‘THIS IS WHAT WE DEMAND. JUSTICE!’

IMPUNITY FOR SEXUAL VIOLENCE AGAINST WOMEN IN COLOMBIA’S ARMED CONFLICT

AMNESTY INTERNATIONAL

CAMPAIGN FOR INTERNATIONAL JUSTICE

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

AMNESTY
INTERNATIONAL

First published in 2011 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2011

Index: AMR 23/018/2011 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: Members of a support group for survivors of sexual violence create a circle with their hands, March 2011, Bogotá, Colombia. The message written on the women's hands reads: "No to sexual abuse".

© Corporación Sisma Mujer

amnesty.org

CONTENTS

ACKNOWLEDGMENTS 5

1. INTRODUCTION 7

2. CONTEXT: HUMAN RIGHTS AND THE ARMED CONFLICT 11

Guerrilla groups 12

Paramilitary groups 13

The impact of the conflict on women and girls 15

3. THE OBSTACLES TO JUSTICE FOR CRIMES AGAINST HUMANITY AND WAR CRIMES. 18

Protection for survivors 23

Protection for women human rights defenders 26

Gender training and specialist staff 29

Isolated regional investigations 31

The care and rehabilitation of survivors 32

Multiple discrimination: sexual violence and Indigenous women 35

The right to reparation 36

Inadequate legal framework 39

4. THE JUSTICE AND PEACE PROCESS 43

Letting down survivors of sexual violence 44

Protection for victims and witnesses 45

5. CONCLUSIONS AND RECOMMENDATIONS 47

Recommendations to the Colombian government 50

Recommendations to guerrilla organizations..... 58

Recommendations to states..... 58

Recommendations to the Office of the Prosecutor of the International Criminal Court..... 59

ENDNOTES 60

ACKNOWLEDGMENTS

This report is the result of a two-year investigation by Amnesty International into impunity in cases of conflict-related sexual crimes in Colombia. It is informed by meetings held in the country with a broad cross-section of society, including survivors, witnesses, women's organizations and networks, human rights groups, government and state officials, lawyers and judges, and Indigenous organizations, as well as international bodies. The contributions of all these individuals and organizations were invaluable in preparing this report.

Meetings were held with the former and current Vice-Presidents, the former Acting and current Attorney Generals, the Procurator General, the Human Rights Ombudsman, the Director of the Administrative Department of Security (Departamento Administrativo de Seguridad, DAS), the former and current directors of the Presidential Human Rights Programme and the former Director of the National Reparation and Reconciliation Commission (Comisión Nacional de Reparación y Reconciliación, CNRR).

Amnesty International researchers also met with the Colombian Institute for Family Welfare (Instituto Colombiano de Bienestar Familiar, ICBF), the Centre for Victim Support (Centro de Atención a Víctimas, CAV), Social Action (Acción Social), the National Institute of Legal Medicine and Forensic Sciences (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF), and the Directors of the Human Rights and Justice and Peace Units of the Office of the Attorney General. Meetings were also held with several magistrates from Colombia's Supreme Court of Justice and the Director of the Office in Colombia of the United Nations High Commissioner for Human Rights (UNHCHR).

The many Colombian human rights non-governmental organizations (NGOs) who generously shared their experiences and expertise with Amnesty International deserve a special mention, especially the women's organizations and women community leaders who have played a crucial in providing what is often the only safety net available to survivors of sexual violence through the legal, financial, medical and psycho-social support they offer.

Many women human rights defenders, including community and social leaders, continue to pay a heavy price for this support and for their campaigns in favour of women's rights and against violence. Many of these leaders have been threatened, some have been killed, and some have even been victims of sexual violence themselves because of the work they do.

Most of all, Amnesty International would like to thank the women survivors and their families who came forward to tell their stories, often for the first time. Amnesty International interviewed women and girl survivors, as well as family members, from across Colombia, including from Putumayo, Valle del Cauca, Antioquia, Cesar and Santander. We are deeply indebted to them for the remarkable courage and determination with which they shared these deeply distressing experiences. It is a measure of their desire for truth and justice that they were prepared to speak out in the hope that they can contribute in some way to finally ending the scourge of sexual violence which has marked Colombia's internal armed conflict.

Amnesty International also interviewed a number of lawyers and human rights groups representing or assisting women and girl survivors, and their families, from other parts of the country, such as Arauca, Cundinamarca, Bolívar, Guaviare, Caldas, Córdoba and Sucre, who, for a variety of reasons, were unable to speak to Amnesty International researchers directly.

Most of the women and girls whose stories are told in this report have asked Amnesty International not to include information that might allow them to be identified. The real names of most of the survivors have, therefore, been withheld and pseudonyms, mostly chosen by the survivors themselves, have been used. It has not been possible to include all the testimonies of those who shared their experiences, but all the stories told, without exception, played an important role in the preparation of this report. This report is therefore dedicated to all survivors of sexual violence and to the memory of those victims – women, men and children – who did not live to tell their stories.

1. INTRODUCTION

"SEXUAL VIOLENCE AGAINST WOMEN IS A HABITUAL, EXTENSIVE, SYSTEMATIC AND INVISIBLE PRACTICE IN THE COLOMBIAN ARMED CONFLICT."

Colombia's Constitutional Court, Judicial Decision 092, 2008

THE TORRES FAMILY

On 14 October 2010, José Álvaro Torres returned home from work to find that three of his children were missing – 14-year-old Jenni, and her brothers, nine-year-old Jimi and six-year-old Jefferson. At the time, the family lived in the hamlet of Caño Temblador, Tame municipality, Arauca Department, a region which has for decades been ravaged by armed conflict.

José Álvaro and other members of the community went immediately to the local army unit in search of the children. Sub-Lieutenant Raúl Muñoz Linares, head of the army unit, said there was nothing he could do to help, so the community formed a search party to look for the children themselves. On 16 October, they found the three bodies buried in a shallow grave very close to where the army unit had been camped.

The local authorities refused to help recover the bodies, citing lack of security. A delegation from the International Committee of the Red Cross (ICRC) helped the family recover the bodies later that evening. Crime scene investigators did not arrive at the site until two days later. Some reports have suggested that the crime scene, which had been secured by soldiers led by Sub-Lieutenant Muñoz, had been tampered with. Autopsies confirmed that the three children's bodies showed signs of torture. All three had stab wounds and Jenni's partially clothed body showed clear signs of rape. Days after the killings, the family fled the area.

The community had repeatedly complained that soldiers were sexually abusing women and girls in the area. Despite this, the army immediately began to point the finger at the local community and "criminal groups" operating in the area. Soon after the killings, security force personnel arrived in Caño Temblador and interviewed local residents, taking down their details and even filming them. When human rights groups drew attention to the killings and the evidence of army involvement, the commander of the army's 18th Brigade, which was operating in the area, claimed on radio that such accusations were a "guerrilla game".

However, forensic examinations linked DNA from semen found on Jenni's body to DNA samples from Sub-Lieutenant Muñoz. He was then handed over to the civilian justice system on 1 November and charged with the rape and homicide of Jenni and the homicide of her brothers.

After Sub-Lieutenant Muñoz was charged, it emerged that less than two weeks before the Torres children were killed, he had been implicated in the rape of a 13-year-old girl from the area. The girl's family had reported the rape and provided a description of the attacker. Local commanders were aware that Sub-Lieutenant Muñoz had taken unauthorized leave of absence at the time of the rape. But still no action was taken by the army. The girl also said that before raping her, Sub-Lieutenant Muñoz had questioned her about the presence of guerrillas in the area.

In a newspaper interview published in *El Tiempo* on 6 November 2010, General Alejandro Navas, commander of the Colombian Army, commented that "strange organizations have taken control over him [José Álvaro Torres] to disorientate him and to formulate these accusations, which they don't do when they [the guerrilla] murder and mistreat thousands of children."[1] The "organizations" referred to are two human rights NGOs supporting the family: Humanidad Vigente and the Permanent Committee for the Defence of Human Rights – Arauca Section.

Lawyers representing the family asked for the investigation of the case to be transferred from Saravena to Bogotá in order to ensure transparency and impartiality, and to guarantee the security of potential witnesses as well as the victims' family. The authorities refused.

In February 2011, Humanidad Vigente revealed that people in Caño Temblador were concerned about the arrival in the community of people wearing camouflage jackets. The men arrived by military helicopter with army bodyguards and claimed to be from the Office of the Human Rights Ombudsman. They interviewed residents who had given information about killings and rapes to the Office of the Attorney General. The Office of the Human Rights Ombudsman denied that any of its officials were in the area. It later emerged that the men belonged to the Integral Military Defence (Defensa Militar Integral, DEMIL), a legal defence organization funded by the military and with senior military officers on its board, which was providing the legal defence for Sub-Lieutenant Muñoz.

Other examples of questionable tactics used by DEMIL include the repeated resignation of defence lawyers, causing delays in proceedings while new counsel is appointed. In February 2011, the judge presiding over the case, Gloria Constanza Gaona, announced an investigation into the delaying tactics being employed by the DEMIL defence lawyers. On 22 March 2011, Judge Gloria Constanza was shot dead in Saravena. The judicial authorities arrested alleged members of the guerrilla group the National Liberation Army (Ejército de Liberación Nacional, ELN) in connection with the killing. However, a few hours after the shooting, a lawyer from Humanidad Vigente, who was representing the Torres family and the 13-year-old rape victim, and the director of the NGO were threatened by phone.

On 24 March, José Álvaro Torres' oldest daughter received a phone call on her mobile. After asking who she was the caller told her: "Oh it is you, the daughter of the dog son-of-a-whore. Tell him that we already got him where it hurts most… We will not rest until we kill another child. You have to leave Saravena. We know where you are living." Following the threat, the family decided to leave the area.

The day after the killing of Judge Gloria Constanza, Humanidad Vigente made a further request, to the Supreme Court of Justice, for the case to be transferred to Bogotá. On 11 April the Court ordered the case to be

transferred to Bogotá arguing that "the victims and witnesses in the criminal process against Raul Muñoz Linares have been subjected to harassment." The case was finally transferred to Bogotá in May 2011. However, that same month, the case was again suspended after yet another defence lawyer resigned. So far, at least eight defence lawyers have resigned, each time forcing proceedings to be suspended. On 20 May 2011, DEMIL announced they were withdrawing from Sub-Lieutenant Linares' legal defence.

Women and girls have been subjected to widespread and systematic sexual violence by all the parties to the long-running Colombian armed conflict – paramilitaries, members of the security forces and guerrilla combatants.[2] While some women and girls have been targeted for reasons other than their gender, many have been sexually abused and exploited simply because they are women – to exploit them as sexual slaves; to sow terror within communities and so make it easier for military control to be imposed; to force whole families to flee their homes and allow land to be appropriated; and to wreak revenge on adversaries.

Women are also targeted in retaliation for their work as human rights defenders or as community and social leaders, or in an effort to silence them when they expose abuses. Over the last few years, women human rights defenders and community leaders working with forcibly displaced communities and those campaigning for the restitution of stolen lands have also been the target of threats and killings, mainly by paramilitaries. Some of these women were also victims of sexual violence.

Very few of those who have committed crimes of sexual violence during the 45-year-old conflict have been brought to justice.[3] Many of the girls, women and families who spoke to Amnesty International and whose stories are at the heart of this report described how this denial of justice remains an open wound, intensifying their suffering and exposing them to other abuses, including threats, harassment and further violence.

Rape and other sexual violence are not the only forms of gender-based violence aimed at women in conflict situations;[4] women are targeted for other kinds of violence too.[5] However, sexual violence falls into a special category for one fundamental reason: it is the most invisible of crimes. Rape, in all parts of the world and especially conflict-related rape, is under-reported.[6] Colombia is no exception. The reasons for under-reporting in Colombia include the shame and stigma associated with the crime of rape, fear of further violence, a general lack of security, and a lack of confidence that the justice system and police will take reports seriously and ensure they are properly investigated.[7] It is clear from Amnesty International's research in Colombia that the failure to hold those responsible to account when cases are reported adds a powerful extra deterrent to women coming forward.

Social attitudes that blame women and girls rather than the abuser have the effect of silencing survivors and their families. Ingrained gender discrimination lies at the root of the failure of the state to afford women protection in the first place, and to bring to justice those responsible for violence against them. All sexual violence in Colombia, as elsewhere, feeds off a general acceptance in society that it is a normal part of life for women and girls, rather than aberrant criminal behaviour. Colombia, like so many states around the world, has a long way to go to fulfil its duty under human rights law to transform such attitudes.[8]

There have been changes in the Colombian government's attitude towards human rights since President Juan Manuel Santos Calderón took office in August 2010. The new government has

made a commitment to address human rights violations and impunity in a more constructive manner than its predecessor. However, most women have as yet seen little real change in their lives. Women and girls have a crucial role to play in developing solutions to this continuing crisis.[9] The necessary transformation in attitudes and practices that would enable them to contribute has, however, yet to materialize for women in Colombia.

Colombia's state institutions – including the criminal justice system – are failing survivors of conflict-related sexual violence every step of the way – by denying them protection, justice, reparation and much needed care and support services. This is especially true of women and girls from Indigenous, Afro-descendent and peasant farmer (*campesino*) communities; forcibly displaced women; and women living in poverty.

Impunity for crimes against humanity and war crimes, including crimes of sexual violence, has been the defining feature of the Colombian conflict for more than four decades. During this entire period, not only has Colombia been unable and unwilling to investigate and prosecute these crimes adequately, but other states have failed to step in and exercise universal criminal and civil jurisdiction over those who have committed war crimes and crimes against humanity or their military and civilian superiors when they were present in their territories. Moreover, although the Prosecutor of the International Criminal Court (ICC) has opened a preliminary examination, as of 1 July 2011 he had not yet sought authorization to open a full investigation into these crimes.

Survivors of sexual violence of all ages, working alongside human rights defenders and community and social leaders, are working courageously to bring about change. Despite many obstacles and dangers, human rights defenders, both men and women, continue to pursue justice. They accompany women and girl survivors through the criminal justice system. They campaign and lobby for survivors to receive full reparations and, given the deficiencies in state support, they provide legal assistance, psycho-social services, medical care and education.

Recent years have seen a gradual increase in awareness of the extent and gravity of violence against women in the context of armed conflict. Amnesty International and other Colombian and International human rights organizations have sought to help bring this long-hidden human rights crisis to public attention. In 2004, Amnesty International published *Colombia: "Scarred bodies, hidden crimes": Sexual violence against women in the armed conflict*, which gave a voice to survivors of sexual violence in the conflict, many of whom had been ostracized by their communities and failed by state authorities.[10] In 2008, Colombia's Constitutional Court issued a groundbreaking judicial ruling on displaced women, *Auto 092,* focusing on the issue of conflict-related sexual violence. [11] This ruling has been viewed by Colombian women's organizations as a template for action to combat conflict-related sexual violence against women and girls and to end impunity in such cases.

This report examines what, if any, progress has been made by the authorities since Amnesty International's 2004 report, and particularly since the 2008 Constitutional Court ruling, in addressing sexual violence and impunity. The report ends with a series of recommendations, calling on the Colombian authorities to fulfil their international obligations to ensure respect for the right of survivors to truth, justice and reparation.

2. CONTEXT: HUMAN RIGHTS AND THE ARMED CONFLICT

"If the threats against and killings of human rights defenders and social leaders do not stop, the [government's] human rights policy could end up being a farce".

Colombian Vice-President Angelino Garzón, May 2011

For almost half a century, the armed conflict has pitted the security forces, either acting alone or with right-wing paramilitaries, against a range of left-wing guerrilla groups. Attacks on civilians by all the warring parties have been the hallmark of the conflict, and both sides continue to be responsible for crimes under international law and human rights violations.

Millions of women, men and children have been forcibly displaced, unlawfully killed, tortured (including by being subjected to rape and sexual violence), taken captive or been the victims of enforced disappearances. More than 280,000 people were forcibly displaced in 2010, bringing the number of displaced people over the last 25 years to between 3 and 5 million.

The sheer scale of human rights violations committed in the last 45 years is staggering. For example, the Office of the Attorney General is investigating more than 27,000 cases of enforced disappearance committed during the course of the hostilities, although the true number of enforced disappearances is thought to be significantly higher.

The deliberate and systematic failure to distinguish between civilians and combatants has been a consistent feature of the conflict. All warring parties continue to employ military strategies that focus on undermining what they perceive to be the civilian population's support for the "enemy", targeting communities simply on the basis of where they live.

The result of labelling such communities as "sympathetic" to the enemy has been a pattern of often systematic abuses against human rights defenders, community leaders, trade unionists, peasant farmers, Indigenous and Afro-descendent communities, and those living in areas of strategic importance to the warring parties or of interest to national and multinational mining, agro-industrial or energy concerns.

The government of President Santos, which took office in August 2010, has to some extent reversed the previous administration's hostile stance towards human rights issues in general,

and human rights defenders in particular.[12] It also introduced legislation, the so-called Victims and Land Restitution Law (Law 1448 of 2011), signed into law in June 2011, which the government claims will address the rights of victims to comprehensive reparations. Despite some flaws, this law is an important first step towards acknowledging and compensating at least some, although crucially not all, of the victims of the armed conflict and returning some of the millions of hectares of stolen lands to their rightful owners.[13]

President Santos has also acknowledged the existence of an internal armed conflict. This is in marked contrast to the approach of his predecessor, Álvaro Uribe Vélez, who repeatedly framed the hostilities in terms of the "war on terror", undermining the application of international humanitarian law, which only applies in situations of armed conflict, and allowing those responsible for attacks against civilians to evade accountability. However, the welcome public statements of President Santos on human rights have yet to be translated into practical improvements for those who are at risk of human rights violations.

The reality is that threats against and killings of leaders of displaced communities and of those seeking the return of stolen lands have increased under his government, while those involved in human rights related criminal investigations, such as victims, witnesses, lawyers, prosecutors and judges, continue to be threatened and killed.

Human rights defenders, trade unionists and community leaders, both women and men, continue to be threatened and killed, mainly by paramilitary groups. Some are even accused of having links with guerrilla groups. This has led to often spurious criminal proceedings being initiated against them, frequently based solely on the statements of informants or on accusations co-ordinated by military intelligence and subsequently compiled in discredited military intelligence files.

Since most unfounded criminal investigations against human rights defenders are based on often discredited military intelligence files and files held by other state security organizations, human rights groups and the UN High Commissioner for Human Rights (UNHCHR) have for years called for such files to be purged to remove false information held on human rights activists. Despite assurances by successive Colombian governments, no progress has been made in purging these files. The latest effort, co-ordinated by the Office of the Procurator General, has also failed thus far to secure any tangible results.

GUERRILLA GROUPS

Guerrilla groups emerged in the 1950s during *La Violencia*, a bloody conflict that was in many respects a civil war. During this period, armed groups linked to the Liberal and Communist parties were driven into remote parts of the country. These armed groups were the nucleus of what by the 1960s had become the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC), still Colombia's largest guerrilla group. The other main guerrilla group in existence is the much smaller National Liberation Army (Ejército de Liberación Nacional, ELN).

Over the decades, the FARC, and to a lesser extent the ELN, created extensive strongholds, principally in rural areas, but also in many small towns, where they effectively determined local government policies and exercised significant control over the local population. However, military losses, especially during the government of former President Uribe (2002-

2010), have reduced the guerrilla's territorial sphere of influence and forced them into more remote and inaccessible areas. The FARC continue to have a presence in many parts of the country but are strongest in the eastern departments of Meta, Guaviare, Vichada, Casanare and Arauca, as well as in the southern departments of Caquetá, Putumayo, Valle del Cauca, Cauca and Nariño. The security forces estimate that the FARC have 9,000 combatants, but the number could be double that if militia members are included.[14]

The FARC continues to rely on kidnapping and hostage-taking as a source of income and political leverage, as well as on drug trafficking. However, most of its high-profile hostages, mainly Colombian politicians and members of the security forces, have been released, while others were killed by their captors, escaped or were rescued. Hostage-taking has become increasingly difficult, largely as a result of military pressure from the security forces.

The ELN is thought to have 2,500-3,000 combatants, and a similar number of militia members. This guerrilla group is strongest in the eastern departments of Arauca, Casanare and Boyacá but also has a presence in other parts of the country, such as Norte de Santander, Cesar, Santander, the Magdalena Medio region, Chocó, Nariño and Cauca.

Guerrilla groups continue to commit war crimes, including unlawful killings, hostage-taking and the recruitment of children into combat units. The FARC, in particular, continues to carry out indiscriminate attacks in which civilians are put at risk through the use of low-precision explosive devices, such as landmines, and to target local politicians, especially during elections.

PARAMILITARY GROUPS

Paramilitaries have their origin in legal civilian "self-defence" groups created in the 1960s by the army to act as auxiliaries during counter-insurgency operations. The use of armed civilians in army operations was outlawed in 1989, as was the promotion, financing and membership of paramilitary groups. However, after a short lull, paramilitarism, backed by the security forces and financed by drug traffickers and business interests, continued to grow.

Paramilitaries have long operated with the support of the security forces, often working as auxiliaries alongside them. The use of such groups has for decades formed an integral part of the armed forces' counter-insurgency strategy. Paramilitaries have been used to sow terror and to deflect responsibility for human rights violations away from the armed forces. Most paramilitary action continues to be directed against civilians rather than guerrilla forces.

The debate about whether paramilitaries still exist has raged since the mid-2000s, when the government-sponsored demobilization process began. The government claims paramilitaries no longer exist and that any violence attributed to them is being carried out by drug-trafficking criminal gangs (*bandas criminales*, commonly referred to as *Bacrim*). What is not disputed is that many paramilitaries failed to demobilize, while a plethora of new groups began to emerge, recruiting both existing and new members.

The paramilitarism of the 1990s and early 2000s was dominated by the national umbrella paramilitary organization, the United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia, AUC). Today, the face of paramilitarism in Colombia is much more akin to that of the 1980s, before the creation of the AUC. It no longer has a unified and hierarchical

national structure and the political discourse and counter-insurgency strategy are not as explicit as they were. Rather, several disparate and very different structures, with varying motivations, have developed in different parts of the country. While some have evolved into criminal gangs involved in drug trafficking, others continue to play a direct role in counter-insurgency strategies or in advancing economic interests and have a clearer political and economic agenda with links to political and economic elites and the security forces.

However, whatever their raison d'être many of these "new" paramilitary groups continue to operate as "traditional" paramilitaries. They control territory and use the threat of force and actual violence to further their economic and political objectives, sometimes with the support or tolerance of the security forces. Their victims are the same as in the past – human rights defenders, trade unionists and community leaders. Paramilitary groups also continue to carry out "social cleansing" operations in poor urban neighbourhoods, where the victims are often young people accused of being petty criminals, drug addicts or sex workers. Lesbian, gay, bisexual and transgender people are also targeted.

There is strong evidence that the number of combatants participating in these groups is increasing, that such groups are becoming more violent, and that they are undergoing a process of consolidation, with smaller groups being swallowed up by larger ones. There is concern that if these trends are left unchecked, the conditions are ripe for the eventual re-emergence of a national paramilitary project, especially given the failure to dismantle the political and economic power structures that sustained paramilitary groups in the past.

In February 2011, Minister of the Interior and Justice German Vargas Lleras acknowledged that *Bacrim* had territorial control in several parts of the country, both in urban and rural areas, and that their reach was now regional rather than local. He highlighted more than 60 municipalities where such groups and the guerrilla had plans to influence "the political processes for the upcoming elections for mayors, governors, assemblies and councils."[15]

Over the past few years, Amnesty International and other human rights organizations, have repeatedly warned that the demobilization process put in place by the government of Álvaro Uribe would not lead to the effective dismantling of paramilitary groups, raising the very real prospect that such groups would re-emerge. Crucially, the demobilization process played down the links between the paramilitary strategy and the security, political and economic elites, instead presenting the paramilitary problem as one solely linked to drugs.[16]

According to the independent think-tank, the Institute for Development and Peace Studies (Instituto de Estudios para el Desarollo y la Paz, INDEPAZ), groups that it defines as "narco-paramilitary groups" have increased their presence across the country in the last three years and are now active in all departments and in more than one third of municipalities. INDEPAZ suggests these groups now have some 7,000 combatants and a support network of between 8,200 and 14,500, and that they have in recent years undergone a process of consolidation, with the number of these groups falling from 43 in 2006 to 15 by the end of 2010.[17]

THE IMPACT OF THE CONFLICT ON WOMEN AND GIRLS

"It doesn't matter if we are careful, or if we are at risk, or how we dress, they [take us] just because we are women… They made me feel that they had the power to do what they wanted to anyone they wanted."

Mari (not her real name), a community leader and survivor of sexual violence, February 2011

The impact of armed conflicts is often greater on women than on men, and this is as true for Colombian women and girls as for those in other conflict situations.

"The violence practiced by all the actors in the armed conflict continues to exact a heavier toll on Colombian women, thereby exacerbating the discrimination that they have historically suffered. The Commission notes with concern that the principal manifestations of violence against women identified in the 2006 report – physical, sexual and psychological violence; forced recruitment of women and girls; the social patterns of conduct imposed upon them, and forced displacement – continue to plague women of all ages, races and ethnic backgrounds in Colombia. The armed conflict also continues to take a particularly heavy toll on indigenous and Afro-Colombian women because of the multi-faceted discrimination that they have historically suffered."

Annual Report of the Inter-American Commission on Human Rights 2009[18]

The experience of forced displacement on women can be more traumatic because of the traditional role women play in the family and community. Many displaced women have been forced to flee their homes in the countryside with their children, abandoning their livestock and possessions. What refuge there is in shanty towns and cities is often insecure and economically precarious.

Displaced women are also at greater risk of being subjected to crimes of sexual violence or being forced into sex work because their livelihoods and support networks have been destroyed. Displaced women face barriers in getting access to goods and services and are often treated as suspected guerrilla sympathizers, including by the authorities, because of having fled conflict zones.

Women also face additional risks in the context of a society where general discrimination against women and girls is deeply entrenched. Many are fearful that their children may be forcibly recruited by armed groups. Others face retaliation because of a voluntary, accidental or deliberate association with a member of one or another armed group, either directly or through a relative. Paramilitary and guerrilla groups also use coercive codes of conduct to control the behaviour of women and girls, both civilians and combatants, including forced contraception, and crimes under international law such as forced pregnancy and forced abortion; as well as rape, sexual violence and sexual slavery. Some women are targeted in order to silence and punish them for their human rights work.

SANDRA AND CARLOS

Sandra and Carlos (not their real names) lived on their own small farm in Vichada Department, growing cassava, bananas, maize and cocoa. One day in July 2010, soldiers stopped the couple on a road near their farm and dragged them away into the bush. The soldiers tied them up and threatened them, accusing the couple of being guerrillas. The soldiers sexually assaulted Sandra before finally letting the couple go at 10am the next day. However, the soldiers continued to harass them, threatening to hand the couple over to the paramilitaries.

A week later Sandra and Carlos fled Vichada. However, the authorities have so far refused to acknowledge the couple's claim that they were forcibly displaced as a result of political violence. As a consequence, Sandra and Carlos have not received any humanitarian assistance from the state.

In November 2010, Sandra's sister was a approached by a soldier who asked her if she was the sister of the woman who had been raped by the army. The sister said she wasn't and then fled the area, fearing for her own safety.

Sandra and Carlos described the intense fear and anguish they have felt since the attack. They feel they cannot trust anyone, even neighbours. Sandra explained that she did not feel at ease living in a city and that remembering the sexual violence that she suffered caused her acute distress and a deep sense of disgust. She had not told Carlos everything that happened to her.

She did, however, report what had happened to the local Human Rights Ombudsman soon after the attack. However, the report was not passed to the Attorney General's Office or to the National Institute of Legal Medicine and Forensic Sciences (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF).

The couple finally reported the attack to the Attorney General's Office in October/November 2010.

The case is currently under investigation by the Attorney General's Office. However, Sandra said that no one from the Office had contacted them to let them know what was happening with the case. The couple's lawyers told Amnesty International that there had been little progress in the case and that Sandra and Carlos are starting to wonder if there is any point continuing to press for justice.

It is impossible to gauge the true scale of the problem of conflict-related sexual violence against women and girls. Accurate data does not exist, both because of under-reporting and the failure of successive Colombian governments to create a single, comprehensive database to record all crimes of sexual violence, whether conflict-related or not.

Although in recent years the authorities have improved existing information systems and begun to collect data on the incidence of sexual violence,[19] there is as yet no consolidated database and comprehensive data collection in operation. The UNHCHR stated in its 2010 report on Colombia, that statistics on sexual violence "continue to be incomplete and fragmented".[20] The creation of a single and accurate dataset for such criminal offences is a crucial prerequisite if the government is to put a definitive end to sexual violence and the impunity that surrounds it. At the same time, the government must effectively address the root causes of under-reporting, especially survivors' fear of retaliation if they report the crime and the gender discrimination which stigmatizes them.

The most reliable dataset is managed by the INMLCF, but this only records the number of examinations it has carried out rather than the number of women and girls actually targeted for rape and other kinds of sexual violence. Given the likelihood of serious under-reporting, this number is certainly considerably higher. Nonetheless, in 2009, the INMLCF carried out a total of 21,288 examinations into suspected cases of sexual violence, compared to 12,732 in 2000. More than 85 per cent of the examinations carried out in 2009 involved children.

In the case of conflict-related sexual violence, the level of under-reporting is even greater. According to the INMLCF, only 131 examinations carried out in 2009 were classified as "socio-political".[21] The UNHCHR, in its 2010 report on Colombia, said that it had "received an alarming amount of information on cases of sexual violence against women and girls that were attributed to members of FARC-EP [Ejército Popular] and the illegal armed groups that emerged after the paramilitary demobilization".[22] In its 2011 report, the UNHCHR also made reference to "[c]ases of sexual violence attributed to members of security forces, in particular the Army, in Arauca, Caldas, Cauca, Chocó, Meta and Vichada… In most of these cases, the victims were girls."[23]

According to the latest report of the NGO coalition Follow-Up Working Group on *Auto 092*, published in May 2011, several surveys have highlighted the extent of under-reporting: "The National Demography and Health Survey reported that 73% of physically ill-treated women did not report the violence they suffered. According to the Ombudsman's Office, 70% of women victims of physical violence and 81.7% of victims of sexual assault did not go to any institution to make a complaint about the attack. As regards sexual violence in armed conflict specifically, the First Survey on the prevalence of sexual violence driven by OXFAM and realized by the Foundation "Casa de la Mujer" found that 82.1% of surveyed women did not report the acts they were victims of."[24]

The available evidence suggests that sexual violence against children in Colombia is a serious problem. Some of the survivors who spoke to Amnesty International were children when they were attacked and the INMLCF data highlights the issue of age. Girls are targeted for crimes of sexual violence because of gender stereotypes that place a value on virginity. For children, the impact of sexual violence is even more far-reaching than for women generally. Young survivors are more likely to suffer severe physical injuries as a result of crimes of sexual violence because their bodies have yet to fully develop. Many face the interruption or end of their education. They may also suffer the additional consequence of pregnancy from rape, and these pregnancies tend to pose greater risks to their health; young girls are more likely to experience complications giving birth, which can lead to maternal mortality.

3. THE OBSTACLES TO JUSTICE FOR CRIMES AGAINST HUMANITY AND WAR CRIMES

"They discriminate against us and treat us almost as if we were the guilty ones. Society thinks that it is the woman's fault"

Mari (not her real name) a community leader and survivor of sexual violence, February 2011

Impunity persists for a number of complex, yet inter-related reasons. The authorities' historical lack of political will and the obstruction of justice have played a part in ensuring that perpetrators are not brought to justice. There are also additional and very specific barriers to the effective administration of justice, such as the threats against and killings of those participating in human rights related criminal investigations. The lack of security, probably more than any other single factor, dissuades most victims from reporting abuses. Witnesses, victims' families, prosecutors, lawyers and judges participating in human rights related investigations have also been killed, threatened and subjected to surveillance.

Another key obstacle to justice is the fact that the military justice system continues to claim jurisdiction in some cases involving human rights violations in which members of the security forces are implicated, despite a 1997 Constitutional Court excluding such cases from military jurisdiction. Cases investigated by the military justice system are routinely closed without any serious attempt to hold those responsible to account. After a period in which there was an increase in the number of cases transferred by the military justice system to the civilian courts, there has over the last year or so been a sharp fall in the number of such transfers.

An additional problem is the lack of effective co-ordination between the myriad institutions in Colombia with responsibility for reporting, recording and investigating human rights violations. These include the Human Rights Unit, the Justice and Peace Unit and regional branches of the Office of the Attorney General; the Supreme Court of Justice; various units within the Office of the Procurator General with responsibility for human rights and for the Justice and Peace Process; the Office of the Human Rights Ombudsman; and the regional

offices of the National Reparation and Reconciliation Commission (Comisión Nacional de Reparación y Reconciliación, CNRR).[25] Although, in theory, information is supposed to be shared between the different investigating bodies, there are serious doubts over the effectiveness of their collaboration.

The justice system also suffers from serious bureaucratic inefficiencies and underfunding resulting in overworked prosecutors, many of whom are handling hundreds of cases at any one time. This has led to unacceptable backlogs and the slow administration of justice. Training for judicial officials, especially in specialist areas such as sexual violence, has been at best haphazard and, in remote parts of the country, almost non-existent. Corruption and the infiltration of paramilitaries, guerrillas and organized crime into parts of the judicial system have also contributed to undermining the rule of law. Moreover, the failure of state institutions to offer effective after-care – such as medical, psycho-social and financial assistance – to victims, and especially to survivors of sexual violence, has further contributed to victims' reluctance to seek justice. These multiple barriers to justice are most in evidence in cases of sexual violence in the context of the conflict.

Former President Uribe's hostility towards human rights defenders and sectors of the judiciary, especially the Supreme Court of Justice, as well as some of his policies, further entrenched already widespread impunity for crimes against humanity and war crimes.[26] Many of these policies, such as the granting of judicial police powers to the armed forces, were eventually overturned by the Constitutional Court. However, others remain in force, such as the Justice and Peace Law, a "restorative justice" mechanism which has enabled thousands of paramilitaries to evade justice for serious human rights violations (see Chapter 4).

Unlike his predecessor, President Santos has sought to improve the executive's relationship with the judiciary. However, although he has repeatedly claimed that his administration is committed to ending impunity, Colombia is continuing to fail victims and the general public by not investigating and prosecuting crimes against humanity and war crimes, including crimes of sexual violence, appropriately and effectively.

Some sectors of the judiciary have long shown a commitment to the fight against impunity, despite the odds stacked against them. These include the Supreme Court and some prosecutors from the Office of the Attorney General, which is responsible for investigating crimes, including conduct that constitutes crimes against humanity and war crimes. Hundreds of prosecutors, lawyers and judges have been threatened and some have been killed as a result of their work.

The semi-official CNRR, created under the Justice and Peace Law (see Chapter 4) to uphold the rights of victims, has also made efforts to reconstruct historical memory in several key human rights cases. It is also undeniable that some human rights abusers, but notably not the perpetrators of conflict-related sexual crimes, have faced justice, especially those implicated in high-profile criminal cases where international scrutiny has been most intense.

The tragic reality, however, is that very few of the thousands of paramilitaries, guerrilla fighters and members of the security forces suspected of committing crimes against humanity and war crimes in the past 45 years have ever been the subject of investigations which met international standards for investigating such crimes.[27] The few that have been

brought to justice have been investigated and prosecuted for ordinary crimes under national law rather than for crimes against humanity and war crimes.

In June 2010, Amnesty International wrote to the then interim Attorney General, Guillermo Mendoza Diago, to request information on the number of alleged perpetrators who had been investigated and prosecuted specifically for war crimes and crimes against humanity since 2002. However, Amnesty International received no response and so has been unable to ascertain how many, if any, such cases have been investigated and prosecuted. Indeed, more than a decade after the Rome Diplomatic Conference adopted the Statute of the International Criminal Court (Rome Statute), Colombia has yet to define crimes against humanity in the penal code and to define in national law all war crimes in conventional and customary law.

International law requires that the government of Colombia ensure that victims of serious human rights violations are provided with access to justice, truth and full reparation.[28] However, most survivors of sexual violence are denied these rights. Inadequate state protection and support, and the routine failure of the authorities to take cases of sexual violence seriously mean that many women and girls do not report crimes of sexual violence committed against them. The overwhelming majority of those who overcome such obstacles and do report sexual violence are let down by a system that fails to investigate the crime or to provide effective and appropriate assistance, whether medical, psycho-social or financial.

The reasons why many women and girls do not report sexual violence are numerous and often inter-connected. They include:

- A lack of confidence in the justice system compounded by the lack of respect shown to many survivors when they try to seek justice. In some cases officials simply do not believe the women's account. Women who have reported sexual violence have seen their experience dismissed as a "crime of passion". Others have been accused of "asking for it" or lying. Everyone has the right to security of the person and equality before the law, and any sexual act committed without freely given genuine consent and agreement, should be investigated promptly, effectively, independently and impartially, irrespective of the work, or lifestyle of the complainant. However, women's organizations told Amnesty international that allegations of sexual violence were often discounted by officials because the complainants were, or were alleged to be, sex workers.

- Many survivors live in poverty and often lack information about the justice system and about their rights and how to exercise them. This lack of information is a particular obstacle for those who face additional forms of discrimination, such as peasant farmers and Indigenous and Afro-descendent women. The precarious economic situation facing many survivors often forces them to give priority to meeting their and their families' basic needs rather than seeking justice. Many survivors also lack the financial resources to travel to the offices where they need to make their report, which are often located far from their homes.

- Many women fear that they or their families will be the targets of threats and retaliation if they report sexual violence and they do not believe that the state will protect them effectively. In such a context of insecurity and intimidation, the decision to report sexual violence can be an act of empowerment. Perpetrators often try to undermine this decision by subjecting survivors to further abuse or by threatening or attacking their relatives. Women

who are politically active in their community or leaders of women's organizations, and who therefore can support and encourage other women to report abuses, are at heightened risk. Attacks on these women send a particularly powerful message to other women to stay silent.

- Cultural factors such as shame and "honour" affect the survivor, their families and their community. The view that violence against women is "normal" also deters women from reporting these crimes. Survivors are often pressurized not to report sexual violence and are ostracized by those around them, leaving them without important social support networks. This is especially true for women who are or become internally displaced.

- Survivors of sexual violence perpetrated by members of the security forces face additional obstacles to justice. Many women do not report such cases either because of fear or because they simply do not know who to turn to when the attacker is an agent of the state. Local military officials have even sought to dissuade the victim or their family from reporting sexual violence, either by offering them money to keep quiet, or by threatening them. Moreover, the army is often the first port of call for victims of human rights violations or the first to arrive at a crime scene, since in many remote areas where the conflict is acute the army is often the only state force present.

YOLANDA

In July 2005, 11-year-old Yolanda (not her real name) was returning home from school in a rural part of Saravena, Arauca Department, when she was stopped by a soldier. This soldier had been pestering Yolanda for some time to have sex with him. When she again refused, the soldier grabbed her and took her to where his army unit was camped, where he raped her and held her captive until morning.

The family reported the rape to the local Office of the Attorney General, but a local prosecutor claimed that the mother had made up the allegation in order to stop her daughter having a relationship with the soldier. The army offered the family money if they withdrew the allegation. Meanwhile, the soldier began to intimidate the family. As soon as he heard that the Office of the Attorney General was investigating the attack he started making a series of threatening phone calls. The family fled their home in fear. Despite requests by the family's lawyers to move the case to Bogotá, it is still being investigated locally. Six years later, the case is still under investigation. The soldier is reportedly still in the army.

Many of the women who lodge complaints only do so years after the event and after intense psycho-social therapy from specialists working with the women's organizations supporting them. Such delays in reporting make it more difficult to bring those responsible to justice. As a consequence women who, years after the attack, may feel psychologically ready to report the crime decide not to do so.

Many women who do report other abuses do not mention the sexual violence they have suffered. Another factor that contributes to the invisibility of these crimes is that prosecutors investigating killings of women do not effectively investigate whether the victim was also sexually abused.

CONSTITUTIONAL COURT JUDICIAL DECISION 092

On 14 April 2008, the Constitutional Court issued a groundbreaking judicial decision (*Auto 092*) on the rights of women forcibly displaced by the conflict.[29] *Auto 092* made an explicit link between displacement and sexual violence. It concluded that the armed conflict and forced displacement had a qualitatively and quantitatively disproportionate impact on women. It also highlighted how certain victims of the conflict faced multiple forms of discrimination – as women and girls, as victims of displacement, and as members of Afro-descendent or Indigenous communities.

The Court ruling obliged the government to implement 13 specific programmes to protect women displaced by the conflict. The programmes cover issues such as sexual violence; health promotion; educational assistance; access to land; assistance for Indigenous and Afro-descendent displaced women; preventing violence against women leaders; the right to truth, justice and reparation; and psycho-social assistance for victims of the conflict.

The ruling also included a "reserved annex" of 183 individual cases of violence against forcibly displaced women – most of them conflict-related – some of which were first highlighted in Amnesty International's 2004 report, *Colombia: "Scarred bodies, hidden crimes": Sexual violence against women in the armed conflict.* The Constitutional Court ordered the Office of the Attorney General to investigate these 183 cases and to ensure truth, justice and reparation for these women. Finally, *Auto 092* called on the government to create individual protection schemes for a further 600 displaced women named in the Judicial Decision.

Guerrilla groups are thought to have been the perpetrators in 8.5 per cent of the 183 cases highlighted by the Constitutional Court, while the security forces accounted for 19.4 per cent of these cases, paramilitaries for 45.8 per cent, unidentified illegal armed groups for 4.5 per cent, common criminals for 4 per cent and a family member for 1.5 per cent, while in 16.4 per cent of cases the group to which the alleged perpetrator belonged could not be ascertained. Around 25 per cent of the victims in these 183 cases were children.

In response to *Auto 092*, human rights and women's organizations set up two Follow-Up Working Groups (*mesas de seguimiento*), one to evaluate progress in implementing the 13 programmes and another to keep track of the 183 criminal investigations being carried out by the Office of the Attorney General.

Both before and after the 2008 Constitutional Court ruling, various administrations, including the current government, have implemented or modified legislation and set up a variety of mechanisms designed to combat sexual violence and to incorporate a gender perspective into government policy. This is to be welcomed. However, these measures have yet to make a discernable impact on the reality of women's lives. More than three years after the Court issued *Auto 092*, the 13 programmes have still to be effectively implemented and little progress has been made in investigating the 183 cases.

However, *Auto 092* has proved a very useful tool for women's organizations working to combat sexual violence. As such, the ruling has become an effective mechanism for analyzing the issue and for carrying out advocacy work. It has ensured that the debate around sexual violence now includes issues beyond those related to impunity, such as psycho-social support and rehabilitation. It has also raised issues around developing public policy on women and it has motivated women survivors to talk about their experiences.

Some of the women whose stories are highlighted in this report are included among the 183 cases in *Auto 092*. However, they have not been identified as such because of concerns that to do so could reveal their identity and so compromise their future safety.

In response to the Constitutional Court's request to investigate 183 specific cases, the Office of the Attorney General issued Resolution 0266 on 9 July 2008, which was designed to speed up these specific investigations, and Memorandum 0117 of 10 November 2008, through which conceptual tools were developed to integrate a differential gender focus into investigations. However, the Office of the Attorney General has made scant progress in its investigations into the cases highlighted by the Court. As of September 2010, only five of these cases had been concluded, with guilty verdicts in four. However, in these four cases all the perpetrators were civilians. In the one conflict-related case that has been resolved, the accused, a paramilitary, was acquitted. At the time of writing, an appeal was pending in this case. In a further 140 cases, the investigations are still at a preliminary stage and the perpetrator has yet to be formally identified.

According to statistics from the Office of the Attorney General, in addition to the 183 cases in *Auto 092*, only a further 68 cases of conflict-related sexual violence are under investigation. All 68 are being investigated by regional branches of the Office of the Attorney General, rather than by the specialized units of the Office in Bogotá. None has yet resulted in a conviction; indeed, in 65 of these cases the perpetrator has yet to be identified.

Impunity for sexual violence committed by paramilitaries involved in the Justice and Peace process has been even more marked. By the end of March 2011, paramilitaries in the Justice and Peace process had admitted to more than 57,000 crimes; only 86 of these were crimes of sexual violence.[30] At the time of writing, not a single paramilitary in the process had been convicted of sexual violence.

The Office of the Attorney General has acknowledged four obstacles to the administration of justice in cases of sexual violence committed in the context of the armed conflict: the failure of survivors to report sexual violence and the failure to identify many of the victims included in the Constitutional Court's reserved annex; the lack of evidence due to an inability to locate many of the victims and witnesses; the length of time between the crime being committed and the start of the investigations; and difficulties in accessing many of the areas where the crimes where committed due to the presence of illegal armed groups. Although there may be some validity in some of the factors cited, they provide at best a partial explanation and ignore some of the more substantive barriers to justice.

Lack of data has made it difficult to carry out a detailed analysis of progress in the investigations. The Office of the Attorney General had repeatedly refused to release relevant data to the NGO Follow-Up Working Group, but did so at the end of 2010, after the Working Group lodged a petition in the courts. However, the information released is limited and confusing. For instance it makes reference to 191 cases, when only 183 are included in the Court's reserved annex. The Office of the Attorney General provides updates only to the Constitutional Court; these are not made public.

PROTECTION FOR SURVIVORS

The lack of protection for survivors is one of the principal obstacles to justice. It is a primary reason behind women's reluctance to report. It is also a major obstacle for those women who do lodge complaints and who then face threats and attacks to dissuade them from continuing their fight for justice. The NGO Follow-Up Working Group has been monitoring around 40 cases of conflict-related sexual violence dating from 1994 to 2009, many of which are

included in the Constitutional Court's reserved annex. In over half of these 40 cases, the survivor was threatened after she reported sexual violence to the authorities. Of these, fewer than half received state protection. Moreover, some of the women were threatened or forced to flee even after receiving state protection.

International standards provide that survivors of sexual violence should be treated with humanity and respect for their dignity and human rights.[31] This requires that effective protection and support be provided by the national authorities. Appropriate measures should be taken to ensure survivors' safety, physical and psychological well-being and privacy, as well as those of their families. Victims should be able to participate in the justice process, including by presenting their views and concerns at appropriate stages of the proceedings, in a manner which is not prejudicial to the rights of the accused and a fair and impartial trial.[32]

The authorities have implemented a number of physical protection programmes for victims of the conflict, witnesses, human rights defenders, trade unionists and journalists. These include the provision of communications systems, bodyguards, armoured cars and police patrols. Such programmes include the Protection Programme for Victims and Witnesses, co-ordinated by the Office of the Attorney General; the Protection Programme of Law 975 of 2005, for victims and witnesses participating in the Justice and Peace Process; and the Ministry of the Interior's Protection Programme for human rights defenders, community leaders, trade unionists and journalists.

These protection programmes have undoubtedly saved lives and the authorities have in recent years incorporated a gender perspective into these mechanisms. Such measures include Decree 1740 of 19 May 2010, which adapted the Ministry of the Interior's Protection Programme, and Decree 1737, enacted on the same date, which reformed the Protection Programme of Law 975. These measures are a sign of progress, but the failure to implement specific procedures and criteria to ensure that survivors have access to these programmes means that they have been of very limited real benefit to those at risk.

The two programmes for which survivors are eligible have two fundamental flaws. First, to qualify the survivor has to be under extreme or extraordinary threat; that is, she must already have been threatened or have been the victim of an attack. The measures are thus reactive not preventative. Second, a request for protection must be authorized by the Office of the Attorney General, which means that women must already have reported a crime and that a legal process must already be under way. Moreover, to qualify for protection under the programme co-ordinated by the Office of the Attorney General, the victims have to show that they are "effectively participating" ("*participación procesal eficaz*") in the investigation.[33]

These requirements highlight the lack of understanding of the needs and rights of survivors of sexual violence. Protection should be unconditional and the authorities should not put the onus on victims to justify their right to justice and protection. For example, a request made for protection by one woman listed in the reserved annex, who had been raped by two hooded members of the Black Eagles (Águilas Negras) paramilitary group, was rejected by the Office of the Attorney General because she had not identified her aggressors (which under the circumstances was impossible) nor provided information as to their whereabouts.

Protection programmes suffer from additional deficiencies.

- There is often a significant delay between a request being made to a specific protection programme and the protection being granted. In theory, the time limit for responding to a request for protection is 15 days, but many survivors have to wait 2-3 months or even longer for a reply. For example, one displaced survivor included in the reserved annex requested protection in September 2009, but failed to receive an official response until March 2010, by which time she had been forced to flee her home.

- There is a lack of gender training for officials in charge of evaluating risk and implementing security measures, including a failure to take into account psychological factors when assessing risk. The lack of a gender focus has resulted in inappropriate protection measures and discriminatory attitudes by officials. For instance, protection measures are not generally extended to family members, except for the provision of air tickets to families. This fails to acknowledge that women are usually responsible for the stability of their families and the physical and emotional care of their children. In one case a woman peasant farmer was offered armoured cars and bodyguards, hardly appropriate in a small rural community. A victim from Soacha, near Bogotá, had seven uniformed police officers turn up at her mother's house as part of her protection detail. After she complained that such a public and over-the-top uniformed presence could put her at increased risk of retaliation, all police patrols were withdrawn, leaving her at risk of further abuse. Women's organizations have suggested more "women-friendly" protection measures should be implemented, such as bodyguards who would accompany the woman on foot (*escoltas de pie*), but this suggestion was rejected by the Ministry of the Interior's protection programme.

- Protection measures are also temporary and provided for only three months. After that, a further risk assessment has to be carried out. Therefore, the long-term nature of some risk is not properly taken into account. This creates high levels of uncertainty and stress for the women involved and their families, especially their children.

- There is also sometimes a lack of co-ordination between the protection programmes and the Office of the Attorney General. For instance, there have been cases in which women have been relocated by the protection programmes, but this information was not passed on to the prosecutors investigating the cases, who then closed investigations because they could not locate the survivor or witness.

- Threats and attacks against people receiving protection tend to be treated in isolation. For example, a woman community leader who was in the Ministry of the Interior's protection programme for leaders and human rights defenders because of threats she had received, reported a new threat against her to the Office of the Attorney General. But rather than link the two threats, the prosecutor opened a new file and reportedly failed to inform the prosecutor investigating the original threat.

- Many women have also been excluded from the protection programmes because, since the supposed demobilization of paramilitary groups, the authorities no longer acknowledge the existence of such groups or, by extension, their victims. As such, victims of *Bacrim*, the name given to post-demobilization paramilitaries by the government, are not classed as victims of the conflict, and cannot thus generally benefit from the protection programmes.

Some women have also been thrown out of protection programmes for seemingly minor infractions. As one survivor of sexual violence told Amnesty International:

"[a friend] was also [in the] protection [programme] but one day they threw her out of [the] protection [programme] because she went out from where she was staying. One has to ask permission and she left because of an emergency, I don't know if it was because she had to take her child to the doctor, and when she returned, they gave her the tickets and [told her to] go, and where could that poor woman go? They threw her out, into the street.

PROTECTION FOR WOMEN HUMAN RIGHTS DEFENDERS

"If they attack the defenders, who will defend the victims?"
Woman human rights defender, February 2011.

Women human rights defenders, including community leaders, continue to be threatened and killed because of their work. Most do not report threats or attacks for fear of further violence and because they do not have confidence in the state's ability to investigate abuses and protect them. The few leaders who do report abuses have found that investigations into their cases have been closed without justification or remain at a preliminary stage. Only in very rare cases has progress been made in identifying the perpetrators of the many threats and attacks against women leaders.

The failure of the authorities to ensure effective protection for human rights defenders falls short of international standards. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms states: "everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms."[34]

CAROLINA

Carolina (not her real name) was a community leader in a town in Caldas Department. She was well known for mediating in local disputes in the town, which was under the control of paramilitaries. When in 2007 Carolina's son was raped by a boy linked to the paramilitaries, she reported the rape to the authorities. Members of the paramilitary group tried to get her to withdraw her complaint, but she refused. They therefore threatened her and forced her to watch them mutilate one of their victims. In May of that year, Carolina was kidnapped and raped by eight paramilitaries. She subsequently discovered she was pregnant as a result of the rape. When the paramilitary commander found out, he ordered his men to beat her; she lost the baby.

In June 2007, the protection programme of the Office of the Attorney General rehoused her in a nearby town. But the threats continued and so she was eventually relocated to Bogotá. She was in the protection programme for a year, but is no longer receiving protection.

The case continued to be investigated in Caldas Department and the prosecutor called on Carolina to testify in the town where the crime took place and where the perpetrators still lived. In September 2008, and after pressure from women's NGOs, the case was transferred to the Human Rights Unit of the Office of the Attorney General in Bogotá. However, the Unit has never called Carolina to testify. Moreover, in August 2010, the prosecutor was removed from the case. The new prosecutor has apparently yet to review Carolina's case.

ANA MARÍA

Ana María (not hear real name) is a leader of a victims' movement in Antioquia Department. In February 2007, she was visiting a survivor of sexual violence when men claiming to be from the Black Eagles paramilitary group arrived at the house. They told Ana María to stop her human rights work and raped both women.

Despite the attack, Ana María continued her work. The paramilitaries threatened her again and told her she had 15 days to leave the area. With the help of the Ministry of the Interior's protection programme she left for Bogotá in October 2007. She was in the protection programme for leaders for three months, but is no longer in the programme.

Ana María's case was transferred to the Human Rights Unit in September 2008 but, despite repeated requests, prosecutors from the Unit did not interview her until September 2009. That month there were two attempts to kidnap Ana María in Bogotá, but the authorities refused to reintegrate her into the protection programme. They claimed she did not qualify because she was not "effectively participating" (*participación eficaz*) in the investigation because she had been unable to identify her rapists.

In March 2010, Ana María issued a writ for protection of fundamental rights (*acción de tutela*) to order the state to include her in the Ministry of the Interior's protection programme, but the writ was rejected. Her appeal was before the Constitutional Court at the time of writing. Because of fears about her safety, and the failure of the state to protect her, Ana María decided not to co-operate any further with the investigation which, in any case, was making little, if any, progress.

In recent years, human rights NGOs, including women's organizations working with women survivors such as the Sisma Women's Corporation (Corporación Sisma Mujer) and the League of Displaced Women (Liga de Mujeres Desplazadas) have received numerous death threats from paramilitary groups, including the Black Eagles and the Rastrojos. In recent years, more than 50 women working with the Colombian Women's Initiative for Peace (Iniciativa de las Mujeres Colombianas por la Paz, IMP) have also been threatened, mainly by paramilitaries. Many of those targeted had reported crimes of sexual violence to the authorities.

On 8 April 2010, the Inter-American Commission on Human Rights granted precautionary measures to the Sisma Women's Corporation and to two women, and the children of one of them, who participated in a programme co-ordinated by the NGO. Precautionary measures call on the state to protect those under threat. The measures were granted in response to threats against the Sisma Women's Corporation by the paramilitary group known as the Metropolitan Bloc of the Black Eagles (Bloque Metropolitano de las Águilas Negras) in January 2010. The two women were also being threatened, and one of the women was told that her son would be killed. Some women's organizations have said that the threats against them and against displaced women participating in efforts to reclaim their rights increased following Judicial Decision 092 in 2008. They believe that this is partly because the Court's

ruling boosted women's confidence to report acts of violence and thus posed a greater threat to the perpetrators of human rights abuses and violations of international humanitarian law.

More than a year later, the protection measures agreed between the authorities and the Sisma Women's Corporation have not been implemented in full, especially with regards to making the NGO's offices secure. Moreover, no progress has been made in investigating the threats against the NGO. At the time of writing, the investigation into the threats was being carried out by one of the regional branches of the Office of the Attorney General, despite repeated requests from the Sisma Women's Corporation that the case be transferred to the Human Rights Unit in Bogotá.

On 19 June 2011, a number of women's organizations, including the Sisma Women's Corporation, received yet another email death threat from the Black Eagles paramilitary group. The email read: "Death penalty to the guerrilla bitches of the FARC that are opposing the policies of our government." It went on to say that they had 20 days to leave the city.

The investigating authorities often appear to discount a political motive behind such death threats, arguing that they originate from *Bacrim* trying to extort money. However, given that the targets of such threats are human rights defenders exposing human rights abuses by state actors, as well as social and community leaders and trade unionists, the authorities' claims are hard to substantiate.

"We weren't expecting the threats and they had the desired effect, fear, and, consequently this affected our work for several months while we sought to adopt the necessary measures in terms of protection, reporting [the threats] and international visibility".

Member of the Sisma Women's Corporation talking to Amnesty international about the threats in 2010 and their effect on the organization's work, February 2011

The failure of the state authorities to implement quickly and effectively the security measures agreed with human rights organizations and the failure of the judicial authorities to investigate such threats, means that the human rights organizations themselves have to devote considerable time following up on these issues, rather than focusing on defending and representing victims.

As the Inter-American Commission on Human Rights said in its 2009 Annual Report:

"Although programs and measures have been taken to protect victims of and witnesses to the violence caused by the armed conflict, the Commission is troubled by the danger and vulnerability to which defenders of women's human rights and civil society organizations that address women's human rights are exposed. The Commission observes that the domestic laws and State policies devised for such protection do not yet ensure that these human rights defenders and civil society organizations are effectively protected and thus able to carry on their daily mission."[35]

Family members of displaced women leaders have also been targeted. Jair Pantoja Berrió, the youngest son of Doris Berrió Palomino, a leader of the League of Displaced Women, was killed on 31 August 2009 in Cartagena, Bolívar Department. In the preceding months and

years, the Constitutional Court, through Judicial Decisions 200/07 and 009/09, had ordered the Colombian authorities to provide special protection measures for the League and in January 2010 the Human Rights Ombudsman had, through Monitoring Report 003 (*Informe de Seguimiento 003*), classified the risk facing the League as "extraordinary".

CENDY TORRES

On 30 March 2011, 15-year-old Cendy Torres Vergara was in school in Sincelejo, Sucre Department. Her mobile rang. When she answered, the caller told her that she would end up dead on the road. Cendy is the daughter of Ingrid Vergara, a human rights defender from the National Movement of Victims of State Crimes (Movimiento Nacional de Víctimas de Crímenes de Estado, MOVICE) in Sincelejo.

Cendy has received several death threats over the last few years that appear to be linked to her mother's work as a human rights defender. Ingrid has also been repeatedly targeted because of her work. She has been active in fighting impunity for human rights violations committed by the security forces and paramilitaries in cases in which local politicians are implicated, and in campaigns for the restitution of lands stolen by paramilitaries, sometimes in collusion with the security forces.

On 1 December 2010, armed men entered Ingrid's home, physically and verbally attacked Cendy, and threatened to kill her. The men left the house after removing the hard drive of a computer containing work Ingrid had been carrying out related to land issues, specifically documentation for a public meeting due to take place two days later.

In *Auto 092*, the Constitutional Court acknowledged the particular threats faced by women leaders. It called on the authorities to create a special physical protection programme for women leaders and to consult with women and their organizations on how best to implement this programme. However, this has yet to happen. Instead, the government continues to include women leaders in its existing programme for human rights defenders, which is co-ordinated by the Ministry of the Interior. However, this programme suffers from several weaknesses. For example, in some cases the protection measures require people to remain in their homes, making it difficult for them to exercise their leadership role. Also, to be considered for inclusion in the programme for leaders and human rights defenders, activists must belong to a legally recognized organization. This excludes many women leaders, especially those working in the regions or with displaced communities, who do not belong to legally registered institutions.

Most human rights violations, including conflict-related sexual violence, occur in remote rural areas where there is more often than not a significant guerrilla and paramilitary presence. This dissuades many judicial officials from effectively investigating crimes for fear of retaliation by the perpetrators against themselves or their families. Many judicial officials are reluctant to even travel to areas where illegal armed groups are present.

GENDER TRAINING AND SPECIALIST STAFF

Survivors of sexual violence are often ostracized by those around them. The nature of the crime carries with it deep-rooted social stigma and it is almost invariably the survivor, rather than the abuser, who is viewed as being shamed or dishonoured. In an armed conflict, women who survive rape are sometimes accused of having offered "something" in order to be allowed to live, or of being willing victims. For example, a prosecutor in the Justice and

Peace Unit told Amnesty International that paramilitary commanders did not need to rape because they had control over any person they chose.[36]

Principle 16 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers states: "Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid". [37]

The Office of the Attorney General has devised a specific methodology for investigating violence against women by parties to the armed conflict that is supposed to include a psycho-social focus (Resolution 0266 of 2008 and Memorandum 0117 of 2008). It has also carried out specialist gender training for prosecutors and other officials and, through Resolution 3788 of 2009, created a Gender Committee to facilitate inter-institutional co-operation. The Constitutional Court also called on the Attorney General to create a sub-group of three prosecutors who would specialize in cases of sexual violence against women. The Ministry of Social Protection as well as other state welfare institutions have also adopted measures designed to combat the discriminatory, condemnatory or stereotyped approach adopted by many officials when dealing with survivors of sexual violence. Moreover, Vice-President Angelino Garzón has repeatedly expressed his commitment to tackling the problem effectively, and to this end he has created a number of working groups and initiated a series of studies with the aim of improving the state's response to cases of sexual violence.

However, the specialist gender training carried out by the Office of the Attorney General has been ad hoc. At the time of writing there appeared to be no funds to repeat the training sessions and, as a result, many of the prosecutors and public defenders currently handling cases of sexual abuse have not been appropriately trained. Moreover, gender training is not an obligatory prerequisite for being assigned cases of sexual violence.

A related problem, reported by many of the women who spoke to Amnesty International, is the failure of some prosecutors to keep survivors informed about progress in their cases, as required by international standards, or even to make initial contact with them.[38] Many survivors have had to wait considerable lengths of time, sometimes as long as a year after reporting the crime, for the opportunity to give their testimonies to prosecutors. Some women did not even know which prosecutors were in charge of their case or in which town or city it was being investigated. This lack of official communication, coupled with the often traumatized emotional and psychological state of many survivors, has led many women to give up efforts to push for justice in their cases.

This lack of communication has been exacerbated by the lack of job security for prosecutors in charge of investigations. Prosecutors can be dismissed from their posts at any time. The loss of sometimes experienced and knowledgeable prosecutors often causes a breakdown in trust and confidence, built up over time, between the prosecutor and the survivor or witness. It also often removes well-trained specialists from the case. This lack of continuity also increases the risk that sensitive information will be leaked or lost.[39]

The application of numerous resolutions and memorandums setting out protocols for investigating sexual violence are welcome, but if there are no specialized personnel to implement them effectively, then these mechanisms will not bring about real improvements

in investigations. Several women's NGOs emphasized that, in their experience, many public prosecutors and public defenders are simply not aware of the various protocols and are therefore not in a position to apply them. Moreover, there are no sanctions in place for those officials who fail to implement these protocols.

The Office of the Attorney General also appears to have failed to implement the Constitutional Court's order to create a sub-unit consisting of three specialized prosecutors. At the time of writing, this sub-unit had only one specialized official working full-time. Another difficulty has been a lack of continuity – the post has been held by at least three different prosecutors since it was created following Constitutional Court Judicial Decision 092 in 2008.

ISOLATED REGIONAL INVESTIGATIONS

Most of the few cases of sexual violence committed in the context of the armed conflict that are being investigated, are handled by prosecutors based in regional branches of the Office of the Attorney General, rather than by specialized units, such as the Human Rights Unit or the Humanitarian Affairs Unit, in the national office in Bogotá. Of the 183 cases of sexual violence included in *Auto 092*, 109 are being investigated by regional branches. All 68 cases under investigation that are not listed in *Auto 092* are being dealt with by regional branches. The dispersal of such cases in regional offices has raised a number of concerns:

- Cases are often being investigated on an isolated basis, without examining the patterns of abuse carried out by the illegal armed groups. This could also lead to the incorrect classification of crimes. For example, if a crime is not classified as conflict-related, it cannot be classed as a crime against protected persons under international humanitarian law. This makes it difficult to attribute responsibility to those higher up the chain of command.

- Investigating sexual violence in the place where the crime took place carries significant security risks in an armed conflict situation. This is especially true given that in many cases the group to which the attackers belong continues to control the area. Paramilitary groups, and to a lesser extent guerrilla forces, have in many cases succeeded in infiltrating sectors of the state apparatus at the regional level. Local officials are also more susceptible to pressure from such groups. Moreover, victims, their families, as well as prosecutors, judges and lawyers are at greater risk of being threatened and even killed in the regions.

- Local judicial offices often lack the resources and the specialized personnel needed to deal with reports of sexual violence and prosecutors and other officials in regional offices are less likely to have had the gender training necessary to interview survivors and investigate such crimes appropriately.

- Prosecutors from the Office of the Attorney General in the regions can be attached to military units and operate from military bases. Such placements do not guarantee the conditions for independent, full and impartial investigations by the civilian justice system. Civilian prosecutors operating within military units are at risk of being placed under undue pressure, especially if an investigation implicates a member of the armed forces.

THE CARE AND REHABILITATION OF SURVIVORS

Sexual violence can have a devastating impact on the lives of survivors, especially if they are rejected by their families and communities and do not receive appropriate assistance to recover from the physical and mental damage caused. Apart from the immediate physical injury and mental anguish, women who are raped run the risk of becoming pregnant or of contracting sexually transmitted infections (STIs). Many of the survivors who talked to Amnesty International had children who where the result of rape.

There can also be an increased risk of developing other health problems, including chronic pain, physical disability, misuse of drugs and alcohol, and depression. In terms of reproductive health, sexually abused women are more likely to have unwanted pregnancies and gynaecological problems and to develop problems in their sex lives.

"I changed towards my children. I began to treat my daughter harshly. I became a domineering mother who had to learn to defend herself, to not depend on anyone, to defend myself from men, to be careful who I mixed with. So I was very harsh with her. So my daughter left home. She left home because she couldn't stand me. I practically destroyed my children. My daughter left when she was 15 years of age and she now has a place, but she did it all by herself, not with the support of her family. I would have liked to have enjoyed her youth with her and that she would have left home like any other woman leaves when she finds a boyfriend."

Survivor of sexual violence, speaking to Amnesty International in 2011

Data provided by one women's NGO, Sisma Women's Corporation, which is following a number of cases of sexual violence, gives an insight into the impact of sexual violence on women, although the sample is statistically small. Of 52 survivors of sexual violence being supported by the NGO, the majority continue to suffer from depression, anxiety and low self-esteem; 30 per cent actually attempting suicide. Some 35 per cent had unwanted pregnancies, while almost 30 per cent contracted STIs. Just over half of the survivors have reported the violence, although only after intensive professional therapy provided by women's organizations. This highlights the crucial importance of the psycho-social work carried out by women's NGOs that has helped survivors overcome the fear of seeking justice.

Experience of addressing the needs of victims of sexual violence around the world has shown that the following free services must be made readily available: immediate medical attention for injuries; medical monitoring to deal with the clinical consequences of the violent act; immediate provision of emergency contraception and prophylactic treatment to avoid STIs, including post-exposure prophylaxis (PEP) for HIV;[40] immediate psychological attention and crisis intervention for the victim and her family; specialist psychological support to address the trauma; forensic assistance; assistance from a social worker; and protective measures to keep the victim safe from her attackers.

International standards require states to provide survivors of sexual violence with health care and rehabilitation.[41] Under Colombian law the state has an obligation to provide health care to victims of sexual violence, including psychological and psychiatric assistance;[42] access to examinations and treatment to prevent HIV/AIDS and STIs; and treatment for physical and emotional trauma.[43] However, in reality, most survivors do not seek help immediately because of fears about being stigmatized; because in practice they do not have information

about or access to the limited services available; and because of concerns about security. Access to health care services is particularly difficult in rural areas, where much of the conflict-related violence occurs.

Many survivors of sexual violence have no choice but to obtain medical services and immediate care, such as emergency contraception, through social and welfare networks run by women's NGOs or private organizations. Although abortion in cases of rape, serious foetal deformity or where the mother's health or life is at risk was decriminalized 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 there. In any event, the possibility of 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 to travel to the few facilities available, or may be simply unaware that such services exist.

DANIELA

In April 2009, 18-year-old Daniela (not her real name) and her friend were raped in Bolívar Department by a man suspected of being a paramilitary. Daniela described what happened.

"I went out to look for firewood with my friend. When we were walking home a man approached us and told us we had to go to the bush with him. He had a knife and he threatened us with it. He forced us to strip. I told him I had my period and he said he didn't care. He then forced us to kiss each other and to lie down on the ground. He spat in our faces so that we would swallow his saliva and raped us. He forced us to have oral and anal sex.

We told him to let us go because we had babies who were waiting to be fed, but he said that if we didn't do what he told us to do, we would not see our babies again, and that he belonged to the Black Eagles and the Rastrojos [paramilitary groups]. Afterwards I managed to push him and he fell over and we began to run, but he caught up with me. My friend escaped, and managed to raise the alarm. He made me walk a lot and said he would use me to escape [from the town]."

The young woman who escaped raised the alarm with a women's organization that was visiting the area. The police said they could not respond since the woman was being held in a rural area where the army had jurisdiction. The army also refused to help. After the women's organization mobilized other women to set up a search party, the police and army reacted and followed behind the group of women. The man was captured and the young women were taken to the local hospital. There, Daniela and her friend were treated with disdain by a woman doctor. One of the members of the women's organization who accompanied them to hospital said: "her attitude was very contemptuous even though she was a woman. She showed her disgust because they smelled, because they were wearing dirty clothes covered in blood. Let's say that this was quite shocking for them [the victims]."

The doctor failed to send the clothes for forensic testing. As the member of the women's organization said: "the doctor told us that they didn't have morning after pills to give her, that it was their duty but that they didn't have any. At no point did a psychologist see them because there weren't any in the hospital". Both the morning after pill and psychological support were in the end provided by the women's organization.

The rapes were reported to the authorities on the day of the attack, and the following day officers from the intelligence unit of the police visited Daniela and her friend. One of the officers was wearing a T-shirt with a

picture of a penis with the words "no se apene" ("don't be sad", which plays on the word "pene", Spanish for penis). They asked the women about their sexual history. The case was reported in the local media, which questioned how one man could have raped two women without them having wanted to have intimate relations with him. The women's NGO believes the story was leaked to the media by the hospital.

The attacker was tried, convicted and sentenced to six years in prison, but as a civilian. His status as a paramilitary was not acknowledged, since the authorities argued that no paramilitaries were operating because they supposedly demobilized in the mid-2000s. The women's organization believes the case would never have reached the courts if they had not happened to be there at the time to put pressure on the authorities to act.

One NGO providing psycho-social assistance to a number of survivors of conflict-related sexual violence, all of whom were subsequently threatened and forced to flee their homes, told Amnesty International that although many survivors are diagnosed with post-traumatic stress disorder, few if any received psychological treatment provided by the state. In the few cases where such help was received in hospitals, the treatment was rarely carried out by specialists. In one case, there were delays in agreeing to carry out a legal abortion on a 13-year-old girl who had been raped by paramilitaries in the east of the country. By the time it was agreed to carry out the procedure, she had changed her mind. The girl is reportedly so traumatized by the experience that she has rejected the child. In another case, a woman raped in 2009 had to wait for more than two weeks to receive retroviral drugs from state health care providers, nor did she receive any psycho-social assistance which might have helped her to report the crime officially. An NGO eventually paid for psycho-social assistance and organized and paid for the survivor to move to a safe area. The state refused to help unless she was prepared to report the attack to the judicial authorities.

Many of the survivors who spoke to Amnesty International had not made a formal complaint about the sexual violence they had experienced, but of those who had, most said that they would not have had the strength to do so without the psychological and emotional support given to them, mostly by women's organizations. As one woman community leader said:

"I think what is very important, especially in cases of sexual violence, is that women are emotionally able to go through the process of reporting. That is, to have a certain strength, power. In particular, sexual violence is so shameful to talk about."

The Office of the Attorney General has only one psychologist in each of its 19 regional branches. One NGO which is supporting 23 survivors of conflict-related sexual violence reported how only one of these women – a six-year-old girl – received psychological assistance provided by the state. Even in this case, the support was given only after it was requested by a private organization to which the girl had been referred by a regional branch of the Office of the Attorney General to assess whether she was actually telling the truth about the attack.

In recognition of these difficulties, on 2 February 2010, the Constitutional Court issued Sentence T-045, which highlighted the lack of state medical and psycho-social assistance for survivors of the conflict. It called on the Ministry of Social Protection to adopt a differential approach to women survivors and, most importantly, called on the Ministry to implement

SURVIVORS SPEAK OUT

SEXUAL VIOLENCE IN COLOMBIA

AMNESTY INTERNATIONAL

"He began to… sexually abuse me, exploiting my vulnerable position as a single mother in a strange place, and his social position in the region as a man and as a member of or collaborator with [the FARC]."

ANGÉLICA'S STORY

For more than 10 years Angélica was kept as a domestic and sexual slave by a man she believed to be a member of or a collaborator with the FARC guerrilla group. Her story begins in 1995.

"I was looking for a better future so we left our home department and travelled to Meta Department, where I did various jobs… But while we were there, my mother developed a blood clot and we didn't have any money for the hospital, so I borrowed some money from a man. He began to come by where I was living. I had nothing to repay the debt with, so he said I had to pay it off by working on his farm, where he raised cattle and where other people worked. So I moved to live on the farm and took my young son with me.

After a few days working on my new boss's farm, he began to turn up drunk and would sexually abuse me, exploiting my vulnerable position as a single mother in a strange place, and his social position in the region as a man and a member of or collaborator with [the FARC]. There were recurring acts of sexual violence which became more extreme. One night, at around half past two in the morning, after I'd only recently moved to the new farm, I was attacked in my room by several men who [my boss] brought to his house for this purpose. After that, life changed completely for me as a mother, and for my son.

I lived with this man for 10 years, 10 years I put up with it. Cooking for around 100 workers. I'd get up at two in the morning. I'd be up until midnight and then wake up again at two the next morning… Then one day four men came. They said the boss had sent them… they raped me there and then, brutally. That's how I have a little girl now. But I haven't told her the truth…"

In November 2005, Angélica and her 19-year-old son were fishing when a group of armed men, whom she believed to be FARC members, came up to them and asked them where the farm owner was. They said he owed them money. Angélica told them that he had gone off a few days earlier and she didn't know where he was. The men grabbed her son and dragged him away, saying that they would keep him until the farm owner showed up. Angélica begged them to leave her son alone, but they took him anyway. The men gave Angélica eight hours to get out of the area. She fled to Villavicencio, then to Bogotá. From there, they travelled out of the city into the countryside in Valle del Cauca Department and found shelter in an abandoned house that a *campesina* let them use. Angélica's son finally managed to escape from his captors in May 2006.

Throughout their ordeal, the family were the targets of threats, harassment and attacks. In March 2008, for example, two armed men came to the house, threw Angélica to the ground and beat her to try to get her to tell them where her son was. They threatened to attack her children and her brother, who is blind, if she reported the attack: "Remember you have a beautiful daughter and there is your other son and the son-of-a bitch blind [brother]".

In September 2008, Angélica's 13-year-old daughter was sexually assaulted by a neighbour. He was arrested, but Angélica was prevented from attending the hearing:

"On the day of the hearing, the police came and told me it would take place at nine in the morning… When I got there the prosecutor told me, 'You can't come in'. I told him, 'How come, if I am the girl's mother?' He said 'No, because the person who made the complaint was her teacher, another woman'. So I said, well, they didn't say that another woman should come but that her mother should. Anyway, I couldn't get in."

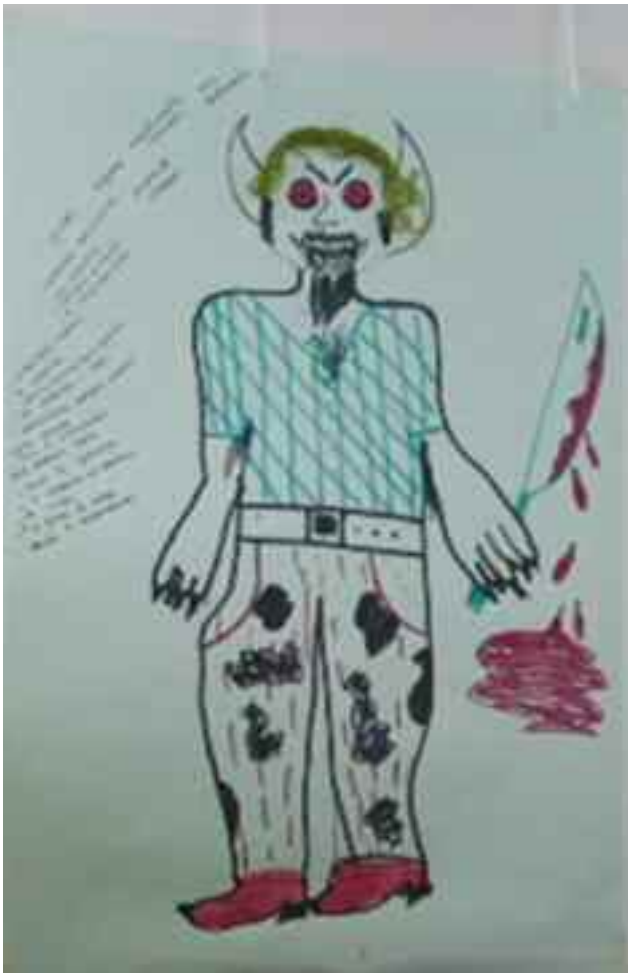
The daughter's attacker was released in November 2009 on mental health grounds.

The threats continued, forcing Angélica and her family to move away from the area. Forcibly displaced for a second time, they returned to Bogotá and then to their home department of Quindío. In neither place was Angélica able to get the authorities to offer the family protection or humanitarian aid. So, once again, the family moved back to Valle del Cauca where, despite Angélica's repeated requests to the authorities, no steps were taken to protect her daughter

from the man who had attacked her in September 2008. In May 2010, he struck again.

"My daughter left early in the morning to catch a bus. I didn't go with her that day because I was very ill. When I got up, I found her in the yard, crying. I asked her why she hadn't gone to school and she said, 'I couldn't go because I was raped.' She told me that we couldn't report it to the police, that our lives would be in danger if we told anyone or went to the courts. We were too scared to make a complaint. My daughter said, 'Mum, don't say anything, for uncle's sake, for granny.' So I didn't report the rape. Why? Because my daughter asked me not to and told me that we shouldn't complain, that a man had threatened her with a knife and had told her to remember about my blind brother and elderly mother and that I had to go out to work and that she and the children were often left alone… In any case, nothing had happened when we filed a complaint the first time round…

Around 2008, I reported the whole thing. I hadn't dared to before because I didn't feel able to and even now I'm still afraid. I've knocked on so many doors and found not one of them open to me. I've been to the Human Rights Office, the Office of the Attorney General, the Presidency, the Ombudsman. I've been to all the bodies here in Bogotá, all of them. I can't pay for transport, I've had to walk. With blisters on my feet, bleeding by the afternoon, horrible. I've had to burst them so that I could get up and do the same all over again the next day. Thirsty, hungry but still fighting, knocking on doors right, left and centre."



© Corporación Sisma Mujer

Above: This painting was done during a psycho-social workshop with women victims of sexual violence in May 2010 in Bogotá.
Page 1: Members of a support group for survivors of sexual violence create a circle with their hands, March 2011, Bogotá.
© Corporación Sisma Mujer

"I've knocked on so many doors and found not one of them open."

The real names of most of the survivors whose stories are told in the following pages have been withheld to protect them and their families. The pseudonyms used were mostly chosen by the survivors themselves. As far as possible, the stories are told in the survivors' own words and the quotations are drawn largely from interviews with Amnesty International researchers in February 2011. Some of the interviews were carried out by local NGOs and are reproduced here with the consent of the survivors.

© Fundación Nydia Erika Bautista para los Derechos Humanos

THE GALÁRRAGA FAMILY'S STORY

On 1 January 2001 at 6pm, several paramilitaries from the Bloque Sur (Southern Block) came to the house of the Galárraga Meneses family in La Dorada, Putumayo Department. They dragged away four of the sisters – 19-year-old Jenny Patricia, 18-year-old twins Nelsy Milena and Mónica Liliana, and 13-year-old María Nelly. A fifth sister, Nancy, described what happened after the sisters were abducted.

"My mum turned up at my house at around 8 o'clock that night. The girls had been taken at six. We began to look for my sisters and we spoke to the [paramilitary] commander. We told him to let them go, they had done nothing, and he said, not to worry, they were being taken to a meeting and would be released at 11 the next day. I told him they had nothing to do with any of this and then he said, 'Get lost if you don't want them dead', and then, 'Don't bother shouting, they're already dead'. He told me and I told mum and she passed out at the thought. No one helped us, people were too scared, in those days they'd kill you for nothing. We stayed there until midnight trying to get them to listen to us, and then the commander came out and told my mum, 'Stop crying, you old slag, I don't want to see you around this town tomorrow'."

The next day the family fled to Nariño Department and went to see the local Ombudsman, who refused to register the report of the sisters' abduction. According to the family, he refused to help them because he feared reprisals from the paramilitaries. The family received a similar response when they tried to report the abductions to the police.

The family tried to return to La Dorada in 2005. Nancy and her mother searched hundreds of grave sites in the region where victims of paramilitary violence were believed to have been buried. The mother described their desperate search:

"We came across an old abandoned house that no one was living in, we had nothing but sacks to wear but I made myself at home, dug a well, worked, organized things. I would get up early and make the children some breakfast. The children didn't know what I was doing, but after sending them to school, I would take a machete, a stick and a shovel and go out into the countryside to look for my daughters. Whenever I came across a sunken hole, I would dig. The first dead bodies that were removed, they've only been returned recently, well it was me that found them, and I informed the Attorney General's Office. I found ribs, legs and arms, behind the house where I was living… I was determined to find my own flesh and blood so I went to El Arco and I found four graves, and I marked the place where they were. I got back at two in the afternoon that day and then I had a call, threatening us. They told me to disappear, and said they would kill me for going out grave hunting."

Many families of the disappeared asked the family for help in finding their loved ones. Eventually, and after repeated threats, Nancy and her mother were offered some protection by the authorities but, according to the mother, the protection measures were inappropriate.

"Officers would come and visit me. Not one, but 10 or 15 police officers would turn up at the door of my house. The neighbours weren't happy about the police turning up every week or so. People didn't know why they came to see me, because we wanted to keep the security issue quiet. Why were there 4, 5, 10 officers outside the house? The neighbours were saying, 'What can this old woman have done? She must be a thief'."

In February 2010, a unit set up under the Peace and Justice process carried out an exhumation in La Dorada. It found a

© Fundación Nydia Erika Bautista para los Derechos Humanos

***Left and above*: Tributes to the Galárraga sisters, Bogotá, July 2010, (*above*) and Putumayo Department, November 2010 (*left*).**

grave containing the remains of four women and girls. In May, it confirmed that these were the bodies of the four Galárraga sisters. Forensic experts reported that the bodies were partially clothed and that the four had been tortured; three had been dismembered before they died, probably with a machete, and the fourth had been bludgeoned to death. According to the National Institute for Legal Medicine and Forensic Sciences (Instituto Nacional de Medicina Legal y Ciencias Forenses, INMLCF), the state in which the bodies were found, including ripped clothing, left little doubt that "penetration or other forms of sexual activity had taken place". Despite this, the Office of the Attorney General did not investigate whether the four had been the victims of sexual violence.

The identity of some of the paramilitaries who abducted the four sisters is known; some are even involved in the Justice and Peace process. At the time of writing, none of them had been called by the investigators to give evidence and none had been charged with enforced disappearance, murder or rape.

The authorities returned the bodies to the family in a public ceremony on 8 July 2010. The Attorney General and the Vice-President were present at the ceremony. However, the family still feels that the state has failed to fulfil their right to justice.

"You can't rely on the state for anything these days, they never offer any solutions. The day they took my sisters, the mayor was there, the police, the army, and what did they do? They did nothing. They [the paramilitaries] took my sisters right in front of them, saying they were criminals, even though that same state now says the girls were innocent."

Nancy Galárraga

"With the years that have passed… People have moved away. So it is very difficult to prove a case of sexual violence".

Support worker, member of a women's organization

CLARA AND LISBETH'S STORIES

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 from a local army unit raided the house. Clara described what happened.

"People began to arrive for the party at around 11 in the morning. That's when everyone started to get together. At around 7 or 7.30 that night, the army turned up. A lot of them… I even said to my mum, 'Mum, the army has arrived'. We carried on as usual. We never imagined what they were going to do.

When they said, 'We are the National Colombian Army', everyone stopped talking because they always did serious things. They turn up at parties, humiliate people, take their money, mistreat them, throw them to the floor, even grope the women. They remove some people from parties. Well, they turned up at my house. They said, 'Everyone on the floor'. Then they began to mistreat us, in the worst possible ways.

They called out, 'Who's in charge here?' My mum got up and said 'I am'… They pointed two guns at her. They were laughing at her, saying they were going to kill her. As soon as they'd made her stand up, they made her get down on the floor again. Like madmen, degenerates. Then they made me get up. One said, 'Are you the daughter of this old woman?' 'Yes'. They made me stand up. They pointed guns at me, humiliated me. It was awful. They threw me to the ground. They said I was a guerrilla. They said my mum and I were both guerrillas although everyone knows this has never been the case.

Now everyone was face down on the floor. We could hear the men saying, 'Hand over the wallets'. What for? For the money. They asked a lot of people for their ID. They stole jewellery from the women, and from any men who were wearing some. They took anything of value. They even stole a girl's trainers, a girl I remember well. A friend.

In this and other ways they were going to humiliate us. They went into the kitchen where my mum used to do everything. The women who were cooking had left some oil heating on the stove. How they humiliated them, threatening to throw oil over them.

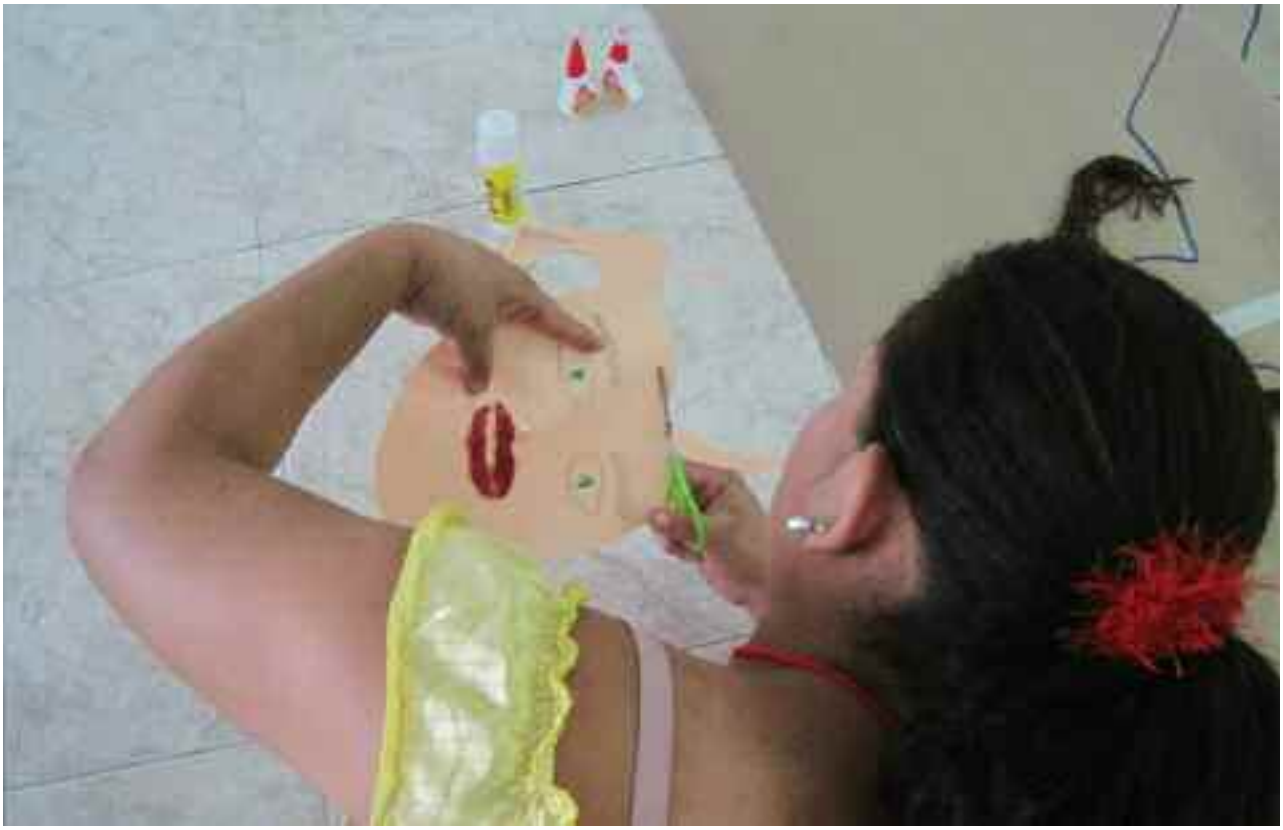
They made my mother get up, then they made her lie face down again. They took a young man, tied his hands behind his back. They threatened him, they said he was a guerrilla. They made a lot of people stand up, a lot of men. They took him from there. They took him away.

They came back and they made me stand up. They felt my body and they found money. They said it was 'guerrilla money'. They humiliated me again. The same things they'd said before. They took the money from me. Then they made me lie face down. They began to grope my body, putting their hands on my breasts, in my vagina, they put their fingers in me, they groped me very roughly and they did this to many of my friends, they treated us very badly.

They took the young man, someone we all knew around there, someone who had done nothing wrong. At around 6 in the morning, [his body] turned up in the town, dressed in a guerrilla uniform, with bombs and a gun. Can you imagine? They killed him. He left behind a wife and young child.

And in the meantime my mother watched, humiliated, as they did bad things to me, what we all suffered there. But the worst thing was that my mum had worked so hard to give me and my little brother a good start because her dream was always to do well in business and be able to be with us all the time. But now my situation is very different since all this. We lost everything. This is what we are demanding. Justice! And that we are at least compensated for everything my mum has worked so hard for. And we are helping her to fight for this"

Lisbeth told Amnesty International:
"It was after about half an hour that it happened. They made us lie on the floor. They made us all lie down. Then they stood on me. I was face down and they walked all over me. They lifted my head so that I couldn't see them. Their faces were half covered with black handkerchiefs and camouflage trousers but no shirt, only their black sweater, gilet and gun. And afterwards they made me stay, they made me look at them, and then soon after they walked on me again.



© Corporación Vínculos proyecto CRIS EIDHR/2008/170-209

Psycho-social workshop for women survivors of sexual violence in Meta Department, February 2011.

I had my brother's mobile. They stood me up, they searched me, they found it and took it and then shortly after they had made me stand up, they took me to a room and made me take my clothes off. They made me take my jeans and blouse off. I took them off. Then they said that [I should take off] all my clothes. They made me take off my underwear. They threw me on the bed. Soon after they came and touched my back. I don't know what they were looking for. They told me: 'It's not you, get dressed'. I got dressed and they led me out of the room."

In June 2010, seven soldiers were sentenced to prison terms for their part in the killing of the young man. However, the sexual assault was not investigated. Only in November 2010, and after considerable and prolonged pressure from women's organizations, did the Office of the Attorney General reportedly agree to open an investigation into sexual abuse by the soldiers. However, a member of the women's organization providing support to Clara and Lisbeth believes the length of time that has lapsed will make it harder to bring those responsible to justice:

"Having a medico-legal examination now will not produce the evidence we need. This case can only be based on statements from the victims. And the worry now is that, with the years that have passed, well, it all loses credibility. The soldiers have been transferred to other areas now. The people involved have moved away. So it is very difficult to prove a case of sexual violence and it is highly likely that the Attorney General's Office will end up archiving it, saying that he could not find the victims… Clara has moved to another department because of what happened so when the prosecutor goes to interview her she won't be here. The Attorney General's Office has still not taken a statement from Clara about the sexual violence.

We have not been able to clarify who is in charge of the investigation because the Human Rights Unit [of the Attorney General's Office] in Cali tells us that the case is with the Human Rights Unit in Bogotá because these attacks took place in the context of the armed conflict. But when we check with the Human Rights Unit here [in Bogotá] they say no, it's in Cali… So we currently don't know if it's in Cali or Bogotá. This is not unusual. Investigations get lost. This is quite common."

"How many people went to jail because of what happened to me? Not one. And I've pointed them out… The same justice system makes excuses for them, instead of supporting you, they make excuses for them and this is what makes me most angry… really there is no justice. Not for me anyway."

SHIRLEY'S STORY

Shirley was 17 when a paramilitary group arrived in her village in Antioquia Department in February 2005. She and her two young sons were taken to the paramilitary camp where she was repeatedly raped. One of her children was kept in the camp and she was able to see him occasionally. The other child was taken to a nearby town; she was not allowed to see him.

"I never knew whether I was having a period or not because I was always bleeding, there were so many men. They used to put coca in my vagina so that they could carry on. Several months passed… I used to cry all the time for the child that they wouldn't let me see… The paramilitary that took me… suggested to other commanders that I should be sent to the town, to a bar to become a prostitute and that they would get all the money I made. I said yes, even though I wouldn't be able to leave the town, so that I would be able to see my other child. I had to make a certain amount in order to be able to see my son…

Time passed, several months passed and then a doctor saw how I was suffering and so I told him all about it. He said, 'If you want to leave the town, why don't you try and disappear' but they always caught me and beat me. Then the doctor said, 'The way to get out is to become ill, you can't have a sick woman in the town, you can't have a sick prostitute'… So I tried to catch something so that I could leave. The day came when the doctor said, 'Well, that's it. You're ill.' I was scared, thinking it was AIDS and I looked at him and he said, 'No, it's not AIDS. It's another one of those diseases.' And so I left that place, I left."

The paramilitaries finally let her leave the town for treatment in August 2005. At first they refused to let her take her two children, but they finally relented after she promised to return.

"I managed to leave. I didn't go back, not even for clothes. No. When I got to Medellín, sick… I found I was pregnant by a paramilitary… It was a girl and they cut it out of me… In February I had to have a Caesarean because the baby was dead. Because of the beatings, the doctors said, because of the beatings the girl had died…

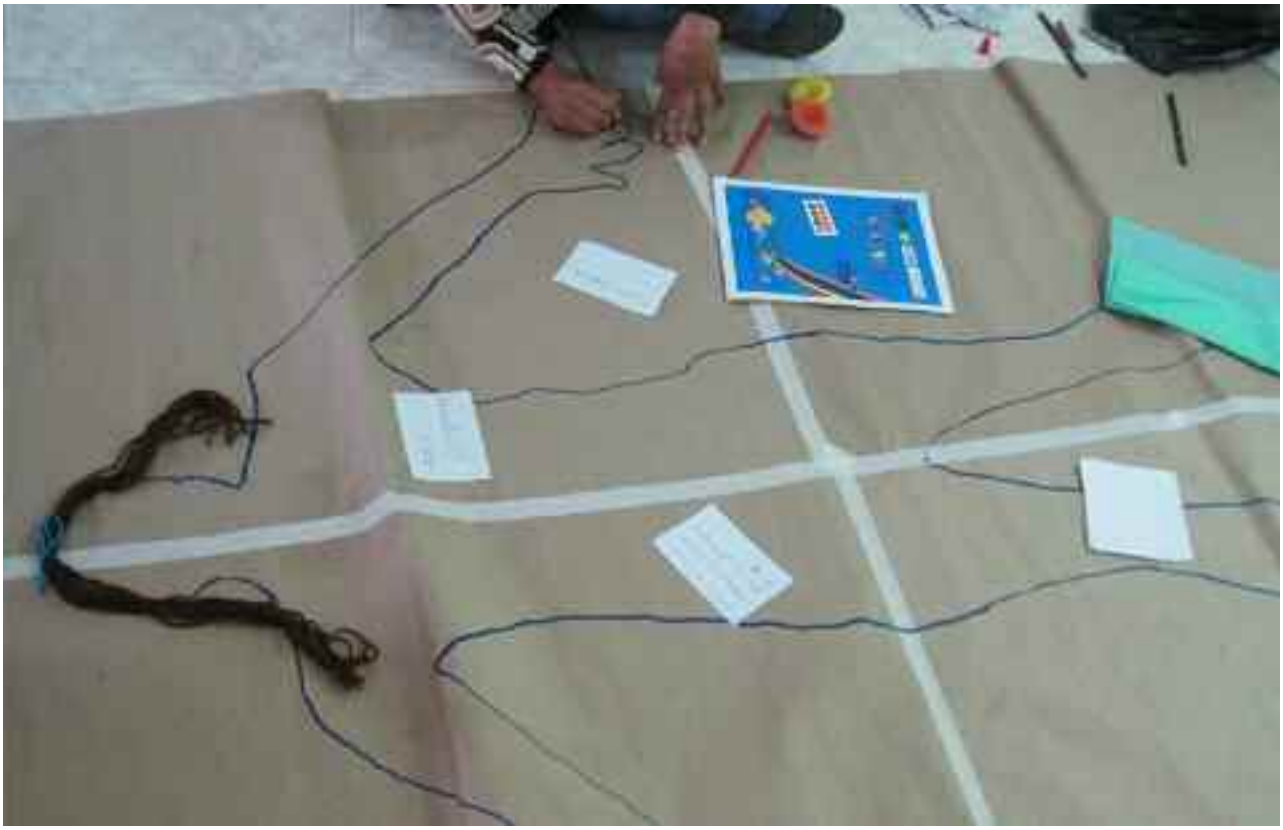
Then the threats began. Almost as soon as I left in 2005… 'You know that if you say anything we'll kill you, you whore, you slut, you and your children. I'll send you your son's head in a bag'."

In December 2008 Shirley went to the Office of the Attorney General and an investigation was opened. After repeated requests from the NGO supporting Shirley, the case was transferred to the Human Rights Unit of the Attorney General's Office in Bogotá in June 2009.

"When I reported it, [a person from the women's NGO] told me, if you want, I can submit the case for you. You say as much as you want to say and anything you don't want to say, you don't have to. I said I couldn't go on any longer. I was thinking of killing myself. I didn't know what to do all alone. My children were talking to me and I was shouting at them. I'd said nothing for four years and now I had made a complaint. I spoke to a prosecutor. I told her everything. I decided to report it. Why? After all, it does no good to file a complaint, there are the threats, the danger to your life; you demand the right to be respected as a woman but they make threats against you. I reported it so that people would realize that this kind of thing goes on."

The authorities then agreed to put her in the government's protection programme and she was moved to a safe house in Bogotá. However, a paramilitary belonging to the same group as her attackers was also housed there, receiving protection under the Justice and Peace process. Shirley was moved to another safe house, but again found that a paramilitary was also being housed there.

"After I reported it, I began to receive threats at home. I was under protection for seven months. But, there's always a but, the protection wasn't that great. How can you be protected alongside members of the very same [paramilitary] group? I was given protection and found myself with [a paramilitary] from the same group. I asked to be moved so that I wasn't with him because he recognized me. He was also under protection.



© Corporación Vínculos proyecto CRIS EIDHR/2008/170-209

Workshop for women survivors of sexual violence in Meta Department, February 2011.

They sent me somewhere [else] but there was another of them, also protected. I got no psychological help from the government. I did from [the NGO], but from the government… nothing. The Attorney General's Office never called me. One day, we had an interview with a prosecutor from there and she told me: 'They [the attackers] have so much money, they're big bosses, they could pay for models, beautiful women – suggesting I was fat and ugly – if they can have women, models, why should they have you?', as if to say I was lying… So you see, I made a complaint of sexual abuse and they treated me like a liar. But if I had been a model, someone well-known, then the justice system would have worked differently…

Now my life has been shattered, I feel as if everyone is looking at me, pointing at me. I feel that if I put on certain clothes, they are going to see what happened to me… I feel that if I go out into the street and someone stares at me it means they know all about me… When I managed to escape, I said 'that's the end of it' but that's a lie, it's not the end of it. I left when I was 19 and now I'm 24 and it's just the same. It's totally the same… you still get the finger pointed at you, this has happened to me… and it never goes away. Never in all your life.

… what makes me most angry is that I think the government should help someone who is suffering… they help the demobilized [paramilitaries] with money so that they can carry on, that's what makes me most angry. Isn't it great… you're the victim… they should support you financially until you are better or until you are in a better psychological state. But no, they support them. A friend of mine said that our mistake was to trust in the justice system… And I think she's right because, well… I reported it and what happened? How many people went to jail because of what happened to me? Not one. And I have pointed them all out. They ask you, 'What were you doing in the countryside? Why were you wearing shorts? Why such and such? Are you sure?' They point the finger at you, and what happens to them? They get off scot free. Life is very hard and this is why. The justice system makes excuses for them, instead of supporting you, they make excuses for them and this is what makes me most angry… really there is no justice. Not for me anyway."

Shirley has left Bogotá. She is no longer receiving protection from the state. Shirley has identified more than 35 of her abusers, some of whom are taking part in the Justice and Peace process. Not one of them has been held to account.

"The following week a friend of ours had a call from a man who told him we had been raped and that he should warn us that, if we talked, they would kill us… We had to move because of this threat, and we're too scared to report it."

ANDREA'S STORY

Seventeen-year-old Andrea and her sister were at home alone in November 2009. Their mother had gone to visit their brother who had been imprisoned the year before for the killing of two members of the teachers' union; he has always maintained his innocence. Andrea describes what happened that day when several men from the local paramilitary group arrived at their home.

"Some young men came to the home. We don't have any security, you can just push open the door and come in, so I thought it was my father and I called out, 'Dad!' Then four armed men entered, came into the room. I said to my sister, 'What's going on? What's happening?'… They tied us up, covered our eyes, blindfolded us and we walked a long way. After a time they stopped and said, 'We're here, this is it, no further'.

They asked about my brother, who was in prison, about how we were all guilty, but we just hugged each other, held onto each other and my sister began to cry.

Then they took my sister, and she was shouting 'Andrea, Andrea!' I didn't know where she was. Her shouting became more and more distant and I was shouting back 'What's going on?' They took her first, I don't know where, because I was blindfolded. Another one stayed with me and said 'Look, nothing's going to happen to your sister, your sister will be right back' and so on…

She began to shout, and cry and, when I heard her, I began to cry as well. All I could do was pray and cry. Then a young guy came. I said, 'What are you going to do to me?' He said, 'They're going to rape you.'

I began to cry harder and I began to panic, I said, 'Please, anything but that!'… I realized that one had come and begun to rape me and, after he left, another arrived. I could feel it wasn't the same person even though I was blindfolded. I wanted to try and escape but I was tied up and blindfolded. So I just screamed and screamed and my sister was also screaming. Three of them raped me…

Then afterwards my sister came back. 'Are you OK?' I said, 'I'm OK'. At three in the morning they took us blindfolded to the road, I could hear the river and, near the house, they let us go. They warned us that if we reported them there would be reprisals… When they released us they told us we should be grateful they hadn't killed us.

When my brother called, from prison, I told him, but I said 'Don't tell mum because she will want to come home straight away, and I want her to stay with you.' So my brother said nothing and didn't tell my mum. But when she got home, I told her what had happened. She began to cry because, psychologically, we weren't in a good state. We felt very uncomfortable around men. The day we had to go back to school I remember we looked at the boys with revulsion and we left our classes and didn't want to go back again.

The following week, a friend of ours had a call from a man who told him we had been raped and that he should warn us that, if we talked, they would kill us. [XXX] told us about the threat and asked if it was true what the man said had happened to us, but we denied it because we felt ashamed. We had to move because of this threat, and we're too scared to report it."

© AP Photo/William Fernando Martinez

"I'd like to form a women's group for people who have suffered in this way… I want to get well, to feel free, to live peacefully and without fear."

RAQUEL'S STORY

Raquel was about 10 minutes away from her home village in Meta Department in February 2007 when she was stopped by three men. The men, members of the 44th Front of the FARC guerrilla group, threw her to the ground. One held her down while another ripped off her underwear. All three men raped her. Before they left, they told her to keep her mouth shut and that they were watching her. Days later, Raquel decided she had no choice but to leave the area after her 14-year-old daughter told her that the men had come up to her and tried to get her to join the guerrillas.

Raquel says that she thought other women had also been raped, but that none had dared to report it because, if they did, the guerrillas would consider them a "military target". The day after she left the area, Raquel went to the local Ombudsman, who referred her to the Assistance and Orientation Unit (Unidad de Atención y Orientación, UAO) where tests revealed that she was pregnant following the rape. Raquel decided she wanted an abortion, but repeated delays by medical staff meant that she was unable to have the pregnancy terminated. Abortion for rape survivors had only recently been decriminalized and doctors were reluctant to carry out the termination.

Raquel reported the rape to the Office of the Attorney General at the end of the March 2007 and was referred to the National Institute of Legal Medicine and Forensic Science (INMLCF). At the Institute she was examined by two doctors and eight students, which she found distressing, especially having to repeat the examination twice. She described how the experience of being passed from one organization to another and having to repeat her story many times – at the International Committee of the Red Cross (ICRC); at Profamilia, a not-for-profit organization providing sexual and reproductive health services; at the hospital; at the UAO; at the INMLCF; at the Attorney General's Office; and at the Human Rights Ombudsman's office – made the whole experience of reporting extremely stressful and painful for her.

"I am alone and I don't think there's anyone that can help me get over this. I'd like to form a women's group for people who have suffered in this way… I want to get well, to feel free, to live peacefully and without fear. I also want to find someone who can help me overcome this loneliness. I want someone to talk to when I need to, when this pain wells up inside me, someone I can call and hear a word of encouragement from, a shoulder to cry on, someone who says 'don't give up'."

Raquel has had no information on the state of the criminal investigation, and she doesn't even know who she should contact. No one from the Attorney General's Office has contacted her.

Eighteen months after she submitted an application for reparation as a victim of conflict-related violence under Decree 1290, Raquel still had not received confirmation as to whether or not she was eligible. At the time of writing, the outcome of a petition submitted to the authorities in May 2011 by the Human Rights Ombudsman on Raquel's behalf to clarify her situation remained pending.

A woman lights candles during a demonstration to protest against violence against women, Bogotá, November, 2006.

"But we went to the police and there he was as well [the attacker]. He was among friends and they were defending him and I was in the wrong".

DORA' STORY

Dora was 14 when she was raped by a police officer in February 2009. At the time of the rape, Dora's mother was the leader of a community organization in Antioquia Department.

"I was out with a friend when I met a police officer I knew through another friend, who used to be his girlfriend. He asked if we could talk and then suggested we go to his flat to listen to music. I decided to go for a while. When we got there he closed the door and put out the light. I asked why he had done that and he said he wanted to be with me. I refused, I said no and he insisted that it was normal, it would all be OK. He pushed me onto the bed and began to take off my clothes. I tried to scream and he covered my mouth. When he had finished, he opened the door and I ran home.

When I got home, I was really shaken, but I didn't tell anyone, I kept quiet. My mum asked me what had happened. I didn't dare tell her. Afterwards I told her, that same night I told my mum. She said, 'We have to do something. We're going to the police' and I said no, I was too scared.

But we went to the police that same night. They took a statement and so on, and there he was as well [the attacker]. He was among friends and they were defending him and I was in the wrong… 'No, this is what you mean… are you sure that was how it was?' I said yes, they could send me for an examination, I had never been with any man except this swine who had done this to me. And they said 'No, no, just drop it. We'll come to an arrangement. He'll help you'. I said no. Money won't put right what he's done to me. In the end, I decided to drop the whole thing.

Afterwards they left me alone with him and I really felt angry and wanted to destroy him because he had absolutely destroyed my life. He said, 'Come and live with me, I'll take responsibility for you'… and I said no, I don't want anything to do with you after what you've done to me. He's left me scarred for life because he did me serious damage, very serious damage.

They took me to the hospital and examined me. They asked me if I had given my consent. I said absolutely not, that it had been by force because I had tried to leave and was unable to. He had covered my mouth with a cloth."

The only test Dora was offered at the hospital was a pregnancy test. She was not offered the emergency contraception pill or given blood tests to check for HIV/AIDS or sexually transmitted infections.

"I was in a lot of pain. My head was hurting a lot because really, what with the fighting, the hitting, when he covered my mouth. I was very badly treated but I didn't want to talk about this because it hurt me to tell my mum and to see her in pain too.

The next day I went to the hospital again, more examinations. We went back to the police station to sign the complaint and they began with, 'No, let's come to an arrangement… this will cause a lot of problems…' They wanted to come to an arrangement. The Sergeant told me that the police officer had already [been transferred to another place] two days earlier. The Sergeant told me not to harm his career as he was starting a course of studies.

And that's how it was. They [the police] took me to a psychologist and I was just saying no, no, no. Even the psychologist asked if it was true or if I was just making it up. If I was scared. I said no. I told her what had happened and she said no, that I had wanted it to happen and that he had said so and that's how it was and she told me, 'But look… you can come to an arrangement.' I just stared at her… 'What?' I said loudly, 'how would you know' and I walked out of the office. I got home and said, 'Mum, let's just drop all this.'

Time passed. We didn't report it because they had clearly said no, that we should come to an arrangement. And in any case I was tired because when I went back to school, the comments were awful… 'Oh, look what happened to you'. And I was scared and nervous. So I kept quiet, I withdrew completely from the world, even from my family. They convinced my mum that it was better not to cause a fuss as a complaint could lead to bigger

© GUILLERMO LEGARIA/AFP/Getty Images

© Corporación Sisma Mujer

problems and so it was better to reach an agreement with the police officer.

In fact, I never saw him again. I was so angry, so nervous. And totally isolated from everyone. Whenever I saw a man, I felt revulsion. I was scared of talking to them. That's when the pointing began. Everyone was looking at me and I felt bad. I left school because I couldn't stand the criticism. They said, 'Here comes the one who got raped'. And so I left school. It hurt me a lot because I used to hear my mum crying about what had happened and my mum is still very ill. It has destroyed my family. I've gone back to my studies again, but with these nerves, these headaches, always thinking about it. I really can't put it behind me. And I have no friends, no friends.

I don't talk to anyone about anything and spend my time shut indoors because I really can't face any men. I'm scared that they are going to do something to me. I feel worthless, sometimes I think I don't want to live, with everyone making fun of me, I always deny everything when my friends ask me; some claim I'm sleeping with them. I don't want to continue my studies, it's pointless."

The report of Dora's rape does not appear to have been passed to the Office of the Attorney General for investigation. The police has not contacted Dora or her family to follow up on the report of rape.

***Above right*: Sculpture created by a survivor of sexual violence during a workshop, Bogotá, September 2010.**
***Above left*: Women demonstrate to mark International Day for the Elimination of Violence Against Women, Bogotá, 25 November 2009.**

"I was so angry, so nervous. And totally isolated from everyone. Whenever I saw a man, I felt revulsion. I was scared of talking to them. That's when the pointing began. Everyone was looking at me and I felt bad. I left school because I couldn't stand the criticism."

"I never reported [the rape]. When I tried to, I got a call and that stopped me. I came to Bogotá as a displaced person. You can't report these things because you don't know which offices [the paramilitaries] are in… And it makes me angry that when you try to do something, you get threatened, and there's no-one to protect you."

LEIDY'S STORY

Seventeen-year-old Leidy was abducted, drugged and raped by members of a local paramilitary group in 2001 in Santander Department. Her attackers accused her of having information about her former boyfriend, also a paramilitary, who had recently been killed.

"In 2001, I was studying at school, I already had a little girl, I was living with my mum, my dad and my sister, who was nearly 18. I had previously been in a relationship with a young lad from the neighbourhood, and some time later he told me he was working with the paramilitaries; because of this, and because he didn't treat me very well, I decided to end my relationship with him. I didn't hear from him for several months and then, in July, he began to get in touch with me again telling me that, because of me, he had left this bad life behind him; I never believed him. Then I found out that they had killed him.

I was very scared but I continued with my studies. One day, as I was going to school, it was in August 2001, it was six in the morning, I was nearly at the school when a taxi blocked my path. Three young men got out and forced me into the taxi at gunpoint. They took me to another neighbourhood, and took me along a path to a house. I was crying, asking them who they were, what they were going to do to me. They just said, 'Shut up, we know you were [XXX]'s girlfriend'… They threw me on the bed and started asking me what he had told me the last time we spoke. I told them, nothing, just that he wanted me to go back to him and that I had refused. They said that if I did not tell them the truth they would kill me there and then. I just repeated the same thing because it was true, he hadn't said anything else to me.

After a while, they tied me to the bed, by my arms and legs, and one of them appeared with a syringe filled with liquid, and told me 'We're going to inject you. If you're telling the truth nothing will happen, you can go home, but if you're lying you'll die'…

Crying, I told them I knew nothing, that they shouldn't do this to me, and they told me again that nothing would happen to me.

© Jorge Mata/Surimages

They injected me. Everything began to spin and then I passed out. When I came round I didn't know what had happened or how much time had passed. There were only two of them left and they began to laugh when they saw I was awake. I asked them what they had done to me. They simply told me that 'you were telling the truth, you knew nothing, so you're going home but you have to swear that you won't say anything to anyone, not your family or friends, because if you say anything we'll kill your mother or your daughter, or rather, you and all your family, so be careful what you say, you know nothing, nothing has happened, go home as usual…'

They took me and put me in a taxi, and dropped me close to the school. I was nauseous. I was wearing my uniform, but I felt strange, aching, wet. I asked a man what time it was and he told me 11.30 in the morning. I stayed there a while. Then I went home. I said nothing, just went to bed quietly, except when I heard someone banging on the door and I told them my mum wasn't there.

When I went to school I was very nervous, and it stayed that way. I continued to feel dreadful, but didn't say anything. About a month later, I realized I was pregnant. They had raped me, I didn't know who, or if it was all of them; there were four, with the taxi driver. I said nothing at home. I tried to hide it for as long as I could. When I realized I couldn't hide it any more, I spoke to a

teacher and told her the truth, and told her that I had tried to take [rat poison] but that I couldn't do it, that I didn't know what to say to my mum and dad…

I know that it hurt my father a lot because there was nothing he could do. When I gave birth to the girl, I didn't even want to look at her. My mum pleaded with me to breastfeed her. My father did love her. He would pick her up when he got home from work. I often saw him crying as he held her. Then he began to sort out the paperwork to register her with his surname, and put her on the social security documents as his daughter. That night he came home and told my mum that everything was sorted, here were the girl's papers for the social security. That night he committed suicide. By the time he called us, he was already vomiting blood and there was nothing we could do.

I never reported [the rape]. When I tried to, I got a call and that stopped me. I came to Bogotá as a displaced person. You can't report these things because you don't know which offices [the paramilitaries] are in… you don't know how they find out that you were asking questions. Why does no one complain? For fear that they will do something to you… And it makes me angry that when you try to do something, you get threatened, and there's no one to protect you. And you live with the fear that someone is going to do something to you. Apart from what you've already gone through, you're in fear of what might happen afterwards.

I came here to Bogotá as a displaced person to seek a better future, to see if I could find a stable job, so that I could be with the children. Two days after I went and found out how to file a complaint, my mum began receiving threats. They called her on the phone and told her to keep it quiet, to stop digging things up that shouldn't be dug up. How did they find out? How did they know so much?"

Demonstration marking the anniversary of the Organización Femenina Popular (Popular Women's Organization) to demand justice for women victims of violence in the armed conflict, Barrancabermeja, Santander Department, July 2007.

© UNHCR/L. Badillo

Mural in Mocoa, Putumayo Deparment. The mural reads: "Woman is like Mother Earth. Her nature must not be violated".

"I reported it so that people would realize that this kind of thing goes on."

Shirley, survivor of sexual violence

programmes, protocols and policies to ensure that health policies meet the needs of victims of the conflict and to provide the necessary financial resources to ensure these are effectively implemented.[44] Although to date the Ministry of Social Protection has carried out several studies into how to implement Sentence T-045, no health programmes that respond effectively to the needs of survivors of the conflict have yet been put into practice.

MULTIPLE DISCRIMINATION: SEXUAL VIOLENCE AND INDIGENOUS WOMEN

Indigenous women face multiple forms of discrimination. They face discrimination because of their Indigenous status, their gender and their poverty. The particular impact of sexual violence on Indigenous women in Colombia was acknowledged by the Inter-American Commission on Human Rights in its 2010 Annual Report, published on 7 March 2011, which stated: "One of the most disturbing signs of the impact of the armed conflict on indigenous women is sexual violence". The report said that rape, forced prostitution and sexual slavery were "a war tactic [that] severely impact indigenous women, who are particularly exposed to the crimes perpetrated by armed groups in a context of multiple discrimination."[45] In Judicial Decision 004 of 2009 the Constitutional Court also noted these concerns and stated that "many of the cases of sexual violence that were reported by the Court [in Judicial Decision 092] to the competent authorities involved Indigenous women, girl and adolescent victims throughout the country".[46]

Many of the obstacles to justice that Indigenous women face are similar to those affecting other women living in poverty in rural areas, but these are exacerbated by the multiple discrimination they face. Women from Indigenous organizations told Amnesty International that they feel invisible. Indigenous women and girls rarely report crimes of sexual violence, both out of fear for their own safety, but also because the collective nature of Indigenous society means that the act of reporting has an impact on the whole community. There is also often significant pressure on women from their own communities not to report such crimes; sometimes a killing may be reported, but the fact that the victim was raped is not.

Indigenous women who seek assistance or who report crimes of sexual violence face additional obstacles such as a lack of translators; a lack of understanding of their culture; difficulties in travelling to where they can get official assistance because they tend to live in remote areas; the significant presence of military combatants in the areas where they live; a lack of information about where they should go to make a report and what happens if they do; and the application of legal and medical procedures that are alien to their culture, such as internal examinations. No legal or medical protocols exist for examining Indigenous women.

Indigenous organizations told Amnesty International that military officers would sometimes try to negotiate with the families of Indigenous women and girls who had been allegedly raped by soldiers to get them to drop a complaint in return for a small amount of money. There were also reports that the military has sometimes tried to sidestep a victim's family and negotiate directly with community leaders instead. In one case, a family was offered US$50 to keep quiet about a case of sexual violence.

According to the June 2011 report of the NGO Follow-Up Working Group, 26 cases in the Constitutional Court's reserved annex involved Indigenous victims and none had resulted in a conviction.

THE RIGHT TO REPARATION

Reparation is the term for the concrete measures that should be taken to address the suffering of survivors and victims and to help them rebuild their lives. The aim of reparation measures is to "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[47] Of course, in situations where victims suffer serious harm – such as sexual violence – or when family members are killed, it is impossible to restore them fully to the situation that existed before the violation occurred. Nevertheless, there is an obligation to ensure that as much as possible is done to address the suffering of the victims.

The United Nations 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 (UN Basic Principles),[48] states that all victims of serious human rights violations, including survivors of rape and other forms of sexual violence, have a right to a remedy and reparation. Specific obligations relating to women seeking reparation have been outlined by the Special Rapporteur on violence against women, its causes and consequences.[49]

An international coalition of women's organizations developed a set of general principles on the right to reparation, to be applied to the context of sexual violence in armed conflicts, the so called Nairobi Declaration. The Declaration suggests that "[j]ust, effective and prompt reparation measures should be proportional to the gravity of the crimes, violations and harm suffered. In the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches."[50]

States bear the primary responsibility for providing reparation to victims of human rights violations in their country. There is a legal obligation on the state to provide reparation when violations are committed by agents of the state or under the state's authority. In some cases, it may be appropriate for the authorities to establish reparation programmes to ensure that victims have access to a range of services and benefits.[51] When crimes are committed by agents of other states or non-state actors, then the state has an obligation to ensure that victims can claim reparation against those responsible, including by making claims before national courts. When obtaining redress from other states or non-state actors is not possible or where there are obstacles that will delay vital measures of assistance required by survivors or victims, the state should step in and provide reparation to survivors and victims and then seek to reclaim any costs from those responsible.

There are five recognized forms of reparation which include a broad range of measures aimed at repairing the harm caused to survivors and victims: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- **Restitution** includes measures aimed at re-establishing, as much as possible, the situation that existed before the violation happened, including restoration of property rights, employment, liberty, citizenship or residency status.[52]

- **Compensation** involves monetary payment for "any economically assessable loss."[53] Although the damage caused by the violation and the amount of compensation related to it has to be evaluated in economic terms, it does not mean compensation only covers material damage. In fact the UN Basic Principles defines damage quite broadly, including: "a) physical or mental harm; b) lost opportunities, including employment, education and social benefits; c) material damages and loss of earnings, including loss of earning potential; d) moral damage; e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

- **Rehabilitation** aims to address any physical or psychological harm caused to victims, including "medical and psychological care as well as legal and social services."[54]

- **Satisfaction** includes important symbolic measures such as: verification of the facts and full and public disclosure of the truth; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed; the recovery, identification and reburial of the bodies of those killed, in accordance with the wishes of the victims or the cultural practices of the families and communities; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim and of those closely connected with the victim; a public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against those responsible for the violations; and commemorations, memorials and tributes to the victims.[55]

- **Guarantees of non-repetition** involve measures aimed at ensuring that victims are not subjected to other crimes or that the crimes are not committed again. Such measures include: reforming the army and the police; strengthening the justice system, including ensuring the independence of the judiciary; educating different sectors of society in human rights and international humanitarian law; re-integrating child soldiers back into society and; reviewing and reforming laws which contribute to or allow crimes under international law.[56]

Not all of these forms of reparation will be required for all human rights violations. In each situation or case, a determination will need to be made about what reparation measures are needed to address the specific harm caused. This process should take into account the views of the victims, who will best know their needs, and the ultimate decision should be proportionate to the gravity of the violation.

Moreover, reparation should not be perceived as a humanitarian gesture, but rather seen for what it is – a rights-based framework for redress. It should be based on effective consultation with the victims and related to their needs and status as victims. The underlining principle of reparation programmes should be that victims are entitled to specific rights, in addition to all other rights they have, because specific crimes were committed against them that require special remedies.

In June 2011, Congress approved the Victims and Land Restitution Law, an initiative promoted by President Santos as the centrepiece of his administration's human rights agenda. The legislation, which includes articles and language dealing specifically with the issue of survivors of sexual violence, will allow some of the victims of human rights abuses and violations of international humanitarian law committed by paramilitaries, guerrilla groups and the security forces to claim comprehensive reparation from the state, both individually

and collectively. It also includes mechanisms to return some of the 4-6 million hectares of land thought to have been stolen, often violently and mainly by paramilitary groups, from millions of Colombian families throughout the course of the internal armed conflict.

However, the law stipulates that only victims whose human rights were violated after 1985 will have the right to financial compensation, while only those whose lands were stolen after 1991 are covered by its provisions. The law also excludes victims of *Bacrim*. It therefore excludes many victims of the conflict.

While the law is an important first step towards righting at least some of the wrongs inflicted on millions of victims of the conflict, measures will need to be introduced to ensure the legislation is effectively implemented. For the new law to succeed in making any difference to survivors' lives, the authorities must ensure that victims and their families, and the organizations that represent them, are fully involved in and consulted on the development of mechanisms to implement this legislation.

Decree 1290 – which was issued on 22 April 2008 and enacted as part of the Justice and Peace Law (see Chapter 4) – created a temporary programme to allow some victims of crimes by illegal armed groups to receive individual monetary reparation from the state following an administrative rather than judicial process. The programme expired on 22 April 2010 after which no new claims could be made. The Decree had a number of significant limitations, including not acknowledging the state's responsibility for reparation, referring instead to the "principle of solidarity"; excluding victims of abuses committed by state actors and by *Bacrim*; and failing to consider collective reparation for organizations and groups that have suffered harm during the conflict. Although the decree adopted a differentiated gender approach, at least formally, very few survivors of sexual violence have been compensated. According to the Fourth Report by the NGO Follow-Up Working Group on *Auto 092*, published in June 2011, only 0.14 per cent of cases approved under Decree 1290 involved survivors of sexual violence; that is, 15 cases out of a total of almost 11,000.

The Justice and Peace Law also includes a reparation mechanism based on judicial adjudication. But, crucially, no reparation can be forthcoming until each legal process against a paramilitary or guerrilla has been finalized; that is, until there has been a conviction and a sentence. At the time of writing only three paramilitaries had been sentenced under this law and no victims had received reparations under this mechanism.

AMANDA

Amanda (not her real name) was walking home one evening in December 2003 in Guaviare Department when five paramilitaries attacked and raped her. They threatened her and told her not to report the crime, a threat which they reinforced on their regular visits to Amanda's home village. The paramilitaries were supported by local officials and so were able to commit crimes with impunity. Families who tried to report them were forced to flee. Amanda said that paramilitaries would kill people right under the noses of the authorities and abduct, torture and murder children without any fear of being held to account, such was their power in the area.

Amanda believes that she was targeted because her husband had fled after stealing some money earlier in 2003. She decided to keep silent about what had happened to her, fearing both for her own life and for the lives of her two children, then aged six and three.

In 2004, Amanda's husband contacted her and persuaded her to leave her village and join him. At first her life was very hard. Amanda described how her husband would constantly humiliate her because of what had happened. His insults and abuse got worse, the relationship deteriorated and, after six months, Amanda decided she had to leave him.

She decided to seek reparation under the terms of Decree 1290. However, when she went to the offices of the local Social Action (Acción Social), they refused at first to give her a form; then they said that because her case involved sexual violence, they did not know if she was eligible for reparation under this process. Amanda described how she found filling in the form very difficult; other people in the office tried to see what she was writing and made fun of her. To date, Amanda has not been told whether she has been acknowledged as a victim under the terms of the Decree. However, the authorities did recognize her as a displaced person so she was able to get some financial support. Finally, in April 2010, she was able to move house after going to court to complain about the very poor conditions in which she and her family had been living for three years.

"They have practically killed me alive, I am going through a living death. I don't really like talking about it because I don't want people pointing at me. It is only now that I am starting to talk about the situation. When I talk about it, my head aches. One feels bad, ashamed. When it happened to me, I couldn't speak or say anything. My life and the lives of my children were in danger."

Amanda's case is being investigated by the Justice and Peace Unit of the Attorney General's Office. Amnesty International does not know what, if any, progress has been made in the case.

INADEQUATE LEGAL FRAMEWORK

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 crimes against humanity. In addition, Colombia has yet to define crimes against humanity as crimes under national law and to define in national law all war crimes in conventional and customary law. .

COLOMBIA'S OBLIGATIONS TO PROSECUTE INTERNATIONAL CRIMES

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 - as well as other criminal acts (i.e. enforced disappearances) - may also constitute crimes against humanity if they form part of a widespread or systematic attack directed against the civilian population. Crimes against humanity and war crimes are subject to universal jurisdiction; that is states are required to investigate and prosecute people suspected of these grave crimes under international law, no matter where they occurred.

By investigating and prosecuting those suspected of committing crimes against humanity and war crimes as ordinary crimes under national law, Colombia has failed to satisfy its obligations under international law, including its obligations under the Rome Statute, to the international community.[57]

Although some of the conduct amounting to crimes under international law can be prosecuted as ordinary crimes, this alternative is not satisfactory for a number of reasons. First, it leaves gaps where conduct amounting to crimes under international law is not subject

to criminal responsibility under national law. Second, conviction for an ordinary crime, even when it has common elements, does not convey the same moral condemnation as if the person had been convicted of the crime under international law and does not necessarily involve as severe a punishment.

There is a fundamental distinction between crimes under international law, which are an attack on the entire international community, and ordinary crimes under national law, which are a concern of the state where the crime was committed. This distinction was usefully set out in a 2006 decision by the International Criminal Tribunal for Rwanda (ICTR) when it refused to transfer a case involving charges of genocide to Norway, where the accused would have faced only a charge of murder as an ordinary crime. The Trial Chamber explained that the crimes under international law – in that case genocide, conspiracy to commit genocide and complicity in genocide – "are significantly different in term of their elements and their gravity from the crime of homicide."[58] The same principle applies to crimes against humanity and war crimes. In other words, prosecuting people for ordinary crimes such as murder, assault, rape or abduction when they are in fact suspected of being responsible for crimes against humanity or war crimes does not satisfy Colombia's obligations under the Rome Statute.

THE CRIMINAL CODE AND INTERNATIONAL STANDARDS

As Colombia's Constitutional Court has recognized, sexual violence against women and girls in Colombia has been widespread, as well as systematic, and has been committed extensively during the armed conflict.[59] Therefore, under international law, acts of sexual violence – such as rape, enforced prostitution and sexual slavery – amount to crimes against humanity or war crimes, or both, if they were part of an attack against women and girls as a civilian population, or were committed in the framework of the armed conflict. International criminal law has also identified acts of rape with torture, which is also subject to universal jurisdiction. And acts of rape should, therefore, be treated accordingly as torture, under Article 178 of Colombia's Criminal Code.

These crimes should, therefore, be investigated and, if there is sufficient admissible evidence, prosecuted in full compliance with Colombia's obligations under international law; that is, as crimes under international law and not as ordinary crimes.[60]

Those found guilty in fair trials for such crimes must be punished by appropriate penalties, which take into account the grave nature of sexual violence. They must not be granted amnesties or similar measures which prevent the discovery of the truth or a determination of guilt or innocence in an ordinary civilian court trial.

While investigating, prosecuting and punishing those responsible for sexual violence, Colombian courts – which as part of the Colombian state are also obliged to comply with international law – should:

- Ensure that the statutory limitations in the Criminal Code are not applied in such cases. Although Colombia is not a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, this prohibition applies to Colombia as it is a rule under customary international law and is reflected in the Rome Statute, to which Colombia is a party.

- Ensure that no one is relieved of individual criminal responsibility for an act of sexual violence amounting to a crime against humanity or a war crime committed under an order of the government or a superior, whether military or civilian.

- Investigate any commander or superior – regardless of his or her official position – who was aware that subordinates or others under his or her control committed a violation of any rule of customary or conventional international law applicable to non-international armed conflict and failed to prevent or suppress such violations.

The Inter-American Court of Human Rights has repeatedly stated that the Colombian courts must remove all obstacles that prevent the effective investigation of crimes under international law.[61] It has also stated with regard to Colombia that "[d]ue to the nature of the crime and the rights and freedoms damaged, military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations".[62]

Currently, the definition of rape in the Criminal Code is limited to acts perpetrated through physical violence – meaning that investigating and prosecuting authorities do not address crimes of sexual violence committed as a result of threats, coercion, abuse of power, and taking advantage of coercive environments.

International criminal law on rape and sexual violence acknowledges that perpetrators often exploit situations of threatened or potential violence to demand sexual acts, abuse their power over protected persons or detainees to demand sexual acts, and that such acts constitute rape or sexual violence. These definitions recognize that sexual acts to which victims do not consent but submit to because they have no real choice as a result of abuse of power by the perpetrator, are criminal offences. Colombian law should reflect that such use of threat of force and coercion is a criminal offence, in order to comply with Colombia's obligations in international law to criminalize, investigate and prosecute war crimes and crimes against humanity.

Colombia's Criminal Code does not reflect definitions of crimes under international law in certain key respects that affect the right of survivors of sexual violence to justice and reparation:

- Articles 205 (rape) and 138 (rape of a protected person under international humanitarian law) currently apply only to acts perpetrated "by violence" (mediante violencia). This is not consistent with the definition in the Rome Statute Elements of Crimes, which refers to rape and other forms of sexual violence perpetrated by "force, threat of force, or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person [the direct victim of the rape or sexual violence] or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent."

- Article 3a of Law 1257 usefully defines sexual harm (daño sexual) as "the consequences of actions consistent with forcing a person to maintain physical or verbal sexualized contact, or to participate in other sexual interactions through the use of force, intimidation, coercion, blackmail, bribes, manipulation, threat or any other mechanism which deprives or limits

personal freedom. Similarly, it is considered as a harmful act and as sexual suffering if an aggressor forced a victim to carry out any of these acts with a third person." However, this law has not been incorporated into the Criminal Code, limiting its effectiveness in providing women and girls who are subjected to rape and sexual violence with a remedy under criminal law.

- Under Article 212 of the Criminal Code, "aceso carnal" (carnal knowledge) is defined as "penetration of the penis into the anus, vagina or mouth" and "penetration of the vagina or anus by any part of the body or any object". This is almost the same as the definition used in the Elements of Crimes of the Rome Statute. Such a definition is progressive, as it can be used to prosecute crimes of rape perpetrated against boys and men, as well as women and girls. However, to be completely consistent with the Elements of Crimes standard, it should be amended to include the addition "penetration, however slight".[63]

PROTECTION FOR SURVIVORS AND WITNESSES IN THE CODE OF CRIMINAL PROCEDURE

Attacks on the integrity and character of victims and witnesses, through the use of previous sexual history as evidence or aggressive questioning by defence lawyers or defendants, or threats to their safety caused by publication of their identity, cause secondary victimization to survivors. They also discourage other witnesses from coming forward.

In 2005, the accusatory criminal system, introduced via Law 906 of 2004, began to replace the inquisitorial system common in many countries in the Americas. The new system is designed to speed up the traditionally slow Colombian justice system. Although the new system has its advantages, in certain respects it is having a negative impact on survivors of sexual violence:

- Since all hearings under the accusatory system are public, the survivor is obliged to provide public oral testimony, often repeatedly and in front of the alleged perpetrator. Law 1257 of 2008, which amended Law 906, establishes that in cases involving sexual violence, the judge, at the request of any party, may hold the hearing behind closed doors. The judge can also order that the identity of the victims and her/his personal details should be withheld. However, such guarantees of anonymity have not always been effectively applied.

- Physical evidence is given more weight than psychological evidence or the testimony of survivors and witnesses. Therefore, in many cases this has led prosecutors to close judicial proceedings due to lack of evidence.

Amending Colombia's legal framework to reflect the current standards of international criminal law, which would also include investigating and prosecuting conflict-related crimes of sexual violence as war crimes or crimes against humanity, would be an important and necessary step towards combating impunity. However, such changes to the legal framework will prove merely formal in nature unless the government can effectively combat some of the endemic and practical obstacles to justice outlined earlier in this report.

4. THE JUSTICE AND PEACE PROCESS

The Justice and Peace process, which began in 2005, is a prime example of how the Colombian state is failing to meet international standards on the right of victims to truth, justice and reparation. The process continues to fail countless victims of human rights violations, including victims of conflict-related crimes of sexual violence.

This policy of "restorative justice" was created by Law 975, the so-called Justice and Peace Law. Under its terms, 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 significantly reduced prison sentences in return for laying down their arms, confessing to human rights violations and returning stolen land and property. In theory, members of guerrilla groups can also benefit from its provisions, but few have done so.

The Justice and Peace process has suffered from serious structural and other flaws:

- Serious doubts remain about the effectiveness of the demobilization process itself. It purportedly resulted in tens of thousands of front-line combatants laying down their arms, but left untouched the extensive and powerful political and economic structures built up over decades by the paramilitaries and their allies in business, politics and the military. This partly explains why many paramilitary groups continue to operate, albeit under new names, and why it was only the Supreme Court investigation some years later into the illegal links between members of Congress and paramilitary groups, that brought to light the scale of official collusion with such groups. There are also increasing doubts about the veracity of some of the demobilizations. For example, and as Amnesty International exposed in 2005, some paramilitary leaders are claiming that many of those who supposedly demobilized from the *Bloque Cacique Nutibara* in Medellín in 2003 were not paramilitaries but ordinary criminals who wanted clean criminal records.[64]

- The process excludes around 90 per cent of paramilitaries, many of whom committed serious human rights violations. These paramilitaries were not subjected to judicial investigations about their possible role, and that of state officials, in abuses and were granted *de facto* amnesties by the Uribe administration. However, in November 2010, the Constitutional Court rejected a law, passed in 2009, which would have confirmed such amnesties. In response, in December 2010, Congress passed a law, supported by the Santos government, which will again grant *de facto* amnesties to most of these paramilitaries in return for their signing a so-called Agreement to Contribute to Historic Truth and Reparation.[65]

- Most of the more than 3,000 paramilitaries who are registered in the Justice and Peace process are not actively participating in it; only about a third have confirmed their participation. Many paramilitaries registered in the process are not even in detention and the whereabouts of many of these are unknown.

- Some six years on from the start of the Justice and Peace process, and despite an increase in recent years in the number of prosecutors in the Justice and Peace Unit of the

Office of the Attorney General, which is responsible for investigating the minority of paramilitaries who are participating in the process, only around half of those participating (4.5 per cent of the total who supposedly demobilized) have given "voluntary depositions" (*versiones libres*) – that is, "confessed". At the time of writing, only three paramilitaries had been convicted under the terms of the Justice and Peace Law.

■ In 2008, more than a dozen paramilitary leaders who were in the Justice and Peace process were extradited to the USA to face drug-related charges. All were suspected of being responsible for torture, the enforced disappearance and killing of civilians, and the forced displacement of tens of thousands. The extradition of these leaders risks undermining the investigations being carried out by the civilian justice system in Colombia, both because access to these paramilitaries has been difficult and because many of the extradited paramilitaries are refusing to collaborate. As a result, in 2010 the Supreme Court refused to extradite several paramilitary leaders to the USA for fear this would undermine victims' right to truth, justice and reparation.

■ Although more than 300,000 victims have registered with the Justice and Peace process and 60,000 have participated in the voluntary deposition process, serious obstacles remain with regards to victims' active participation in the process. Many victims have complained about lack of information; inadequate assistance from state authorities; ineffective or non-existent protection for victims and their families, despite the creation of a specific physical protection programme for victims participating in the process; the slowness of the process; lack of respect for victims and even re-victimization by state officials; and poor use of the media and other mechanisms to disseminate information about upcoming voluntary depositions.

LETTING DOWN SURVIVORS OF SEXUAL VIOLENCE

Some 90 per cent of the tens of thousands of paramilitaries who supposedly demobilized were never investigated for human rights violations and were thus free to return to their communities. As a result, many survivors of human rights violations, including sexual violence, have been unwilling to report cases to the Justice and Peace Unit. There are many cases where survivors have been threatened by their attackers who had returned to live in the local neighbourhood following their demobilization. The maximum sentence of eight years envisioned in the Justice and Peace Process has also acted as a disincentive to reporting sexual violence as women fear that the perpetrator could soon be back in the community.

The ongoing infiltration by paramilitary groups of sectors of the state apparatus, especially in the regions, and continued collusion between such groups and some in the security forces, invariably means that some of the paramilitaries who returned home, or who continue to operate elsewhere in the country, still hold positions of power. They are, therefore, in a position to continue to undermine women's rights to freedom from violence and to justice.

The failure to investigate crimes of sexual violence in the Justice and Peace Process has been exacerbated by the lack of an effective institutional strategy for investigating sexual violence. One of the most serious weaknesses of the Justice and Peace process is that prosecutors generally only investigate cases to which paramilitaries have already confessed. This is problematic given paramilitaries' failure to confess to crimes of sexual violence.

Although judicial benefits are dependent on paramilitary combatants confessing to their crimes, the language contained in Justice and Peace Law is not sufficiently watertight, so that combatants may still gain judicial benefits even if they do not make a full confession. Paramilitaries are often not subjected to a thorough cross-examination process and it is therefore difficult to establish that a defendant has not provided a full or completely frank confession. Prosecutors' heavy workloads mean that statements made by paramilitaries are often accepted at face value. Prosecutors have tended not to question paramilitaries about practices such as forced prostitution and sexual slavery, which were, and still are, common in paramilitary-controlled areas of the country. Prosecutors also tend not to ask whether crimes of sexual violence took place when crimes often linked to sexual violence – such as massacres, forced displacement or selective killings – were being committed.

While human rights violations allegedly committed by paramilitaries are investigated by the Justice and Peace Unit, alleged violations by members of the security forces come under the jurisdiction of other units of the Office of the Attorney General, such as the Human Rights Unit, and are often even investigated by the military justice system, despite the fact that such cases should, constitutionally, be excluded from military jurisdiction. In cases of sexual violence where both paramilitaries and members of the security forces are implicated, there is therefore no guarantee that information will be shared between the different units. As a result investigations are frequently flawed and partial.

Although victims' identities are supposed to be protected in the Justice and Peace process, some survivors of sexual violence committed by paramilitaries have, during voluntary depositions, been forced to give evidence in front of their attackers or in front of community members. In other cases, unit prosecutors have visited rural communities asking for information about possible victims of sexual abuse, or have visited survivors in their own homes in areas with an overt paramilitary presence.

PROTECTION FOR VICTIMS AND WITNESSES

Following the killing in 2007 of several women leaders who were participating in the Justice and Peace process, including Yolanda Izquierdo and Carmen Cecilia Santana Romaña,[66] the IMP, which supports victims of conflict-related sexual violence, presented a writ for protection of fundamental rights (*petición de tutela*) to the courts. This called on the government to provide protection for the organization's leaders and the women for whom they were providing support and assistance in the Justice and Peace process. While the courts were deliberating, the government issued Decree 3570 on 18 September 2007, through which it created the Protection Programme for Victims and Witnesses of Law 975 (see Chapter 3). Finally, in May 2008, the Constitutional Court, through Sentence T-496, ruled in favour of the IMP.

The Constitutional Court ruling was scathing in its criticism of the government's protection programme. It concluded that the programme had failed to respect the basic rights of women victims. In particular, the Court affirmed that the programme was insufficiently specific in that it did not take into account the gender, age, and health of the victim. It also said the programme was too slow because it lacked autonomy and offers of protection had to be signed off by numerous state institutions, including the Office of the Attorney General, the Ministry of the Interior, the police and the civilian intelligence service (Departamento Administrativo de Seguridad, DAS). It also criticized the lack of training for those

implementing the programme, the lack of an integrated strategy, the absence of evaluation and monitoring mechanisms, and the failure to keep those in the protection programme informed. The Court also restated its view that women victims of the conflict face a disproportionate level of risk and that the state had an obligation to adopt a distinct approach to their protection. The Court gave the government six months to modify the protection programme. The government failed to redesign the programme, at least in law, until May 2010 when it issued Decree 1737, which reformed the programme by adopting a differential gender approach. However, no specific procedures and criteria to guarantee victims of sexual violence access to these programmes have as yet been implemented, so that the reforms have brought little real benefit to survivors of sexual violence.

Practical measures to protect witnesses and victims can only be effective if perpetrators are arrested, investigated and prosecuted. Without this basic commitment to the rule of law by the state, witness protection programmes will remain ineffective. Once crimes have been reported, the effective prevention of further crime requires witness protection programmes, both to protect victims and witnesses from further violence, and to make it clear to perpetrators that their actions will be investigated and prosecuted. The two processes – investigation and prosecution – and witness protection, must be implemented consistently.

5. CONCLUSIONS AND RECOMMENDATIONS

MARI

"I did a very good job of blanking things out. I remembered the place, I remembered the people but I didn't remember the dates and then when I remembered the date, I went to file a complaint. When I went to file the complaint, I went to the Attorney General's Office. I said I was going to report the case of my rape, as a victim of sexual violence [and they said], 'Another one? Another rape?' When they said that, I froze and got up and said 'Thank you, I'll come back another day'. I said 'I don't want to [do it] any more'. That word made me blank out again, it made me feel everything I don't want to go through like I did before, with the mistreatment making me feel that I was the guilty one.

I am displaced, I am a raped woman under threat, I've lost a son. What are they going to say to me? I got up and went back to sit in the waiting room. Because that's what they're going to say, 'Why didn't you say anything when it happened?' I don't want to go through that, I've already been through too much to go through that. The fact is many of us are victims of sexual violence and many of us have been displaced because of the armed groups. There is no government body saying, 'We're going to look after you without the need to file a complaint'. What evidence am I going to give? It happened years ago. If there was any evidence, it was no longer going to exist.

It doesn't matter if we file complaints; that's why I haven't done so. And many of my friends say, 'Why? What's the point of filing a complaint? If there's going to be no solution and no one is going to get convicted, why?'... The family is damaged, your family gets hurt. In my friend's case, it's society that is calling her daughter 'child of rape'. Our children get hurt when society knows about it. They discriminate against us and treat us almost as if we were the guilty ones. Society thinks that it is the woman's fault …

And the government, what is it doing? [We need] a body that doesn't tell me that I have to file a complaint, [but] simply that there is a psychologist there to help and if I want to file a complaint, OK... There are women who don't want a legal process, they just need psychological support because we have been destroyed emotionally, psychologically and personally, because, when it comes to our private lives, I don't trust anyone.

We have friends who don't want to file a complaint because they have had a baby. A baby resulted from the rape. And so, how can you make them go through a whole process in which those who [resulted] from the rape are involved? Look, what kind of process would that be? In my case, at least, I see the Attorney General's Office as something hostile that is going to make me and my children feel bad, that is going to make me feel guilty. So, I go and file a complaint and I'm made to feel guilty.

[And you feel] defenceless because at any moment they can go and kidnap the child because it's his child. So [the woman] becomes a military target. When they want to find her, they use all the means they have as an [armed] group. So she is at risk. Who knows, or who in the Attorney General's Office has checked where she is? I think that in cases like that [the authorities] should monitor the person and find out how she is, how she is

financially and psychologically, how her family is. How are her children getting on? Are they at risk? Where are the perpetrators, at least? What are they doing? Are they nearby or not? There should be protection and monitoring of the case.

Somehow, society does not [see] this as a crime. For me, society will not change until the day that Colombia declares sexual abuse to be a crime against humanity and punishable… The way of thinking will only change by giving a great deal of attention to the issue, by saying that we have to show what the problem is, because many women think that you were asking for it. They need to be told that it's not like that. Show what the problem is that men think they can do it and that nothing will happen… Here they think a man can do what he wants when he wants. How do we show people all that?

Mari (not her real name) a survivor of sexual violence, February 2011

Mari, a community leader from Valle del Cauca Department who was raped by paramilitaries in 2001, vividly describes the difficulties faced by women survivors in reporting crimes of sexual violence in the context of the conflict. Mari's son was murdered in 2009 and she was forced to flee her home in December 2010 after a campaign of threats and intimidation. Despite her deep desire for justice and the support of a community group and a women's organization, Mari felt unable to report the sexual violence she had suffered. The obstacles for someone in a more isolated or vulnerable situation are that much more daunting. Indeed, in many cases they prove insurmountable.

Survivors of crimes of sexual violence have a right to truth, justice and full reparation. The state is obliged under international law to take effective steps to prevent and eradicate sexual violence, to provide support services to survivors, and to investigate and bring the perpetrators to justice. But despite myriad initiatives, laws, policies, mechanisms, decrees and protocols, the Colombian state is still failing to protect women survivors effectively or to ensure that their right to truth, justice and reparation is fully respected. In large part, this endemic failure has been due to a lack of political will on the part of successive governments to tackle the numerous causes of impunity for human rights violations, especially sexual violence, highlighted in this report.

In recent years, there has been some limited progress in bringing to justice those responsible for human rights violations in a small number of high-profile cases. However, the same cannot be said for cases involving sexual violence committed in the context of the conflict.

As the Constitutional Court recognized in its 2008 landmark ruling on women and displacement, sexual violence against women and girls in the context of Colombia's armed conflict has been widespread and systematic. Therefore, under international law, such acts can amount to war crimes or crimes against humanity, or both, and must be investigated and prosecuted by the Colombian justice system as such.

However, most perpetrators of human rights abuses and violations of international humanitarian law are not held to account. Nowhere is this failure to ensure justice more evident than in cases of sexual violence, the most invisible of crimes. Women rarely report such crimes, and when they do, the authorities often seek to dissuade them from taking their complaint any further. Survivors are often treated with mistrust and dismissed as liars or "prostitutes". Even when women find the strength to pursue the complaint, cases are rarely

effectively investigated and the prospect of the perpetrator being convicted is negligible, especially if the abuser is a soldier, a paramilitary or a guerrilla fighter. Every step of the process appears designed to block survivors' attempts to seek truth, justice and reparation.

While confessing to thousands of killings and enforced disappearances, paramilitaries involved in the Justice and Peace process have remained tight-lipped about their sexual crimes. Crucially, much of the limited truth that has emerged has done so not as a direct result of confessions by paramilitaries in the Justice and Peace process, but because of separate investigations carried out by the Supreme Court of Justice, the Human Rights Unit of the Office of the Attorney General, human rights defenders and journalists.

Survivors of human rights abuses and violations of international humanitarian law committed by guerrilla groups, the security forces and pre-demobilization paramilitaries have at least now been acknowledged, to some extent, by the Colombian state as victims of the armed conflict, and so have access to some limited state support. Victims of "post-demobilization" paramilitaries (*Bacrim*), have not been accorded even this limited recognition of their experiences, status and rights. They are, as a result, denied their rights to protection and reparation, or to state assistance if they are displaced by such groups. Any serious effort to ensure justice for wrongs, both past and present, must involve all victims of the conflict, regardless of the perpetrator.

Since Amnesty International's report on sexual violence in the conflict was published in 2004, the Colombian authorities have taken some steps to address some of the deep-rooted problems associated with reporting and prosecuting sexual violence. Moreover, the Constitutional Court's groundbreaking 2008 ruling has helped make the issue more visible and has emboldened many women to stand up for their rights. But in practice, there have been few concrete improvements in the experiences of survivors of crimes of sexual violence when seeking truth, justice and reparation. Few of Amnesty International's 2004 recommendations have been effectively implemented, either by the state authorities or guerrilla groups. In short, crimes of sexual violence committed in the context of the conflict continue unabated, the obstacles to reporting such crimes are still daunting and often insurmountable, and the authorities continue to fail to prosecute the perpetrators or to offer effective and appropriate support, assistance and protection to survivors.

The armed conflict has certainly exacerbated the problem of sexual violence and contributed to impunity. However, governments cannot justify a failure to act by pointing to the continuation of hostilities. What is clear, however, is that to combat conflict-related crimes of sexual violence effectively and reverse the shocking levels of impunity, the state must tackle both the human rights consequences of the armed conflict and the specific factors that ensure that sexual violence continues unabated and unpunished.

To combat impunity effectively, not only in cases of conflict-related sexual crimes but in all cases of human rights abuses and violations of international humanitarian law, the government must amend the Colombian legal framework to bring it into line with international law. It must also ensure that existing and any future measures to combat impunity, including crimes of sexual violence, are effectively implemented.

Successive Colombian governments have enacted numerous laws, policies and programmes, and issued numerous directives and protocols, to address impunity in cases of sexual violence in the context of the internal armed conflict, and to enhance the care and rehabilitation of survivors. If these are effectively implemented, which to date they have clearly not been, such measures would make a major contribution to combating impunity.

In order to address the failure to translate laws into practice, the government must first ensure that all laws and mechanisms to address rape and sexual violence, and the impunity which has for so long marked such crimes, are properly funded, monitored, evaluated and supervised. Moreover, women's rights organizations and survivors of rape and sexual violence must be fully involved in the elaboration and implementation of such measures.

If the government is to tackle impunity effectively, it must ensure that effective mechanisms are in place to protect those at the forefront of the struggle for justice, including human rights defenders, lawyers, judges, prosecutors, witnesses and survivors themselves. It must also address the causes of the chronic under-reporting of sexual crimes, as well as the legal mechanisms which have for so long protected the perpetrators of crimes under international law, such as the military justice system and the Justice and Peace Law. It must address issues such as women's equality and empowerment and the discriminatory stereotyping of survivors of sexual violence both by state officials and society at large. And it must ensure that services to care for and rehabilitate survivors are freely available and accessible.

RECOMMENDATIONS TO THE COLOMBIAN GOVERNMENT

On women's equality and empowerment

Develop a comprehensive gender strategy

- All activities to address violence against women, including torture, should be informed and integrated into a comprehensive gender strategy to address and transform the inequality that women and girls face and which is one of the main causal factor of crimes of sexual violence.

- This national plan of action should be drawn up in close co-operation with women's organizations and survivors and its reach should be comprehensive and inter-disciplinary, addressing all facets of state action.

- The situation of women and girls in rural areas, and those who are internally displaced, should receive special attention, as should the situation of Indigenous and Afro-descendent women and girls, and those living in poverty. In addition, members of these groups should participate in the decision-making process on how their particular situations are to be addressed.

- The implementation of the action plan should be properly resourced, benchmarked in order to monitor effectiveness, and regularly assessed. Political responsibility for implementation should be given to a senior government minister able to ensure effective implementation across government departments.

Implement a national data collection process

- A national data collection process on all forms of violence against women (whether conflict-related or not) should be implemented to improve knowledge of the extent of the problem; so that the planning of services and other reforms can have a secure basis in fact; and to ensure that inter-related causal factors, such as the armed conflict and stereotypes about appropriate roles for women and girls, can be addressed holistically.

- Women's rights organizations should participate in the design of questionnaires and the method of outreach to ensure that women and girls participate in the data collection confident that they will be treated respectfully, that the information gathered will be kept confidential and used for ethical purposes, and that they will not be put at further risk.

- The ethical and professional standards on confidentiality, safety of informants and security of data should be respected and must be seen to be enforced.

- Once the extent of the incidence of sexual violence has been assessed, there needs to be a system of reliable information collection on crimes of sexual violence and gender-based crimes, and all other crimes of violence against women and girls, whether or not such violence is conflict-related.

- Data collection surveys should include questions about informants' age, gender identity, sexual orientation, and ethnic background; answering these questions should be optional. The place where the attack occurred, and the identity and status of the perpetrator (that is, whether they are a civilian or a combatant) should also be noted.

Ending discriminatory stereotyping

- Adopt concrete and effective measures to combat discriminatory stereotypes, for example, through public information campaigns and reform of school curricula, to make it clear that gender-based violence, whether or not committed in the context of the armed conflict, is unacceptable and illegal, and that victims of gender-based violence are entitled to be treated with dignity. This would acknowledge that sexual violence has been used as part of a deliberate military strategy by parties to the conflict and that the conflict has exacerbated sexual violence.

On protecting women human rights defenders and survivors of sexual violence

- Adopt a differential focus in protection programmes for witnesses and victims by effectively removing the obstacles faced by women trying to access these programmes.

- Ensure that women survivors who decide not to make an official complaint are offered the same level of protection as those women who do. Women's "effective collaboration" with a criminal investigation must not be a requirement to qualify for any of the state's protection programmes.

- Comply with Constitutional Court ruling T-496 of 2008 on the Justice and Peace protection programme for victims and witnesses. This calls on the authorities to guarantee the availability of women officials; to incorporate psychologists and/or other professionals in the risk assessment process who can evaluate the physical and psychological factors that affect victims under threat; to ensure that any protection measures are appropriate; to eliminate obstacles to accessing justice; and to implement sanctions for officials who fail to comply with these requirements.

- Comply with Constitutional Court Judicial Decision 092, which calls on the authorities to create a special physical protection programme for women leaders and to consult with women's organizations on how best to implement this programme.

On investigating and prosecuting sexual violence

- Comply with the recommendation made by the UN Special Rapporteur on Violence against Women, its Causes and Consequences that the Attorney General should appoint a high-level legal adviser on sexual and gender-motivated violence.

- Ensure that investigations into sexual violence carried out by the various units and regional branches of the Office of the Attorney General are co-ordinated and monitored centrally by a high-level legal adviser on sexual and gender-motivated violence. Such co-ordination would facilitate an assessment of patterns of crimes.

- Comply with Constitutional Court Judicial Decision 092, which calls on the Office of the Attorney General to establish a specialized unit of three prosecutors to work exclusively on cases of violence against women and, once this is established, monitor progress in these cases to assess whether more resources are necessary.

- Ensure that prosecutors abide by the principle that rape and sexual violence are crimes of public concern, rather than a private complaint of the victim, and that once they are aware of allegations that such a crime has taken place, the onus is on the authorities to investigate and make progress on the case, not on the victim.

- Ensure that officials investigating and prosecuting sexual violence undertake properly resourced and benchmarked training programmes that are provided to all staff, including in the regions and in rural areas, on a compulsory and regular basis. This training should emphasize the need for courtesy and consideration to be given to all those seeking justice. Challenging and transforming stereotypes about rape and sexual violence, such as the stereotype that women and girls bear responsibility for putting themselves at risk, should be a major aim of all gender training. Those investigating and prosecuting such crimes who fail to implement such protocols should be sanctioned and retrained.

- Ensure that cases involving conflict-related sexual violence are investigated and prosecuted by specialized prosecutors in the Human Rights Unit of the Office of the Attorney General in Bogotá, if so requested by lawyers representing survivors.

- Ensure that the Office of the Attorney General implements effective measures to guarantee the protection of the rights of women in criminal processes related to sexual violence, using the Rules of Procedure and Evidence of the International Criminal Court as a

guide. Such measures should cover the criminal investigations process, police practices, prosecutorial strategies, witness protection, privacy and confidentiality, and protection from secondary victimization during the investigation and trial.

- Develop an accessible, reliable, permanent process of dialogue between women's organizations, the Office of the Attorney General and the Office of the Procurator General to advance the implementation of Constitutional Court Judicial Decision 092 of 2008 on women and displacement. The Office of the Attorney General should also provide as much information as possible to the NGO Follow-Up Working Group on *Auto 092* on progress with the cases, in a manner which safeguards the right of the accused to a fair trial.

- Ensure that the Office of the Attorney General designs and executes a policy to guarantee access to justice for women victims of violence and incorporates a physical and mental health focus in compliance with Constitutional Court ruling T-045 of 2010. This must ensure that women survivors have access to psycho-social support to allow them to break the silence as a first step in ensuring access to justice. Such a policy must include measures to ensure that women survivors have the tools necessary to report the crime and to participate effectively in the judicial system, including access to information about their cases and about how the legal system works.

- Ensure that the Office of the Attorney General includes a psycho-social component in its investigative strategy. Judicial officers must guarantee the confidentiality, privacy and security of victims and their families, taking account of women's ties to family and community. Where a woman or girl at risk needs to go into hiding, be relocated or receive protective measures, the appropriateness of such measures should be discussed in full, so that measures are effective for the woman or girl and her family. Women and their families should be housed appropriately. Where children receive protection, their rights to education should be guaranteed.

On the individual criminal accountability of state agents in cases of sexual violence

- Ensure that the Ministry of Defence implements an effective policy of "zero tolerance" towards crimes of sexual violence. Once a serious allegation has been made, the alleged perpetrator must be immediately suspended from active duty, and removed from any place or role where they might be able to interfere with the investigation, including intimidating witnesses, pending a prompt, effective, independent and impartial investigation by the civilian justice system in accordance with international standards.

- Prosecute on charges of perverting the course of justice or corruption in public office any person found to be proposing "conciliation" (offers of payment in return for dropping charges) in cases of sexual violence against women and girls. Although under Colombian legislation "conciliation" in these cases is illegal, it continues to be used as a way to pressurize the victims or their family to drop their complaint.

- Ensure that all members of the security forces receive specific training on the absolute prohibition of torture, including rape and sexual violence. All disciplinary rules should reflect this. These disciplinary rules, procedures and training should reflect international criminal law, which identifies that sexual contact with civilian women and girls under coercive circumstances amounts to rape and torture.

- Given the frequent reports of members of the security forces coercing or forcing women and girls to have sex, whether as "girlfriends" or as "prostitutes", ensure that military commanders are vigilant regarding the behaviour of those under their authority, on and off-duty. Where force or coercion is suspected and there is sufficient admissible evidence, investigations and prosecutions for crimes of sexual violence should be opened.

On the care and rehabilitation of survivors of sexual violence

- Guarantee free and timely access to counselling, information, tests and treatment for STIs, including HIV/AIDS, as well as emergency contraception, especially for women living outside cities and large towns. Where it is recommended by doctors, post-exposure prophylactic drugs in the 72-hours after rape should be made available free of charge to prevent possible HIV infection. Survivors of rape should also have effective access to free abortions in cases of unwanted pregnancy.

- Ensure access to reliable and appropriate services that can provide victims with good quality medical and psychological assistance and social support for their rehabilitation and reintegration, especially in the regions and in rural areas.

- Provide effective training programmes for personnel working in the public health system on how to provide good quality medical services for victims of sexual violence.

- Ensure that organizations working on sexual violence are involved in drawing up programmes, services, policies and management tools, and in monitoring and evaluating government action to address the needs of the survivors.

- Ensure that the Ministry of Social Protection designs and implements a strategy for psycho-social health to assist victims of the conflict, as ordered by the Constitutional Court ruling T-045 of 2010. This must have a gender focus and give special attention to women and girls who are subjected to gender-based violence.

On preventing the stigmatization of survivors of sexual violence

- In consultation with women's NGOs and survivors of sexual violence, develop a national public awareness campaign to challenge and condemn the stigmatization of women and girl survivors. Also, implement education programmes aimed at public and community leaders on the importance of not stigmatizing survivors.

On reparation

- Implement a programme of reparation to enable women and girls to assess in full their right to restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition. Comply with the recommendations of the Special Rapporteur on violence against women, its causes and consequences, as outlined in her 2010 report on reparation, to transform existing gender hierarchies which contribute to gender-based violence, as a part of the right to guarantees of non-repetition.

On international law and sexual violence

- Withdraw Colombia's reservation to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), so that CEDAW's inquiry process into grave and systematic violations can be invoked. Also, withdraw the declarations

on interim measures on economic, social and cultural rights, and on the decriminalization of offences against life or personal integrity. These declarations are incompatible with the object and purpose of the Optional Protocol, which is to ensure effective protection of women's right to equality and non-discrimination. The first declaration strikes at the principle that treaty bodies are entitled to provide interim measures to avoid irreparable harm while cases are in progress. The second seeks to limit the extent of the recommendations that the CEDAW Committee is entitled to make, whereas a treaty body's recommendations are authoritative interpretations of the legal substance of the treaty.

- Invite the UN Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the UN Secretary-General for Children and Armed Conflict to arrange a mission to Colombia.

On general concerns relating to the non-repetition of human rights violations

The government should publicly commit to full and prompt implementation of the human rights recommendations of the UN High Commissioner for Human Rights (UNHCHR) and other UN bodies, as well as by the Inter-American Commission on Human Rights. These recommendations should be compiled into an accessible format and an action plan developed to implement them.

Protect civilians

- Adopt measures to improve the protection of civilians, including internally displaced people, in line with the human rights recommendations of the UN and the Inter-American system, as well as the UN Guiding Principles on Internal Displacement.

- Comply with the obligation to prevent the displacement of Indigenous Peoples; commit to uphold the rights contained in the UN Declaration on the Rights of Indigenous Peoples; and take measures to prevent the displacement of Afro-descendants, peasant farmers and other groups living in conflict zones and areas of military or economic importance who have a special dependency on their lands.

- Acknowledge that many paramilitaries who continue to operate despite the demobilization process in what the government refers to as "criminal gangs" (*Bacrim*) are to all intents and purposes parties to the conflict and continue, on occasion, to count on the support of the security forces. Victims of such paramilitaries should be eligible for the protection and reparation programmes offered by the state authorities to those it classifies as victims of the conflict.

- Following a vote by Congress in 2010 on the International Convention for the Protection of All Persons from Enforced Disappearance, the government should deposit the instrument of ratification, including recognition of the competence of the Committee on Enforced Disappearances, set up under Article 26 of the Convention, to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of enforced disappearance.

Protect human rights defenders

- Continue to emphasize that human rights defenders are entitled to pursue their work without attack, threat, or harassment, and that seeking justice is a human right.

- Ensure that human rights defenders can carry out their human rights work without fear of retaliation or punishment by adopting, publishing and implementing a comprehensive policy on the right to defend rights.

- Investigate all attacks, threats or harassment of human rights defenders promptly, effectively, independently and impartially and, where there is sufficient evidence, bring the perpetrators to justice.

- Ensure effective protection programmes are made available to all human rights defenders and leaders at risk; protection measures should be planned and implemented in genuine consultation with those to be protected.

- Take effective measures to ensure that all public servants, including members of the security forces, not only allow the work of human rights defenders to continue unhindered, but give support to their human rights work through public statements and protection.

- Ensure that the Human Rights Unit of the Office of the Attorney General, which investigates human rights violations against human rights defenders and other activists, receives full political support and extensive resources to carry out its work, including funding for staff training.

- End the misuse of the legal system to undermine the work of defenders and other activists and stop criminal prosecution of activists on spurious charges. Set up effective mechanisms to prevent frivolous and vexatious claims against human rights defenders.

- Purge the intelligence files of false information held by the security forces and the civilian intelligence services on human rights defenders, trade unionists and other activists, which are often used as the basis for initiating criminal proceedings against them.

Limit the jurisdiction of the military justice system

- Ensure that the military justice system does not claim jurisdiction over human rights cases involving members of the security forces, and that the military courts immediately cede jurisdiction over all such cases to the civilian justice system.

- Ensure that the Office of the Attorney General instructs its prosecutors to act in accordance with international law which stipulates that members of the security forces implicated in human rights violations should always be investigated and, where there is credible admissible evidence, prosecuted by the civilian justice system.

Bring to justice those responsible for crimes under international law

- Ensure that members of the security forces, state or government officials, politicians, or private individuals who have engaged in conduct amounting to complicity in the unlawful acts of paramilitary and guerrilla groups, as well as of the security forces, are effectively investigated and, where there is sufficient admissible evidence, prosecuted in fair trials before civilian courts.

- Ensure that perpetrators of crimes against humanity and war crimes do not benefit from legal or administrative measures exempting them from criminal prosecution or conviction, or de facto amnesty laws.

- Implement mechanisms to ensure effective co-operation, such as information-sharing, between judicial institutions (for example, between the Office of the Attorney General and the Supreme Court of Justice) and within the same institution (for example, between the Human Rights and Justice and Peace Units of the Office of the Attorney General).

- Guarantee the effective physical protection of judges, lawyers, prosecutors, magistrates, and other judicial officials. Such measures must be agreed in consultation with the recipients themselves to ensure that they are appropriate.

On implementing the Rome Statute and other international criminal law

- Colombia should implement its complementarity and co-operation obligations under the Rome Statute of the International Criminal Court and other international criminal law by enacting effective implementing legislation, as outlined in Amnesty International's *International Criminal Court: Updated checklist for effective implementation*, in particular, by including crimes against humanity and all war crimes defined in customary international law and treaties as crimes under international law.[67] As such, acts of conflict-related sexual violence must be investigated and prosecuted as crimes under international law and not as ordinary crimes.

On amending the Colombian legal framework

- The Criminal Code, which defines rape, should be amended to reflect the full definition of rape in international criminal law.

- The Code of Criminal Procedure (Law 906) should be amended to reflect the Rules of Procedure and Evidence of the International Criminal Court.

RECOMMENDATIONS TO GUERRILLA ORGANIZATIONS

Amnesty International calls on the guerrilla organizations to:

- Order all fighters to abide by international humanitarian law, which prohibits parties to an internal armed conflict from targeting civilians.

- Issue clear instructions to all fighters under their control not to commit 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".

- Publicly denounce gender-based violence, issuing clear warnings or instructions to their forces that violence against women will not be tolerated.

- Make a public commitment not to recruit anyone under the age of 18; to stop the use of rape and other forms of sexual violence; and to stop the practice of forced abortions, pregnancy and contraception with respect to female members of the guerrilla forces.

RECOMMENDATIONS TO STATES

Amnesty International calls on states to:

- Urge the Colombian government to fulfil the above recommendations and closely monitor its efforts to fulfil these recommendations and those made by the UN and the Inter-American human rights system and other inter-governmental bodies.

- Develop together with other states a plan of action to share the responsibility to identify, track and, where there is sufficient admissible evidence, seek the extradition of those suspected of responsibility for crimes against humanity and war crimes of sexual violence.

- Call on guerrilla groups to commit themselves publicly to respect international criminal law and to prevent their members from committing crimes against humanity and war crimes, including sexual violence.

- In their relations with the Colombian government, express concern for its failure to prevent, prosecute and punish sexual violence.

- Provide support to women's organizations, activists and human rights defenders to enable them to carry out their work without fear.

RECOMMENDATIONS TO THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

Amnesty International calls on the Office of the Prosecutor of the International Criminal Court to publish quarterly reports concerning the status of the preliminary examination of the situation in Colombia indicating:

- Which crimes within the jurisdiction of the International Criminal Court have been included as crimes under Colombian law.

- Where these crimes have not been included as crimes under Colombian law, what steps the Office is taking as part of positive complementarity to encourage Colombia to fulfil its obligations to do so.

- What investigations have been opened by Colombian authorities regarding crimes against humanity and war crimes committed since 2002, when they were opened, their current status, whether they have led to prosecutions and, if so, whether the suspects have been charged with crimes or ordinary crimes under national law.

- By what date the Prosecutor will decide whether to seek authorization pursuant to Article 15 of the Rome Statute to open an investigation of the situation in Colombia.

ENDNOTES

[1] http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-8298180.html, accessed 12 July 2011.

[2] The increased risk of sexual violence and impunity for abusers in armed conflict situations has been recognized by the UN Security Council in Resolution 1960, adopted on 16 December 2010.

[3] For the purposes of this report, an act of sexual violence is defined as being conflict-related if it has been perpetrated by one the parties to the conflict, be they members of the security forces, paramilitaries or guerrillas.

[4] Sexual violence takes many forms – rape; forced prostitution, pregnancy, abortion and sterilization; sexual harassment; sexual slavery; and gender-related persecution, for example control over sexual behaviour.

[5] "During armed conflict, women experience all forms of physical, sexual and psychological violence perpetrated by both State and non-State actors. These forms include murder, unlawful killings, torture and other cruel, inhuman or degrading treatment or punishment, abductions, maiming and mutilation, forced recruitment of women combatants, rape, sexual slavery, sexual exploitation, involuntary disappearance, arbitrary detention, forced marriage, forced prostitution, forced abortion, forced pregnancy and forced sterilization." *In-depth study on all forms of violence against women*, Report of the United Nations Secretary-General, 6 July 2006, A/61/122/Add.1, para 143.

[6] *In-depth study on all forms of violence against women*, Report of the United Nations Secretary-General, 6 July 2006, A/61/122/Add.1, for example at para. 221.

[7] Other factors include the difficulty of "[p]roviding reliable data on the extent of sexual violence in war and humanitarian crises… precisely because of the chaotic circumstances and constantly shifting populations as well as safety considerations." *In-depth study on all forms of violence against women*, Report of the United Nations Secretary-General, 6 July 2006, A/61/122/Add.1, for example at para. 226.

[8] See the Convention on the Elimination of all Forms of Discrimination against Women, Article 2(e)(f) and 5(a).

[9] Their right to equal participation has been reaffirmed by the UN Security Council in its resolutions on Women, Peace and Security, see Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010).

[10] Index: AMR 23/040/2004.

[11] Constitutional Court Judicial Decision (*Auto)* 092 of 2008 called on the state to implement 13 programmes to prevent sexual violence and protect victims and called on the Office of the Attorney General to make progress in investigating 183 cases of sexual violence, some of which were included in Amnesty International's 2004 report.

[12] For an examination of the position adopted by the Uribe government on human rights and human rights defenders see *"Leave us in peace!": Targeting civilians in Colombia's internal armed conflict* (Index: AMR 23/023/2008).

[13] See Chapter 3, The right to reparation for an examination of the Victims and Land Restitution Law.

[14] Militia members dress in civilian clothes and operate in urban or semi-urban areas. Armed with hand guns, they carry out tasks such as intelligence, logistics and recruitment and join "regular" forces as fighters as required.

[15] *El Tiempo*, 14 February 2011, http://m.eltiempo.com/justicia/plan-para-evitar-accin-de-bandas-en-las-elecciones/8859853, accessed 12 July 2011.

[16] See *The Paramilitaries in Medellín: Demobilization or Legalization?* (Index: AMR23/019/2005).

[17] INDEPAZ, *V Informe sobre narcoparamilitares en 2010*, 2011.

[18] Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II, Chapter 5, 30 December 2009.

[19] For example, as a result of Constitutional Court Judicial Decision 092, the Attorney General's Office is working on a database on conflict-related sexual violence. However, according to Colombian NGOs, this is not yet operational.

[20] Annual Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia, 4 March 2010, A/HRC/13/72.

[21] *Informe Periciales Sexológicos, 2009, Violencia Sexual Contra la Pareja*, INMLCF.

[22] Annual Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia, 4 March 2010, A/HRC/13/72.

[23] Annual Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia, 3 February 2011, A/HRC/16/22.

[24] Working group to monitor compliance with *Auto 092* of 2008 of the Colombian Constitutional Court, *Access to Justice for Women Victims of sexual Violence*, May 2011, p. 31.

[25] The Office of the Procurator General is responsible for carrying out disciplinary investigations into, among other things, the involvement of public officials in human rights violations. The Office of the Attorney General is responsible for criminal investigations into all crimes, including human rights violations. The Supreme Court of Justice is the highest judicial body in civil and criminal matters. The Office of the Human Rights Ombudsman is responsible for guaranteeing, promoting, disseminating, defending and protecting human rights in Colombia.

[26] For more information on the fight against impunity during the government of President Uribe, see *"Leave us in peace!": Targeting civilians in Colombia's internal armed conflict* (Index: AMR 23/023/2008).

[27] These standards include the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989 (http://www2.ohchr.org/english/law/executions.htm). In that resolution, the Economic and Social Council recommended that the Principles should be taken into account and respected by governments within the framework of their national legislation and practices. The UN has also drafted a manual to assist states in implementing these Principles, which were endorsed by the UN General Assembly in Resolution 44/162 of 15 December 1989.

The standards also include the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recommended by General

Assembly resolution 55/89 of 4 December 2000, (http://www2.ohchr.org/english/law/investigation.htm). In that resolution, the UN General Assembly drew the attention of governments to the Principles annexed to the resolution and strongly encouraged them to reflect upon the Principles as a useful tool in efforts to combat torture.

[28] See, for example, Principle 2 of the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity: "Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations"; Principle 19: " States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished"; Principle 3 of the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: "The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:… (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation".

[29] *Auto 092* was a follow-up report to a 2004 Constitutional Court sentence (T-025), which ruled that the lack of an integrated state policy towards displaced communities was unconstitutional. Since then, the Court has issued a series of judicial decisions on specific displaced communities, such as Indigenous Peoples and people with disabilities.

[30] Office of the Attorney General website, http://www.fiscalia.gov.co/justiciapaz/Index.htm, accessed in June 2011.

[31] Principle 6 of the United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power states: "The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by ….d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation." Principle 10, 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 states: "Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation." See also: Article 68 (1) of the Rome Statute of the International Criminal Court and ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

[32] Principle 6 of the Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power states: "The responsiveness of judicial and administrative processes to the needs of victims should be

facilitated by:… b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system". See also: Article 68 (3) of the Rome Statute.

[33] To demonstrate that victims are effectively co-operating with an investigation they must provide information to help identify and locate the perpetrator.

[34] A/RES/53/144, 8 March 1999.

[35] Annual Report of the Inter-American Commission on Human Rights, 30 December 2009, OEA/Ser.L/V/II.

[36] Amnesty International is concerned that this statement shows how rape and sexual violence is only understood by the Colombian authorities as crimes committed using physical violence. The prosecutor shows in this statement that she does not recognize that the use of control and abuse of power exercised by commanders can be exercised through implied threat. Just because they do not have to use physical violence, does not mean that their imposition of sexual acts on others who do not freely agree to these acts is not rape.

[37] Adopted by General Assembly resolution 40/34 of 29 November 1985.

[38] The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 6, states: "The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information".

[39] Principle 6 of the 1990 UN Guidelines on the Role of Prosecutors states that "Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations." Principle 4 states:"States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability."

[40] Post-exposure prophylaxis (PEP) is an emergency medical response that can be used to protect individuals exposed to HIV. PEP consists of medication, laboratory tests and counselling. PEP should be initiated within 2-24 hours (and no later than 48-72 hours) of possible exposure to HIV, and must continue for approximately four weeks.

[41] See UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 14: "Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means" and Principle 15:, "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: "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."

[42] Law 1257 of 2008.

[43] Law 360 of 1997.

[44] Constitutional Court Sentence T-045/10, 2 February 2010.

[45] Inter-American Commission on Human Rights Annual Report 2010, OEA/Ser.L/V/II. Doc. 5, rev. 1, 7 March 2011.

[46] Constitutional Court Judicial Decision 004, 26 January 2009.

[47] Permanent Court of Arbitration: Chorzow Factory Case (*Germany v. Poland*), 1928.

[48] Adopted by the UN General Assemly on 16 December 2005.

[49] Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 23 April 2010 (A/HRC/14/22): http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.pdf, accessed 12 July 2011.

[50] Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. 19-21 March 2007.

Article 3(e).

[51] For example, the governments of Argentina, Chile, Peru, East Timor, Brazil or South Africa have

developed different reparation programmes depending on the needs of the victims.

[52] UN Basic Principles, Art. 19.

[53] UN Basic Principles, Art. 20.

[54] UN Basic Principles, Art. 21.

[55] UN Basic Principles, Art. 22.

[56] UN Basic Principles, Art. 23.

[57] In July 1998, a diplomatic conference adopted the Rome Statute of the International Criminal Court (ICC) by an overwhelming vote of 120 in favour and only seven against (21 abstained). The Rome Statute defines the crimes, how the ICC will work and what states must do to cooperate with it. The 60th ratification necessary to establish the ICC was deposited on 11 April 2002 and the Statute entered into force starting its jurisdiction on 1 July 2002. In February 2003, the first 18 judges of the ICC were elected and the first Prosecutor was elected in April 2003.

[58] *Prosecutor v. Bagaragaza*, Decision on the Prosecution Motion for Referral to the Kingdom of Norway – Rule 11 *bis* of the Rules of Procedure and Evidence, Case No. ICTR-2005-86-11 *bis*, Trial Chamber, 19 May 2006, para. 16, affirmed by *Prosecutor v. Bagaragaza*, Decision on Rule 11 *bis* Appeal, Case No. ICTR-05-86- AR11 *bis*, Appeals Chamber, 30 August 2006, para. 16.

[59] Colombia's Constitutional Court, Judicial Decision 092, 2008.

[60] In this respect, as the Appeals Chamber of the Special Tribunal for Lebanon, an internationalized criminal court, recently held that: "[a]ccording to the principle of legality, everybody must know in advance whether specific conduct is consonant with, or a violation of, penal law." It also held that: "[T]his… does not necessarily entail, however, that the authorities of a State party to the ICCPR may try and convict a person for a crime that is provided for in international law but not yet codified in the

domestic legal order: in criminal matters, international law cannot substitute itself for national legislation; in other words, international criminalisation alone is not sufficient for domestic legal orders to punish that conduct. Nevertheless, Article 15 of the ICCPR allows at the very least that fresh national legislation (or, where admissible, a binding case) defining a crime that was already contemplated in international law may be applied to offences committed before its enactment without breaching the *nullum crimen principle*. This implies that individuals are expected and required to know that a certain conduct is criminalised in international law: at least from the time that the same conduct is criminalised also in a national legal order, a person may thus be punished by domestic courts even for conduct predating the adoption of national legislation". Colombia has been a party to the International Convention on Civil and Political Rights since 1969.

[61] "In this regard, the State [Colombia] may not apply amnesty laws or argue prescription, non-retroactivity of the criminal law, *res judicata*, the principle of *ne bis in idem*, or any other similar mechanism that excludes responsibility, in order to exempt itself from this obligation" to investigate and prosecute. Inter-American Court of Human Rights, *Manuel Cepeda Vargas vs. Colombia case*, Judgment of May 26, 2010 (Preliminary objections, merits, reparations and Costs), para.216 (d).

[62] Inter-American Court of Human Rights, Case of the Rochela Massacre v. Colombia, Judgment of May 11, 2007 (Merits, Reparations, and Costs), para.200 and the Case of the Pueblo Bello Massacre v. Colombia, Judgment of 31 January 2006, (Merits, Reparations and Costs), para.192.

[63] Elements 1 and 2 of the Elements of Crimes relating to Article 7(1)(g)-1, Article 8(2)(b)(xxii)-1, Article 8(2)(e)(vi)-1. The perpetrator invaded [A footnote here reads: 'The concept of "invasion" is intended to be broad enough to be gender-neutral.'] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. [A footnote here reads: 'It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.'

[64] See *Colombia: The Paramilitaries in Medellín: Demobilization or Legalization?* (Index: AMR 23/019/2005).

[65] Law 1424 of 2010.

[66] See *Amnesty International Report 2008*, www.amnesty.org/en/region/colombia/report-2008.

[67] AI Index: IOR 53/009/2010

I WANT TO HELP

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

☐ I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

☐ I wish to make a donation to Amnesty International (donations will be taken in UK£, US$ or €)

amount

please debit my Visa ☐ Mastercard ☐

number

expiry date

signature

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

amnesty.org

‘THIS IS WHAT WE DEMAND. JUSTICE!’

IMPUNITY FOR SEXUAL VIOLENCE AGAINST WOMEN IN COLOMBIA’S ARMED CONFLICT

Sexual violence is endemic to Colombia’s long-running armed conflict. Members of all the warring parties – paramilitary groups, guerrilla groups and the Colombian security forces – have sexually abused and exploited women and girls. They have done so for a variety of reasons – to exploit them as sexual slaves, to sow terror within communities, to wreak revenge on an adversary, and to silence women leaders.

Rape and sexual violence are not the only forms of gender-based violence women experience. However, they fall into a special category for one fundamental reason: they are the most invisible of human rights abuses. Survivors rarely report such crimes and, when they do, their abusers are almost never brought to justice. This is a human rights scandal that re-victimizes survivors of sexual violence. It vividly reveals the deeply entrenched impunity that has for so long shielded from justice human rights abusers of all kinds in Colombia.

At the heart of this report are the voices of survivors of sexual violence in Colombia’s bloody conflict, women and girls who have for so long been silenced, overlooked and ignored. The message they gave in sharing their stories with Amnesty International was both clear and compelling – “This is what we demand. Justice!”

amnesty.org

Index: AMR 23/018/2011
September 2011

AMNESTY
INTERNATIONAL