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**Sexual Violence Against Women in Colombia**

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1. This report, which is submitted by MADRE (an ECOSOC accredited NGO), the International Women's Human Rights Clinic at the City University of New York School of Law, CORPORACIÓN HUMANAS, European Center for Constitutional and Human Rights, Taller de Vida, and Women's Link Worldwide highlights the lack of access to justice by women in Colombia who have been victims of sexual violence by paramilitary and/or guerilla forces during Colombia's internal armed conflict.

## **I. Background and Context**

2. Despite continued efforts to ensure compliance with Colombia's international human rights obligations, the situation of women and girls remains critical with a persistent lack of accountability for sexually violent acts committed during Colombia's internal armed conflict. A socio-judicial analysis of the conflict in Colombia has provided legally irrefutable evidence that sexual violence, as a war tactic, is a systematic or generalized practice. However, the State's response to this crime in regards to prevention and sanctions has been insufficient, as women victims of these acts have yet to have their rights to truth, justice, and reparation restored.

3. Despite protections under the Colombian Constitution, several conventions relevant to the eradication of torture and other violence against women, and some legal reforms in recent years, impunity for sexually violent acts against women in Colombia remains rampant. This report highlights three main areas of concern: i) sexualized violence of internally displaced women; ii) forced recruitment and sexual slavery during the internal armed conflict by the *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia) (FARC) and by members of the now demobilized paramilitary organizations; and iii) the State's failure to investigate, punish and prevent reported cases of sexual violence and to enforce recent legislative measures designed to combat sexual violence and to incorporate a gender perspective into government policy.

## **II. Sexualized violence against internally displaced women**

4. In Colombia, a high level of internally displaced people (3,888,309 as of January 2012) has created serious humanitarian concerns, such as sexual and gender-based violence, forced recruitment, neighborhood curfews and extortion.<sup>1</sup> Sexualized violence is one of the primary causes of the forced displacement of women in Colombia. It is estimated that two out of every ten women are forced to leave their homes because of gender-based violence. More than half of all known displaced women have reported experiencing some kind of gender-based violence.<sup>2</sup> Displaced women face a greater risk of being subjected to sexual violence because their social networks and communities have been destroyed, thus exposing them to more vulnerable and precarious situations.

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<sup>1</sup> 2012 UNHCR country operations profile – Colombia (Sept. 24, 2012, 5:14 PM), <http://www.unhcr.org/pages/49e492ad6.html>

<sup>2</sup> UNHCR, INTERNATIONAL WOMEN'S DAY: UNHCR HELPS COLOMBIAN VICTIMS OF SEXUAL VIOLENCE, (Mar. 6 2009), available at <http://www.unhcr.org/49b1351a2.html>

5. In 2008, Colombia's Office of the Human Rights Ombudsman released a special report on sexual violence in the context of the conflict and found that there is a "serious impact on the sexual and reproductive rights of the displaced population, particularly for women and children, the main victims of displacement."<sup>3</sup> Moreover, Indigenous and Afro-Colombian women have faced double discrimination based on their race and gender, and have borne additional burdens even compared to the vulnerable position of displaced women in general.<sup>4</sup> These women make up the majority of displaced persons in Colombia, even though they only comprise about one third of the country's entire population.<sup>5</sup>

### III. Forced Recruitment and Sexual Slavery

6. There have been a growing number of reports and testimonies of child soldier recruitment in Colombia. In 2009, the Colombian Office of the High Commissioner for Human Rights (OHCHR) received numerous complaints that guerrilla groups were recruiting children in several departments including Antioquia, Arauca, Caquetá, Norte de Santander, Putumayo, and Valle de Cauca.<sup>6</sup> Despite steps taken by the State to prevent child recruitment, the UN Secretary-General's 2012 annual report on children and armed conflict documented 343 cases of recruitment in 23 of the country's 32 departments (or states) in 2011.<sup>7</sup>

7. Girl members of illegal armed groups are particularly vulnerable to grave sexual violence. They are forced to use inadequate and often harmful methods of contraception, and forced to undergo unsafe abortions if they become pregnant.<sup>8</sup> According to the Colombian Constitutional Court, sexual violence is "a habitual, extended, systematic and invisible practice in the context of armed conflict perpetrated by the illegal armed groups, and in isolated cases, by individual agents of the national armed forces.... [C]hildren account for an exceedingly high proportion of the total cases of known victims."

8. In 2006, the IACHR Rapporteur on the Rights of Women heard testimonies of girls recruited by the AUC (United Self Defense Forces of Colombia) paramilitaries on the Caribbean coast, especially in the neighborhoods of Montería, such as Canta Claro, Unión, El Dorado, Santa Fe, Robinson Pitalua, La Turbina and Quibdó.<sup>9</sup> In the Cauca region, paramilitary leaders forced girls

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<sup>3</sup> According to Article 282 of the Colombia Constitution, the Ombudsman's Office of Colombia is in charge of supervising the promotion, exercise, and publicizing of human rights.

<sup>4</sup> OXFAM INTERNATIONAL, *SEXUAL VIOLENCE IN COLOMBIA: A WEAPON OF WAR*, 16-19, (2009), available at <http://www.oxfam.org/sites/www.oxfam.org/files/bp-sexual-violence-colombia.pdf>; AMNESTY INTERNATIONAL, *EVERYTHING LEFT BEHIND: INTERNAL DISPLACEMENT IN COLOMBIA*, 6, 12 (2009), available at <http://www.amnesty.org/en/library/asset/AMR23/015/2009/en/6022342b-845a-4079-96da-14b3aa41b331/amr230152009eng.pdf>.

<sup>5</sup> See generally Inter-Am. Comm'n H.R., *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II, doc. 67 (2006), available at

<http://www.cidh.org/countryrep/colombiamujeres06eng/IV.htm>, see also AFRODES USA, *Afrocolombian Fact Sheet*, (2007) <http://www.afrocolombians.com/pdfs/ACfactsheet.pdf>

<sup>6</sup> OHCHR, *Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, ¶ 28, Annex U.N. Doc. A/HRC/10/32 (2009).

<sup>7</sup> U.N. SCOR, *Rep. of the Secretary-General on Children and Armed Conflict in Colombia*, ¶ 15, U.N. Doc. S/2012/171 (2012).

<sup>8</sup> U.N. SCOR, *Rep. of the Secretary-General on Children and Armed Conflict in Colombia*, ¶ 39, UN Doc. S/2009/434 (2009).

<sup>9</sup> Inter-Am. Comm'n H.R., *Violence and Discrimination against Women in the Armed Conflict in Colombia*,

as young as 14 to provide them with sexual services and domestic chores. One testimony recounted the case of a pregnant girl who tried to escape and was subsequently murdered. Her fetus was removed and displayed in order to prevent other girls from attempting to flee. In other cases, paramilitary members were reported to have taken women from towns to their camps at night and sexually assaulted them.<sup>10</sup> A 2008 follow-up report noted that recruitment practices continued to exact a particularly heavy toll on women, who are often forced into prostitution by illegal armed groups and then subsequently assassinated because of their “undesirable” status.<sup>11</sup>

9. There are cases of girls who gave birth while in an armed group and were subsequently separated from their children. Now adults, many of these mothers still do not know the whereabouts of their children and have no way of locating them.

10. A woman from the Colombian state of Sur de Bolivar was sexually enslaved first by the guerilla and then by paramilitary forces. In 2002, she was sent to a FARC camp after being detained, beaten and separated from her family at a FARC checkpoint. She was sexually enslaved by the FARC commander and his men and suffered severe physical and psychological abuse as a result. She was also forced to work as a nurse in the camp and witnessed the guerillas beating pregnant girls in the stomach until they aborted. She had been in captivity for 48 days when the FARC dispatched her to go into town and buy provisions for the camp and return. In order to leave she had to have sex with multiple members of the front. She was kept as a sex slave by the FARC until the paramilitaries took over the region in 2003. The paramilitary group then sexually enslaved her after accusing her of being a guerrilla sympathizer. She later escaped. She reported the enslavement by the paramilitary group to the Special Public Prosecutor of the Justice and Peace Unit. However, the State failed to undertake any investigation or legal action with regard to her claim. She did not report the enslavement by the FARC as the commander still resides in the region and still asks for her. Thus, the risk to her life persists.

#### **IV. Failure to Prosecute and Investigate Reported Cases of Sexual Violence and Failure to Enforce Recent Legislative Measures Designed to Combat Sexual Violence and to Incorporate a Gender Perspective into Government Policy**

11. Members of the FARC and illegal armed groups that emerged from the demobilization of paramilitary organizations in August 2006 continue to enjoy impunity for the sexually violent crimes committed against Colombian women during the country’s 48-year old internal armed conflict. Freedom from criminal liability for most of the members of these armed groups remains a widespread problem, primarily due to the overall failure of the justice system to investigate, prosecute, and remedy the harm caused to victims.

12. The Constitutional Court’s 2008 Order 092 remitted to the Attorney General 183 cases of sexual violence against women who suffer these crimes at the hands of armed actors and stressed that the impact, frequency, and gravity of these cases increased substantially among Indigenous

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OEA/Ser.L/V/II, doc. 67 ¶ 90 (2006), available at <http://www.cidh.oas.org/pdf%20files/InformeColombiaMujeres2006eng.pdf>

<sup>10</sup> *Id.* at ¶ 92.

<sup>11</sup> Inter-Am. Comm’n H.R., Follow-Up to 2009 Annual Report, Violence and Discrimination Against Women in the Armed Conflict in Colombia, ¶ 34-35 (2009), [http://www.cidh.oas.org/annualrep/2009eng/Chap.V.4.htm#\\_ftnref74](http://www.cidh.oas.org/annualrep/2009eng/Chap.V.4.htm#_ftnref74)

and Afro-Colombian women, who found themselves in defenselessness and vulnerable situations. The order points out recent cases of sexual violence perpetuated against women, adolescents, and children of the following ethnic groups: Betoye (Arauca), Embera (Antioquia and Chocó) and Nasa (the regions of Alto Naya, Putumayo, and Cauca).<sup>12</sup> Many Colombian women's organizations view this ruling as a useful tool in combating conflict-related sexual violence and as a step toward ending the impunity surrounding such cases. Unfortunately, the 2008 order has yet to make a noticeable impact on the day-to-day lives of the survivors of these atrocities.

13. The Colombian Justice Department response to sexual violence has been insufficient. In response to the Constitutional Court's request to investigate 183 specific cases, the Office of the Attorney General issued Resolution 0266 of 9 July 2008, which was designed to accelerate these specific investigations, and Memorandum 0117 of 10 November 2008, which was developed to incorporate a gender focus into investigations.<sup>13</sup> Unfortunately, only scant progress has been made. As of September 2010, only five of the 183 cases had been concluded, with guilty verdicts in four cases. All convicted perpetrators were civilians. In the only conflict-related case that has been resolved, the accused paramilitary member was acquitted. As of May 2011, this case was still on appeal.<sup>14</sup>

14. In June 2011, The Constitutional Court signed *La Ley de Víctimas* (Victims and Land Restitution Law) Law 1448 of 2011. The State claims this law will offer comprehensive reparations to those who have suffered human rights abuses or been displaced as a result of Colombia's internal armed conflict.<sup>15</sup> This legislation is an important first step towards acknowledging and compensating at least some of the victims of the conflict, however it falls short of addressing the harms suffered by women victims of sexual violence at the hands of guerilla and/or paramilitary actors.

15. Much like the Victims and Land Restitution Law, impunity for acts of sexual violence by paramilitaries participating in the Justice and Peace process remains widespread. As of September 19, 2012, paramilitaries in the Justice and Peace process had admitted to 38,473 crimes; only 89 of these were crimes of sexual violence.<sup>16</sup> Since September 2012, of the 4511<sup>17</sup> demobilized paramilitary who at that time were candidates for the Justice and Peace process,

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<sup>12</sup> COMMITTEE ON WOMEN LABOR AND ARMED CONFLICT, IX REPORT ON SOCIOPOLITICAL VIOLENCE AGAINST WOMEN, ADOLESCENTS, AND GIRLS IN COLOMBIA (2009).

<sup>13</sup> Amnesty Int'l Report, "This is What we Demand. Justice!" Impunity for Sexual Violence Against Women in Colombia's Armed Conflict, Sept 2011, at 23, available at <http://www.amnesty.org/es/library/asset/AMR23/018/2011/es/d4396a83-c078-46f0-96ff94f6d667b6bc/amr230182011en.pdf>

<sup>14</sup> Fourth Follow-up Report to Auto 092 of the Colombian Constitutional Court, Confidential Annex, 36-37 (May 2011).

<sup>15</sup> MINISTERIO DE COLOMBIA DE JUSTICIA Y DEL DERECHO, JUSTICIA TRANSICIONAL [COLOMBIAN MINISTRY OF JUSTICE AND LAW, TRANSITIONAL JUSTICE] <http://www.leydevictimas.gov.co/> (last visited Sept. 24, 2012).

<sup>16</sup> UNIDAD NACIONAL DE FISCALIAS PARA LA JUSTICIA Y LA PAZ [COLOMBIAN OFFICE OF THE ATTORNEY GENERAL, JUSTICE AND PEACE UNIT], <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm> (last visited Sept. 24, 2012).

<sup>17</sup> UNIDAD NACIONAL DE FISCALIAS PARA LA JUSTICIA Y LA PAZ, Listado de Postulados [COLOMBIAN OFFICE OF THE ATTORNEY GENERAL, JUSTICE AND PEACE UNIT, List of Candidates], <http://www.fiscalia.gov.co:8080/justiciapaz/Postulados975.asp>, (last visited Sept. 26, 2012).

only 14 received sentences.<sup>18</sup>

16. Between 2005 and May 2011, the Ministry of National Defense reported only 46 cases of sexual offenses involving National Army soldiers under criminal investigation by the ordinary courts; only seven of these cases have resulted in a conviction.<sup>19</sup> This low figure of 46 cases gathered over a period of six years and four months pales in comparison to the 40 cases that were reported in 2010 alone to the National Institute of Legal Medicine and Forensic Sciences where the alleged perpetrator was a member of the armed forces or police.<sup>20</sup>

17. Women victims of sexual violence face several obstacles to accessing justice under Colombia's current judicial system. Evidence has shown that "in the cases observed in this investigation where the women were victims of gender based violence, the women were not able to exercise their right to access to justice. Despite the virtues of the new system, the justice system's mechanisms, tools, and practitioners are not gender-sensitive. In other words, they do not take into account relationships of power between men and women in the analysis of social realities. Access to justice, which these women, as discriminated victims, have a right to, is not fully guaranteed in Colombia. This is in spite of the legal order of this country which upholds the principle of equality before the law."<sup>21</sup>

18. Among the problems of access to justice for women victims of gender-based violence<sup>22</sup> is the fact that Colombia's judicial system is designed to guarantee the rights of the accused over the rights of the victim, since the informed presence of the accused and their defense is considered indispensable. In cases of sexual violence, victims right to privacy is violated for the sake of the public transparency of the process. The penal process is oriented towards a policy of judicial decongestion, under which crimes historically considered to be of "minor importance," including those that disproportionately affect women, such as intra-familial violence, are put aside. Legal practitioners work harder to get a case through the system as quickly as possible than to guarantee a verdict that protects a victim's rights. As to the probative value, physical evidence holds more weight, which in cases of gender-based violence is usually controversial and detrimental to victims who may suffer from re-traumatization and re-victimization. Moreover,

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<sup>18</sup> UNIDAD NACIONAL DE FISCALIAS PARA LA JUSTICIA Y LA PAZ, [COLOMBIAN OFFICE OF THE ATTORNEY GENERAL, JUSTICE AND PEACE UNIT], <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>, (last visited Sept. 26, 2012).

<sup>19</sup> Revisión de las acciones del Gobierno del Presidente Juan Manuel Santos en el primer año: Prevención y eliminación de la violencia sexual en el marco del conflicto armado y la atención de las mujeres víctimas [Review of the actions of the government of President Juan Manuel Santos in the first year: Prevention and elimination of sexual violence in the framework of the armed conflict and the care of women victims] 18 (2011), available at <http://coeuropa.org.co/files/octubre%20Informe%20sobre%20Violencia%20Sexual%201%20aNo%20de%20Gobierno%20Santos.pdf>

<sup>20</sup> Instituto Nacional de Medicina Legal y Ciencias Forenses. Informe sobre la violencia sexual contra las mujeres en los conflictos armados. [National Institute of Legal Medicine and Forensic Sciences. Report on Sexual Violence Against Women in Armed Conflicts.] 162 (2010), available at <http://www.medicinalegal.gov.co/images/stories/root/FORENSIS/2010/EXAMENMEDICOLEGALPORPRESUNTODELITOSEXUAL.pdf>

<sup>21</sup> CORPORACIÓN HUMANAS, LA SITUACIÓN DE LAS MUJERES VÍCTIMAS DE VIOLENCIA DE GÉNERO EN EL SISTEMA PENAL ACUSATORIO. [Humanas, The Situation of Women Victims of Gender-Based Violence in the Criminal Justice System] 58 (2008), available at [http://www.humanas.org.co/archivos/La\\_situacion\\_de\\_las\\_mujeres\\_victimas.pdf](http://www.humanas.org.co/archivos/La_situacion_de_las_mujeres_victimas.pdf)

<sup>22</sup> *Id.* at 59-62

the demand for inappropriate testing, disapproval of the victim's conduct and the rejection of her testimony constitute additional barriers to accessing justice. All of these factors demonstrate that discriminatory patterns persist and that "the justice system has not incorporated a policy into practice that views women as subjects with rights."<sup>23</sup> Additionally, other procedural safeguards override the right of victims to receive compensation.

19. In August 2012, a legislative bill was introduced in Colombia's Congress that would redefine sexual violence as a crime against humanity at the domestic level and modify Colombia's Penal Code and the Law of Violence against Women to reflect the language of international treaties that Colombia has ratified. Such treaties include the American Convention on Human Rights and the Inter-American Convention on the Prevention and Eradication of Violence Against Women "Convention of Belem do Para" and the Rome Statute. The Bill also includes other elements that would help to streamline the investigation process of sexually violent crimes.<sup>24</sup> This initiative was supported by women's organizations and human rights organizations that contributed suggestions and comments on the proposal, seeing it as a strong expression of the severity and magnitude of the problem and an effective way to address impunity in cases of sexual violence associated with armed conflict.

20. In September 2012, the Attorney General categorized acts of kidnapping, torture and sexual violence committed against journalist Jineth Bedoya by the Centaurs Bloc of the AUC paramilitaries in 2000 as a crime against humanity. However, it is noted that this act by the Attorney General serves only to address the victimization of a public figure, and does not constitute an institutional position with regards to the investigation and prosecution of all such similar crimes.

## **V. Recommendations**

21. We respectfully request that the Human Rights Council ask the Colombian government to do the following:

- The State should conduct a systematic study and analysis of sexual and gender-based violence issues for internally displaced women and girls and implement a comprehensive policy for them.
- The State should provide law enforcement personnel with proper and comprehensive training in gathering evidence for the purpose of documenting a crime involving sexual assault or rape.
- The State should adopt effective measures to investigate all cases of sexual violence referred to the Attorney General's Office by the Constitutional Court and should establish a reliable

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<sup>23</sup> Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallstrom, con motivo de su visita a Colombia. [Report submitted by women's and human rights organizations to the Special Representative of the Secretary-General on Sexual Violence in Conflict, Margot Wallström, on the occasion of her visit to Colombia] 15, (2012), available at

<http://www.dejusticia.org/index.php?x=0&modo=interna&tema=antidiscriminacion&publicacion=1220&lang=en>

<sup>24</sup> Copy of Legislative Bill Proposal on file in Spanish at CORPORACIÓN HUMANAS, August 2012.

system for documenting incidents of any type of sexual or gender violence.

- The State should, via the court system, adequately identify the rights or legal interests that have been affected due to the perpetrators' behavior and impose appropriate penalties for these violations. In cases of sexual violence the court must consider not only crimes that epitomize sexual violence (behavior that violates sexuality and a victim's sexual organs) but should also take into consideration the context and purpose of such acts in order to charge them as war crimes and/or crimes against humanity where appropriate.
- The State should guarantee compensation for victims and ensure guarantees of non-repetition as covered by the State's obligation to implement effective measures for the prevention and treatment of sexual violence and establish a method of remembrance as a way of dignifying the women victims of gender-based violence during Colombia's internal armed conflict.
- The State should go beyond punishing the guilty and implement public policies that guarantee the non-repetition of such acts.
- The State should increase the resources allocated to the physical and psychological recovery of women and girls who are victims of sexual violence and ensure that they do not suffer secondary victimization in gaining access to justice. Personnel participating in this effort must be trained accordingly.
- The State should increase resources to address the basic needs of displaced women and children. Often displaced women are forced to leave their children with relatives or friends in order to search for employment or housing in new places. These children are at a high risk for being recruited and the women face a 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.
- The State should develop a comprehensive dialogue with organizations that know the issues surrounding sexual violence and have experience in caring for victims.
- The State should comply with its obligations under international human rights law and international criminal law to effectively investigate and prosecute crimes of conflict related sexual violence:
  - Article 2(c) of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) requires the effective legal protection of fundamental rights and freedoms of women on an equal basis with men. This does not only mean that appropriate and effective complaint procedures and criminal law enforcement policies on gender-based crimes exist, but that there also be an effective and practically available remedy.<sup>25</sup> Moreover, pursuant to Article 2 (c) CEDAW a State Party is obliged to address systematic issues that may have led to

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<sup>25</sup> Byrnes, Article 2, *in* THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN – A COMMENTARY 84 (M.A. Freeman *et al.*, 2012).



the violation.<sup>26</sup>

- We recall the United Nations Security Council Resolutions (UN Res.) 1325<sup>27</sup>, 1820<sup>28</sup>, 1888<sup>29</sup>, 1889<sup>30</sup> 1960<sup>31</sup>, which oblige all countries to prevent sexual violence by military staff, and to hold them accountable for these crimes both during conflicts and in the post conflict phase. Namely para. 4 of UN Res. 1820 requires states to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice; this means that those Rules of Procedure and Evidence of the Rome Statute which seek to eradicate prejudice and stereotypes should also be implemented into Colombian Law.

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<sup>26</sup> *Id.* at 85.

<sup>27</sup> U.N. SCOR Res. 1325, (Oct. 31, 2000).

<sup>28</sup> U.N. SCOR Res. 1820, (June 19, 2008).

<sup>29</sup> U.N. SCOR Res. 1888, (Sept. 30, 2009).

<sup>30</sup> U.N. SCOR Res. 1889, (Oct. 5, 2009).

<sup>31</sup> U.N. SCOR Res. 1960, (Dec. 16, 2010).