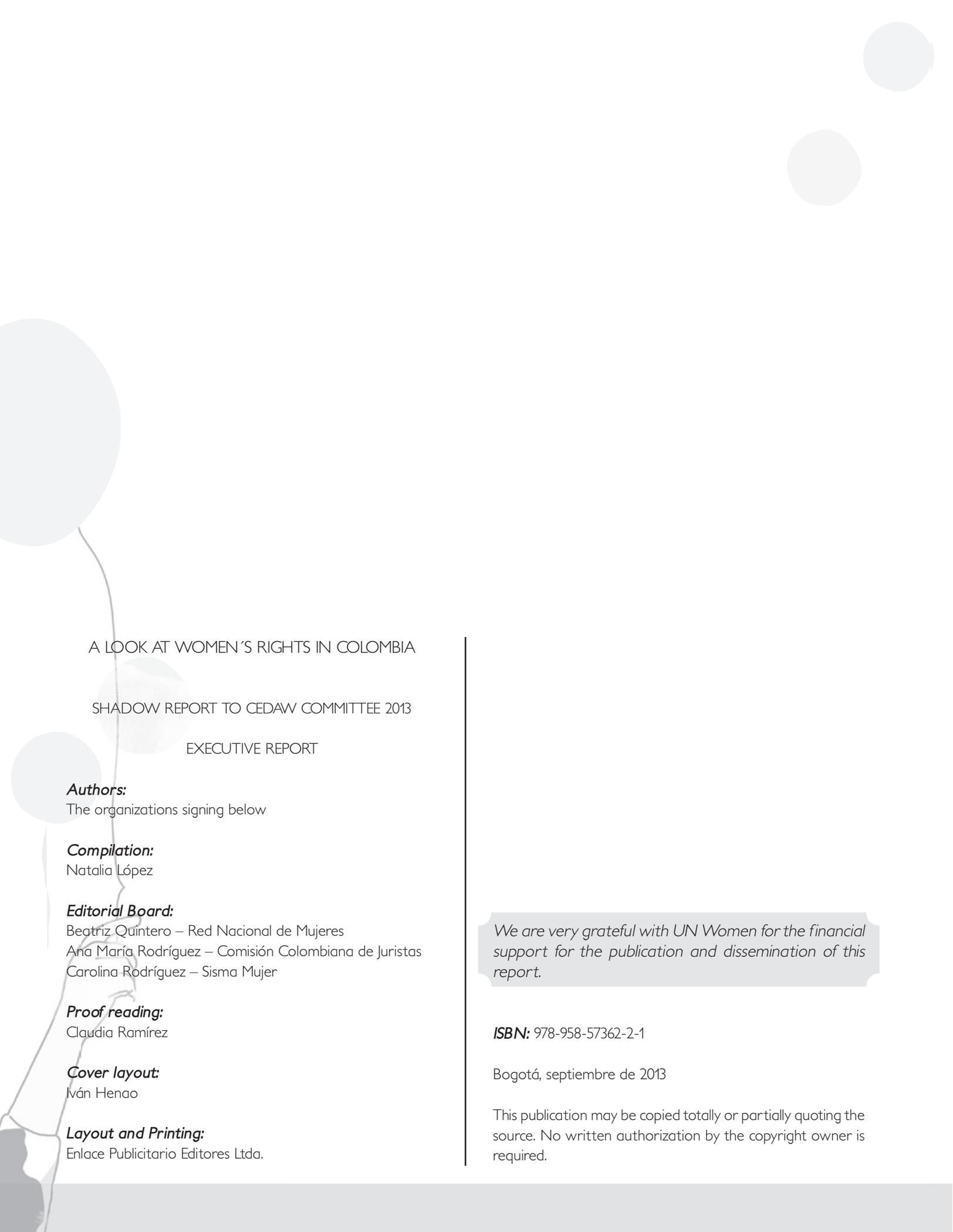


A LOOK AT WOMEN'S RIGHTS IN COLOMBIA

EXECUTIVE REPORT



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SHADOW REPORT TO CEDAW COMMITTEE 2013

EXECUTIVE REPORT

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We are very grateful with UN Women for the financial support for the publication and dissemination of this report.

ISBN: 978-958-57362-2-1

Bogotá, septiembre de 2013

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This report is the result of the work done by an alliance of women networks and mixed organizations. The report will be presented in October 2013, in CEDAW Session 56, where the 7th and 8th periodical Colombian reports will be reviewed.

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- Católicas por el Derecho a Decidir - Colombia
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- Centro de Investigación y Educación Popular / Programa por la Paz
- Colombia Diversa
- Comisión Colombiana de Juristas - CCJ
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INTRODUCTION

Between 2007 and 2013 serious events have taken place in Colombia, all of them having an impact on the lives of women: the development of investigations of the crimes committed by demobilized paramilitaries, even more serious in the case of crimes against women; the emergence of post-demobilization new criminal groups; the approval and implementation of the Victims and Land Restitution Law; the talks with the FARC guerrillas, and the entry into force of free trade agreements. The armed conflict still goes on and women face different forms of discrimination and violence, although there are no unified and reliable official figures on the situation.

Even though the Colombian Government has introduced new legislation to address some of the aspects of discrimination and violence against women, these regulations have not been properly implemented and have failed to transform reality.

The poor implementation of the law is due to several reasons, including the lack of political will and of budget, and it is aggravated by profound contradictions among authorities. While constitutional jurisprudence is protective and progressive, Congress dishonors its obligation to legislate on matters of importance to women, and the Attorney is openly opposed to the rulings of the Constitutional Court having to do with the voluntary interruption of pregnancy and same-sex marriage. In this scenario, civil society continues focusing in legal action before the High Court, making important progress in the protection of women's rights against all odds.

1. Women's Rights

- a. The right to live a life free from violence

Sexual violence

General sexual violence –perpetrated not only in the context of the armed conflict- has increased in the last years. The National Institute of Legal Medicine and Forensic Sciences (hereinafter NILMFS) indicated that the rate of incidence for 2011 was 49 cases per 100,000 inhabitants, thus becoming “the highest incidence rate in the last decade”.

For the years 2010 and 2011, the NILMFS reported an 84% of women victims of sexual violence compared to a 16% of men. This means a ratio of 1 man for every 5 women.

Sexual violence against women continues to be a common, widespread, systematic and invisible practice in the context of the armed conflict and it is perpetrated by all the soldiers involved². In 2011, NILMFS reported 94 legal medical examinations for sexual crimes, whose perpetrators were soldiers involved in the armed conflict³. In 86% of the cases, the victim was a woman. Of these cases, 58% was attributed to the police, 27% to paramilitary groups and 15% to the guerrillas⁴.

Between 2003 and 2011, 13 cases of sexual violence against indigenous women -in the context of the armed conflict- were reported, although the low figure could be due to fear of reporting. In 6 cases, the alleged perpetrators were military and troops from the national army⁵.

Most of the victims are under 17 years of age: NILMFS pointed out that, in 2011, 85% of the tests made to young women correspond to girls and adolescents between 5 and 17 years of age, the majority of them between 10 and 14 years⁶.

The impunity of these crimes is of 98%. This figure goes together with a high percentage of underreporting, the invisibility of these crimes and the constant fear to denounce them.

1 Constitutional Court of Colombia. Rapporteurship. Act 092, 2008. In: <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>

2 This was recognized by the Constitutional Court in Act 092, 2008.

3 NILMFS has not released the report for 2012. The National Institute of Legal Medicine and Forensic Sciences (NILMFS), 2011. Forensis, table 3, p. 215 See: http://www.medicinalegal.gov.co/index.php?option=com_content&view=article&id=193:forensis-2011&catid=19:forensis&Itemid=154 Instituto Nacional de Medicina Legal y Ciencias Forenses (INMLCF), Forensis 2011, citado, cuadro 3.215. Ver: http://www.medicinalegal.gov.co/index.php?option=com_content&view=article&id=193:forensis-2011&catid=19:forensis&Itemid=154

4 Percentages taken from the Report to the Universal Periodic Review, September 2012. *Situation of Human Rights and Humanitarian Law in Colombia 2008-2012*. In: http://coljuristas.org/documentos/libros_e_informes/examen_periodico_universal_2012.html

5 Quoted from the report of the monitoring of resolution 1325 in Colombia, in Indigenous National Organization of Colombia – (ONIC for its acronym in Spanish), Consejería Mujer, Familia y Generación: “Indigenous Women, Invisible Victims in the Conflict in Colombia” presented to the representative of the UN SG on May, 2012.

6 National Institute of Legal Medicine and Forensic Sciences, “Forensis 2011”, Colombia, 2011, p. 213-214. See table 1, medical legal examinations for alleged sex crime, according to age and sex.

Violence against human rights defenders

The persecution and stigmatization of human rights defenders is systematic⁷. This situation was aggravated in the years 2009⁸, 2010⁹, and 2011¹⁰.

From the second half of 2009 on, threats, attacks and harassment against women leaders was brought about allegedly by new criminal, paramilitary groups. These crimes were perpetrated on 93 women and 12 women's organizations. In December 2010, women's organizations denounced death threats against 4 human rights defenders¹¹.

Domestic and/or intra-family violence

In 2010, 37% of the women surveyed by Profamilia reported physical aggression by their husband or partner, and 85% of these victims suffered serious injury or physical or psychological consequences as a result of violence¹².

In 2011, NILMFS reported that 70.139 women have been victims of domestic violence, this kind of violence being the main form of partner violence: 51.118 women were victims of partner violence¹³. According to NILMFS, in the same year, 1,415 women across the country died because of domestic violence. The couple or ex-couple was reported as the main aggressor of these women.

The preliminary results reported by NILMFS for 2012 speak of 1,146 women murdered, but there is no data yet on the alleged attacker or circumstances of the cases. In relation to domestic violence, 71,485 cases were reported and in 77.8% of them women were the victims. The partner violence reported for this year was showed the largest number of women victims: a total of 40,831 cases.

Institutional obstacles to prevent and punish violence against women

The Colombian State highlighted the issuing of Law 1257 of 2008 and its regulatory decrees in accordance with article 1 of the Convention as the main legislative progress in the matter¹⁴. However, after five years of the adoption of this law, the comprehensive model for the attention of violence against women not has been effectively implemented.

b. The right to justice for women victims of violence

Discriminatory patterns due to sex are still present in the judicial system, preventing access to justice for women. The impunity rates in cases of sexual and domestic violence are very high, and the measures taken by the State to respond to a problem of this magnitude are inadequate.

7 OAS / Ser. L/V/II., Doc. 51 corr. 1.30 December 2009, annual report of the IACHR, chapter V; A/HRC/13/22/Add.3, on March 4, 2010; Report of the Special Rapporteur on the Situation of the Defenders of Human Rights, Margaret Sekaggya; United Nations, A/HRC/16/44, December 20, 2010. Annual Report of the High Commissioner for Human Rights on the Situation of Human Rights in Colombia, 2009, par. 22 et seq.

8 Ibid.

9 Annual Report of the Office of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, A/HRC/16/22, February 3, 2011, par. 10 and 11.

10 www.somosdefensores.org. The System of Information on Attacks against Defenders of Human Rights in Colombia -SIADDDH-for 2011 shows a significant increase of 36% compared to 2010.

11 Technical Secretariat: Casa de la Mujer. *Reviews of the Follow-up Table to Act 092, 2008, Government Reports March 16, July 1 and November 8.*

12 This survey has been conducted every five years since 2000. Results have been published on the website: <http://www.profamilia.org.co/encuestas/Profamilia/Profamilia/>

13 Information from Corporación Humanas, September 2013.

14 VII and VIII Combined Reports of the Colombian State... Ob. Cit, p. 30.

According to the Attorney-General Office, between 2009 and 2012, in 86% of the investigations, the administration of justice could not properly identify the author or authors in cases of sexual crimes and domestic violence¹⁵.

Incriminal proceedings in the framework of Law 975 of 2005 (called “The Justice and Peace Law”), sexual violence crimes have been denied by the majority of the demobilized soldiers. Those who have accepted them have stated that these relationships were agreed by the women, whereas commanders affirmed that these crimes occurred “*due to lack of control of the troop*”¹⁶. The National Unit of Prosecutors for Justice and Peace reported that by December, 2012, of 39,546 crimes confessed, only 96 correspond to sexual violence crimes¹⁷.

Of the 14 rulings handed down under the “Justice and Peace law”, only 2 involve sexual violence crimes. Of the 183 sexual violence crimes against displaced women that the Constitutional Court ordered to investigate to the Attorney General in 2008, only 5 cases have gone to trial¹⁸.

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

Participation in politics

Despite rules and policies referred to by the Government in its report to the Committee, in the last period there has been no significant progress in women’s political participation. On the contrary, a lack of political commitment has been shown by the executive power and the political parties.

By 2012, of the 14 ministers in office, only 2 were women, and the Superintendence, the State Social Enterprises and the scientific and technological institutes did not have any woman in senior positions.

As for elected officials, the lack of progress is evident in the underrepresentation of women in the Congress, which boasts 102 senators, and the Chamber with 168 representatives. In this Corporation, the percentage of women’s participation has never exceeded 16%.

Participation in peace building processes

In August 2012, the Government and the FARC signed a “*General agreement for the cessation of the conflict and the construction of a stable and lasting peace*”. They agreed to begin discussions on policies on comprehensive agricultural development, political participation, conflict management, illicit drugs and victims, and the implementation, verification and endorsement of the agreements. So far the discussion of the first two topics has been advancing with no gender approach on the part of any of the negotiators.

The Colombian Government failed to foresee the participation of women in this process. It did not include any women in the first row of the negotiations table, and there are only two women on the second level of negotiations (as advisers). This raises questions on whether a gender perspective will be incorporated and whether crimes against women will be visible.

15 Quintero Benavides Alexandra, “*Rights in Feminine, towards a Real Path to Equality?* VI Report on the Human Rights of Women in the Red Nacional de Mujeres 2010-2012, Corporación Sisma Mujer, Impresión Nomos, July 2013, p. 60.

16 Open Truth, (2008, November 6), *Serious Cases of Sexual Abuse of the Bloque Norte*, in http://www.verdadabierta.com/justicia_ypaz/ 529 graves casos de abuso sexual del bloque norte

17 See: National Prosecutors for the Justice and Peace Unit Statistics. Management of the National Unit of Prosecutors for Justice and Peace December 1, 2012, in <http://www.fiscalia.gov.co/jyp/unidad-de-justicia-y-paz/>

18 *Follow-up Table to Act 092, 2008*, reserved annex. *Access to Justice for Women Victims of Sexual Violence*. Fourth follow-up report, May, 2011.

d. Economic, Social and Cultural rights

The Right to Health

Although the Constitutional Court has pointed out that the criminalization of abortion imposes a disproportionate burden on women denying their fundamental rights, the decisions of the Court are cramped by barriers generated by public entities, especially those responsible for health care.

Government policies are not consistent, and the influence of public servants who act according to their particular religious criteria hinders the implementation of comprehensive policies on sexual and reproductive health and rights.

It is estimated that 6 out of every 10 health institutions having the capacity of providing post abortion services, do not, and about nine out of ten of these institutions do not offer legal abortion services¹⁹. Between May 2010 and June 2012 nearly 387 hindered cases or incurring in unjustified denials of services have been followed up.

Concerning HIV/AIDS, data from the National Observatory for the Management of HIV/AIDS show that from 1988 to 2010 the proportion of women infected by men increased by almost five times. Nowadays, nearly 50% of the people living with HIV/AIDS in our country are women.

Violence against women is a matter of public health and it is also a cause and consequence of the HIV infection. Violence and the threat of violence increase drastically the vulnerability of women and girls to HIV/AIDS.

The Right to Education

According to the National Quality of Life Survey conducted in 2011 (National Department of Statistics, DANE), the national illiteracy rate of the population aged 15 years and over was 6.4%²⁰. According to the UNDP National Human Development Report, 2011, the rate of coverage in rural areas is 2.7 times lower than in urban centers²¹.

According to the Ministry of Education, in 2012, 196,725 men and 155,280 women dropped out of school. Dropping out of school is associated with gender conditions: girls are forced to abandon their studies to devote to household chores, caring for other people, or because they face pregnancy. According to figures from the Ministry of Education, 50% of cases of dropout of adolescent women had pregnancy as its main cause.

The Right to Work

Although the country has laws recognizing formal guarantees to women, they do not effectively enjoy the right to work in equal conditions compared to men.

The overall rate of participation of women is more than 20 points below that of men and women's unemployment rate nearly doubles that of male^{22, 23}. Persistent wage gaps between men and women range

19 Guttmacher Institute and Fundación Oriéntame/. *Unplanned Pregnancy and Induced Abortion in Colombia: Causes and Consequences*, Bogota, 2011, p. 6 to 18.

20 <http://formularios.dane.gov.co/pad/index.php/catalog/167>

21 <http://pnudcolombia.org/indh2011/index.php/el-informe/informe-completo/30>

22 74.2% of men and 52.9% of women (DANE, Labor Market by Sex, February 2013 - April 2013).

23 8.3% of Men and 13.9% of Women (DANE, Labor Market by Sex, February 2013 - April 2013).

between 15% and 20% for equal work²⁴. In a sample of 135 countries, Colombia is placed in the 94th position in the index of equal pay for similar work.

- Free-trade (FTA) agreements -

Presently, the FTA's with the United States and Canada are in force²⁵. The non-binding mechanisms for the protection of the human rights treaties foreseen in these agreements do not include women's rights. There have been social conflicts arising from the application of these treaties in the agricultural and industrial sectors. These sectors directly impact the lives of rural women and of those linked to the industry, since they cannot face competition with low price imported products.

-The Status of Community Mothers -

Community Homes are a program of non-formal education for boys and girls between 0 and 7 years of age coming from the poorest households. These homes are managed by neighborhood women known as Community Mothers. Until a few months ago, the money they received in exchange for their work was considered a bonus, a "voluntary contribution" and was not considered a salary.

In 2012, the Constitutional Court ordered the design and implementation, with the participation of Community Mothers, of the necessary measures for the payment of a salary to them. In April 2013, the Government created a subsidy for individuals who are close to retirement and who do not qualify for a pension. However, the monetary subsidy, that is not a pension as such, is insufficient, since it is equivalent to half a minimum wage.

The minimum wage (and access to health and pension) was also implemented for mothers currently linked to the program. However, the decision benefits only young women, leaving without protection those women who have worked for many years and who will not have access to a pension.

2. Women in Special Vulnerability Conditions

a. Afro - Colombian Women

The Independent Expert on Minority Issues visited Colombia in February 2010²⁶. In her report, she pointed out that slavery is still latent in the social marginalization of the people belonging to the Afro-Colombian communities who are still harassed by armed stake holders seeking to dispossess them of their land and to involve them in the drug trade. She expressed her concern for the Afro-Colombian community women because although there is legislation protecting them, it is not conducive for decreasing violence and forced displacement practiced against them. While this report gives an account of the situation in 2010, some of the problems evidenced by the expert have been disregarded and Afro-descendant women continue facing discrimination, violence and poverty.

Two of the most serious situations of violence suffered by Afro-Colombian women are sex discrimination and racism. This kind of violence minimizes the potential for equity and the full enjoyment of their rights in comparison to other women in Colombia.

b. Indigenous women

According to UNDP Human Development Report, of all the indigenous peoples, 63% live under the line of poverty (compared to 34.1% in the national index) and 47.6% under the destitution line²⁷. The percentage

²⁴ Global Report on Gender Differences by 2011.

²⁵ In process of ratification: European Union, Korea and Costa Rica. Likewise negotiations are being done with Japan, Turkey, Panama, Japan and the Pacific Alliance.

²⁶ Document A/HRC/16/45/Add.1.

²⁷ http://escuelapnud.org/biblioteca/documentos/abiertos/05_indh2011co.pdf

of illiterate indigenous women is 23% higher than the national average, and maternal mortality is higher in the departments inhabited mainly by indigenous people, where the illiterate rate can reach up to almost five times the national average.

The impact of the armed conflict on indigenous peoples continues to be disproportionate, taking into account that these communities are getting smaller but continue living in areas where the intensity of the conflict is higher. This brings about massive displacement, internal exile and forced recruitment, among other violations of their rights. Not a public policy of comprehensive protection to indigenous peoples taking into account this impact has been produced.

In addition, the national development model is founded on mining policies that do not guarantee adequate consultation processes and/or free, prior and informed consent according to the law. On the other hand, there survives a model of society based on imaginaries and cultural practices that disparage and discriminate women, not only because of their gender condition but also because of their ethnic and racial status. Thus, discrimination against indigenous women is emphasized and deepened.

c. LGBTI women

In Colombia there are not information systems on the situation of human rights of LGBTI people that acknowledge the problems faced by this community and that allow for the design and implementation of policies to remedy their situation. The Ministry of the Interior should have designed programs of technical, social assistance and support to the LGBT population²⁸. However, concrete results are not shown yet.

Of the known murders of LGBTI people between 2008 and 2012 (580 in total), 22 of the victims were lesbians and 107 transsexual women²⁹. Of the 580 cases, only 20 have rendered final judgments. NILMFS reported that between 2010 and 2011 at least 60 LGBTI people were victims of sexual violence.

The real impact on the LGBTI population in the context of the armed conflict is not known although there are practices against them perpetrated by armed groups.

Lesbian women and transsexual men and women in jail denounced restrictions of conjugal visits and punishments for demonstrations of affection in public.

Regarding family law, there are still problems in relation to the de facto marital unions, the marriages and the possibilities of adoption³⁰.

d. Girls, adolescents and young people

Teenagers, young women and girls from different population groups such as peasants, afro-descendants and indigenous people, are one of the most discriminated populations.

According to the Secretary-General of the United Nations, Human Rights Watch and UNICEF, Colombia ranks fourth in the world with the largest number of children and adolescents linked to the internal war³¹. The legal frameworks for the care and reparation of victims do not guarantee an effective remedy and a

²⁸ Article 13, Decree 4530, 2008.

²⁹ Colombia Diversa, a non-governmental organization owns a database in which violations against LGBT people, including violations of the right to life and personal integrity are reported. The database is periodically fed from: 1) Radio, written press and television; 2) Complaints by non-governmental organizations and activists, 3) Individual complaints which made to Colombia Diversa, and 4) Official information provided by the State (Public Prosecutor's Office, national police, ombudsmen, National Institute of Legal Medicine and Forensic Sciences, among others) through responses to request by Colombia Diversa.

³⁰ See: <http://www.caracol.com.co/noticias/actualidad/colombia-no-esta-preparada-para-uniones-maritales-entre-homosexuales-procurador/20111202/nota/1587191.aspx> and <http://m.eltiempo.com/politica/proyecto-de-ley-para-regular-la-objecin-de-conciencia/10039067>

³¹ Document written and Semillero de Niñas y Jóvenes from the Colectivo Mujeres al Derecho, in the framework of the first meeting of the Regional Conference on Population and Development in Latin America and the Caribbean, Montevideo, Uruguay – August, 2013.

guarantee of non-repetition for girls and young women. The policy of restitution of lands for boys, girls and adolescents has not been formulated or implemented by the State yet.

Sexual violence continues to be dramatic. According to official figures, 40% of the cases of sexual abuse are committed against girls under 14 years of age.

e. Rural women in mining areas

In the last decades, the national Government increasingly linked its strategy of economic development to the growth of the extractive industry. This model has impacted the environment and deteriorated the quality of life of many communities, particularly rural women.

While there are no studies on the situation of rural women in mining areas, national discrimination towards them in mining contexts is expressed in at least five specific violent practices: property-related or patrimonial violence (violation of land and territory), economic violence (low labor linkage and exclusive dedication to unpaid care work), sexual violence (trafficking, sexual exploitation and forced prostitution), impact on health (sexual and reproductive health violations) and political violence (exclusion of decision-making processes and weakening of social organization).

f. Women with disabilities

Despite positive developments in the protection of persons with disabilities in Colombia, women with disabilities continue to be victims of violations to their human rights because of gender and disability. Currently, an alarming number of women and girls with disabilities are forcibly sterilized without their informed consent³². This discrimination results in the systematic denial of their rights to sex education, to live their sexuality, to have sexual intercourse and to start and support a family.

For women and girls, sterilization is irreversible and, therefore, when it is enforced, constitutes an act of gender-based violence, a form of social control and a violation of the right to not be subjected to torture or other cruel, inhuman or degrading treatment^{33,34}.

g. Women deprived of their liberty due to drug-related offences

In recent years in Colombia a new modality of feminization of drug offences has been implemented. Although the majority of persons deprived of their liberty due to drug-related crimes are men, between 2003 and 2010 the women arrested for drug trafficking-related crimes represented between 45% and 48% of the women deprived of liberty³⁵.

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

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

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

35 Guzman, Diana Esther & Uprimny, Rodrigo. (2010). *Drug Policy and the Situation of Prisons in Colombia*. In: *Overloaded Systems: Reforms to the Drug Law in Latin America*. Wola. Available at: <http://www.drogasyderecho.org/assets/rld-colombia.pdf> . p. 26-28.

These women mostly have a marginal and not violent role in the drug business³⁶. In addition, the effects of the deprivation of liberty tend to be disproportionate for women in relation to men because they are more vulnerable to the separation from their families and to losing contact with their sons and daughters³⁷.

In addition, anti-drug policies, in general have not been structured taking into account a sensitive approach to the rights of women.

3. The Armed Conflict

a. Lack of implementation of resolution 1325

In spite of the absence of a National Action Plan for the implementation of resolution 1325, some strategies thematically related to resolution 1325, Act 1448, 2011, and Act 092, 2008, are being implemented.

Nonetheless, there is a notorious delay and little progress on the indicators of the Security Council. The absence of data for monitoring violence against women (indicator 1a), the security and physical and mental health of women and girls, their economic security and their rights (indicator 14) must be highlighted. Incomplete or little disaggregated information to determine if there are operational structures and mechanisms to reinforce the physical integrity and security of women and girls (indicator 16) is also observed. There are no records on the existence and transfer of small arms and light weapons (indicator 17). The State does not have a record to assess the access to justice of women (indicator 19)³⁸. Similarly, the information to determine if the staff responsible for the care of women victims of violence and gender-based violence is being trained is also deficient (indicator 20).

b. Criminal groups

The demobilization process of paramilitaries between 2004 and 2008 did not mean the removal of one of stake holders in Colombian war. On the contrary, there was a proliferation of criminal groups. Even though the authorities made great efforts to hide the failure of the process, the criminal activity of these groups has forced the authorities to rename them Bacrim (criminal gangs) and speak of the reemergence of structures and capos. In the post-demobilization period, many acts of violence against women are being committed by these groups.

c. Guarantee of non-recurrence of violations

Despite the measures to protect women and the resources invested in protection programs, public servants do recognize the serious situation of violence and vulnerability that women still suffer, including femicide, sexual violence, threats and forced displacement.

While the Constitutional Court has pointed out the importance of incorporating a gender approach to protection programs on several occasions, this approach has not been implemented yet, especially in Afro-Colombians and indigenous territories.

36 Ibid. p. 31-32.

37 See, for example: Carmen M. Herrera & Exposito Francisca. (2010). *A Life Behind bars: Psychosocial Aspects of Incarceration and Gender Differences*. *Intervención Psicosocial* Vol. 19 No. 3. p. 235-241.

38 Corporación Humanas, *The Colombian State Compliance*.

d. Forced displacement

According to official information, the armed conflict has left 3.7 million displaced people between 1997 and 2011. 51% of the displaced people are women³⁹. Nevertheless, according to the Internal Displacement Monitoring Center (IDMC) internally displaced people add up to 4.9 to 5.5 million people⁴⁰. About 80% of them are women and children, and 43% of the displaced families are female headed households⁴¹.

In 2008 the Constitutional Court issued the Act 092, which recognized the disproportionate impact of displacement on women and identified ten specific vulnerability factors to which they are exposed because of their womanhood. In this regard, the national Government implemented 13 measures addressing these risk situations and creating conditions for the effective enjoyment of their rights. The current Government has shown interest in the implementation of such programs, although they are not yet all in place.

e. The rights of women victims: victims and the Land Restitution Law

Law 1448, 2011, also known as the Victims and Restitution of Lands Act recognizes the armed conflict and its victims. Though with some gaps, the law proposes differential measures of care and reparation favoring the women victims of violations of international humanitarian law and of serious human rights violations, especially those who have been victims of sexual violence and abandonment or forced looting from their lands.

Nonetheless, Act 1448 does not take into account the specific needs of women in relation to the right to land and does not reveal their particular impacts and the exclusive forms of expropriation imposed on them, such as sexual violence committed in the context of the armed conflict.

On the other hand, often women do not have a title supporting their relationship to land, and when it exists, it is usually given on behalf of their family men or their spouse.

There is still no effective inter-agency coordination and formalisms are not surpassed in order to prioritize material justice. A more decisive *pro victim principle*, the implementation of the good faith principle and the inversion of the proof burden in favor of the victims are imperatives, as well as to give priority to the attention requested by women. Those women who demand their right to land are persecuted, threatened and murdered.

f. Protection of women and women leaders in the context of the armed conflict

In recent years, the Colombian Government has tried, through legislation, to advance in the protection - with a gender focus- of women in general and of women leaders victimized by the armed conflict.

The Constitutional Court reminded the Government of the basic elements supporting protection programs and emphasized that the gender approach must be included in these programs. Nevertheless, in practice many of the models of protection do not recognize the specific reality of women and do not address issues such as psychological damage that are not perceived “at a glance”. The protection is limited to physical measures and there are no measures to give shelter to the women leaders’ families or measures to effectively protect indigenous and Afro-Colombian women.

39 Department for Social Prosperity, Attention to Victims Unit, *The Displaced, Population Statistics*. See: <http://www.dps.gov.co/contenido/contenido.aspx?catID=295 & conID = 556 & pagID = 838>

40 Internal Displacement Monitoring Centre (IDMC), *Global Overview 2012*, April 2013, link online: [http://www.internal-displacement.org/8025708F-004BE3B1/%28httpInfoFiles%29/DB8A259305B071A8C1257B5C00268DDC/\\$ file/global-overview-2012.pdf](http://www.internal-displacement.org/8025708F-004BE3B1/%28httpInfoFiles%29/DB8A259305B071A8C1257B5C00268DDC/$ file/global-overview-2012.pdf)

41 UNHCR, *Gender-based Violence and Displaced Women, 2009*. See: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/ pdf/7269>

g. Military criminal justice and sexual violence against women

As mentioned above, police is the armed group mainly responsible for sexual violence in the context of the armed conflict, being girls and adolescents the most affected population.

On December 2012, the Congress approved a reform of the military justice system. This reform was quoted by UNHCHR as “(...) a historical setback of the Colombian Government in the fight against impunity and the respect and guarantee of human rights”⁴².

One of the main concerns about the reform is that violations of international humanitarian law committed by security forces will be known exclusively by military courts, with the exception of crimes against humanity, genocide, forced disappearance, torture, extrajudicial killing, displacement and sexual violence⁴³.

The exceptions included in the reform list are insufficient, since they leave out violations of human rights which should be the competence of the ordinary courts: arbitrary detention, cruel and degrading treatment, the taking of hostages, discrimination and violence against women (other than sexual) and crimes of war, among others.

A further concern with respect to the reform of the military justice system is the expedition by the Ministry of Defense, in November 2012, of the *Protocol for the Public Force in the Handling of Sexual Violence with Emphasis on Sexual Violence with Occasion of the Armed Conflict*⁴⁴. This protocol gives the military forces responsibilities in the attention to women victims of sexual violence. These tasks contradict the law and the standards for the protection of women’s human rights. Among other issues, the protocol includes the fulfilling of a manual of care for women victims of sexual violence when the military know their cases. It suggests that the military carry out estimations about the credibility of the victim, the certainty of the fact and the responsibility of the aggressor, issues that are not the military’s competence and can deflect or prevent investigations of sexual violence crimes.

h. Children and the armed conflict

Violations to the life and integrity of girls during hostilities, or because of landmines or unexploded munitions, confinement and denial of humanitarian aid, sexual violence, occupation of schools and other affectations to their ESCR are still present⁴⁵.

The forced recruitment of children by armed groups in Colombia is a widespread and systematic practice that has increased through outbreaks in schools, permanent threats and promises of better conditions of subsistence^{46, 47}. The armed stake holders exercise a permanent social control and maintain a census of people younger than 18 years in their areas of influence. Despite the gravity of the situation, there are still no official figures taking into account the phenomenon of forced recruitment⁴⁸. As for its prosecution, there are only two court decisions under the law of “Justice and Peace” including charges for illegal recruitment, and around 48 cases in the ordinary courts.

42 The Office of the High Commissioner for Human Rights, *Colombia: United Nations experts are calling the authorities to consider constitutional reform of the military criminal jurisdiction* press, Geneva, October 22, 2012 release. This statement is signed by eleven holders of special procedures mandates, within which you find the Special Rapporteur on Violence against Women, Rashida Manjoo.

43 Act No. 02/2012 (December 27) “reforming articles 116, 152 and 221 of the Political Constitution of Colombia”.

44 Issued by the Ministry of Defence in November 2012.

45 Committee on the Rights of Children, *concluding observations: Colombia*, June 21, 2010, document CRC/C/OPAC/COL/CO/1, paragraph 34.

46 Committee on the Rights of Children, *concluding observations: Colombia*, June 21, 2010, document CRC/C/OPAC/COL/CO/1, paragraph 34.

47 Coalition against the Involvement of Children and Young People in the Armed Conflict in Colombia (COALICO), bulletin No. 10, June 2013, in: <http://www.coalico.org>.

48 Committee on the Rights of Children, *concluding observations: Colombia*, June 21, 2010, document CRC/C/OPAC/COL/CO/1, paragraphs 16 and 17, and Committee on the Elimination of Discrimination against Women, *replies to the list of issues and questions relating to periodic reports seventh and eighth combined, Colombia*, document CEDAW/C/COL/Q/7-8/Add.1, p. 33.

CONCLUSIONS

Despite the heavy issuance of standards, Colombia still does not adopt the necessary measures to guarantee the effective improvement of the situation of women. The serious scenario faced by almost all rights, evidence that most of the recommendations made by the Committee have not been fulfilled or have a poor performance regarding a positive transformation of the reality of Colombian women.

The encouragement of the Constitutional Court to international standards is laudable. However, it is not reflected satisfactorily in adjustments to existing policies or the commitment of other State institutions to implement women's rights.

The report evidences that the main initiatives resulting in changes in the struggle against violence and discrimination against women come from the civil society. This shows two things: the little political will of the State in this matter and the importance of the contributions of women in the talks between the national Government and the FARC to reach a sustainable peace agreement.

RECOMMENDATIONS

According to the situation described above and with the aim to comply with the obligations imposed by the Convention, we suggest to the CEDAW Committee to request of the Colombian State the following actions:

1. On the elimination of violence against women

- To design a unified system of information on violence against women, where the information of all the State institutions, including the regional and local levels is articulated. This system should include figures on facts and forms of violence, ethnic characteristics of this violence, age and/or sexual orientation of the victims and information related to judicial and disciplinary investigations.
- To assign to all the State institutions in charge of prevention, care, protection, research and service functions, a budget for the implementation of policies to eradicate discrimination and violence against women, giving priority in the allocations to the Office of the Ombudsman in order to guarantee legal support to women victims.
- To promote a criminal policy based on Act 092, 2008, Law 1257, 2008, and the international standards, including the prevention of violence, the prosecution of the acts, the punishment of the perpetrators and a physical and psychosocial health care with a differential approach; comprehensive reparation and effective protection of women victims and human rights defenders.
- To provide for spaces for dialogue on policies and initiatives related to women's rights with women and civil society organizations.
- To establish transparent mechanisms for monitoring and following-up the implementation of different policies related to women's rights. Civil society organizations should participate in their design and implementation.

2. In order to guarantee access to justice for women victims

- To develop a comprehensive and inter-agency strategy to overcome the high rate of impunity in cases of violence against women and in particular in cases of sexual violence in the context of the armed conflict, including measures such as the specialization of officials in the investigation of these cases, the interdisciplinary analysis of violence against women, the application of international standards of investigation of sexual violence inside and outside the armed conflict, and the internal harmonization of the laws on sexual offences recognized by the Rome Statute.
- To implement a strategy for the elimination of prejudices and stereotypes of gender in the care system and the administration of justice allowing for the identification of the impact of discriminatory attitudes on judicial decisions and legal reviews, and the implementation of disciplinary measures for the judicial officials who keep on reproducing prejudices and stereotypes in their decisions and actions.
- To adjust and strengthen the existing protection programs to incorporate effective measures of protection with a differential and integral approach for women victims, women leaders and human rights defenders

in order to ensure access to legal representation free services, the participation of victims at all court proceedings and the effective reparation of women. Measures should include protection of the family, physical health and psychosocial care, access to education and job opportunities or productive projects, and should consider the specificities of women and the ethnic and sexual orientation of the beneficiaries.

- To implement a strategy for the dismantling of emerging paramilitary groups, giving priority to the prosecution of those responsible for threats to defenders of human rights, women leaders and women's organizations.
- To strengthen the dialogue with women defenders of human rights in order to monitor the present policies and standards for their protection, as well as advances in the investigations of attacks against them.
- To remove all the provisions involving the military forces in the processing of cases of sexual violence in the context of the armed conflict and the attention to women victims of violence in the Colombian legal system.
- To implement monitoring mechanisms to guarantee that any act of violence against women committed by police officers or soldiers inside or outside the context of the armed conflict are sent immediately to the Office of the Attorney-General or a civilian authority. To guarantee also that in the implementation of the reform to criminal justice and its regulatory developments the military judges do not know of acts of sexual violence committed by State agents, under no qualification, and therefore only the ordinary courts know of these crimes, and competence conflicts do not occur except to correct the assignments of the military judges.

3. In order to ensure women political participation

- To apply at all levels, from the appointments of senior officials of the State by the President to the corresponding regional and local government structures, laws promoting women political participation and to boost compliance through political actions for cultural change and sanctions for those who fail to comply the corresponding law.
- To plan and promote the adoption of a political reform to guarantee an increase of women's participation in public posts at different levels –national, regional and local.

4. In order to guarantee the exercise of women's ESCR

Education

- To implement measures to guarantee an education process free of prejudices and stereotypes of gender, including those measures adopted under Law 1257, 2008, (Decree 4798, 2011), involving goals for real equality between men and women, access to education in areas traditionally associated to men, the allocation of specific resources for the education of women, particularly the adaptation of teaching programs to the geographical, physical, social, political and cultural contexts in which women live, as well as to the conditions of poverty.
- To establish a mechanism for the evaluation of the impact of educational measures with a gender perspective, with comprehensive and up-to-date information, and to facilitate the analysis of the advances with vulnerable groups such as indigenous women, Afro-descendant, rural women, disabled women and LGBTI women.

Health: sexual and reproductive rights

- To refrain from maintaining and reproducing preconceptions, prejudices and stereotypes of gender, as well as ideologies or particular beliefs as a basis to prevent the guarantee of the sexual and reproductive rights of women, particularly the services for the voluntary interruption of pregnancy in the exceptions decriminalized by the Constitutional Court, and to guarantee that all the officials and public servants especially in the fields of health and justice who are responsible for providing those services do act in accordance with their legal obligations in a democratic, multi-ethnic, multicultural and secular State that must be the main guarantor of women's rights. To implement actions to identify and overcome the obstacles that women face in accessing health care, particularly the services for the voluntary interruption of pregnancy.
- To design and implement public policies on the sexual and reproductive rights of women beyond the prevention of pregnancy and sexually transmitted diseases based on the principles of a secular State guaranteeing free will, sexual freedom and the free development of personality. This should include measures of differential care for Afro-Colombian and indigenous women. Special attention should be paid to the situation of maternal mortality and the sexual and reproductive health of these populations, as well as in the case of trans-women.

5. In order to guarantee women's rights in situations of special vulnerability

Indigenous and Afro-Colombian women

- To implement actions in all the State institutions to guarantee the right to prior consultation as a fundamental right of indigenous and Afro-Colombian women in accordance with international standards, and to promote an increased political participation of women from ethnic groups at the national, regional and local levels and within their community governments and to allocate specific resources for those actions.
- To adopt and develop a comprehensive policy for indigenous peoples and for Afro-descendant peoples articulating the perspective of indigenous women and Afro-descendant women in order to overcome discrimination.
- To guarantee ethnic rights, particularly political autonomy (self-government), territorial rights (safe territories and free mobilization of women and their families) and cultural rights, and to implement actions to cope with the threat of the physical and cultural extinction of these peoples as an impact of the armed conflict.

LBTI population

- To implement the rulings of the Constitutional Court in order to modify and adjust the internal regulations of prisons and penitentiary facilities to adapt to the needs of lesbian women, bisexual women and transgender women.
- To design and implement LGBTI public policies consulted with representatives of this population, including specific actions to meet their particularities and needs, and to promote a differential access to economic, social and cultural rights.
- To refrain from basing administrative and judicial decisions on prejudice and to guarantee the independence of the authorities who know of actions filed by the LGBTI community, particularly in decisions made by judges and notaries in requests for equal marriage between couples of the same sex and to investigate and clarify the cases of violence against trans-women.

Women and girls with disabilities

- To guarantee that women and girls with disabilities exercise their right to sexual and reproductive health, recognizing their full legal capacity to make autonomous decisions; to provide complete and timely information on their rights and to implement legal protection to their rights, demanding respect for the physical and mental condition of this population from private staff and public servers and to punish those who are unaware of their rights.

6. On the legal framework of transitional justice

- To guarantee that all rules and regulations relating to the prosecution of violations of human rights in the armed conflict consider the involvement of women victims in the exercise of their rights to truth, justice and reparation, and to guarantee that the so called transitional justice measures are not unaware of the rights of women, reinforce gender discrimination, or maintain the disproportionate impact of the conflict on the lives of women.
- To design and implement mechanisms for monitoring and following-up the implementation of transitional justice standards guaranteeing access to information related to investigations of rape in all jurisdictions, and to analyze the impact of these standards on the rights of women to truth, justice and reparation, as well as the levels of impunity generated by this law.

7. In order to address forced displacement

- To comply with the rulings of the Constitutional Court for the adequate care of displaced women and women victims of the armed conflict and, among these rulings, to implement the 13 public policy programs ordered by the Constitutional Court and to identify the obstacles women face to access the restoration of their rights.
- To implement the model of systematization, monitoring and evaluation of the territorial actions for the care of displaced populations, particularly women, ruled by the Ministry of Health and Social Protection. To guarantee that initial attention to women victims provide psycho-social care until the reinstatement of rights takes place.
- To streamline the processes of recognition and titling of land with no impact on the processes of restitution in which displaced women are involved and without duplicating procedures or denying the victims' rights.
- To demand from all judicial and administrative authorities to apply the presumptions of law in favor of the displaced women established by the Constitutional Court, Law 1257, 2008, and by international standards as tools to solve the doubts arising from the application or interpretation of the Law of Victims or other transitional justice mechanisms.

8. The implementation of Resolution 1325 of the UN Security Council

- To formulate the National Plan of Action for Resolution 1325 in the framework of the peace dialogue process so that the victims of the armed conflict can measure the progress in the guarantee of women's rights to truth, justice and reparation.
- To encourage municipal and departmental government institutions to know the content of resolution 1325 and of Act 092, its implementation and the implementation of follow-up mechanisms.

- To design specific mechanisms for the participation of women in peace negotiation scenarios, both national and regional, evidencing their negotiation skills in decision-making processes, and to guarantee the inclusion of a gender perspective, and to highlight the role of women both in the implementation of the agreements and in the design of the post-conflict strategies.

9. In order to guarantee the restitution of lands and the rights of rural women

- To adopt a model of rural development recognizing the particularities of rural women and their relationship to land and territory, considering that many of them do not have legal protection. The model should facilitate their access to uncultivated lands or to lands under expiration of ownership, under the authority of the State; to protect subsistence agriculture and to include rural women as active development subjects in Colombia.
- To implement mechanisms to facilitate the writing off of agrarian debts and to offer alternatives for this population, including the allocation of seed capital and soft loans consistent with the economic possibilities of agricultural workers; to guarantee access to technology, the protection of native seeds and to implement specific measures of protection against free trade agreements.
- To implement the Rural Women Law (731, 2002), including the preparation of a rural census with qualitative and quantitative indicators of access, use and enjoyment of the land, and the impact of restitution and redistribution of land policies. This census should help to identify the dimension of the dispossession of lands suffered by rural women in the framework of the armed conflict and the new policies in the field.
- To design a framework of comprehensive measures for the access to education, health, housing, social security, recreation, resources for the production, communications, marketing, business, and technical assistance for rural women in order to improve their income, their life quality and their economic stabilization after forced displacement.
- To design and implement real measures of non-repetition beyond training activities, and to develop structural measures such as protection programs with gender perspective, dismantling of paramilitary groups, food security or a revision of the concept of safety measures different to the militarization of territories. These measures should be discussed with rural women.

Participating organizations:

Alianza Iniciativa de Mujeres Colombianas por la Paz – IMP
Asociación Colectivo Mujeres al Derecho
Casa de la Mujer
Católicas por el Derecho a Decidir – Colombia
Centro de Estudios de Derecho, Justicia y Sociedad – Dejusticia –
Centro de Investigación y Educación Popular / Programa por la Paz
Colombia Diversa
Comisión Colombiana de Juristas – CCJ
Comité de América Latina y del Caribe para la Defensa de los Derechos de la Mujer – CLADEM Colombia
Conferencia Nacional de Organizaciones Afrocolombianas – CNOA
Corporación Humanas Colombia – Centro Regional de Derechos Humanos y Justicia de Género
Corporación Sisma Mujer
Consejería Mujer Familia y Generación – Organización Nacional Indígena de Colombia – ONIC
Coordinación Mujer, Familia y Niñez – Organización de los Pueblos Indígenas de la Amazonía Colombiana – OPIAC
ENI Colombia
Iglesia Evangelica Luterana de Colombia – IELCO
Instituto Latinoamericano para una Sociedad y un Derecho Alternativo – ILSA
La Coalición 1325
La Mesa por la Vida y la Salud de las Mujeres
Liga Internacional de Mujeres por la Paz y la Libertad – LIMPAL Colombia
Mesa de Trabajo Mujer y Conflicto Armado
Mesa por el Derecho de las Mujeres a una Vida Libre de Violencias: Ley 1257
Programa Acción por la Igualdad y la Inclusión Social (PAIIS) - Universidad de los Andes
Red de Educación Popular entre Mujeres – REPEM / Colombia
Red Nacional de Mujeres
Sutsuin Jiyeyu Wayuu - Fuerza de Mujeres Wayuu
Tribunal de Mujeres y DESC

Financial support :

