Medicine and Forensic Sciences, in “Forensis 2009: Datos para la vida”, p. 27.

victim<sup>12</sup>; and 66 could not be operationalized for lack of certainty as to the sex of the alleged aggressor<sup>13</sup>.

Despite the alarming figures recorded by the National Institute of Legal Medicine and Forensic Sciences on the various kinds of violence against women, the figures do not reflect the figures recorded by the Office of the Public Prosecutor (Fiscalía General de la Nación) regarding this kind of violence. Thus, for the year 2007, Legal Medicine recorded a total of 58,533 cases of partner violence, while, for that same year, the Public Prosecutor recorded a total of 18,601 cases of partner violence<sup>14</sup>. The figure for victims of offenses against freedom, integrity and reproductive health education recorded by the Public Prosecutor's Office is also significantly lower than the one reported by Legal Medicine. In 2007, Legal Medicine reported a total of 20,232 victims of sexual violence, of which 74.4% were women; on its part, in that same year, the Public Prosecutor reported a total of 16,742 victims, of which 90% were women.<sup>15</sup> Concerning the information reported by the High Judicial Council (Consejo Superior de la Judicatura) on these types of violence, in 2007, 611 persons were sentenced for intra-family violence and 3,197 for sexual violence.<sup>16</sup>

The situations described above are experienced more critically by indigenous, Afro-descendant and lesbian women due to the double and triple discrimination exercised against them and their devaluation as subjects of rights. In addition to the above, the country has no information systems for accounting the violence suffered by said population groups, and public policies are not formulated and enforced through a differentiated approach.

The above confirms that most cases of violence against women in Colombia are not formally investigated, tried, and sanctioned by the justice administration system, and, therefore, there is a systematic pattern of impunity in the judicial acts and processing of these cases. As has been recognized nationally and internationally, impunity is both the cause and the consequence of violence against women.

## **OBSTACLES TO THE EXERCISE OF THE RIGHT FOR JUSTICE BY WOMEN VICTIMS OF VIOLENCE IN COLOMBIA**

A first obstacle faced by women in the access to the administration of justice systems is the lack of knowledge of their rights and the manner by which to access judicial instances, of how the judicial system operates, and of how they can contribute to the investigation and clarification of the facts. This obstacle is usually known as legal poverty or lack of awareness of their rights and is defined as “a person's incapacity to use regulations, State institutions and other alternative mechanisms as a suitable means

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<sup>12</sup> Ibid., p. 28, Table 5.

<sup>13</sup> Ibid., p. 29.

<sup>14</sup> Office of the Attorney General of the Nation, “Situación de la violencia contra las mujeres. Ley 1257 of 2008” [Situation of sexual violence against women. Law 1257 of 2008] in “Procurando la Equidad”, No. 4, July 2009, p. 12.

<sup>15</sup> Ibid., p. 13.

<sup>16</sup> Ibid., p. 13.

for exercising rights and solving conflicts.”<sup>17</sup> This problem, which has gained little visibility and affects a large number of women in Colombia, is seen mainly as a consequence of the scarce resources assigned to informing men and women citizens of their rights, the low levels of female schooling, as well as the exclusion and subordination of women in public spaces.

Another obstacle is related to the difficulties faced by women in assuming the costs of legal proceedings. These include the initiation of the proceedings, their continuation, and possible delays. Added to the above, are expenses such as transportation, the decrease in work activities, and those related to legal counseling services and legal aid, the latter involving high costs that most women cannot assume. Generally, women are poorer than men. The United Nations has pointed out that most of the 1,500 million people who subsist on less than one dollar per day are women.<sup>18</sup> Likewise, as the product of historical patriarchal family structures and modes of production, women depend materially and economically on the men in their families; even those who belong to wealthier classes have no access to economic resources independent of those of their parents, husbands or partners and cannot, therefore, file lawsuits, especially if the suit is against them.

Although the State provides some of these services free of cost, they have been traditionally dominated by masculine standards that bear upon the availability and quality of the services received by women. In Colombia, the Office of the Ombudsman (Defensoría del Pueblo) provides public defense services to people who are unable, economically or socially, to provide themselves with the defense of their rights. However, in regard to criminal law, the service has traditionally been geared exclusively to guaranteeing the technical defense of persons involved in the process as defendants, accused, or sentenced, and exclude the possibility that victims of an offense be able to resort to these services for the defense of their rights. This situation is reinforced by the establishment of a criminal law system of an accusatory nature. Legislative Act 02 of 2002, by which this system was introduced in the Political Constitution, establishes as a fundamental piece of its operation, the National Public Defenders System (Sistema Nacional de Defensoría Pública) under the coordination of the Office of the Ombudsman. In accordance with Law 906 of 2004, “*by which the Criminal Procedure Code is issued*”, it is the role of the National Public Defenders System to assign a lawyer to the defendant when he or she does not have a personal lawyer.<sup>19</sup>

The creation of this system in the country also established the right of all victims to be assisted by a lawyer during trial and integral reparation, and it was determined that, in cases where the victim lacked the sufficient resources for hiring a lawyer,<sup>20</sup> the Office of the Public Prosecutor would have to appoint an ex-officio lawyer.<sup>21</sup>

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<sup>17</sup> Instituto de Defensa legal (IDL) de Perú, Fundación Debido Proceso Legal (DPLF), *Obstáculos para el acceso a la justicia en las Américas [Obstacles for accessing justice in the Americas]*, available at: <http://www.partnersglobal.org/20th-anniversary-1>

<sup>18</sup> The Feminization of Poverty, in “Mujer 2000, igualdad entre los géneros, paz para el siglo XXI” [Woman 2000, equality between genders, peace for the 21st century], available at <http://www.un.org/spanish/conferences/Beijing/fs1.htm>

<sup>19</sup> Law 906 of 2004, Article 118.

<sup>20</sup> Law 906 of 2004 “*by which the Criminal Procedure Code is issued*”, Article 11, Subparagraph h.

<sup>21</sup> *Ibid.*, Article 137, Numeral 5.

Functionaries of the Office of the Public Prosecutor state that the designation of representatives to the victims of unfairness has become problematic because there are no lawyers offering this service,<sup>22</sup> which is the reason why they usually resort to the students of the legal aid clinics of various universities. On its part, the National Public Defenders System<sup>23</sup>, which guides the Office of the Ombudsman in criminal matters, is made up of law professionals with an experience of three years minimum, with a postgraduate degree in the subject, and who continually receive training and guidance.<sup>24</sup>

The above demonstrates that, even though the present penal system guarantees the right to judicial technical assistance, both to victims of offenses and to those who acquire the status of defendants or accused in criminal proceedings, the service rendered to them is better qualified on account of being rendered by experienced, accredited, and trained professionals, while the victims are represented by persons who do not even hold a degree in Law. This situation, which affects the victims of any offense, turns out to be particularly worrisome in those cases where the offense constitutes any type of violence against women, since the official and unofficial invisibility of these types of conduct, their traditional underestimation by the judicial system and society in general, and the effects of these acts on the victims, require special services, among them, technical assistance or suitable and qualified free legal aid as a guarantee to accessing the administration of justice and as a condition to put an end to the systematic impunity of the acts and judicial proceedings of these cases.

Only recently, with the coming into force of Law 975 of 2005, better known as the “Ley de Justicia y Paz” (Law of Justice and Peace), was the service of free legal representation on the part of the Office of the Ombudsman made extensive to offenses committed by members of illegal armed groups who have demobilized and accepted the terms of the procedure established by Law 975 of 2005. Nevertheless, the service lacks qualified and trained personnel for the assistance and defense of the rights of women.

Likewise, Law 1257 of 2008 points out the duty of the State to guarantee guidance services, legal advice, and legal assistance to women victims of violence by the public defenders of the Office of the Ombudsman. However, two years later, the

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<sup>22</sup> Several staff members of the Office of the Public Prosecutor state that they have problems when it comes to representing victims because the lawyers registered in the Registro Nacional de Abogados (National Registry of Lawyers) refuse to render this service due to its gratuitous nature and the risk involved in the disciplinary investigations that could ensue for their actions in the process. Consequently, the entity has opted to sign agreements with different universities, so that legal representation services to the victims are performed by students of their legal aid clinics. Members of several units within the Public Prosecutor’s office state that they have created rosters of lawyers they trust, who in some cases have taken on the cases, yet in others have not always been willing or available to cooperate.

<sup>23</sup> Law 941 of 2005 “By which is the National Public Defenders System is organized”.

<sup>24</sup> The following are among the requirements for being a public defender: filling an application with information and supporting documents on their competence and suitability; a declaration stating that he or she is not involved in an inability or incompatibility cause to hire with official entities, in general and, in particular, with the Office of the Ombudsman; a specialization or post-graduate degree in the criminal area; and evidence of three years of experience as a lawyer in the role of public defender, or in the judicial branch or the Public Ministry, or in the private or public sector. The lack of specialization or post-graduate degree may be homologated by evidence of three additional years of specific experience. Additionally, Law 941 of 2005, “by which the National Public Defenders System is organized”, establishes that the duty of public defenders is to continue permanent training and determines that the National Public Defenders System shall foster their updating through the Training and Investigation Unit or institutions contracted by the System for the purpose of optimizing the quality and efficiency of the service.

implementation of this service does not evidence significant progress, since to date the number of lawyers assigned to this service is paltry in relation to the demand in the country's different regions and, additionally, the professionals lack the training required for rendering this service, due to the fact that the technical defense of boy, girl, and adolescent victims in the framework of Law 1098 of 2006<sup>25</sup> is assigned to those responsible, and, in some regions, to those who assume the defense of the perpetrators. Additionally, the service privileges the legal technical assistance to women victims of violence to the criminal field, while ignoring that the different expressions of violence against women may give rise to judicial proceedings in different areas and judiciary-administrative dealings with different authorities who are also required to give legal aid to the victim.

The Office of the Ombudsman also provides legal technical assistance in labor, civil, and contentious matters to the poor. Although the service does not adopt any criterion that allows to conclude that women are excluded as beneficiaries of the service, at present, the service does not adopt criteria for differentiated and gender-sensitive assistance, nor does it guarantee women victims of violence the protection or restoration of their rights, nor the legal representation in several judicial and administrative proceedings that must be exhausted.

Moreover, the underestimation by the justice system of violence against women in its various modes constitutes an additional obstacle that prevents actual and effective access to the system. In this sense, the cases of violence against women are considered non-priority as well as causes that prevent the swift and timely dealing of processes involving higher amounts. It is common, for the purpose of expediting conciliations, to resort to the application of the principle of opportunity and the signing of pre-agreements and deals between the Public Prosecutor and the defendant or accused, thus restricting the rights of women victims to truth, justice, and reparation. This situation is made evident in cases of violence against women in the family environment.

Although Law 1142 of 2007, *“by which Laws 906 of 2004, 599 of 2000, and 600 of 2000 are partially reformed, and measures are adopted for the prevention and repression of criminal activities specially impacting citizen coexistence and safety”*, states that the offense of intra-family violence ceased to be complainable, the Office of the Public Prosecutor continues to apply conciliation in these cases, in the understanding that, in these events, ex officio investigation does not exclude the application, when necessary, of the effects of the complaint for the integral benefit and reparation of the crime.<sup>26</sup>

Another obstacle preventing access to justice by women victims of violence is related to the existence of discriminatory socio-cultural patterns that have propitiated violence against women as a highly permissive conduct in Colombian society, a fact that is reflected in the attention given by authorities and the justice officials that deal with such cases. It is usual in Colombia, in cases of violence against women, to disqualify the victims and render little credibility to their allegations.

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<sup>25</sup> Up to August 2010, the National Office of Public Defense of the Office of the Ombudsman had assigned 22 public defenders specialized in criminal matters for the defense of the interests of boy, girl, adolescent, and women victims.

<sup>26</sup>Office of the Public Prosecutor, *“Manual sobre la Ley 1142 de 2007 (28 de junio). Reforma a las leyes 906 de 2004, 599 de 2000 y 600 de 2000”*, Bogotá, July, 2007.

The above is confirmed by the experience of women victims of violence when they turn to the authorities for protection. In these cases, the authorities undermine the victim's story and do not address their call in due time. Also, in those events where measures for their protection are approved, proper follow-up regarding the aggressor is not carried out, nor is the effectiveness of the measure assessed. Thus, the potential of the protective measures intended to prevent violence against women is curtailed. Frequently, there is a reliance on physical and testimonial evidence, and key tests for the clarification of the facts are not performed. This situation generates in the victims fear of re-victimization by the justice system and discourages the victims in their intention to turn to the judicial authorities.

It is also important to point out that these obstacles significantly affect indigenous and Afro-descendant women. In this regard, the report of Inter-American Commission on Human Rights (CIDH, by its acronym in Spanish) points out that *“the discrimination and difficulties in accessing justice differentially affect indigenous and Afro-descendant women, due to their being particularly exposed to the impairment of their rights on account of racism. Likewise, it has been established that the obstacles they face in accessing suitable and effective judicial remedies can be particularly critical because they are subject to various forms of combined discrimination by their gender, ethnic, or racial background and/or their socio-economic condition.”*<sup>27</sup>

Also, indigenous women in Colombia face additional obstacles because, in several communities, the subordination of women and the violence against them are approved as customary practices and, thus, women lack in protective measures in the face of possible violation of their rights and cannot rely on the indigenous jurisdiction for the judicialization of the acts. Likewise, the option of resorting to the services of the State and official justice for the prevention and sanction of violent acts against them diminishes considerably due to the ignorance of indigenous women about their rights and by the linguistic and cultural limitations that prevent them from going to the official authorities. Another negative factor playing a negative role in the access of indigenous women to the right for justice is the fact that their communities are located in isolated areas where State authorities are not present and, consequently, all cases of violence and discrimination against them are left to the discretion of their own judicial authorities, who generally underestimate and make invisible the violence against women. In the case of sanctions, the treatment given to violence against women is not adequate and restricts their rights to justice and the protection of their constitutional rights recognized by several international treaties that protect human rights.

Although the Constitutional Court has pronounced itself establishing limits to the jurisdictional power of indigenous authorities, the lack of coordination between the indigenous jurisdiction and the national judicial system and the absence of follow-up and control mechanisms concerning the autonomy of indigenous communities in regard to the determination of their judicial institutions and their trial system has had a negative effect on the indigenous women's access to justice, particularly in those cases where the victims of violence are members of their communities.

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<sup>27</sup>Inter-American Commission on Human Rights, “Acceso a la justicia para las mujeres víctimas de violencia en las Américas” [Access to justice for women victims of violence in the Americas], Washington, 2007.

Moreover, aside from the obstacles referred to above, it is important to bear in mind that acts of violence against women generate psychological and emotional consequences that make it difficult for the victim to resort to reporting to the authorities or seeking advice and support. The various expressions of violence against women are based on power relationships that place the victim in a situation of subordination and special subjection in face of their aggressor. This situation leads to fear of possible retaliation of the aggressor against her and her loved ones on the part of the victim. It is also frequent for women victims of violence to prefer to remain silent due to the negative expressions of rejection that their allegation may generate in their families and communities. Also, sexual violence, particularly, makes victims feel ashamed of what has happened and fearful of being blamed for the facts, as well as afraid of the negative reactions of people in their family and close circles, and, therefore, it occurs frequently that the victims decide not to resort to the judicial authorities, nor request guidance or advice.

### **15 women defenders victims of forced displacement claim justice**

In the framework of the precautionary measures granted by the Inter-American Commission on Human Rights (hereafter CIDH, by its acronym in Spanish, or the Committee) in favor of 15 women victims of forced displacement, on 2 May 2010, the Colombian State submitted to this protection entity a report that accounts, among other things, for the criminal investigations made by the Office of the Public Prosecutor in regard to the threats and violent acts of which the beneficiaries of the measures have been victims.

Among the situations derived from the information collected by the State for the CIDH in relation to investigations for threats, harassment, persecutions and various expressions of violence against 12 women victims of displacement, the delays in obtaining evidence and the omission of the authorities in applying fundamental and suitable proofs for the clarification of the facts are particularly worrisome.

In addition to the above, the indifferent and hostile treatment towards them and the unawareness on the part of the functionaries in charge of their assistance as to their characteristics and special situation of vulnerability are cause for concern.

*Unjustified delays in carrying out the necessary steps and delays in the application of proofs following the aggression:* The information collected by the Office of the Public Prosecutor shows that, in cases related to threats, harassment, persecutions and violence against women leaders in a situation of displacement, there are delays in the proceedings and the application of the proofs required for the clarification of the facts.

Despite the promptness in the preparation of the methodology, in most cases, there are unjustified delays by the Police in preparing the Technical Study on the Level of Risk. In several cases, this situation has generated the consummation of the risk that threatens the life and personal safety of the victims. There are also delays in summoning victims and witnesses. Consequently, when the time comes to expand the allegation or render testimony, they have forgotten the time, mode, and place in which the acts occurred and the physical features of the aggressors, or they have lost essential information, such as the telephone numbers or email addresses from which they received the threats.

These delays prevent the collection of evidentiary material and physical evidence necessary for the identification of the offender and constitute one of the reasons why all the cases known by the Office of the Public Prosecutor have not advanced beyond the stage of preliminary investigation, despite having been denounced by the victims two, and even three, years back.

*No fundamental proofs are applied for the proper clarification of the facts:*

In most of the cases known by the Office of the Public Prosecutor, basic proofs for the clarification of the facts have not been applied. In all the cases reported by the Office of the Public Prosecutor, the absence of physical, technical, and psychological proofs are absent, a situation that has generated a standstill in most processes. It has also been confirmed that there has been resort to privileging physical proof, while ignoring other types of proofs that could be crucial to the determination of the facts.

It has been confirmed, however, that most victims state having received emails or calls from mobile phones in which they are threatened and harassed to abandon their activities of promotion and defense of the rights of displaced persons, and that the Office of the Public Prosecutor has not ordered the proofs that allow identifying the email addresses or phones. It has also been confirmed that, in all cases, an interview to the victim has been taken as the only proof for the clarification of the facts. Although this proof contributes in some way to establishing the conditions of time, mode, and place in which the events occurred and provides elements for the identification of the perpetrators, it is not the only one to be kept in mind for these purposes, especially bearing in mind the difficulties presented in their application by reason of the characteristics and conditions of special vulnerability experienced by these women because of their condition of persons displaced by violence and the fear and distress entailed, by the nature of the facts of which they are victims, in calling the authorities .

*Discriminatory practices on the part of the authorities:* Women leaders in a situation of forced displacement report that, during the process, they have experienced abuse, indifference and hostility on the part of the functionaries in charge of receiving their allegations and applying proofs during the investigation. They also state that sometimes they are shamed and blamed for the facts of which they were victims. This situation discourages women victims of violence from denouncing new acts of violence, attending the requirements of the authorities to extend the allegations, and participating in the application of other proofs within the investigation.

In part, the above explains the reasons why in most of the cases presented by the Office of the Public Prosecutor, women have not heeded the call of the authorities when required to extend the allegation or render testimony for the threats, harassment, aggression or other types of violence against them.

*Unawareness of the characteristics and special vulnerability of victims:* By reason of the fact that most women have not heeded the calls of the investigating entity for extending the allegations, nor of the Police for a risk assessment, it is cause for concern that the Office of the Public Prosecutor cites as an obstacle the “*lack of participation, cooperation, and activity of the victim.*” This proves unawareness and insensitivity towards the victim’s characteristics and vulnerability.

Decision 092 of the Constitutional Court points out that displaced women face multiple obstacles that prevent them from vindicating their rights as victims of violence. Among them, are the following: *“fear of retaliation by their aggressors towards them or their relatives, (ii) distrust in the justice system, (iii) ignorance about their rights and the mechanisms and procedures for making them effective, (iv) lack of State accompaniment and advice during the processes, (v) lack of training and sensitization of the functionaries in charge of administering justice in face of the delicate situation of displaced women as victims of violence and the offense, and (vi) generally, the absence of guarantees for them and their families in accessing justice, (...). Also contributing to this situation is (vii) the risk to which women who opt for getting organized and leading social and community processes of vindication of their rights, both before and after their displacement. Finally, (viii) the generalized official and unofficial invisibility extended over the violence and gender risks particular to the armed conflict, as well as the gender aspects of displacement and their very serious repercussions on the fundamental rights of the victims (...).”*

Aside from the obstacles identified by the Court, it should be added that due to the disadvantageous economic conditions of displaced women, they encounter mobilization and transport difficulties when heeding the call of the authorities to follow up on recent processes. Also, due to the level of risk experienced by the women victims of displacement who lead processes of vindication of rights, this population group tends to shift their place of residence and mobile phone numbers constantly. This poses a difficulty to the authorities concerning their location and acts of notification. Nevertheless, the above cannot be adduced as a reason by which the investigations do not progress, even less so when, as was already pointed out, the call of the authorities takes place long after the women have presented their allegations or the functionaries exhibit hostile behavior, abuse, and stigmatize the victims, a fact that discourages them from heeding their subpoenas.

## **PROTECTION OF WOMEN’S RIGHTS DEFENDERS AND ACTIVISTS**

On the basis of the initiative of human rights organizations, the Colombian State defined, in article 81 of Law 418 of 1997<sup>28</sup>, a protection program assigned to the Ministry of the Interior and directed to persons in a situation of risk by reason of political or ideological violence or the internal armed conflict. Subsequently, this law underwent several modifications that resulted into what is known today as the Program for the Protection of Human Rights of the Ministry of Justice and the Interior (hereafter, the Program or PPDHMIJ), which was regulated by Decree 1740 of 19 May 2010.

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Members of various population groups who are beneficiaries of the Program and various instances have stressed the deficiencies of the State protection strategy contained in Decree 1740. Thus, the United Nations High Commissioner for Human Rights stated the following in the most recent report on the human rights situation in Colombia:

The office in Colombia appreciates the Human Rights Protection Program of the Ministry of Justice and the Interior. However, there continue to be concerns regarding risk studies, delays in the implementation of the measures, the absence of a differentiated approach, and the cession of protection schemes to private companies. Besides, the reforms introduced in May made difficult the implementation of protection measures. Generally, protection programs require a reform that allows greater flexibility and effectiveness and the inclusion of public functionaries, such as SAT staff or those involved in processes of land restitution.”<sup>31</sup>

The offer regarding protection to women working for the vindication of human rights and women's rights is a cause for special concern, since it lacks a differentiated approach that takes into account the risks and special needs for safety and protection of women defenders, by reason of being subjects of special constitutional protection.

The absence of a differentiated approach to specifically attend the extraordinary risks and burdens faced by women by reason of their activities in defending and promoting human rights exacerbates the risk factors to their health, integrity, and safety, while ignoring their right to a violence-free life and their right to participate in the country's socio-political processes. This additionally generates a special impact on the participation and mobilization of women, which is especially serious in the case of

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<sup>29</sup> By which some instruments for the search for coexistence, the efficiency of justice, and other provisions are set out.

<sup>30</sup> By which Article 81 of Law 418 of 1997, modified and extended by Laws 548 of 1999, 782 of 2002, 1106 of 2006 is regulated, and other provisions are set out.

<sup>31</sup> United Nations High Commissioner for Human Rights, on the situation of human rights in Colombia, doc. A/HRC/16/22, 3 February 2011, paragraph 15.

Afro-Colombian, indigenous, peasant, and displaced women, who have historically suffered from discrimination, exclusion, and vulnerability.

In this sense, the Constitutional Court has pointed out that “The general problems experienced by women by reason of their gender in a society with the characteristic structures of Colombia, are seriously magnified by the unusually high vulnerability to which they are exposed in the armed conflict context, a circumstance that imposes upon the authorities the duty to undertake integral, rational, coordinated, and carefully designed actions for tackling directly the factors that generate the differentiated impact of violence displayed by the armed conflict on Colombian women.”<sup>32</sup>

Based on the analysis of the PPDHMIJ protection strategy for defenders of human rights, three problematical aspects are evidenced in regard to the protection of woman defenders. First, the participation of women in the formulation and execution of the Program; second, the prevention and protection measures contemplated by the program; third, the procedures that must be exhausted before accessing protection from the State.

### **Participation of women in the formulation, execution and follow-up of the Program**

Despite the recognition of various international instruments, ratified by Colombia, on the need to convoke the participation of women in taking decisions that affect them, the regulation of the PPDHMIJ did not rely on the actual and effective participation of women groups and organizations, nor did decision-making in the program and the follow-up of its implementation guarantee their participation.

Despite the fact that Decree 1740 of 2010 determined a manifest decrease in the, already precarious, safety guarantees established by Decree 2816 of 2003, the defenders were not consulted regarding the identification of risks, nor the drafting of concrete protection measures and the procedures for accessing them. This momentous omission by the authorities in charge contributed, no doubt, to the fact that the Program did not incorporate a differentiated approach to attend the safety and protection needs of the defenders and activists who promote women’s rights.

On the other hand, there are no guarantees for the defenders and activists of women’s rights for participating in the implementation and follow-up of the Program. Basically, this is due to the fact that the defenders and others who work for human rights were not recognized as an independent group within the object population of the PPDHMIJ. Concerning the present operation of the Program, this implies that the defenders and activists devoted to the promotion of women’s rights lack an independent Committee for Risk Regulation and Evaluation (CRER, by its acronym in Spanish) to guarantee their participation, evaluate the cases, issue safety recommendations, and perform the respective follow up, while taking into account their condition as subjects of special constitutional protection and the specific risks entailed by their activities in the framework of the armed conflict.

### **Prevention and protection measures for human rights defenders**

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<sup>32</sup> Constitutional Court, Sentence T-496/08, M.P. Jaime Córdoba Triviño.

In regard to current prevention and protection measures, the institutional offer does not satisfy effectively the need for security and protection of the defenders of human rights, nor of women's rights activists. There are two reasons for this: first, the institutional offer privileges physical protection measures, ignoring other types of measures that contribute positively to the alleviation of the risks of defenders and activists devoted to fostering women's rights; second, the physical protection measures do not incorporate a differentiated approach to address the need for security and protection of the defenders and other persons who work for the vindication of the women's rights.

In this sense, and in regard to the state of defender's rights, the Special Rapporteur points out that the risks and problems faced by defenders of human rights and others who devote themselves to women's rights "(...) cannot be conceived independently of political, social, economic, environmental and other systemic factors that produce and reproduce the conflicts, displacement, inequality, violence and patriarchal attitudes that cause these problems. The safety of the defenders is inextricably related to the safety of their communities, and may only be fully achieved in the context of a holistic approach that includes, among other things, the consolidation of democracy, the fight against impunity, the reduction of economic inequalities, and the fight for social and environmental justice."<sup>33</sup>

Consequently, the prevention and protection of the women's rights defenders and activists in the Colombian context should begin with the adoption of a series of political measures that include a negotiated solution to the armed conflict; the public acknowledgment of the legitimacy and importance of the work they perform towards the consolidation of a democratic and just society and the reconstruction and strengthening of the social fabric affected by the internal armed conflict<sup>34</sup>. And, additionally, the redress of the attacks carried out against the work of the defenders and a ban on any type of targeting against them and their organizations by State officials.

On the other hand, it is of utmost importance that the institutional offer include, as an assumption for the mitigation of risks and the protection in face of the impact of the armed conflict on their lives, aside from physical protection, measures geared towards guaranteeing health, social security and welfare, and encompassing the psychological condition of women defenders and their close relatives.

Finally, in regard to the measures of physical protection contemplated by the present institutional offer, it should be noted that the measures do not include a differentiated approach that takes into account the specific risks and particular needs of safety and protection of the defenders and activists devoted to the promotion of women's rights. Furthermore, the offer disregards the principle of equality, the principle of rights, diversity, sustainability, and the adaptability of the measures.

Decree 1740 establishes a precise catalogue of protection measures<sup>35</sup> that are implemented without regard to the specific circumstances of the concrete case and the

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<sup>33</sup> Human Rights Council, "Informe de la Sra. Margaret Sekaggya, Relatora Especial sobre la situación de los defensores de los derechos humanos" [Report by Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders] Geneva, 20 December 2010, United Nations document A/HRC/16/44, paragraph 103.

<sup>34</sup> Corte Constitucional. Auto 092/08, M.P. Manuel José Cepeda Espinoza.

<sup>35</sup> The physical protection measures are laid out in article 17 of Decree 1740. Concerning officers, leaders, representatives of displaced population, or persons at extraordinary or extreme risk, aside from

geographic, social, and cultural sphere in which the women at risk operate. The above, in open disregard of Law 1257 of 2008, which for the case of women victims of violence in spheres other than family, establishes the right of women to immediate protection “by means of prompt and special measures”, among them, the transfer of the victim and her children to a location where she can find the guardianship of their life, integrity, and family group, and any other measures necessary to the enforcement of the purpose of the Law.<sup>36</sup>

Even though several of the protection measures contemplated in the Decree turn out to be adequate and suitable for addressing the risks faced by women, the criteria for their adoption and the conditions under which they are enforced disregard their needs for protection, as well as the vulnerability of some of the women beneficiaries of the program.

Thus, for example, domestic air tickets are delivered only when, in a situation of risk, the beneficiary and her family group have to be relocated. This does not acknowledge the fact that women leaders of social, civic, and human rights organizations, and women leaders of displaced populations in performance of their duties must travel to various cities in the countries and air travel, precisely, is the most effective and safe means of transportation for guaranteeing their safety.

Regarding the support to temporary relocation, the decrease in funds, from three minimum monthly wages (Decree 2816 of 2006) to one minimum monthly wage, is particularly detrimental for women, since they must relocate with their family group; in face of the situation, the amount is insufficient to cover the total cost of relocation.

On the other hand, the elimination of transportation assistance and its substitution for protection schemes that include common or armored vehicles, a driver and one or several bodyguards is a cause for concern. The reason for this is that for some at-risk women, particularly those who live in marginalized areas, the protection schemes can expose them to new or greater risks.

Furthermore, Decree 1740 does not contemplate special protection measures for the women beneficiaries of the Program for the Protection of Human Rights of the Ministry of Justice and the Interior (PPDHMIJ, by its acronym in Spanish) travelling to attend the particular risks resulting from their condition as women.

All of the above confirms the urgent need to reconsider the physical protection measures established by the PPDHMIJ. To that end, it is suggested that, concerning defenders and activists of women’s rights, the institutional offer be made flexible with a view to adopting protection measures addressed to the circumstances of the specific case, the geographic environment, and the social and cultural context in which the risk exists. In any event, if the decision is to preserve a precise catalogue of protection measures, a consultation process must take place, with the participation of all women defenders groups, especially indigenous, Afro-Colombian, displaced persons defenders, and those who work for land restitution, who have traditionally been excluded from the on debate the decisions affecting them.

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these, the possibility of implementing the protection measures of the Protection Program of the National Police of article 18 of the Decree is foreseen.

<sup>36</sup> Law 1257 of 2008, art. 18, literals a and d.

## **Procedures for accessing the protection program**

Another problem faced by the current protection offer regarding the protection of defenders and activists who work on the defense and protection of women's rights is related to the procedures established for accessing protection by the State. Several of these problems are shared by the totality of the procedures that must be exhausted; others, instead, are related to specific paperwork.

*Problems common to the totality of procedures.* Common to the totality of the procedures and highlighted among the inconveniences in accessing protection by the State are the discriminatory practices and the disregard of all the public officials involved in the process of request for protection and its implementation, the specific risks, and the particular needs for safety and protection of the defenders and those who work for the promotion and defense of women's rights.

Usually, the functionaries of the entities responsible for attending allegations, requests for protection, and their implementation (Office of the Public Prosecutor, Ministry of Justice and the Interior, National Police, among others) are indifferent and hostile towards the defenders and activists who work for women's rights. It is also usual for them to blame and shame them for the acts of which they were victims, and to disqualify them and undermine the credibility their statements.

Moreover, the intervening authorities are negligent in processing the requests for protection and implementation of measures. The application to participate in the PPDHMIJ, the assessment of risks and security, the notification of results to the interested parties, the CRER sessions, and the decisions regarding protection and its implementation show unjustified delays that impair the rights of defenders and activists of women's rights. The pending character of the situation increases the uneasiness and fear of the women and their close relatives, particularly children, and gives rise to a situation of lack of protection that, in many cases, ends up harming their right to life or to personal integrity.

This situation has increased the distrust of women towards the authorities and has discouraged their participation in organizational processes of defense and protection of human rights. Therefore, it is recommended to carry out a process of training and awareness for the functionaries in charge of attending the risks and threats to which the defenders and activists devoted to foster women's rights in regard to the rights of this population, and the existing instruments, mechanisms and procedures for their protection. Additionally, the adoption of the necessary remedies to speed up the processing of requests and the implementation of protection measures, with a view to addressing the risks and threats faced by defenders and activists of women's rights in a smooth and timely fashion.

*Problems evidenced in some of the procedures to be exhausted for access to protection by the State.* In addition to the normal difficulties, certain procedures exhibit disadvantages that prevent the access of defenders and activists of women's rights to effective protection. The procedures that constitute an obstacle to the effective protection of women due to the amount of paperwork involved are the following: the application to enter the PPDHMIJ, the assessment of risk levels and security at the headquarters of the organization, the internal handling of the precautionary measures

decreed by the Inter-American Commission on Human Rights (CIDH, by its acronym in Spanish), and the temporary protection measures granted by the Inter-American Court of Human Rights.

- Application for entering the PPDHMIJ: In regard to this application, there is a general unawareness, mainly in rural areas and on the part of indigenous, Afro-Colombian, and displaced women, about the possibility of requesting protection measures in the face of situations of extraordinary or extreme risk by reason of the exercise of their activities or political, public, social, or humanitarian roles. Thus, it is recommended to promote a campaign of information and divulgation of the PPDHMIJ, with a view to enabling women's rights defenders and activists to enter the program, especially those in marginalized areas of the Colombian geography.

Moreover, there is concern that the requirements for entering the PPDHMIJ include the submission to the respective organization of a copy of the allegation denouncing the acts that constitute a risk or threat and the accreditation of the position of the at-risk person in the organization in which she works.<sup>37</sup> This disregards the difficulties represented by the allegations of acts of violence, by reason of the fear and shame habitually experienced, such as the mistrust towards the competent authorities. In addition, the requirement of accrediting the position within an organization violates the constitutional principle of good faith. Thus, it is proposed that the requirements for processing the application submitted to PPDHMIJ by women defenders and activists of human rights be made flexible.

- Risk assessment by the National Police: for several reasons, the evaluation of level of risk and security at the headquarters of the organizations is one of the procedures most questioned by human rights defenders and activists. In the first place, because the staff in charge of carrying it out is normally a male staff unaware of the risks and vulnerabilities faced by women and openly hostile and insensitive to the risks faced by women.

In the second place, because the evaluation criteria established by Decree 1740 of 2010 in article 24 are not consonant with the criteria determined by the Constitutional Court.<sup>38</sup> In the third place, because, in regard to risk evaluation, the National Police applies a matrix that disregards civil society. This situation has prevented the evaluation and verification of whether the Police included wide and sufficient criteria for assessing the risks faced by defenders, including the women leaders of displaced populations, indigenous and Afro-Colombian women, and those who work for land restitution. Finally, it is especially worrisome that no resources are provided for contesting the results of risk assessment studies.

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<sup>37</sup>In: [www.mij.gov.co/eContent/newsdetailmore.asp?id=2827&idcompany=2&idmenucategory=142](http://www.mij.gov.co/eContent/newsdetailmore.asp?id=2827&idcompany=2&idmenucategory=142)

<sup>38</sup>Sentence T-134/10 of the Constitutional Court establishes that the competent authorities in charge of appreciating the facts on the basis of which protection from the State is sought, should rationally appraise objective as well as subjective factors with an end to determining the circumstances of the petitioner and establishing whether there are grounds for special protection. The Court points out the following as criteria for risk assessment: a) the reality of the threat; b) the individuality of the threat; c) the specific situation of the threatened person; d) the scenario of the threat; and e) the imminence of the danger.

All of the above is especially detrimental to women's rights defenders and activists, since the results of the risk assessment are the main input in the analysis and recommendation of protection measures<sup>39</sup>. Therefore, it is recommended to train the staff of the National Police in charge of risk assessment of women's rights in the specific risks faced in the framework of the internal armed conflict and the particular needs for safety and protection. Also, that the assessment of the risks faced by women defenders and activists of women's rights be performed by the female staff of the National Police. Likewise is necessary a reconsideration of criteria for risk assessment and the incorporation of the criteria indicated by the Constitutional Court. Finally, the National Police must commit itself to allowing civil society to become acquainted with the matrix applied to the assessment of risks, in order to evaluate whether it incorporates objective and subjective factors related to the circumstances of women defenders, particularly victims of displacement, indigenous, and Afro-Colombian women defenders, and those who work on land restitution.

- The internal processing of precautionary measures issued by the CIDH and the temporary protection measures granted by the Inter-American Court on Human Rights; of special concern is the internal processing of the precautionary and temporary measures issued respectively by the Inter-American Commission and the Inter-American Court.

The reason for the above is that, once the measures are granted by these entities, the Colombian State usually requires the beneficiaries to work out the processes and procedures established for entering the PPDHMIJ. Thus, they are required, among other things, to subject themselves to the risk assessment and follow the respective procedure before the CRER.

According to defenders and activists working in the defense and promotion of human rights, this situation completely distorts the nature and objectives of the measures, which are that the legal acts adopted by international entities devoted to the protection of fundamental rights and through which the respondent State is ordered to adopt, in the shortest time possible, all the necessary judicial and administrative measures to put an end a threat on a specific human right<sup>40</sup>. It is also worth noting that "(...) given that the Colombian State is a party in the San José de Costa Rica Pact, the precautionary measure should be examined in good faith by the internal public authorities. Also, for their particular procedural characteristics and the ends intended to be reached, its binding force is coupled to the enforcement of the constitutional duties played by the role of Colombian public authorities in the terms of article 2 Superior<sup>41</sup>.

It is therefore suggested that whenever this type of measure is adopted by the CIDH or the Inter-American Court of Human Rights in regard to risks or threats against defenders or activists who work on the defense and promotion of women's rights, they be assured about the character of the protection measure

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<sup>39</sup> Decree 1740 of 2010, art. 25.

<sup>40</sup> Constitutional Court. Sentence T- 588/03, M.P. Clara Inés Vargas Hernández.

<sup>41</sup> Ibid.

issued by the competent authority, with a view to not having to certify the risk or threat by means of other procedures and processes and that they be provided swiftly with all the necessary safety and protection measures. The above, in accordance with Article 21 of Law 1257 of 2008<sup>42</sup>.

## **Recommendations**

Based on the analysis of the response about protection by the Colombian State to at-risk women defenders and activists of human rights, it is recommended that the Inter-American Commission on Human Rights:

1. In order to further the common purpose of guaranteeing the protection of defenders and activists, urge the Colombian State to:
  - a) Publicly recognize the legitimacy and importance of the work carried out by the defenders and activists who promote women's rights in the consolidation of a just and democratic society and in the reconstruction and consolidation of the social fabric affected by the internal armed conflict.
  - b) Redress the attacks carried out against the work of the defenders and ban, under threat of sanctions, any kind of targeting by State officials against them and their organizations.
2. Order the Colombian State to reform the Ministry of the Interior's Program for the Protection of Human Rights, mainly by means of modifying Decree 1740 of 2010, with a view to guaranteeing the incorporation of a differentiated approach to attend the specific risks and particular needs for safety and protection of the defenders and activists who work on the defense and promotion of women's rights. As a minimum, a reform along these lines should:
  - a) Guarantee the effective participation of women in the design and implementation of policies on the subject of prevention and protection of women at risk as a consequence of their public, social, and humanitarian activities.
  - b) Make flexible the offer of physical measures of protection with a view to adopting measures that address the circumstances of the specific case, the geographical area, and the social and cultural context where the risk takes place.
  - c) Foresee measures geared to guarantee the health, social security, and welfare, including the psychological condition, of women defenders and their closest relatives.
3. Warn the Colombian state about the need to make flexible to women defenders and activists of human rights the requirements for the processing of the application for entering the Program for the Protection of Human Rights. Specifically the requirements of allegations of the acts constituting a risk or threat and the accreditation of the position within an organization.

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<sup>42</sup> Article 21 of Law 1257 establishes that the situations of violence that lead to assistance to women and their sons and daughters will be accredited with the measure of protection issued by the competent authority, with no additional requirements imposed.

4. Urge the Colombian State to carry forward a process of training and awareness of the State functionaries involved in attending situations of risks and threats to which the defenders and activists devoted to the promotion of women's rights are exposed in regard to the rights of this population and the existing instruments, mechanisms and procedures for their protection.
5. Order the Colombian State to comply, in a timely, swift, and effective manner, with the precautionary measures and the temporary measures, issued respectively by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, specifically, in those cases in which the threat looms over the life, personal integrity and safety of women's rights defenders and activists by reasons related to socio-political violence, to refrain from demanding the totality of all the procedures required for access to protection, and to speed up the ones deemed indispensable.