



Access to justice for
Women victims of
sexual violence

Fifth Follow-Up Report to Auto 092 of the Colombian Constitutional Court • Confidential Annex

MONITORING THE SITUATION OF IMPUNITY FOR SEXUAL VIOLENCE

WORKING GROUP TO MONITOR COMPLIANCE WITH AUTO 092 OF 2008 – CONFIDENTIAL ANNEX

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Working Group to Monitor Compliance with Auto 092 of 2008
of the Colombian Constitutional Court- Confidential Annex

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Preparation of the report

Liliana Rocío Chaparro Moreno

Technical secretariat

Centro de Estudios de Derecho, Justicia y Sociedad
Carrera 24 No. 34 - 61, Bogotá D. C., Colombia
Conmutador (571) 6083605 • (571) 2327858
info@dejusticia.org

Publishing coordination

Diana Esther Guzmán, Linda María Cabrera C.

Translation into English

Neil Martin

Cover photography

UN Women

Photos of pages

UN Women and Giulia Ducci, Liga de Mujeres Desplazadas, Comisión Colombiana de Juristas,
Organización Nacional Indígena de Colombia

Production

Marta Rojas

Cover Design

Martha Gómez

Printing

Ediciones Antropos Ltda.
Cra. 100B N° 75D- 05 Bogotá, D. C., Colombia
PBX: (571) 433 7701

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The member organizations of the Working Group to Monitor the Confidential Annex to Auto (Order) 092 of 2008 (hereafter Working Group), hereby submit to the Colombian Constitutional Court (hereafter The Court), the Office of the Prosecutor General of the Nation (hereafter Prosecutor General's Office), the Office of the Inspector General of the Nation (hereafter Inspector General's Office), and all of Colombian society the Fifth Follow-up Report on Compliance with Auto (Order) 092 of 2008 concerning efforts to overcome impunity for sexual violence during or on the occasion of armed conflict.

In Auto 092 of 2008 the Constitutional Court recognized that sexual violence *in the context of the Colombian armed conflict*, caused either by the actions of armed groups or as a result of forced displacement, is a *common, widespread, systematic and invisible practice*. The court therefore ordered the Prosecutor General's Office to adopt, in a timely fashion, necessary measures to accelerate legal procedures and open investigations in cases that have not yet been investigated. In addition, the Constitutional Court requested that the Inspector General's Office guarantee a *particularly strict oversight* of these investigations and prosecutions.

Throughout the five years since Auto 092 was issued in 2008 the Working Group has continuously monitored actions undertaken by the Prosecutor General's Office and the Inspector General's Office. In light of this monitoring, the Working Group concludes that the situation of impunity persists virtually unchanged, and that compliance with the order handed down in Auto 092 has therefore completely failed.

It is evident that the government's efforts to overcome impunity and factors that deny women justice have been insufficient. The majority of the response has been directed towards the introduction of policy and has had a very small direct impact on the rights of the women who have been the victims of these crimes. Regulatory adjustments have not reflected a clear strategy that seeks to address the de facto situation and the problems identified by the Constitutional Court in Auto 092, particularly concerning the *"immediate design and implementation of public policy designed for the specific purpose of preventing these crimes, protect victims and punish guilty parties"*.

It is now five years since Auto 092 was issued in 2008, and the Working Group reiterates that although various measures have been adopted, they do not constitute a genuine policy, in the terms specified by the Constitutional Court, and this fact prevents a comprehensive approach to the issue and helps perpetuate the situation of impunity for sexual violence.

In order to support this argument, the Fifth Follow-up Report examines four problems that have remained constant over time: First, we describe the institutional obstacles which prevent compliance with Auto 092, and specifi-

cally the administrative, technical, strategic and coordination failures in each governmental department that affect the overall response to this phenomenon. These factors hinder the design and implementation of an adequate response, prevent the generation of a carefully worked out strategic plan, and adversely affect the odds of women victims' obtaining justice. The Working Group points to several institutional shortcomings: (1) a partial and uncoordinated response in terms of policy, (2) inadequate and unreliable records, (3) a lack of coordination between separate public institutions, (4) no clear policy concerning how to approach diverse constituencies, (5) specific problems with oversight provided by the Inspector General's Office, (6) a lack of effort in the Higher Council of the Judiciary to engage in dialogue concerning this issue, and (7) lacking communication between the latter agency and the Working Group.

The second problem addressed in this report has to do with obstructions to justice caused specifically by prior conditions and problems with investigations that lead to impunity. Although the Prosecutor General's Office has consistently made reference to the development of a Comprehensive Plan, this agency's efforts have not reflected factual evidence, for example registers that document sexual violence, or other issues identified by the Constitutional Court in Auto 092, and therefore have not responded adequately to the problem they are designed to solve. This can be seen in a lack of guarantees for parties who make complaints, a lack of respect for victims, impunity for aggressors, a lack of clarity in the methods governing complaints and investigations, the persistence of a narrow interpretation of the definition of sexual violence in the context of armed conflict, regulations and policies that threaten access to justice, patterns of discrimination and victimization, problems with training programs, a lack of measures to ensure legal consultation, a lack of approaches involving all relevant constituencies, and lack of reparations as a result of criminal procedures.

Third, the Working Group discusses institutional barriers to providing victim protection, and its coordination and effectiveness in light of Constitutional Court rulings, issues that affect the achievement of justice. Although the Working Group recognizes significant progress in this area, we consider that the failure to guarantee the safety of victims who make complaints and the lack of an adequate protection system continue to constitute one of the main factors that prevents the reporting of sexual violence and the participation of women in criminal proceedings. In addition, advances have failed to make a direct impact on the specific needs of the victims listed in the confidential annex as instructed in Auto 092 and on the problem in general. Therefore, significant flaws in the institutional structure and the implementation of protective methods and strategies remain.

Fourth, the report investigates obstacles that prevent the effective administration of health care to address the specific effects of sexual violence and the lack of a psycho-legal approach. The Working Group considers that progress in the protection of women's health-related rights has been scant and has resulted in no significant increase in victims' access to justice. This constitutes a breach of the duty to design policies that address the needs of victims of armed conflict, in particular psychosocial impacts. Policy failures can be seen in a lack of coordination in providing care in response to the particular effects of sexual violence and the failure to incorporate a psycho-legal approach in criminal proceedings, among other factors.

The Working Group hopes this report will contribute to the demand for a comprehensive and integrated response that reflects the decisions made by the Constitutional Court in Auto 092 of 2008, which might effectively guarantee the rights of women victims, work to end impunity, and deter violence against all Colombian women.

Noncompliance with Auto 092 of 2008 seriously and continuously affects guarantees for the rights of women victims of sexual violence associated with armed conflict, and sends a message of state tolerance for such violence, which leads to its recurrence.

Therefore the Working Group urges the various state institutions to take immediate steps to guarantee that women victims are assured the rights to truth, justice and comprehensive reparations.

Finally, the Working Group respectfully requests that the Constitutional Court embrace the recommendations made in the Fifth Follow-up Report, the aim of which is to provide an impetus for the creation of a comprehensive policy that can protect Colombian women from the sexual violence associated with armed conflict.



I. INTRODUCTION

The Partnership “Colombian Women’s Initiative for Peace”, The Center for the Study of Law, Justice and Society, the José Alvear Restrepo Lawyers’ Collective, the Colombian Commission of Jurists, the Consultancy for Human Rights and Displacement, the Foundation “Casa de la Mujer”, the Foundation “Sisma Mujer”, the League of Displaced Women, the Working Group on women and armed conflict, the Observatory for Gender, Democracy, and Human Rights, The National Indigenous Organization of Colombia, the Movement “Ruta Pacífica de las Mujeres”, and are organizations that make up the Working Group to monitor compliance with Auto 092 of 2008 (hereafter Working Group), to the second order issued to the Office of the Prosecutor General of the Nation and to the request directed to the Office of the Inspector General of the Nation dealing with the confidential annex to Auto (Order) 092 issued by the Colombian Constitutional Court in 2008. The Working Group here presents the fifth follow-up report, entitled “Access to justice for Women victims of sexual violence”. The Working Group has been accompanied by observing parties Office in Colombia of the United Nations High Commissioner for Human Rights and UN Women, and this report was made possible through the support of UN Women.

The Colombian Constitutional Court issued Auto 092 in 2008, which studied the impacts of armed conflict and forced displacement on the lives of women and acknowledged that women in these situations face a number of risks and gender-related issues that are unique and pressing and expose this group to situations that contradict and violate their fundamental rights. Among the latter, the Constitutional Court found that sexual violence – whether it arises from the actions of armed groups or is caused by forced displacement – *in the context of the Colombian armed conflict (Section III.1.1.1) is a practice that is routine, widespread, systematic, and invisible*. Furthermore, the court identified several barriers that hinder women’s access to justice and identified three parts of the process in which this occurred: formal and informal invisibility of this phenomenon, victims’ silence, and high rates of impunity in such cases.

In addition, the Constitutional Court identified 183 cases of sexual violence associated with armed conflict, which are described in a confidential annex that remitted these cases to the Office of the Prosecutor General of the Nation (hereafter Prosecutor General’s Office). The annex recommended that necessary measures be adopted so that these cases should progress in a timely fashion, and that relevant procedures be initiated in cases that have not yet been investigated. The Constitutional Court also requested that the Office of the Inspector General of the Nation (hereafter Inspector General’s Office) provide *particularly strict oversight* of investigation and prosecution procedures.

The Constitutional Court also considered that it was appropriate “*to include at the highest level of priority in the national agenda, a response to sexual violence as it occurs in the armed conflict that Colombian women have been, and continue to be, exposed to*”.

This report is an analysis of the response that responsible entities have provided, in particular to the 183 cases of sexual violence mentioned previously, which has taken place in the five years that have elapsed since Auto 092 was issued, and of the general response to

the recommendation that this issue be given the highest priority in the national agenda. The report examines the responses of the Prosecutor General's Office, the Inspector General's Office, the Higher Council of the Judiciary, the Health Ministry, and the National Protection Unit, inter alia.

This document draws on official data and the direct experiences of the Working Group. Its principal sources are the responses to requests for information that the Working Group submitted to the Prosecutor General's Office¹, analytical documents provided by the Inspector General's Office², information that has been generated during meetings with these institutions, and official reports produced by other national and international institutions. Many of its assertions are the result of direct knowledge derived from legal representation and accompaniment work carried out with victims of conflict-related sexual violence by several of the organizations that make up the Working Group.

In writing this report, the Working Group has considered international protocols governing protection³ for human rights and that mandate the state's obligation to provide a legal recourse to investigate, prosecute, and punish those responsible for human rights violations. They also require that such a remedy must be effective, advanced within the parameters of due diligence⁴, and executed according to the principles of equality and non-discrimination. It is required as a result that the actions of all state entities must strive to meet these standards.

The document makes evident that the Working Group considers that actions taken by the State to overcome impunity and counteract problems that reduce women's access to justice have clearly been insufficient. Past response, for the most part, has been to indicate what ought to be done but this has not directly impacted the effective enjoyment of the rights of the women who are victims of these crimes. It is for this reason that the Working Group considers regulatory measures cannot be said to have had a clear strategy that seeks to address the factual situation and the obstacles identified by the Constitutional Court in Auto 092, or in particular to *"immediately develop and implement a public policy designed specifically*

to prevent these crimes, protect victims and punish authors" (Section III.1.1.7). In this sense the response has been innocuous⁵ and, therefore, the remedy provided by the Colombian state is illusory⁶, and thus fails to affect women victims' rights to dignity, equality and access to justice, and violates their rights to truth, justice, and redress for human rights violations in a serious and continuous fashion.

The Working Group reiterates the conclusions of the Fourth Follow-Up Report (published in May, 2011) which found that *"such a policy does not exist and this contributes to the on-going impunity that surrounds the sexual violence committed against women during or on the occasion of armed conflict. Although several measures have been implemented, they do not constitute a policy in terms set forth by the Constitutional Court and to such an extent do not provide a comprehensive approach to overcome impunity"*⁷.

This lack of policy is linked to the state's failure to provide victims with an effective legal remedy as well as its failure to act with due diligence in these cases, among other reasons due to its additional failure to coordinate between agencies to ensure that victims' rights are respected or to provide a response appropriate to the highest priority level of the national agenda.

This failure perpetuates a historical situation in which impunity continues to be a reality⁸, and allows for the repetition and chronic perpetration of sexual violence as part of armed conflict. As verified by the Constitutional Court in Auto (Order) 098 of 2013⁹, this violence has continued since Auto 092 was issued.

To provide evidence for these claims, this document is divided into five sections. The first addresses the institutional problems that exist concerning compliance with Auto 092. These consist of existing administrative, technical, strategic and coordination-based challenges within each agency that affect the overall response to the phenomenon. The second section examines factors that obstruct access to justice as they relate to specific and pre-ex-

- 1 Responses to the Working Group issued by The Office of the Prosecutor General of the Nation in October, 2012 (Memorandum DNF 22866 of October 1, 2012) and June, 2013 (Memorandum DNF 13322 of June 13, 2013). See also the response of the Prosecutor General's Office to Auto 028 of 2013, issued to the Constitutional Court in Memorandum No. 20135000055241 of March 6, 2013.
- 2 Office of the Inspector General of the Nation, Delegate Inspector for Prevention in Human Rights and Ethnic Issues (Procuraduría Delegada para la Prevención en Materia de Derechos Humanos y Asuntos Étnicos). *"Evaluation and follow-up to the public policies and programs in comprehensive care, prevention, promotion, and protection for the rights of women victims of sexual violence in the context of the Colombian armed conflict"*. December, 2012.
- 3 These standards were examined extensively in the Working Group's Fourth Follow-Up Report.
- 4 Due diligence includes the duty to organize all government agencies and public policy structures *"in such a way that they are able to legally guarantee the total and unrestricted enjoyment of human rights"*. In addition, it implies the employment, within a reasonable time period, of all available measures to carry out all activities and oversight, including those *"necessary to shed light on systematic patterns that have allowed for the perpetration of serious human rights abuses"*. Inter-American Court of Human Rights, Case of *Velasquez Rodriguez*, paragraph 166.

- 5 In Auto 098 of 2013, the Constitutional Court considered that public policy dealing with gender equality that is designed to respond to the needs and specificities of damages suffered by women in the context of armed conflict is ineffective if it does not reflect an escalation of the effective enjoyment of the fundamental rights of women in reality. Constitutional Court, Auto 098 of 2013, Consideration V.2.2.1.
- 6 *"[...] the formal allocation of resources is not adequate; they must be effective, i.e., they must provide results or respond to violations of rights as described by the Convention. Remedies that are ineffective due to general conditions in the country or the particular circumstances of some case should be considered inadequate. For example, when they prove to be useless in practice either because courts lack the necessary independence to make impartial decisions or because they lack the means to issue rulings; or as a result of any other situation that constitutes a denial of justice (...)"*. Inter-American Court of Human Rights, Case of *19 Comerciantes*, paragraph 192 and the paragraphs that follow.
- 7 Working Group to monitor compliance with Auto 092 of 2008 of the Constitutional Court confidential annex. *Access to justice for women victims of sexual violence. Fourth Follow-up Report to Auto 092 of the Colombian Constitutional Court*. Page 67.
- 8 Defined as *"a complete lack of investigation, prosecution, arrest, trial, and conviction of those responsible for the violation of rights protected by the American Convention"*. Inter-American Court of Human Rights, Case of *Masacre de Mapiripán*, paragraph 237.
- 9 Colombian Constitutional Court, Auto 098 of 2013, Consideration 2.1. (iii).

isting investigative conditions that contribute to impunity. In the third section the Working Group reviews problems surrounding protective measures from an institutional perspective, drawing on Constitutional Court rulings, and reviews how these affect access to justice. In the fourth section the report addresses problems with health care, the way care responding to specific consequences of sexual violence is coordinated, and the lack of a psycho-legal approach. In the final section the report presents its conclusions and requests.

The Working Group hopes this report will contribute to advocacy for a comprehensive response that reflects the considerations of Auto 092 of the Constitutional Court, in an effort to guarantee in an effective manner the rights of women victims, to provide appropriate strategies to overcome impunity, and to install mechanisms to deter all violence against Colombian women.



II. INSTITUTIONAL PROBLEMS THAT INFLUENCE COMPLIANCE WITH AUTO 092 OF 2008

The Working Group has posited that the institutions responsible for the expansion of access to justice for women victims of sexual violence associated with armed conflict have shown serious institutional incapacity, which affects their ability to fully comply with Auto 092. These obstacles hinder an adequate response, affect the general ability to come up with coordinated and strategic solutions, and negatively impact women victims' guarantees for justice. The Working Group calls attention to the following institutional shortcomings: a partial and disjointed normative response; a lack of adequate and reliable records; problems with coordination, a lack of inter-sectorial approaches; a lack of oversight in the Inspector General's Office; and a lack of strategies in the Higher Council of the Judiciary and difficulties in dialogue with this institution.

1. PARTIAL AND DISJOINTED NORMATIVE RESPONSE

The Working Group considers that the primary response of the state to the phenomenon of conflict-related sexual violence has been the extensive implementation of regulations. While this is useful and necessary to address the issue of impunity, the Working Group notes that regulations that have been implemented are partial, disjointed and pronouncedly devoid of a comprehensive strategy to address the phenomenon according to the specific mandates of the court order, issued five years ago, which makes them less effective.

Since Auto 092 was issued, the Prosecutor General's Office has described the implementation of a number of internal policies, between which variation and repetition have occurred without taking previous policies into account. Among these can be found: justice-related strategies with a gender-differential approach¹, measures by means of which cases involving sexual violence can be accelerated and guidelines governing this process², internal and inter-agency coordination platforms³, and the assignment of various units and internal departments to address the issue of conflict-related sexual violence⁴.

The Working Group considers that no strategy exists to streamline these various policies nor by means of which a clear, effective and comprehensive response to the phenomenon of sexual violence might be provided, considering the factual situation and the problems described in Auto 092. In other words, the mere introduction of policy is insufficient to address a situation of systematic discrimination against women in a context of armed conflict.

¹ Memorandum 40 of 2008, Memorandum 30 of 2009, Memorandum 67 of 2009, Memorandum 052 of 2011, Resolution 0368 of 2012, and Resolution 0450 of 2012.

² Resolution 0266 of 2008, Memorandum 0117 of 2008, Memorandum 73 of 2008, and Memorandum 075 of 2009.

³ Resolution 3788 of 2009 and Memorandum 046 of 2009.

⁴ Resolution 05510 of 2008 and Resolution 0-2608 of 2011. The latter called for the establishment of the Sub-Unit for Registry, Comprehensive Care and Counseling for Victims of Illegal Organized Groups in the National Unit for Justice and Peace that, according to the Office of the Prosecutor General of the Nation (DNF Memorandum 22866 of October 1, 2012), addresses "important issues of children, minors, women, persons of Afro-Colombian and indigenous descent, and care for victims of gender-based violence in any form". As will be discussed in the following chapter, this assignment has fluctuated constantly between units and agencies.

In addition to this, policy generally lacks defined objectives, timelines for implementation, adequate budgets, and clear indicators that allow progress to be monitored as efforts to combat impunity are developed⁵. According to the Prosecutor General's Office, there is not a specifically allocated budget to address this issue; instead an overall budget is administered for the entire agency⁶.

Working group finds it to be unacceptable that five years have elapsed since the Constitutional Court ordered that specific and immediate measures be adopted, but that a specific budget to address this phenomenon has yet to be established⁷. This lack of specificity contributes to the failures of related measures as well as the failure of solutions to transcend the regulatory domain.

It should be clearly noted that the Working Group considers, based on the standards set forth by international human rights instruments and the Colombian Constitution (Article 85), that the order to provide an effective remedy for victims of sexual violence is an immediate, not long-term, requisite for compliance. The rights of individual women who have been the victims of sexual crimes are entitled to immediate state-administered protection. The government has been ordered to implement a public policy in response to the issue of access to justice that is to include the elements set forth by the Constitutional Court, especially within its duty to provide mechanisms to guarantee non-repetition, which have been extensively discussed by international organizations.

The Prosecutor General's Office reports that various measures and mechanisms that have been created have operated properly, however experiences in the accompaniment and representation work carried out by several of the Working Group's member organizations clearly indicate that the majority of these are not being implemented (or have not been implemented consistently) as will be illustrated throughout this report.

For example, in an October, 2012 statement⁸ the Prosecutor General's Office indicated that Memorandum 0117 of 2008, *which establishes the differential research methodology for cases of sexual violence in the context of armed conflict, in compliance with a psychosocial approach (...), was released and shared within the institution so that its guidelines would be applied by officials investigating this typology of violence*. However, information was not provided regarding the results of the application of this protocol or mechanisms by means of which to evaluate its effectiveness⁹.

⁵ These consist of the minimum rational requirements as established by the Constitutional Court in several rulings, among others Judgment T-496 of 2008 in which the court describes the protection program as a policy that should "address the heightened impact armed conflict generates among women victims of violence".

⁶ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

⁷ The Inspector General's Office expressed the same opinion; see Office of the Inspector General of the Nation, op. cit. Page 88.

⁸ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

⁹ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13. 2013.

The Working Group is aware that this memorandum has not been socialized properly, nor is the entirety of the institution aware of its existence, as has been indicated by the Prosecutor General's Office¹⁰. On the contrary, the manner in which many investigations have been undertaken, high levels of impunity, and continued acts of victimization targeting women illustrate the minimal extent to which these guidelines, and Auto 092, have made an impact.

Given that attention has already been called to this situation, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to provide information as to how internal awareness of new regulations has been raised, the principal results of their application, and mechanisms used to ensure compliance including the activation of internal disciplinary procedures.

2. LACK OF AN ADEQUATE AND RELIABLE REGISTER

Auto 092 of the Constitutional Court stated that no official register existed for acts of sexual violence committed against women in the context of armed conflict, a situation that should be addressed by "immediately adopting radical corrections, by all authorities with pertinent jurisdiction" (Section III.1.1.2.).

In addition to this, the Constitutional Court considered that a three-fold process had developed concerning sexual violence, one part of which was invisibility from an official standpoint fostering almost total impunity for such acts. One factor indicated by the Court as having contributed to this process was the official underreporting of cases (Section III.1.1.6). In response, entities responsible for compliance with Auto 092 were to develop informational systems to record instances of sexual crimes committed in the context of armed conflict by means of which to increase available information describing such crimes and overcome almost complete impunity in these cases.

However, the Working Group observes that to date judicial authorities have not installed an official, clear and reliable register in compliance with Auto 092¹¹. This deficiency, as discussed below, is observed with regards to internal registers of legal entities considered individually, as well as the complete lack of coordination between the various agencies, which operate in complete isolation from one another.

2.1 Problems with the Legal Register

The Working Group considers that a suitable judicial register should serve not only as a mechanism for statistical production, but allow for the quantitative and qualitative analyses of cases that have been investigated, as well as research as to advances made in all processes,

¹⁰ Proof can be seen in that no decisions based on this Memorandum, or reflecting its guidelines, have been made in the cases accompanied by member organizations to the Working Group, or in which they provide legal representation.

¹¹ These informational systems' weaknesses were recently pointed out by the Constitutional Court in Auto 098 of 2013, Consideration 2.1. (iii).

their mobility, and their dynamics. In addition to this, it should serve as a research tool that can identify patterns of behavior, suspects and, in general, describe the context in which violence occurs, given that an instrument that perpetuates systematic and historical discrimination is clearly in place, that is manifests itself differently with regards to women, and that is exacerbated in the context of war. The register should also include information regarding referrals to health care and protection agencies, as an integral component of access to justice, and manage the oversight of compliance with Auto 092.

Concerning this issue, the Prosecutor General's Office reported that, in response to Auto 092 and by means of Resolution 0266 of 2008, a register of victims has been elaborated in which the 183 cases discussed in the confidential annex are recorded, and that the process of strengthening informational systems continues *by means of projects in which the characteristics of victims are being elaborated*¹². According to the Prosecutor General's Office, the existing database contains several categories whose goal is to examine vulnerable conditions, optimize control and monitoring mechanisms, develop strategies, and allow for the production of statistical information¹³.

Despite advances mentioned by the Prosecutor General's Office, the Working Group found the data provided to be confusing given the impossibility in general to ascertain the number of cases in the procedural phase, the lack of distinction made between Auto 092 cases and those that are not part of the confidential annex, the use of imprecise variables, and a static quality that lacks indications that describe the progress or stagnation of the research. In this regard, it does not serve as a useful tool by means of which to identify progress in efforts to the overcome impunity or compliance with Auto 092¹⁴.

For example, the registry was designed in Excel but there is not a single file that gathers together all of the relevant information, for which reason quantitative analyses must be carried out manually¹⁵. Furthermore, available variables do not correspond to easily understandable categories that relate to a normative or regulatory framework; as such some cases are identified with variables such as "cumulative/inactive" or "preliminary/inactive".

¹² Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

¹³ "The database includes categories such as the crime identification number (*número único de noticia criminal*), Sectional Department to which the case corresponds, Unit, office number within the agency, crime, victims' names, time and location of events, facts surrounding events, name and identification of aggressor, presumed author or responsible group, legal process, phase of procedure, specific characteristics (such as gender, ethnicity, sexual orientation, and social roles, among others) or differential approach». Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

¹⁴ The Inspector General's Office observed the same failures in a December, 2012 report. Office of the Inspector General of the Nation, op. cit. Page 53.

¹⁵ Separate files are created depending on whether processes are investigated using methodology established by Law 600 of 2000 or methodology defined in Law 906 of 2004, or whether they are assigned to the Human Rights Unit or the National Directorate of the Prosecutor's Office (Dirección Nacional de Fiscalías). Files also vary depending on the month in which they are created (for example files for March and April are separate).

It is notable that the database for these cases are developed in Excel, while the Prosecutor General's Office has developed other informational systems to document cases processed within the framework of Law 600 of 2000, Law 906 of 2004 and Law 975 of 2005. The Working Group has not been informed as to a reason for which the Prosecutor General's Office has failed to use these systems in the case under discussion. However, this isolation and differential treatment illustrates a lack of confidence or knowledge regarding the informational systems already in place, that sexual violence has not permeated these registers, and that those responsible for the development of relevant documentation lack understanding or have restricted access.

For the Working Group, this situation reveals that the register the Prosecutor General's Office has developed in compliance with the orders of the Constitutional Court, is designed only to respond to requests for information (by means of the right to petition) and does not allow for the qualitative oversight of relevant cases.

Given these deficiencies, it is not possible to analyze available information and establish progress that has been made in efforts to overcome impunity and compliance with Auto 092. Of utmost concern, it is illusory to believe that a case register with these characteristics might be used to perform contextual analyses or as a research tool with the objective of expediting cases, identifying patterns, etc. The absence of a register of this nature demonstrates the lack of a strategy that takes into account the particular context in which sexual violence occurs, which not only leads to isolated research carried out on a case-by-case basis, but also makes a complete and adequate analysis of the situation impossible.

In addition to the deficiencies of the informational system within the Prosecutor General's Office, the Working Group has observed the absence of a register in the Higher Council of the Judiciary. In a March, 2012 response to a request for information made by The Center for the Study of Law, Justice and Society (Dejusticia), the above agency presented the Fourth Follow-up Report to Auto 092¹⁶ that was issued by the Working Group and informed that the *judicial branch does not differentiate between typologies* in the case of the crime of sexual violence¹⁷.

The fact that the agency responsible for statistics regarding judicial work in cases of sexual violence cases would transmit a report produced by this Working Group constitutes clear evidence of the absence of records and, especially, of the absence in this agency of operational protocol in response to orders issued in Auto 092. Likewise, a lack of differentiated information regarding sexual violence in the Higher Council of the Judiciary impedes any exact knowledge surround individual processes once they leave the internal sphere of the

¹⁶ Higher Council of the Judiciary, Administrative Chamber (Sala Administrativa), Memorandum of March 23, 2012.

¹⁷ Higher Council of the Judiciary, Administrative Chamber, Memorandum No. UDAEOF12-646 of March 26, 2012.

Prosecutor General's Office. These weaknesses in the registration systems were corroborated by the Inspector General's Office in its report issued in December, 2012¹⁸.

The Working Group found that the Inspector General's Office also lacks a formal system by means of which to record information regarding its performance in response to the request that it exercise oversight in the processes discussed in the confidential annex. Although the agency has developed an Excel database, is an inventory matrix and does not include information addressing cases' procedural advancement.

For the above reasons, the Working Group concludes that despite the recommendations made by the Constitutional Court in Auto 092, entities responsible for investigation and prosecution in cases of sexual violence associated with armed conflict have not developed informational systems that reflect the magnitude of the phenomenon and advances in attention measures for victims and efforts to overcome impunity.

The Working Group considers that competent institutions should adopt registers that are cable of providing quantitative information that would enable qualitative analysis, that differentiate between the cases included in the confidential annex of Auto 092 and those that are not, and that progressively describe these cases' procedural progress, advances, or stagnation.

2.2 Lack of Integration between Registers

In addition to the Constitutional Court's findings set forth in Auto 092 concerning the structural flaws of the official register, the Inter-American Commission on Human Rights reiterated in its 2009 annual report that the creation and improvement of information systems to overcome underreporting, and adequately reflect the reality of conflict-related sexual violence, remained a challenge¹⁹.

These state registration systems, according to the recommendations of international organizations and Auto 092, should be designed to identify acts committed against women before being murdered, reflect the situation at the national and local levels, and disaggregate data according to gender, race, and ethnicity, among other factors, in order to reflect the specific situation for indigenous and Afro-Colombian women²⁰. In addition, the Working Group considers that the state registry system should allow for a comprehensive understanding of how the different components of institutional responses, in both the judiciary

and the government in general, have been developed to ensure that complete reparation is administered. This is necessary in order to ensure a comprehensive approach that can provide women with reparation, prevent re-victimization, and act as an impetus for analysis towards the design and implementation of public policies.

Although the Working Group recognizes the existence of multiple registers²¹, these are not in any way integrated (neither between registration systems in general nor between judicial institutions), use different variables, fail to document care provided for victims, and do not seem to respond to the considerations of the Constitutional Court in Auto 092. According to available information, none of these records contain the catalog of sexual violence elaborated by the Court.

Because of this, to date it is not possible to identify the magnitude of the phenomenon of sexual violence, nor is it possible to know if the victim has received counseling, health care, protection, etc. Accordingly, the Working Group welcomes the conclusion of the Inspector General's Office in calling for the need to review and integrate different information systems²².

Therefore, the Working Group will request that the Constitutional Court order all competent entities, in particular The Prosecutor General's Office, the Higher Council of the Judiciary, and the Inspector General's Office, to elaborate an official and integrated informational system, immediately and without deadline extensions, that takes the positions of the Working Group into consideration.

3. PROBLEMS OF COORDINATION BETWEEN INSTITUTIONAL PLATFORMS FOR DIALOGUE

Institutional regulations and policies have created various platforms within and between agencies whose objective is to articulate a response to the phenomenon of sexual violence that targets women during or on the occasion of the armed conflict. However, the Working Group is unaware of any effective coordination between these platforms, either internally within institutions that were ordered to comply with Auto 092, or in the form of inter-agency cooperation between these entities.

Concerning internal coordination within agencies, cooperation among the various units of the Prosecutor General's Office does not seem to occur, each of which operates differently according to its specialty and without coordination with other units²³. This affects the right

¹⁸ Office of the Inspector General of the Nation, *op. cit.* Pages 53 and 57.

¹⁹ Inter-American Commission on Human Rights Annual Report, 2009, Chapter V, Follow-Up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009. Paragraphs 13, 21, 71 and 73.

²⁰ Office of the High Commissioner for Human Rights Report on the Human Rights Situation in Colombia, 2009, Recommendation D. United Nations, *Report presented by Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences: Colombian Mission* (November 1-7, 2001), E/CN.4/2002/83/Add. 3, March 11, 2002, Paragraph 115; IACHR, “*Violence and discrimination against women in the armed conflict in Colombia*” and IACHR Annual Report, Chapter V, 2009, Recommendations 20, 21, 22, 23, 24, 27 and 40.

²¹ Police, Institute for Forensic Medicine (Medicina Legal), Prosecutor General's Office, 'Unidad Administrativa Integral a Víctimas', Health Ministry, Colombian Institute for Family Welfare (Instituto Colombiano de Bienestar Familiar), etc.

²² Office of the Inspector General of the Nation, *op. cit.* Page 57.

²³ Evidence of internal disarticulation can be seen in the response made by the Prosecutor General's Office to a request for information – via Memorandum DNF 22866 of October 1, 2012 – which stated that it was impossible to provide information regarding criteria for priority because “*it is the personal policy of the Prosecutor General*”.

to equality, to the extent that criteria used for the investigation of crimes as well as work dynamics vary significantly between, for example, the National Human Rights Unit, the Justice and Peace Unit, the BACRIM Unit, and the Sexual Crimes Unit. On the other hand, there is no evidence of a clear strategy that aims to identify behavioral patterns and address the systematic nature of sexual violence associated with armed conflict, as a specific crime-related phenomenon.

The Prosecutor General's Office stated that Resolution No. 3788 of 2009 called for the creation of a working group to analyze and formulate investigative and assistance strategies with regards to victims of gender-based violence. In this line of action, this Gender Committee *has met on two occasions*, however it is the intention that *this platform will optimize strategies to be implemented and create new tools designed to guarantee the enjoyment of the fundamental constitutional rights of women victims of sexual violence in the context of armed conflict*²⁴.

It is unrealistic to think that a platform which has convened on only two occasions throughout its four-year existence, considering the original intention that sessions be scheduled regularly on a monthly basis²⁵, can adequately address a phenomenon of such complexity that was ordered to be *of the highest priority level in the national agenda*. As such it is the position of the Working Group that this is merely a formal response and reveals the absence of any strategy or will to solve the problem, a clear sign of the non-compliance in the Prosecutor General's Office regarding Auto 092.

In an expanded response issued by the Prosecutor General's Office to the Working Group in June, 2013 the agency added that *a group, consisting of one prosecutor and two researchers with expertise in psychological and judicial police, is currently functioning and responsible for the execution of gender-sensitive research, the implementation and execution of institutional macro-policies, and the mainstreaming of gender issues with a differential approach in institutional activity*²⁶.

The establishment of a separate group in addition to the existing Gender Committee, consisting of one prosecutor and two of researchers is clearly insufficient given the complexity of the issue at hand, the volume of cases and the amount of functions assigned. It is impossible to justify that a three-person team is to respond to the problem of sexual violence in the context of armed conflict or issue a detailed report outlining the main results of its administration's efforts to *execute institutional macro-policies, and the mainstreaming of gender issues*", especially given the evident lack of any achievement. Therefore, the Working Group considers that these measures do not constitute a structural response to this phenomenon, and that such a response will require a clear strategy that includes the *minimum rational requirements* (elementos mínimos de racionalidad) described by the Constitutional Court.

²⁴ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

²⁵ Resolution No. 0-3788 of 2009, Article 3. This matter was ratified by the Office of the Prosecutor General of the Nation in Memorandum No. DFN 25869 of September 29, 2009.

²⁶ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

The absence of coordination between institutions is also evident and seriously affects women victims' fundamental rights. This is demonstrated by the failures of mechanisms designed to generate coordination between entities, which do not function regularly or continuously. According to the information available to the Working Group, no fluid channel of communication has been established between the Prosecutor General's Office and the Inspector General's Office with the goal of facilitating inter-institutional dialogue that might positively affect progress in diverse processes.

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to immediately provide information as to why the Gender Committee, established due to resolution 3788 of 2009, has met only twice, the principal results of its activities in response to Auto 092, and internal and inter-agency coordination platforms - especially between this institution and the Inspector General's Office - as well as the dates on which these platforms will be in session and their objectives.

4. LACK OF INTER-SECTORIAL APPROACHES

In Auto 092 the Constitutional Court issued a warning regarding the acute impact sexual violence has on indigenous and Afro-Colombian women and girls, indicating that the *incidence, frequency and severity* of this type of offense event have increased significantly in these segments of the population that are situated in *conditions of increased vulnerability, defenselessness and exposure* (Sections III.1.1.3 and III.1.1.4).

One of the most notable failures of governmental efforts to overcome impunity in cases involving sexual crimes has to do with the failure to adopt a differential approach or specific measures in order to more aptly address differences that arise from ethnic and racial identity, age, sexual orientation, and disability among women victims.

In spite of this, none of the policies developed thus far attempt to promote differential approaches to criminal investigations that can address these particular situations of enhanced discrimination, which have negatively impacted the protection of the rights of specific groups of women.

Although the data presented by the Prosecutor General's Office²⁷ allows for the extraction of numbers of victims who are women, children, Afro-Colombian, small-scale farmers, human rights activists, LGBT (sic) and disabled, it is not clear that this disaggregation has impacted research processes, nor that the Prosecutor General's Office employs differential approaches to address each particular situation. It is also unclear whether this investigative body has access to interpreters to more sensitively address cases in indigenous communities, individuals trained to understand diverse worldviews in racial and ethnic communities, or trained personnel in each of the agency's units capable of advancing investigations, as required by law, in cases in which victims are girls.

²⁷ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

In cases in which indigenous women have been the victims of sexual violence, forensic examinations are not only limited to direct evidence, but also ultimately define victims' access to justice. The National Institute of Legal Medicine and Forensic Sciences (INML) deploys personnel throughout Regional Offices, Sectional Offices and Basic Units, which in the latter case consist mostly of a formality given that medical examinations are conducted by local rural or urgent-care medical facilities that lack care facilities for victims of sexual violence and expertise in this area. In regions with predominantly indigenous populations, the institutional presence of the INML is limited to these Basic Units, which operate with the aforementioned limitations. According to the National Indigenous Organization of Colombia (hereafter ONIC for its acronym in Spanish), the departments with high percentages of indigenous populations are Vaupes, Guainia, Guajira, Amazonas and Vichada. There is no INML presence in Vaupés, while Basic Units "function" in municipal hospitals in Guainia, Amazonas and Vichada²⁸.

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office and the Higher Council of the Judiciary to immediately provide information describing parameters, criteria, and measures taken that address the specificities of indigenous women, Afro-Colombian women, women with diverse sexual orientation or gender identity, girls, elderly women, and disabled women, as well as guidelines that have been established to ensure that these groups are guaranteed their rights in criminal investigation processes.

5. PROBLEMS WITH OVERSIGHT PROVIDED BY THE INSPECTOR GENERAL'S OFFICE

The Constitutional Court included a confidential annex to Auto 092 in which it described 183 cases of sexual violence, and presented this documented to the Inspector General's Office to ensure that it would, in exercising its constitutional powers, *provide an exceptionally strict oversight of the development of investigative procedures and the restitution of fundamental rights* in these cases.

Five years since this request was issued, the existence of a specific strategy in the Inspector General's Office designed to comply with Auto 092, and ensure strict oversight that adheres to the terms set forth by the Constitutional Court, remains uncertain. While the Working Group recognizes that, since 2011, the Inspector General's Office has developed several lines of action with the intention of monitoring the human rights of women victims of sexual violence, it is necessary to strengthen these activities in order to accelerate compliance with Auto 092.

In this section the Working Group presents an analysis of the Inspector General's Office in terms of two activities: (1) intervention in criminal proceedings and (2) evaluation and oversight of public policies.

²⁸ <http://sirdec.medicinalegal.gov.co:58080/directorioML/>

5.1 Results of Interventions in Criminal Procedures

The referral of the confidential annex to Inspector General's Office was intended to ensure that criminal proceedings were monitored. Drawing on five years of observations since Auto 092 was issued, the Working Group considers that interventions have not been sufficient to accelerate the pace of these procedures.

In a memorandum presented to the Constitutional Court in February, 2013 the Inspector General's Office reported a favorable balance for 2012 in terms of case oversight and increase levels of awareness regarding conflict-related sexual violence²⁹.

In spite of this positive balance referenced by the Inspector General's Office, the Working Group notes with concern that, although its databases indicate that oversight had been carried out in each case, its monitoring activities, in many of the procedures pertinent to cases listed in the confidential annex were limited to requests for information regarding the progress of the investigation, as opposed to procedural or qualitative involvement that would have required the development of more profound analyses in the Inspector General's Office and would have made a greater impact on these processes, as was the intention of the terms set forth in Auto 092. For example, according to information the Inspector General's Office presented to the Constitutional Court, special agency has been assigned in only four of these cases³⁰.

Given limited intervention in criminal proceedings by the Inspector General's Office, the Working Group considers that the balance of this agency's performance was negative, contrary to the position presented by the Inspector General's Office in its report to the Constitutional Court in February, 2013.

Therefore, the Working Group requests that the Constitutional Court reiterate its position in urging the Inspector General's Office to intervene in all cases discussed in the confidential annex by means of a thought-out legal strategy based on mandates outlined in Auto 092, to immediately submit a report describing oversight carried out in each case, with a special emphasis on monitoring efforts in processes that inactive or are in the preliminary phase, and to deliver periodic reports on a quarterly basis.

5.2 Analysis of Procedures to Evaluate and Monitor Public Policy

The Inspector General's Office launched a process in 2012 to provide orientation and establish guidelines regarding sexual violence associated with armed conflict. Within a framework

²⁹ Office of the Inspector General of the Nation, Memorandum No. 1281 of February 7, 2013. This information was presented to the Constitutional Court at a technical session convened by the court in February, 2013.

³⁰ According to the Criminal Procedure Code (Código de Procedimiento Penal) – Law 906 of 2004, art. 109 – special agency (agencia especial) is a legal mechanism that allows the Inspector General's Office to intervene informally or by parties' request in *processes of meaningful and relevant importance*. According to available information, special agency has been established in cases No. 33, 35, 160 and 161 (Office of the Inspector General of the Nation, Memorandum No. 1281 of February 7, 2013). In these cases – one of which is represented by Foundation 'Sisma Mujer' and another by Foundation 'Sisma Mujer' and the Colombian Commission of Jurists – it not clear how special agency intervention has been administered by the Public Prosecutor nor how the Inspector General's Office has sought to implement compliance with Auto 092.

of development for preventative human rights mechanisms, it created monitoring indicators and in December, 2012 released its report “Evaluation and Monitoring of Public Policies and Programs for Comprehensive Care and the Prevention, Promotion and Protection of the Rights of Women Victims of Sexual Violence in the Context of the Colombian Armed Conflict”.

The Working Group considers the development of monitoring indicators to describe oversight by the Inspector General’s Office to be a very important step in the oversight of public management of conflict-related sexual violence. In an effort to reinforce its monitoring capacity, the Working Group presented the Inspector General’s Office with a document containing comments—some of which are discussed below—that discusses the indicators and evaluation process described in the report³¹. The Working Group appreciates that the Inspector General’s Office has solicited information and diagnosed this situation for the past two years. However, the Working Group is seriously concerned about the content of this report due to a lack of depth in certain areas, lost opportunities due to a lack of recommendations in some areas (for example psychosocial approaches and protection) and the effectiveness of certain indicators.

The Working Group considers that the Inspector General’s Office should itself undergo a periodic monitoring exercise to ensure its proper functioning in addressing this issue, especially with regards to its preventive functions, interventions into criminal procedures, and disciplinary measures. For the sake of future analysis, the Working Group also considers, given that evident delays have affected several activities including the creation of functional informational registers, that the response of the Inspector General’s Office, which has been limited to making observations and general requests, has been insufficient. The powers bestowed on this institution by law allow for far more qualified recommendations regarding the type of register that should exist, the information it should contain, and the deadline by which it should be produced. It also has the power to order disciplinary investigations to be opened in cases of non-compliance with duties that correspond to a specific entity. Throughout the past five years neither the Prosecutor General’s Office or the Inspector General’s Office have carried out the orders of the Constitutional Court, a situation that requires the disciplinary powers of the latter agency, which have not been exercised.

The Working Group understands that this process constitutes an initial analysis and evaluation exercise. However, in the steps that follow the Inspector General’s Office should advance mechanisms for the oversight of the effective enjoyment of women victims’ rights and should not limit the basis of its analysis to information produced by other entities due to the fact that this mostly reflects only the formal results of protocol initiatives, documen-

³¹ Working Group, *Comments by the Working Group to Monitor Compliance with Auto 092, confidential annex, in response to the Inspector General’s Office report: Evaluation and Monitoring of Public Policy and Programs for Comprehensive Care, Prevention, Promotion and Protection of the Rights of Women Victims of Sexual Violence in the Context of the Colombian Armed Conflict*, April, 2013. See document annexed to this report.

tation, etc. and does not take into account the extent to which legal instruments have been employed.

On the other hand, it is important that oversight address problems related to cooperation between institutions. It is clear to the Working Group that comprehensive protection requires an integrated and synchronized approach coordinated between many agencies, however the procedures that exist do not contemplate this variable articulation concerning specific rights, for example to health care, or in the case of aid for the displaced population, for which reason we suggest that it be included in the future.

In addition to this, the Working Group recommends that the Inspector General’s Office include in future analyses compliance with the right to the voluntary termination of pregnancy. This matter was not addressed in the December, 2012 report nor is it contemplated by the previously mentioned indicators. In its report, the Inspector General’s Office concludes that medical and psychological care is an essential element in ensuring the health of the mother and unborn child. For the Working Group, this is a misrepresentation of the issue of voluntary termination of pregnancy. We therefore requested that the formulation of this indicator be reviewed and that the meaning and scope of the recommendations be rectified³². It is clear that any policy involving sexual violence must comply with Constitutional Court Judgment C-355 of 2006 in which abortion was decriminalized³³.

These efforts on the part of the Inspector General’s Office, with modifications, could be successful in measuring progress or lack thereof in the enjoyment of the rights of women victims. Therefore the Working Group recommends that the Inspector General’s Office indicate deadlines for the application of indicators and a specific and sustainable budget. This concern stems from the notion that the evaluation and the process by means of which indicators were developed were funded by means of international cooperation, not autonomous resources of the Inspector General’s Office, casting doubt on the financial sustainability of these efforts.

Accordingly, the Working Group requests that the Constitutional Court urge the Inspector General’s Office to set forth deadlines and provide the resources necessary for this evaluation process, an exercise that should take place at a minimum of every four months and reflect the Working Group’s comments, and to examine the possibility of activating its disciplinary powers for breach of Auto 092. It is urgent that the Constitutional Court alert the Inspector General’s Office as to the importance of oversight and the administration of protections for relevant aspects of the sexual and reproductive rights of women, particularly those relating to the voluntary termination of pregnancy.

³² Working Group, *ibid*, for annotation see Indicator 44.

³³ In addition, the Constitutional Court decriminalized abortion when continued pregnancy may endanger the life or health of a woman and when a serious malformation of the fetus constitutes non-viable life.

6. LACK OF STRATEGY IN THE HIGHER COUNCIL OF THE JUDICIARY

Although Auto 092 gave no instructions to the Higher Council of the Judiciary, as a function of its duties before the state and with regards to the administration of the Judicial Branch, this entity should take measures to ensure that women victims of sexual violence associated with armed conflict are able to access justice³⁴.

According to research carried out by the Working Group in the form of accompaniment with women victims, monitoring work, and formal requests for information, the Higher Council of the Judiciary has not taken measures to ensure that relevant international and constitutional standards are respected once cases of sexual violence leave the Prosecutor General's Office. This situation was corroborated by the Inspector General's Office in its 2012 report³⁵.

As a result of this lack of oversight in the Higher Council of the Judiciary, the few cases that are able to pass through the phase of investigation in the Prosecutor General's Office then confront the same obstacles, as identified by the Constitutional Court in Auto 092, in analyses of evidence, victims' care, etc.³⁶.

The Working Group considers that the Higher Council of the Judiciary, by the present date, ought to have established guidelines that address each step in the judicial process, taking into consideration factual and legal requirements set forth in Auto 092, and activated disciplinary powers in cases in which discrimination or harm has negatively affected the rights of women victims.

The Higher Council of the Judiciary also lacks means by which to engage with the autonomous justice systems in place in indigenous communities, to address the issues of prosecution and punishment in cases of sexual violence against indigenous women. According to information provided by ONIC a strategy is being implemented by means of capacity-building workshops that address the issue of jurisdiction as it applies to investigation, prosecution, and sanctions, but this process is far from having translated into clear methodology by means of which sexual violence occurring in indigenous communities can be prosecuted. Institutional decisions in this area have been isolated and in many cases contradictory.

³⁴ Pursuant to Agreement No. PSAA08-4552 of 2008 of the Administrative Chamber of the Higher Council of the Judiciary, this entity is responsible for the "promotion of equal opportunities for women and men and non-discrimination based on gender in judicial decisions, in the public service of the administration of justice, and the internal administration of the judicial branch". Article 1. In addition, this Agreement created the National Gender Commission of the Judiciary, responsible for "ensuring equality and non-discrimination for women in access to justice". Article 3.

³⁵ Office of the Inspector General of the Nation, op. cit. Page 195.

³⁶ In this sense, the Inspector General's Office requested that the Higher Council of the Judiciary "establish guidelines that allow for the particular circumstances in which the crime was committed to be established, as well as the context and characteristics of the armed conflict in which it occurred". Office of the Inspector General of the Nation, op. cit. Page 225.

As such, the Working Groups request that the Constitutional Court require the Higher Council of the Judiciary and the Judiciary's National Commission on Gender to intervene with regards to these issues.

7. OBSTACLES TO EFFECTIVE DIALOGUE

After Auto 092 was issued, the Working Group repeatedly requested that sessions for regular and permanent dialogue with the Prosecutor General's Office and the Inspector General's Office be established. These sessions began in 2011 and have acted as a channel through which these agencies can share information regarding initiatives, progress and obstacles.

In the case of the Prosecutor General's Office, a high-level platform for dialogue was created in which to discuss and debate matters related to the investigation of sexual crimes associated with armed conflict. As this platform began to function, advances were made in the definition and development of an agenda whose objective was to access specific information about the status of the cases discussed in the confidential annex to Auto 092. Initially, the platform's work emphasized raising awareness about the instruments in place within this agency to facilitate the tracking of cases and corresponding avenues by which the Working Group might review and make comments in order to collaborate in the qualification of this procedure.

Platform participants met regularly, initially including the Prosecutor General who pledged to promote dialogue with the Working Group, until March, 2012. At this point the subsequent Prosecutor General was appointed and no sessions were held until September, 2012, when the platform resumed on a semi-continuous basis with the participation of one official from the National Directorate of Prosecutors' Offices (Dirección Nacional de Fiscalías). As such, further progress on the initially planned agenda was not possible.

The Working Group is currently calling for a proposal in which the delegation that represents the Prosecutor General's Office in these dialogue sessions be revised to guarantee the participation of all of the agency's units, and to forward recognition of the need for access to specific information regarding each of the 183 cases discussed in the confidential annex, due to the generic nature of the information currently available that impedes follow-up to the Constitutional Court's orders.

In order to establish an avenue for dialogue with the Inspector General's Office, a series of meetings was held in order to define an agenda for future sessions. The Working Group emphasized the need for information as to progress made by the Inspector General's Office regarding its responsibility to monitor the 183 cases listed in the confidential annex as dictated by the Constitutional Court in Auto 092. The Inspector General's Office presented an alternative proposal in which this agency would provide periodic reports describing institutional actions in response to the problem of sexual violence occurring in a context of armed conflict.

The result of this process was a unified agenda for dialogue that includes both the monitoring of actions carried out by the Inspector General's Office to provide oversight for the

183 cases discussed in the confidential annex, and the definition of institutional policies to address the phenomenon of sexual violence in the context of the armed conflict.

Since dialogue with the Inspector General's Office was initiated, sessions have been convened roughly once every two months, for which reason the Working Group recognizes this agency's commitment and willingness to strengthen avenues for communication. However, it has not always been possible to maintain continuity of the agenda due to the absence or turnover of government officials delegated to participate in this dialogue and the inability to access information in an accurate and timely fashion regarding efforts to monitor confidential annex cases.

Although this is important progress, it is relevant to submit information regarding several difficulties, which have affected the flow of dialogue with various institutions and reveal structural difficulties that affect compliance with Auto 092, for the consideration of the Constitutional Court.

First, the platforms in which dialogue occurs are not continuous and depend largely on the disposition of individual participants. In the case of the Prosecutor General's Office, dialogue was established during the administration of Dr. Vivian Morales, but diminished significantly with her departure from office, an event that occurred before any results had been attained according to the objectives established between participating parties.

The Working Group considers that, while dialogue with the Inspector General's Office has allowed for increased understanding as to the agency's work in response the Constitutional Court's requests, information provided by the Inspector General's Office continues to be inaccurate and insufficient, a situation that impedes the process of monitoring compliance with the orders issued in Auto 092.

The second problem relates to the profiles these platforms for dialogue have assumed. The Working Group appreciates the commitment and willingness of individuals that participate in the platforms. However, participation is insufficient in that it is limited, in the case of the Prosecutor General's Office, to a single person who lacks the institutional power to make decisions or adopt strategies, which reduces the likelihood that proposals made in these sessions will become policy. It is essential to contemplate this aspect of the status quo when assessing compliance with the Constitutional Court's provision that this matter be assigned *the highest level of priority in the national agenda*. Compliance with this mandate is the responsibility of the Prosecutor General and requires a space in which representatives from various agencies, endowed with the authority to make decisions, can adopt effective measures to reduce impunity in a timely fashion.

A third issue of concern is the failure of these platforms to provide remedies to existing problems that affect access to clear, reliable, and complete information necessary to monitor Auto 092. For example, a request for information presented to the Prosecutor General's Office in August, 2012 was answered in an incomplete fashion in October of the same year³⁷.

³⁷ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

The Working Group issued a second request in November, 2012 to reiterate several concerns and make clarifications but a response was not obtained until June, 2013³⁸, ten months after the initial request. The second response was also incomplete.

It is also concerning that requests for information are met with responses that are vague, occasionally ambiguous, and in some cases untrue. For example, in its initial response in October 2012, the Prosecutor General's Office indicated that it had established "*a working group including Unit Directors (Jefes de Unidad), Judicial Police, the Institute for Forensic Medicine (Medicina Legal), and Women's Organizations*" to develop a Protocol for the Investigation of Crimes against Sexual Freedom, Integrity, and Development. However, when the agency was asked in November, 2012 to indicate the women's organizations that had participated in this process, it responded: "*to date Women's Organizations have not been included in the process; however this issue is under review by the Prosecutor General*"³⁹.

This illustrates an additional difficulty in monitoring compliance with Auto 092. Authorities are required to provide information that describes the basic aspects of compliance with the terms set forth in Auto 092, such as strategy, numbers, formal policies, protection, health care, and coordination, among others, and a failure to do so readily and immediate amounts to a serious breach of terms. It is therefore concerning and revealing that ten months were required to obtain a response to a request for basic information regarding the phenomenon of sexual violence associated with armed conflict. The Working Group sees this as another example of the failure to treat this matter according to *the highest level of priority in the national agenda*.

Finally, it is concerning that platforms for dialogue have not resulted in fluid channels of communication with each agency as a whole, but rather with departments or individuals that does not result in articulation throughout the institution. This reveals a lack of internal coordination, the absence of a clear strategy to reach diverse departments within these institutions, and the need to create avenues for agency-wide engagement.

For these reasons, although the Working Group recognizes that the creation of platforms for dialogue with the Prosecutor General's Office and the Inspector General's Office represents important progress, we recommend that the above agencies undergo adjustments that bring about immediate and continuous monitoring of Auto 092. Therefore, it requests that the Constitutional Court order the Prosecutor General's Office and the Inspector General's Office to appoint a group of high-level officials within each institution, with the power to mandate internal policies, to engage with the Working Group in a continuous and systematic manner and coordinate the institutional response.

³⁸ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

³⁹ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.



III. PROBLEMS WITH ACCESS TO JUSTICE IN CASES OF SEXUAL VIOLENCE ASSOCIATED WITH ARMED CONFLICT

Auto 092 exposed the serious situation that women face as a result of the armed conflict, of which sexual violence is one of the cruelest manifestations, described by the Court as *a habitual, widespread, systematic and invisible practice in the context of the Colombian armed conflict*. Throughout the five years since this order was issued, the Working Group has identified serious obstacles that continue to exist, impede access to justice, and reflect at least three types of structural failures: general obstacles that apply to all victims of human rights violations and are particularly pronounced in cases in which the victim is a woman, specific obstacles related to gender-based violence, and specific obstacles exclusively associated with sexual violence in the context of armed conflict.

In response to Auto 092, the Prosecutor General's Office has indicated that various measures have been taken to comply with the Constitutional Court's orders. These have proved to be inadequate, disjointed and inconsistent. Therefore, the Working Group has voiced concern about the lack of a legal strategy through which to carry out investigations and apply sanctions in cases of conflict-related sexual violence in the terms set forth in Auto 092.

The first progress report submitted to the Constitutional Court¹ by the Prosecutor General's Office outlined several weaknesses in terms of compliance² and described mechanisms that were adopted to address these issues through strategies including outreach, investigation, oversight, training, and strengthening channels of communication with contact organizations³.

The second progress report, submitted to the Constitutional Court in response to Auto (Order) 036 of 2009, described the implementation of a *Comprehensive Action Plan for the protection of the fundamental rights of women victims of sexual violence in the context of armed conflict*⁴, which sought to address *the disproportionate impacts, in quantitative and qualitative*

- 1 Auto 092 ordered the Prosecutor General's Office issue a report six months later that was to include detailed information regarding the 183 cases listed in the confidential annex.
- 2 Among these were the following: (i) *insufficient operational infrastructure to meet case load*, (ii) *insufficient knowledge of criminal act to clarify the facts*, (iii) *victims absent in procedures making their assistance and cooperation very difficult because they were frightened, hopeless, lonely and distrustful of the justice system and even, in most cases, undetermined*, and (iv) *missing evidence due to the passage of time and inability to overcome the complex nature of the facts*. Office of the Prosecutor General of the Nation, Memorandum No.0053 of January 13, 2009.
- 3 These strategies are developed in the framework of the Comprehensive Action Plan described in the second report. Concerning the strategy of strengthening communication channels with contact organizations, it is important to note that the Prosecutor General's Office notes in the report submitted in October 2012, that Resolution 266 to 2009 *established the need to create platforms for dialogue with all contact organizations as well as the Working Group in order to Monitor Compliance with Auto 092; a prosecutor was appointed to serve as a liaison between organizations and institution to create an avenue for control and coordinated management*". Office of the Prosecutor General of the Nation, DNF Memorandum 22866 of October 1, 2012. It is important to note that the dialogue platform that exists today was not created in the wake of Resolution 266 of 2009. To the contrary, as indicated in the first four follow-up reports submitted to the Constitutional Court, the Prosecutor General's Office repeatedly refused to create such a platform despite organizations' repeated requests. It was not until 2011 that the platform was created, with the limitations noted above.
- 4 This Comprehensive Action Plan was mentioned again in Memorandum DNF 22866 of October 1, 2012. However, none of the reports submitted by the Prosecutor General's Office point to the document in which it

terms, of the internal armed conflict and forced displacement, with a focus on eight components: (i) database construction (ii) technical and legal committees for expediting cases, (iii) differential investigation, (iv) training for judicial officials, (v) the creation of units in the Prosecutor's General's Office, (vi) the creation of care centers for victims, (vii) coordination between agencies, and (viii) internal coordination within agencies⁵.

Concerning the creation of Units, the second report issued by the Prosecutor General's Office announced the creation of the Humanitarian Affairs Unit to address cases involving sexual violence associated with armed conflict, to be implemented gradually and become fully functional throughout the country by 2009⁶. However by September, 2010 the Prosecutor General's Office warned that the high volume of case had outgrown the Humanitarian Affairs Units. Subsequently in response to this situation and the instructions of the Constitutional Court, the Prosecutor General's Office announced the creation of a special National Unit to address the crimes of displacement and forced disappearance⁷. According to the Prosecutor General's Office one of this unit's objectives was to provide timely solutions, "especially when attending more vulnerable subjects, as is the case with women, who are differentially and disproportionately affected by such crimes, as a result of sexual violence committed within such contexts⁸." In October, 2011 the Prosecutor General's Office reiterated its intention to implement the Comprehensive Plan, but omitted information concerning the "creation of units in the Prosecutor General's Office".

As far as the Working Group is aware, cases have been assigned to the Human Rights Unit, the Justice and Peace Unit, the BACRIM Unit, and sectional units of the Prosecutor General's Office, inter alia. It is evident that there has not been a clear, uniform, and consistent strategy in response to Auto 092, throughout the past five years, as can be observed in continually shifting jurisdictions and the ongoing creation and dismantling of units in charge of investigation in cases of conflict-related sexual violence.

In addition, measures developed to the present have not included empirical aspects in their considerations, for example the catalog of sexual violence or obstacles identified by the Constitutional Court in Auto 092, for which reason they have not responded adequately to the phenomenon they are designed to address.

In this section the Working Group demonstrates that the *almost total impunity* described in Auto 092 continues to be a reality, and constitutes a clear breach of the terms articulated in

is described, or whether it was approved via resolution, memorandum or internal directive.

5 The Comprehensive Action Plan was mentioned by the Prosecutor General's Office in its second report issued to comply with Auto 092, submitted via Memorandum DNF-22516 No. of August 24, 2009. Subsequent to this report, the Prosecutor General's Office did not mention the Plan in Memoranda No. DNF-007914 of September 29, 2010 or No. DNF-006573 of April 1, 2011. The Prosecutor General's Office did not mention the existence of the plan again until October 2012, in Memorandum DNF 22866 of October 1, 2012.

6 Office of the Prosecutor General of the Nation, Memorandum No. DNF-22516 of August 24, 2009.

7 Office of the Prosecutor General of the Nation, Memorandum No. DNF-007914 of September 29, 2010.

8 Office of the Prosecutor General of the Nation, Memorandum No. DNF-007914 of September 29, 2010 and Memorandum No. DNF-006573 of April 1, 2011.

this order⁹. In doing so, this section addresses: (i) the lack of guarantees for victims who make complaints and of respect for victims, (ii) the persistence of impunity, (iii) the lack of procedural clarity regarding complaints and investigations; (iv) the persistence of a narrow view of sexual violence in armed conflict, (v) the existence of regulations that threaten victims' \ guarantees to justice, (vi) the persistence of patterns of discrimination and re-victimization, (vii) problems with training programs, (viii) the lack of measures to guarantee legal accompaniment, (ix) the lack of inter-sectorial approaches, and (x) the lack of reparation measures in criminal proceedings.

1. LACK OF GUARANTEES FOR VICTIMS WHO MAKE COMPLAINTS AND OF RESPECT FOR VICTIMS

In Auto 092 the Constitutional Court indicated that the three-fold process of invisibility, silence and impunity has caused failures in systems that attend victims of sexual violence consisting, per se, of mechanisms that prevent progress in judicial proceedings, among which it emphasizes distrust of the justice system, fear due to the threat of retaliation, cultural factors such as shame, isolation and social stigmatization, as well as ignorance and misinformation concerning victims' rights.

In addition, in Auto 098 of 2013 the Constitutional Court indicated that it was aware of cases of sexual violence in which women have been sent from one entity to another without fair treatment and without clear information as to how to advance their process, without aid or care provided in situations of high vulnerability, without immediate medical attention or with delayed or incomplete medical attention. Likewise, victims have not been provided with the necessary legal or psychological support¹⁰.

In the Fourth Follow-Up Report the Working Group discussed factors that explain the general lack of complaints made by women victims, including fear for their safety, shame, guilt, lack of knowledge regarding avenues for attention, lack of trust, lack of financial resources, and stigmatization, among others. These factors increase in cases of sexual violence that occurs in the context of armed conflict. At the time, the Working Group noted that "the absence of complaints does not excuse the authorities from their duty to ensure victims' access to justice. On the contrary, high rates of underreporting are largely due to the state's failure to fulfill its duties to promote awareness among women concerning their rights, and ensure minimal condi-

9 "the failure of the authorities to initiate relevant investigations, unjustified delays in investigations and trials, evidentiary practices that foster the re-victimization of women victims, lack of research methodology that adequately considers the context in which violent events occur and the consequent labeling of such acts as common violence, investigation based on irrelevant or inconclusive evidence, derogatory and discriminatory practices by judicial officers, lack of or inadequate protection for the safety, privacy and intimacy of women during criminal proceedings, among others factors, constitute the failure of the state in its minimum duties to investigate, prosecute, issue sanctions, and provide reparation in cases of women victims". Constitutional Court, Order 098 of 2013.

10 Constitutional Court, Auto 098 of 2013, Consideration 4.

tions for their safety, health care, and psychological assistance with a psychosocial focus, among other factors¹¹.”

Two years since the fourth report was published the five years since Auto 092 was issued, the Working Group considers that victims’ needs continue to be neglected and that an institutional strategy that guarantees women the ability to make complaints in cases of sexual violence associated with the Colombian armed conflict has yet to be implemented.

The Inspector General’s Office encountered significant problems relating to respect for victims’ dignity that have given rise to concerns regarding the protection of their rights. In 2012 this agency reported on cases in which complaints were not accepted because victims were unaware of aggressors’ identity or denied medical attention due to lack of health care coverage. In addition to this, the Inspector General’s Office observed that “none of the responses have clearly determined whether or not conditions exist for privacy and respect for victims’ dignity¹²”.

The practice of transferring individuals from one agency to another without fair treatment, lack of information, lack of care, conditioning the acceptance of a complaint on the victim’s ability to identify their aggressor(s), the denial of medical attention due to the absence of health care coverage, and women’s unawareness their rights are factors and disincentives that prevent women from making complaints in cases of sexual violence associated with armed conflict¹³. This further illustrates insufficient progress in terms of state-administered guarantees for victims who make complaints.

It is also noteworthy that in cases of sexual violence perpetrated against indigenous women, the public discussion of such scenarios based on the understanding that they are community issues, or institutional procedures that are carried out without precautions or confidentiality in indigenous communities, violate women’s rights to intimacy and privacy. Therefore complaints are actually discouraged in these cases due to possible stigmatization and rejection due to the events of which they were victims, a situation that has been observed in Nukak and Wiwa communities accompanied by ONIC.

Difficulties also exist concerning measures taken to provide care for the drastic physical and psychosocial health effects suffered by victims, and the lack of effective protection measures to facilitate making complaints in a safe and risk-free environment. Each of these matters is discussed at greater length in the sections that follow.

Because of these issues, the Working Group requests that the Constitutional Court order the Prosecutor General’s Office to immediately implement measures to encourage complaints in cases of crimes perpetrated against women victims in the terms set forth in Auto 092.

¹¹ Working Group to monitor compliance with Auto 092 of 2008 of the Colombian Constitutional Court, confidential annex, op. cit. Page 34.

¹² Office of the Inspector General of the Nation, op. cit. Page 212.

¹³ Therefore, the Inspector General’s Office requested that “the Prosecutor General’s Office and the Higher Council of the Judiciary develop a clear informational strategy concerning respect for victims’ right to participate in investigations and processes”. Office of the Inspector General of the Nation, op. cit. Page 223.

2. IMPUNITY

In this section the Working Group addresses one of the most glaring aspects of non-compliance with Auto 092, namely the lack of results in the 183 cases described in the confidential annex, as well as limited investigative activities.

2.1 Relevant Figures: Almost Complete Impunity

According to information provided by the Prosecutor General’s Office in *March, 2013 with regards to procedures initiated in cases of sexual violence committed against women in situations of forcible displacement, in relation to the confidential annex of Auto 092 as well as to cases outside its scope, our research has produced the following figures¹⁴*:

**TABLE 1
CASES OF SEXUAL VIOLENCE
IN THE SECTIONAL UNITS
OF THE PROSECUTOR GENERAL’S OFFICE**

Preliminary investigation	48
Arraignment (instrucción)	8
Preclusion of investigation (casos precluidos)	4
Inactive due to termination of investigation (resolución inhibitoria)	26
Indictments	3
Convictions	11
Acquittals	1
Arrest warrants issued	5
Assurance measures (medidas de aseguramiento)	1
Inquiry (indagación)	9
Transferred to other jurisdiction	4

SOURCE: Office of the Prosecutor General of the Nation, Memorandum DNF 13322, June 13, 2013.

**TABLE 2
CASES OF SEXUAL VIOLENCE
IN THE NATIONAL HUMAN RIGHTS UNIT
AND INTERNATIONAL HUMANITARIAN LAW**

Cases assigned	87
Cases in the preliminary phase (preliminar)	38
Cases in arraignment (instrucción)	8
Persons under investigation	47
Indictments	2
Convictions	7
Arrest warrants issued	11

SOURCE: Office of the Prosecutor General of the Nation, Memorandum DNF 13322, June 13, 2013.

Information provided by the Prosecutor General’s Office does not allow for a comprehensive analysis of progress in efforts to overcome impunity given the serious failures discussed in the previous section. However, according to the information provided in the above tables, 95 cases are in the preliminary or investigative phases, 16 in arraignment (instrucción), preclusion of investigation (casos precluidos) has been ordered in four cases, 26 cases are inactive due to a termination of investigation (resolución inhibitoria), five cases have resulted in indictments, 18 in convictions, and one in acquittal¹⁵.

¹⁴ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

¹⁵ The sum of these procedures is a total of 164 cases, short of the 183 listed in the confidential annex. Moreover, the Prosecutor General’s Office clearly indicates that information in these tables is not exclusively from the confidential annex to Auto 092.

Because this quantitative data is unreliable for reasons previously stated, the Working Group consulted the matrices provided by the Prosecutor General's Office in June, 2013 with regards to information concerning the 18 convictions, eleven of which correspond to information provided by sectional units of the Prosecutor's General's Office and seven to the Human Rights Unit. This exercise yielded the following results:

Of the eleven convictions in sectional units of the Prosecutor's General's Office, only four appear in registers under the category of sentence or enforcement of penalties. Of the remaining seven convictions none are registered in the database. Of the four sentences, two followed convictions for murder as opposed to criminal offenses related to sexual violence¹⁶. The remaining two, in which sentences were issued for acts of sexual violence, are indicated to have been processed by the Unit for Sexual Crimes in Quibdó, however the cases referred to in the annex occurred in Tolima and Arauca¹⁷. Therefore, this exercise did not produce coherent information about any convictions.

Regarding the seven sentences indicated in table in reference to cases in the Human Rights Unit, according to an analysis of the June, 2013 database, the Working Group finds that the Prosecutor General's Office registers nine convictions, of which only five were issued in sexual violence cases¹⁸. The remaining four cases involved the crimes of murder, extortive kidnapping, and forced displacement. It is also unclear whether or not the latter refer to convictions¹⁹.

Therefore the Working Group concludes that a contrast between tables and the databases provided by the Prosecutor General's Office reveals that there have not been eighteen convictions, as reported by this investigative body, but five, of which only three correspond to cases included in the confidential annex.

It is clear that neither the tables published by the Prosecutor General's Office nor the databases in which they are supposedly substantiated provide reliable information that can lead to a coherent analysis. The panorama in this regard is bleak and bluntly illustrates the failure of the Prosecutor General's Office to comply with the terms set forth in Auto 092.

The Delegate Inspector for Criminal Affairs (Procuraduría Delegada para Asuntos Penales) has also reported on the 183 mentioned in the confidential annex. Below is an analysis of this information according to procedural progress:

¹⁶ These correspond to cases 126 and 135 of the confidential annex.

¹⁷ These correspond to cases 84 and 89 of the confidential annex. Although the database indicates that convictions were made in these cases, neither location nor case identification numbers correspond.

¹⁸ These correspond to cases 28, 15 and 22 of the confidential annex. The other two cases do not seem to be listed in the annex.

¹⁹ These correspond to cases 1 and 93 of the confidential annex and two additional cases not mentioned in the annex. In these cases, information is unclear due to a separate categorical system that includes conviction, preliminary investigation, and arraignment, and acquittal.

TABLE 3

Case Status	Number of Cases
Conviction	11
Acquittal	1
Arraignment (instrucción)	17
Prior Investigation	76
Inactive (archivo)	69
Trial	4
Indigenous jurisdiction	1
Case repeated	1
Judicial proceedings backlogged/pending	2
No information	1
TOTAL	183

SOURCE: Office of the Inspector General of the Nation. "Consolidated Information Regarding Sexual Violence and Women". November, 2012.

According to information reported by the Inspector General's Office, convictions have been made in only 11 of the cases mentioned in the confidential annex, or in 6% of all cases. There are 21 cases in which the alleged author has been identified, charged, or is being tried (or 11.4%). Concerning the remaining cases, it is extremely concerning that 69 (37.7%) are inactive and 76 (41.5%) are in the preliminary phase.

Of the eleven cases in which the Inspector General's Office reported that a conviction had taken place, individual authors in crimes against women and girls in situations of forced displacement have identified in five. An analysis of these five cases by the Working Group found that one has not resulted in a conviction but been transferred to jurisdiction established by Law 1098 of 2006. Of the six remaining cases, in which authors are armed actors, it is evident that at least one, in which legal representation has been provided by Foundation "Sisma Mujer", no conviction was issued; an acquittal was issued for the crime of sexual violence. Therefore this information has also displayed inconsistencies and is unreliable.

In conclusion, the information available does not allow for a thorough and detailed analysis of developments that have occurred in the cases mentioned in the confidential annex to Auto 092. However, given that the Prosecutor General's Office indicates eleven convictions, the Inspector General's Office indicates eighteen, and the Working Group could corroborate only five, of which only three appear in the confidential annex, it is possible to conclude that *almost total* impunity continues to be a reality²⁰.

²⁰ The Constitutional Court stated that known accounts of conflict-related sexual violence describe a panorama of violence, cruelty and barbarism over which a cloak of almost total invisibility, silence, and impunity has been placed officially and unofficially. It noted that one of the factors contributing to this scenario was almost total impunity, particularly when authors belong to illegal armed groups. Constitutional Court, Auto 092 of 2008, Sections III.1 and III.1.1.6.

Therefore, the Working Group will provide the Constitutional Court with an annex addressing each of the cases listed in the confidential annex, including a detailed analysis of the information made available to the Working group by the Prosecutor General's Office. In each of these cases the Working Group presents questions and comments, which we respectfully request the Constitutional Court forward to the Prosecutor General's Office so that the relevant responses can be articulated.

2.2 Lack of Investigative Strategies to Overcome Impunity

As noted previously, it is concerning that many cases are inactive or in the preliminary investigation phase, and that there is no strategy based on the contents of Auto 092 to address this situation. According to information provided by the Prosecutor General's Office (mentioned previously) 95 cases are in preliminary investigation or inquiry (indagación), and 26 are inactive due to termination of investigation (resolución inhibitoria).

Concerning these cases, the Prosecutor General's Office indicated in October 2012 that inactive cases, and cases in which termination or preclusion of investigation had been ordered (casos precluidos or resolución inhibitoria), were *in assessment of evidence and had not progressed due to circumstances that did not reflect the intentions of the institution. However, in response to these inhibitions, guidelines were reviewed by technical legal committees with consideration for guarantees for effectiveness and access to justice, and four of these decisions were overturned*²¹.

This categorical affirmation made by the Prosecutor General's Office, with respect to the assessment of evidence in procedures that ended in preclusion of investigation, acquittal or termination of investigation, was contradicted by the Constitutional Court in at least one case, in which Judgment T-973 of 2011 was issued.

In this case, in which representation was provided by Foundation "Sisma Mujer", the Constitutional Court examined one of the cases that appears in the confidential annex to Auto 092, in which the Prosecutor General's Office had definitively closed a case (preclusión) of sexual violence that was committed against a disabled Afro-Colombian girl, also a victim of forced displacement. In analyzing the case, the Constitutional Court found that the Prosecutor General's Office had failed in its duty to investigate, punish, establish the truth, and mandate redress for damages. It is therefore clear to the Working Group that the affirmation that the Prosecutor General's Office had deployed all possible investigative actions to identify authors and overcome impunity in all cases ending in preclusion of investigation, acquittal or termination of investigation, is false. This is extremely concerning, and more so when it is considered that there has been no legal representation in most of these cases and intervention on the part of the Public Prosecutor has been limited.

On the other hand, a limitation concerning investigative activity can be seen in the common practice of pursuing physical and testimonial evidence provided by the victim without examining other sources of evidence to clarify facts surrounding these crimes. This situa-

tion was verified by the Constitutional Court in Judgment T-973 of 2011 (as mentioned previously). In the present case, the victim of sexual violence and forced displacement was a disabled minor. The Constitutional Court ruled that the Prosecutor General's Office had not exercised due diligence because, among other reasons, it had considered the victim's testimony to be essential evidence in the investigation, regardless of the fact that *this evidence was impossible to collect and assess because the victim's particular condition prevented her from providing serious, real, and consistent testimony to describe the facts.*

In the same decision, the Constitutional Court found that the Prosecutor General's Office had ignored the victim's right to enhanced protection given her *situation of extreme helplessness and vulnerability* caused by her condition as a minor, victim of forced displacement, and disabled. It therefore reiterated that the Prosecutor General's Office must act with utmost diligence in such cases and not suspend criminal action *without having previously executed all possible actions to collect sufficient evidence in order to clarify that criminal acts occurred and, thus, ensure a fair trial according to the reality of what happened.*

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to design a strategy, based on Auto 092, to accelerate cases currently in preliminary investigation and inquiry and to review cases that have been definitively closed (preclusión) or made inactive (archivados). Furthermore, this agency should immediately provide detailed information concerning activities carried out in each of the cases in preliminary investigation and inquiry to ensure the collection of all available evidence, in light of the standards set forth in constitutional jurisprudence and, regarding cases that were definitively closed or in which termination of investigation has been ordered (resolución inhibitoria), detailed information should be provided concerning the reasons for these decisions as well as a complete copy of all resolutions that justify preclusion or termination.

3. LACK OF CLARITY IN METHODS TO RESPOND TO COMPLAINTS AND CONDUCT INVESTIGATIONS

As described previously, the Working Group has found that excessive laws and policies have produced numerous guidelines and jurisdictions that victims often find confusing, contradictory, and unclear. The lack of a strategy that addresses sexual violence related to armed conflict is exacerbated by an increasingly complex justice system that makes governmental responses confusing, and a lack of clarity as to an appropriate path to be pursued in cases of sexual violence once they have been reported.

There are currently various apparatus that operate simultaneously as a result of which individual cases can be taken up in multiple jurisdictions—ordinary jurisdiction, in which the Human Rights Unit, the BACRIM Unit, the Unit for Context Analysis (Unidad de Análisis de Contextos), the Centers for Care and Comprehensive Research for Victims of Sexual Crimes (Centros de Atención e Investigación Integral a las Víctimas de Delitos Sexuales) etc. operate, or jurisdiction created by Law 975 of 2005—branches of the legal system that do not exchange criteria or tend to identify authors by means of collaborative strategies. Nor do

²¹ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

they tend to address behavioral patterns, establish motives, or examine the particular contexts in which crimes were committed. The complex nature of the justice system exacerbates additional difficulties in addressing sexual violence associated with armed conflict. The evidence indicates that Auto 092 has made a sufficient impact neither on investigation of individual cases nor on the definition of strategies.

This situation was recognized by the Prosecutor General's Office in Directive No. 0001 of 2012, which characterized administrative practices as (i) *non-transparent*, (ii) *disjointed*, (iii) *undemocratic*, (iv) *lacking in effective control mechanisms*, and (v) *not integrated into a comprehensive investigative strategy, all of which lead to inconsistencies in how complaints are treated without any rational or legitimate justification*²².

This lack of clarity is also reflected in the general situation with regards to care for victims of sexual violence associated with armed conflict. The Inspector General's Office indicated a lack of defined care mechanisms on the national level, which makes access for victims to government services difficult²³. It is also unclear as to which government agency has jurisdiction in cases of indigenous women who are the victims of sexual violence, while judgments made by the Higher Council of the Judiciary have been isolated and in many cases contradictory, as reported by ONIC.

Therefore, the Working Group calls for an urgent response to this lack of clarity and the installation of general practices to be integrated in all relevant institutions that can provide care for victims of sexual violence as well as specific guidelines for criminal investigation. As such, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to design methodology that will accelerate investigation, set criteria for the allocation of cases within this investigative body, and state how comprehensive care is to be coordinated with other responsible agencies.

4. THE NARROW INTERPRETATION OF SEXUAL VIOLENCE IN ARMED CONFLICT

One of the problems that contribute to impunity in cases of sexual crimes is caused by a narrow interpretation concerning the relationship between crimes and armed conflict. The Working Group has noted that this complex phenomenon continues to be seen from a simplistic point of view that considers neither the register of sexual violence provided by the Constitutional Court in Auto 092, nor information collected by various international and national human rights organizations.

²² "(...) today, the paradigm that all crimes should be investigated at the same time, in the same way, and as isolated events has led to high rates of impunity (...). This also seriously affects the rights of victims, and has produced various failures in the system such as, among others, the following: (...) (ii) identical criminal conduct (sexual offenses) has received different treatment in different Delegates of the Prosecutor General's Office". Office of the Prosecutor General of the Nation, Directive No. 0001, "by means of which several criteria were adopted to prioritize situations and cases, and a new system of criminal investigation and management was created for cases in the Prosecutor General's Office", Chapter V.

²³ Office of the Prosecutor General of the Nation, op. cit. Page 113.

The Prosecutor General's Office has reported that guidelines that define sexual violence related to the armed conflict are outlined in Memorandum 0117 of 2008. However, while the memorandum provides tools for the investigation of crimes, it fails to define how events should be considered to relate to the armed conflict. As a result of this lack of guidelines several cases that could have been interpreted as being connected with conflict were investigated as if they were not.

In a statement made in June, 2013 the Prosecutor General's Office indicated that criteria used to determine when a case is related to conflict are described in the Penal Code (Código Penal), in the chapter that addresses persons and property protected by international humanitarian law, and in provisions established by international organizations and national jurisprudence²⁴.

The Prosecutor General's Office has failed to analyze and provide insight as to one of the most serious and complex aspects of sexual violence in armed conflict, specifically the identification and understanding of events that fall into this category. Because the complexity of the armed conflict manifests itself in various forms of sexual violence, behavioral patterns, and the use of women's bodies, an analysis of the facts should be meticulous and meet clear criteria that allow for cases to be classified according to criminal typologies.

This complex issue has been analyzed by the Constitutional Court on several occasions²⁵. The Working Group considers it to be important that the proper implementation of criteria developed by the court's jurisprudence is guaranteed, especially Judgment C-781 of 2012 in which clarity was offered as to the interpretation of the notion of "on the occasion of the armed conflict" and a broad interpretation of this concept was adopted. In this regard, the Working Group finds it essential that the authorities responsible for administering justice define sexual violence perpetrated by armed actors and/or civilians against displaced women as having occurred on the occasion of the armed conflict. As such, it is necessary to account for victims' profiles and the complexity of sexual violence in the context of the conflict, as defined in the broad interpretation cited above.

The Penal Code does not address this complex issue; therefore a broad interpretation should be applied that guarantees an understanding of the reality of the phenomenon in Colombia. The Prosecutor General's Office, the Higher Council of the Judiciary and the Inspector General's Office should ensure the correct application of Constitutional Court jurisprudence concerning this matter.

Therefore, the Working Group requests that Constitutional Court order the Prosecutor General's Office, the Inspector General's Office, and the Higher Council of the Judiciary to monitor the implementation of constitutional jurisprudence that clarifies how to define the connection between a crime and the armed conflict, particularly the prevalence of interpretation in favor of the victim in the cases of doubt.

²⁴ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

²⁵ Among others, Judgments C-291 of 2007, C-781 of 2012, and C-253A of 2012.

5. CONTINUED PATTERNS OF DISCRIMINATION AND RE-VICTIMIZATION

Auto 092 of the Constitutional Court ruled that risk from which women suffer in the context of conflict and forced displacement is related, among other factors, to gender. It also provided evidence to illustrate that in addition to this, women who demand that their rights be protected tend to be confronted by situations of discrimination and the use of gender stereotypes that result in their re-victimization and contribute to the three-fold phenomenon of invisibility, silence, and impunity.

In response to this historical discrimination, to which women continue to be subjected, the justice system should establish measures for affirmative action in legal proceedings that address this condition and attempt to provide a remedy by all means available²⁶.

Notwithstanding, the Working Group has illustrated how interpretations continue to underestimate the severity of crimes of sexual violence and exacerbate discrimination, thereby undermining the real possibility of access to justice. These patterns of discrimination have not been overcome despite the development of numerous training programs in the Prosecutor General's Office. The ruling of the Constitutional Court in Auto 098 of 2013 is therefore relevant, in which it noted that *"the state must redouble its efforts to eliminate factors that generate violence and structural discrimination related to gender"*²⁷.

In the same sense, the Inspector General's Office encountered a *patriarchal cultural pattern* that facilitates continued sexual violence and *makes it difficult to prosecute*. It therefore posited that *"changes in cultural patterns that favor equal conditions are of fundamental importance"*²⁸.

Because of this the Working Group requests that the Constitutional Court order the Prosecutor General's Office to immediately design mechanisms to prevent acts of discrimination and sanctions to be applied in cases in which officials incur such acts in the course of investigations.

6. PROBLEMATIC ASPECTS OF TRAINING PROGRAMS

A document issued by the Prosecutor General's Office in October 2012²⁹ affirmed that, subsequent to Auto 092, it had carried out twenty-seven training sessions, in which a total of 1,009 persons had participated and that it continues to develop a training plan to address the issue of sexual violence in armed conflict³⁰. According to this information, the program carried out sessions for three years, the last of which were administered in August and September, 2011, and were administered as detailed in the following tables:

TABLE 4

Curriculum	Administered in	Number of Participants
Sexual violence in armed conflict	Sectional and National Units	231
	Justice and Peace Unit	137
Gender-related violence in armed conflict	Sectional and National Units	30
Sexual violence in general	Justice and Peace Unit	23
Gender-related violence in general	Sectional and National Units	39
	Justice and Peace Unit	349
Human rights	Sectional and National Units	200
TOTAL		1.009

Graph elaborated by the Working Group based on information provided by the Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

The Working Group considers that the development of these training processes is an important step forward that may help overcome existing discrimination in the justice system. Although the Prosecutor General's Office has indicated its intention to continue to pursue this training process, readers will note that the last session was carried out in September, 2011. The Working Group therefore expresses concern that the training program has not followed a coherent, strategic, continuous, or large-scale strategy or tended to impact the development of legal procedures based on evidence provided by Auto 092. For this reason, a strategic plan should be implemented to ensure that all personnel with expertise in this area receive training that covers investigative needs and care for victims.³¹

On the other hand, it is of utmost importance that training programs be mandatory so that increased levels of expertise and knowledge regarding new approaches do not depend on the will of individual participants. Training process should be linked to oversight mechanisms and, if appropriate, disciplinary investigation in cases of negligence with regards to its application.

In addition, the Prosecutor General's Office, the Higher Council of the Judiciary and the Inspector General's Office should exercise a rigorous review process concerning the professional profiles of personnel in this area. Work such as investigation, prosecution, or intervention in these processes requires accredited professionals or, at the bare minimum, personnel that has received previous internal or accredited training.

In any case, given that access to justice is a right whose defense is the state's direct responsibility, the Working Group considers that a lack of training in no way justifies discriminatory treatment in investigative endeavors. As is the case with other crimes, those responsible for the administration of justice are obliged to enforce laws according to constitutional principles. Therefore, to simply wait for a transformation of consciousness, the disappearance

²⁶ The Inter-American Court of Human Rights has addressed this matter. See Consultative Opinion 16/99 addressing the right to information about consular assistance in the framework of guarantees for legal due process.

²⁷ Constitutional Court, Auto 098 of 2013, Consideration 4.2.2.

²⁸ Office of the Inspector General of the Nation, op. cit. Page 109.

²⁹ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

³⁰ It is not possible to determine who participates in training processes from the information provided by the Prosecutor General's Office, for example whether the same people have participated in multiple courses.

³¹ The Inspector General's Office suggested the implementation of systematic training processes including on mechanisms to measure impacts and attempt to transform cultural patterns. Office of the Inspector General of the Nation, op. cit. Página 137.

of gender stereotypes, and the correct administration of justice would constitute a new and unacceptable form of discrimination.

For these reasons, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to establish a training plan, funded by internal resources, over an extended period of time, to specifically address issues discussed in Auto 092. Furthermore, this plan should describe in detail a monitoring process and sanctions to be applied when training guidelines are not followed.

7. LACK OF MEASURES BY WHICH TO GUARANTEE LEGAL ACCOMPANIMENT

In Auto 092 the Constitutional Court indicated that a lack of *accompaniment and expert advice in legal and emotional terms* contributes to the three-fold phenomenon of invisibility, silence, and impunity in cases of conflict-related sexual violence.

Law 1257 of 2008 (Article 8.b) established the entitlement of women victims of violence, as a condition of their gender, to receive state-administered counseling, legal advice, and technical assistance in an immediate, free, and specialized fashion as soon as the matter has been brought to the attention of the authorities. The law states that this right should be guaranteed through services provided by public defenders³².

Sexual violence has been interpreted by the Interamerican Court of Human Rights as a form of violence against women of a paradigmatic character³³. Therefore, women victims of sexual violence associated with armed conflict clearly have the right to counseling, legal advice, and technical assistance in the terms described in Law 1257 of 2008. It is the duty of the Colombian state to guarantee this right.

However, as indicated by the Prosecutor General's Office³⁴, this obligation has not been fulfilled despite its existence since December 4, 2008 when Congress passed Law 1257 of 2008.

The state has failed to fulfill its duty to ensure that victims receive legal support. This is serious because of the disproportionate impacts of violence against women, among other reasons, in addition to the numerous difficulties this group faces in seeking access to justice and as a result of the justice system's complexity. These factors severely limit the ability

³² In addition, the United Nations Security Council, in Resolution 1960 of 2010, called for increased access to legal assistance for victims of sexual violence in armed conflict, which adds to the insistent recommendations made in this area by the Inter-American Commission on Human Rights.

³³ Inter-American Court of Human Rights, Case of *Rosendo Cantú y Otra vs. México*, Judgment of August 31, 2010, paragraph 109. Inter-American Court of Human Rights, Judgment *Fernández Ortega y Otros*, paragraph 119.

³⁴ "(...) there is no specific information as to who are the legal representatives of the victims; the understanding is that they are lawyers that from the Office of the Ombudsman or private attorneys, and in compliance with law enforcement 1257 of 2008 appropriate resources will be made available so the institution can provide representation for victims if they have not obtained legal counseling". Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

of individually women to administer paperwork required to advance processes. In addition, as mentioned in the previous section, extensive stereotypes and prejudices continue to exist, entrenching discrimination and in many cases justifying sexual violence, a situation in which representation and legal advice or support are imperative to reduce the risk of re-victimization.

Although Law 1257 of 2008 established the duty of the Office of the Ombudsman (*Defensoría del Pueblo*) to lead legal accompaniment efforts, a position reiterated by Law 1448 of 2011 (Article 43), this agency can only operate once it has been made aware of the facts, for which reason it is initially the responsibility of the Prosecutor General's Office to provide information to the Office of the Ombudsman.

Therefore, the Working Group rejects the response presented by the Prosecutor General's Office, which states that this agency will *take relevant measures so that the institution can make the appropriate referrals*, without clearly identifying an immediate strategy to ensure the rights of women who have made complaints and other women victims.

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to comply with Article 8 of Law 1257 of 2008. Moreover, considering that victims in the cases mentioned in the confidential annex to Auto 092 have been identified, we request that the Constitutional Court order the Ombudsman's Office to provide orientation, legal advice and technical assistance for victims in these cases, taking necessary measures to prevent their repeated victimization.

8. LACK OF MEASURES FOR REPARATION IN CRIMINAL PROCEEDINGS

As a result of the continued and widespread prevalence of impunity in cases of sexual crimes, chances decrease that women who are victims of these crimes might attain comprehensive reparation through the justice system. A lack of reparation not only affects women on an individual basis, but sends a message of acceptance and state tolerance with regards to this type of violence in general, affecting Colombian women as a whole given the continued risk of sexual violence.

The Working Group has no knowledge of efforts, aside from the procedure set forth in Law 975 of 2005, to guarantee comprehensive reparation; there are no guidelines that establish how ordinary courts can adopt comprehensive reparation measures. This explains the order issued by the Inspector General's Office to the Higher Council of the Judiciary in which it was indicated that *no policy regulates legal reparation with the objective of transforming the root causes of sexual violence*. It therefore recommended that the *Judicial Branch of the government, through the Supreme Court of Justice, implement a policy for the legal reparation for victims of sexual violence in the context of the armed conflict that look to transform the social and cultural causes that gave rise to sexual violence*³⁵.

³⁵ Office of the Inspector General of the Nation, op. cit. Page 231. In addition "the management of a legal reparation policy for victims of sexual violence in armed conflict whose goal is to provide compensation for both moral and material damages" was recommended.

On the other hand, in terms of administrative reparation, according to information presented to the Inspector General's Office, the Unit for Victims' Care and Comprehensive Reparation (Unidad de Atención y Reparación Integral a las Víctimas) provided reparation to 176 victims of conflict-related sexual violence from 2009 to 2011 and intended to provide reparation to 238 women in 2012³⁶. The Working Group is concerned that reparation has been so scarce given the known magnitude of this phenomenon.

As will be discussed in greater detail in the following chapter, the Working Group is also concerned about reforms to the procedure set forth in Law 975 of 2005, which transformed the comprehensive reparation into the recognition of damages, which would seem to eliminate the possibility of judicial recognition of reparation, replacing it with inadequate administrative mechanisms.

In addition to this, the state has failed to provide mechanisms or guidelines that govern reparation in cases involving women victims of sexual violence associated with armed conflict as well as gender-related aspects of forced displacement. In these cases, it would seem that the only way compensation can be attained is through the normal procedure, which ignores the connection between events and conflict.

Lastly, the Working Group has no knowledge of mechanisms for reparation to be applied with respect to the 183 cases of sexual violence in the confidential annex to Auto 092.

Therefore, the Working Group requests that the Constitutional Court order the Higher Council of the Judiciary to provide information as to policy governing reparation that has been designed—or will be designed—to guarantee full reparation for women victims of sexual violence and to “transform the social and cultural factors that gave rise to sexual violence”.

9. POLICIES THAT CAST DOUBT ON VICTIMS' GUARANTEES TO JUSTICE

The Working Group is concerned about recent policies and initiatives that may exacerbate impunity in cases of sexual crimes, such as the priority policy (política de priorización), reforms to Law 975 of 2005, and reforms to military criminal jurisdiction. In this section, the Working Group describes each of these aspects and requests that they be considered by the Constitutional Court from a standpoint of compliance with Auto 092 so that, if it is considered necessary, guidelines with clear objectives might be determined to prevent the extension of impunity in these cases.

The first issue is the priority policy, described by the Prosecutor General's Office in Directive No. 0001 of October 4, 2012³⁷, and concerning which the Working Group has formulated questions and concerns. On one hand, it is problematic that non-prioritized

³⁶ Office of the Inspector General of the Nation, *op. cit.* Page 228.

³⁷ “By means of which several criteria were adopted to prioritize situations and cases, and a new system of criminal investigation and management was created for cases in the Prosecutor General's Office”. To obtain information regarding plans and schedules, particularly concerning sexual violence mentioned in the confidential annex to Auto 092, the Working Group requested information in August, 2012. In October of the same year the Prosecutor General's Office responded that no information about the priority policy was available, that it was

cases—many of which are probably cases involving sexual violence associated with armed conflict—will continue to be investigated in isolation without accounting for the context in which events occurred, one of the main causes of impunity.

On the other hand it is unclear how objective criteria (severity and representativeness) and complementarity criteria (feasibility and viability) will be applied in cases involving sexual violence. It is clear that due to the nature of such events authors are difficult to identify. Complaints are made long after events take place; information and evidence is scarce, and sufficient advances have not been made in the identification of impacts and degree of affectation. It is therefore unclear how these issues, that constitute the very essence of investigation into sexual violence, are to be overcome.

Auto 092's confidential annex was submitted to the Prosecutor General's Office was so that this investigative agency would *immediately pursue the necessary legal procedures*. The Working Group considers that the cases included in the annex alone constitute a significant sample of facts and as such should be considered priority cases. Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to consider the 183 confidential annex cases according to priority policy.

The second issue concerns Law 1592, passed in Congress on December 3, 2012. Article 22 mandates the removal of investigations from the ordinary justice system when assurance measures (medida de aseguramiento) are in place, even before a judgment has been issued, and their transfer to mechanisms defined by Law 975 of 2005. This reform could have a negative impact on the progress of cases listed in the confidential annex.

On the other hand, Article 23 of this law amended the allocation of reparation measures as defined by Law 975 of 2005, so that they would be allocated according to those damages identified as having been caused to victims. The Working Group considers that this reform may further undermine access to justice as defined by jurisdiction established in Law 975 of 2005. The reform constitutes a *de facto* mechanism that discourages victims from seeking justice through the courts. Although we recognize that victims' interest in pursuing processes in the justice system is not limited to reparation – while this is a legitimate right – but includes truth and justice, it is clear that the judicial procedure involves emotional stress that is exacerbated in cases of sexual violence. Therefore the Working Group notes that, since the result will likely be equivalent, victims prefer to directly pursue the procedure established by Law 1448 of 2011.

To discourage victims from making complaints additionally constitutes a lost opportunity for the country as a whole, especially in efforts to establish the truth and facts that describe how women are victimized and how historical patterns of discrimination have exacerbated this violence.

being produced, and that it is the direct responsibility of Prosecutor General. Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to immediately provide information as to mechanisms that have been adopted to ensure that the courts are adequately informed regarding events related to sexual violence on the national level and to guarantee that reforms to Law 975 of 2005 will not discourage women from making complaints.

Lastly, on June 18, 2013 a statutory law was approved that elaborates Articles 116 and 221 of the Constitution, reformed by means of Legislative Act 2 of 2012. The law aims to establish *regulations regarding the investigation, prosecution, and trial of members of the Armed Forces within the framework of international humanitarian law*.

The Working Group considers that although this constitutional reform, and Article 41³⁸ of the statutory law, explicitly restrict the jurisdiction of the military courts in cases of sexual violence, it is necessary – if these measures are approved by the Constitutional Court in the process of prior and automatic control – to guarantee that under no circumstances will sexual violence be tried in military courts.

As noted previously, the Criminal Code should be interpreted in a manner that guarantees a *pro-victim* perspective and implies a broad interpretation of the definition of sexual violence. Therefore, it is problematic that the only sources of analysis referred to in Article 41 are provisions of the Penal Code, while diverse complementary sources, such as crime-related elements of the Rome Statute and constitutional jurisprudence, are not contemplated.

In addition to this, the Working Group is apprehensive of possible difficulties arising from the guidelines established in the “Protocol for the Armed Forces on Sexual Violence with an Emphasis on Sexual Violence on the Occasion of the Armed Conflict”, by means of which the Armed Forces were equipped with the authority to gather evidence, record testimony, and assume the role of the judicial police. The Working Group is concerned that military forces might supplant civil authorities, and discourage women from making complaints, given the distinct characteristics of military life.

Therefore, the Working Group respectfully requests that the Constitutional Court study the constitutionality of the proposed law accounting for the risks that this reform could imply in cases of sexual violence and, if applicable, in accordance with a broad interpretation of international human rights law and international criminal law, to explicitly prohibit that any such case be heard by military courts.

³⁸ *Crimes against humanity, crimes of genocide, forced disappearance, extrajudicial executions, sexual violence, torture, and forced displacement are the exclusive competence of the ordinary criminal courts. (...) Sexual violence includes all crimes against sexual freedom, integrity, and education according to Title IV of the Criminal Code and Articles 138, 139, and 141 of the Penal Code.*



IV. PROBLEMS WITH PROTECTION MEASURES

Auto 092 of the Constitutional Court stated that a combination of victims' fear caused by the threat of retaliation and a lack of state-administered protection measures contributes to the three-fold problem of invisibility, silence, and impunity surrounding conflict-related sexual violence. For this reason the Court mandated issued the Prosecutor General's Office a six-month deadline to report provide detailed information about *work being carried out to support and protect the victims of these crimes*¹.

Since 2008, the Working Group has verified that protection measures have been modified several times, in order to establish a system that addresses the particularities of the armed conflict and the victims. There are currently at least three different protection schemes:

First, the *Victim and Witness Protection Program (Programa de Protección para Víctimas y Testigos) of Law 975 of 2005*, was created by Decree 1737 of 2010, by means of which Decree 3570 of 2007 was amended, on the occasion of Judgment T-496 of 2008 which stated that the Comprehensive Protection Program (Programa Integral de Protección) should contain several minimum rational requirements.

Second, a *Program for the Protection and Assistance of Witnesses, Victims and Other Parties Involved in Criminal Procedures in the Prosecutor General's Office (Programa de Protección y Asistencia a Testigos, Víctimas e Intervinientes en el Proceso Penal de la Fiscalía)*, was established through Resolution No. 0-5101 of 2008.

Third, Decree 4912 of 2011 created a *Prevention and Protection Program to guarantee the rights to life, liberty, integrity, and safety of individuals, groups, and communities in the Ministry of the Interior and the National Protection Unit*². This program has had a major impact in the case of women leaders, human right defenders, and accompaniment organizations; however, it does not directly address risk associated with participation in criminal proceedings.

Although the Working Group recognizes significant progress in this area, the failure to guarantee conditions for parties filing complaints and the overall lack of a protection system continue to be major obstacles to the filing of complaints regarding sexual violence and women's participation in criminal proceedings. In addition, advances have failed to directly impact the specific needs of this phenomenon and of the victims listed in the confidential annex with consideration for Auto 092.

¹ Of the answers the Prosecutor General Office submitted to the Working Group, so far this agency has not provided complete information to the Constitutional Court, in particular concerning support and protection work for victims of sexual crimes included in the confidential annex. The response states that “every Prosecutor was required to instruct investigations in confidential annex cases to adopt measures for assistance and protection for victims if necessary, with differential approach criteria to address the specific attributes of each. Protective measures were taken when necessary, for example in coordination with the Colombian Institute of Family Welfare (Instituto Colombiano de Bienestar Familiar) for victims under the age of 18”. Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012. Therefore, we request that the Constitutional Court order the Prosecutor General's Office to immediately report as to protection measures offered and delivered in each of the cases listed in the confidential annex to Auto 092 in the past five years.

² This Program modified Decree 1740 of 2010 “Which regulated Article 81 of Law 418 of 1997, modified and extended by Laws 548 of 1999, 782 of 2002, 1106 of 2006, and other provisions”.

The information presented in this section is based on first-hand experiences of the Working Group and pronouncements made by the Constitutional Court subsequent to Auto 092. The following three issues are addressed: (i) the recognition by the Constitutional Court of the need for protection measures for women, (ii) failures of institutional structures, and (iii) failures in the implementation of protective measures.

1. RECOGNITION OF THE CONSTITUTIONAL COURT THAT WOMEN SHOULD BE PROVIDED WITH SPECIFIC AND DIFFERENTIAL PROTECTION

The Constitutional Court has acknowledged non-compliance with Auto 092 and Judgment T-025 of 2004 on at least three occasions, with regards to the duty of the Colombian government to provide protection for victims of human rights violations from a gender-differential point of view.

First, one month after Auto 092, the Constitutional Court issued Judgment T-496 of 2008, which studied the risk level of fourteen women represented by Colombian Women's Initiative for Peace. In this ruling the Constitutional Court established the minimum rational requirements that a protection program should contain to adequately protect women victims in the context of armed conflict. The protection program defined by Law 975 of 2005 was modified as a result of this ruling.

Secondly, in Judgment T-234 of 2012, the Constitutional Court protected the right to personal security, life, liberty, integrity, and due process for a women victim in one of the cases of sexual violence from the confidential annex to Auto 092. The situation had been studied previously by the Prosecutor General's Office, which had decided not to protect the victim arguing the inexistence of any direct causal link between risk and her participation in the criminal process.

In this Judgment, the Constitutional Court provided evidence illustrating the inadequate nature of the response made by Prosecutor General's Office with regards to its duty to protect victims of sexual violence. The Court indicated that it was *absurd to require a woman victim of sexual violence and forced displacement to describe her aggressors in detail, and their whereabouts, in order for her cooperation with the administration of justice to be qualified as effective*³. In addition, it noted that *this argument illustrates that state officials continue to lack the levels of sensitivity, with respect to gender issues, necessary to conduct a study based on objective variables which might effectively guarantee victims' the rights to truth, justice, and reparation for serious human rights violations and thereby counteract impunity and prevent the recurrence of human rights violations*⁴.

Because of these difficulties, the Constitutional Court urged the Prosecutor General's Office and the Ministry of the Interior to review the respective programs and *provide for their*

*adaptation to the principles and minimum rational requirements clarified by constitutional jurisprudence, as well as to criteria and mechanisms employed to review and implement comprehensive protection programs as described in Law 1448 of 2011 (Article 32)*⁵.

Finally, the Constitutional Court issued Auto 098 on May 21, 2013, in which it addressed the situation faced by women leaders in displaced communities and organizations working with the displaced population.

Although Auto 098 of 2013 does not specifically address protection programs for victims of sexual violence with regards to complaints, it makes observations relevant to the analysis of the situation and the government's response such as the continued use of sexual violence against women subsequent to Auto 092⁶ and protection systems' deficiencies, among other issues.

In this order, the Constitutional Court showed that, subsequent to 2009, risks faced by individuals who exercise leadership in their capacity as displaced women as well as those working for the rights of women *have worsened and been exacerbated*⁷. The deterioration of this situation can be expressed quantitatively (in reflection of the continually growing number of women at risk) and qualitatively (in reflection of the way *acts of gender-based violence are carried out*), and generates a multidimensional impact on the personal level, as well as in families, collective groups, and communities. Therefore, the court adopted a position that *presumes the existence of extraordinary gender-related risk* in situations involving women human rights defenders.

In its analysis, the Constitutional Court acknowledged that regulatory changes introduced by Decree 4912 of 2011, and Resolution 805 of 2012, constituted progress towards the definition of institutional endeavors and appropriate measures that can protect displaced women who work in the defense of human rights. However it also pointed to design flaws concerning (i) the lack of coordination between the protection program and the system that provides care to the displaced population, (ii) the centralization of the protection program in Bogota, (iii) difficulties associated with the material self-sufficiency of the beneficiaries of

³ Constitutional Court, Judgment T-234 of 2012, Consideration 6.2.2.

⁴ Constitutional Court, Judgment T-234 of 2012.

⁵ Judgement T-234 of 2012, fifth and sixth points of resolution.

⁶ "There is evidence that since Auto 092 of 2008 was issued, the successive and ongoing displacement of women and their families continues to occur as does the reiterated subjugation of individual women to sexual violations (...)". Auto 098 of 2013, Consideration 2.

⁷ The Foundation 'Casa de la Mujer', Codhes, Foundation 'Sisma Mujer', Colombian Women's Initiative for Peace, 'Ruta Pacífica de las Mujeres', and the League of Displaced Women from El Pozon (Liga de Mujeres Desplazadas del Sector El Pozón), all of which are members of the Working Group, have received threats and face specific risks due to their work in the defense of the women's rights. This situation was confirmed by the Constitutional Court in Auto 098 of 2013. Therefore in the eleventh point of resolution the court ordered that this risk be analyzed and that measures be administered according to presumed levels of extraordinary risk. In the case of the League of Displaced Women, more than ten cases of sexual violence listed in the confidential annex to Auto 092 were made inactive, indicating an even higher risk of tolerance and permissiveness caused by impunity. Moreover, while precautionary measures were issued in this case, these have not been adequately administered and this organization continues to face risk.

protective measures, (iv) the failure to protect at-risk families, and (v) the failure to develop and implement a differential approach.

As described further in the following section of this report, these problems that were identified in Auto 098 of 2013 provide a benchmark for analysis regarding protection systems intended to address risks faced by women victims of sexual violence who have made complaints.

2. PROBLEMS RELATED TO INSTITUTIONAL STRUCTURES AND THE EFFECTIVENESS OF PROTECTION MEASURES

The Working Group appreciates progress made in the creation and consolidation of protection programs to address situations of risk of suffered by women victims and rights advocates. Important advances have been made with regards to dialogue and participation in the prevention and protection program established by Decree 4912 of 2011. Regardless, the Working Group has shown that there are various institutional constraints that seriously affect the possibility for protection for women who make complaints sexual violence associated with armed conflict.

In this section we examine several of the most concerning issues. However it is relevant to note that the conclusions of the Constitutional Court in Judgment T-234 of 2012 indicate that protection programs do not meet minimum rational requirements set forth in Judgment T-496 of 2008.

2.1 Differentiation Between Protection Programs

The first difficulty is related to the existence of three separate protection systems that draw on different criteria and between which there is no clear coordination. In the program administered by the Prosecutor General's Office for ordinary procedures (Resolution No. 05101 of 2008), risk assessment assigns importance and relevance to the delivery of testimony, as a result of which the provision of protection necessarily depends on victims' willingness to contribute to the progress of criminal processes. Neither the program administered by the Prosecutor General's Office, created in response to Law 975 of 2005, nor the program implemented by the Protection Unit use this criteria.

In this situation a victim whose case is under investigation only via ordinary procedures, who does not qualify as being a 'leader', and who cannot contribute to the advancement of the criminal process has no access to protection mechanisms. This is problematic especially in the case of sexual violence to the extent that many women who have been victims cannot identify their aggressors or contribute to legal advancement and for this reason are denied protective measures. This requirement that special importance be assigned to the delivery of testimony is especially serious when considering victims who have not made complaints, in which case mechanism for risk analysis do not apply.

Another difference between protection programs is reflected in the measures provided. For example, According to Resolution 805 of 2012, women beneficiaries of protection as a

result of Decree 4912 of 2011 may qualify for additional measures not provided by programs implemented by the Prosecutor General's Office. This constitutes an unjustified inequality between victims.

Thirdly, the Working Group agrees with observations made by the Constitutional Court with regards to flaws in this program's design due to a lack of coordination with other policies, centralization, internal funding, the exclusion of family units, the lack of a differential approach and, in general, a failure to meet the minimum rational requirements.

Finally, according to information provided by the Prosecutor General's Office, this agency has failed to acknowledge the plight of victims in cases described in the confidential annex⁸. This is illustrated in two ways: first, threats and situations of risk suffered by women discussed in Auto 092 have been ignored and secondly, informational systems do not allow for the incorporation of information with respect to protection that has been provided to victims in the cases described in the confidential annex. The Working Group is aware of requests for protection that have been presented to the Prosecutor General's Office and the Ministry of Interior by women mentioned in this document. In one of these cases the level of risk was analyzed by the Constitutional Court (Judgment T-234 of March, 2012).

Therefore, the Working Group requests that the Constitutional Court repeat its order that the Ministry of the Interior and the Prosecutor General's Office adjust their programs to reflect these matters, and urgently request the implementation of mechanisms necessary to comply with Auto 092, as well as to determine what mechanisms exist for women who have not yet made complaints and require protection in order to do so.

2.2 Lack of an Effective Gender-Based Approach

Although the Constitutional Court has repeatedly called for the need to incorporate a gender-based approach into protection policies, the Working Group has observed that, in programs administered by the Prosecutor General's Office, such efforts have decreased or been limited to formal announcements.

As acknowledged in Judgment T-234 of 2012, women continue to be required to provide an accurate description of their aggressors, protection programs continue to disregard the particular attributes of how sexual violence affects women, sex crimes are not considered to be a latent risk for women victims, and levels of sensitivity necessary to analyze risk levels have not been achieved⁹.

According to accompaniment activities carried out by several of the Working Group's member organization, state-administered security arrangements have at times contributed to organizational failures and exacerbated existing discrimination by reinforcing patterns in

⁸ "There is no information as to threats on the occasion of investigations listed in the confidential annex to Auto 092 of 2008". Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

⁹ Judgment T-234 of 2012.

which state agents attempt to exercise control over the lives of women in situations unrelated to their protection, a practice that constitutes a gender bias.

Given the amount of time that has elapsed since Auto 092 was issued, numerous pronouncements made by the Constitutional Court, and the persistence of non-compliance, the Working Group requests that the Constitutional Court interpret the situation for women human rights defenders in a way that *presumes a gender-related risk associated with women victims of sexual violence who have made criminal complaints* and, consequently, that the court order the Prosecutor General's Office and the Ministry of the Interior to make the arrangements necessary to respond to this presupposition.

2.3 Problems with the Implementation of Protective Measures

The difficulties described previously have an evident impact on the extent to which protective measures are effective.

In the first place, access to protection is hindered by the fact that some women who face risks as a result of having made complaints do not meet criteria as defined by protection programs, especially when they have not provided relevant information about aggressors. This represents an additional problem for victims of sexual violence as a result of the nature of this gender-based violence.

Secondly, protection programs' risk assessment processes do not incorporate a gender focus, for which reason investigative criteria and the professional profiles of the personnel who perform these assessments are inadequate¹⁰. In this regard, it is impossible in practice to select the sex of personnel to perform the study a risk analysis and, often, this procedure is used to investigate the private lives of women victims or the facts surrounding instances of sexual violence.

Thirdly, the Working Group considers that it is necessary and urgent that the Prosecutor General's Office take measures to provide protection for women victims with consideration for their specific needs and the particular impacts of this type of violence. Therefore, we reject the response provided by this investigating agency, which indicates that, while victims' consent is a prerequisite and that a platform for dialogue is a possible result, this will not necessarily result in an agreement¹¹.

Finally, extended periods of time continue to elapse between the moment in which protective measures are requested and their concrete implementation, a phenomenon that puts victims at great risks and inhibits their participation in criminal proceedings¹².

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office and the Ministry of the Interior to immediately report as to actions

that have been taken to ensure that risk assessment and the implementation of protection measures are carried out by appropriate professionals, account for the specific conditions of women victims of sexual violence, are designed to prevent re-victimization, and are carried out within time periods that reflect the urgency of the case. Additionally, these agencies should periodically provide information describing protection measures for victims listed in the confidential annex.

3. LACK OF COORDINATION BETWEEN PROTECTION PROGRAMS AND CRIMINAL INVESTIGATIONS

According to the Working Group's understanding and material provided by the Prosecutor General's Office, one of the protective measures' principal failures is rooted in the limited or nonexistent flow of information between protection programs and criminal investigations.

In the first place, the register that the Prosecutor General's Office indicates having developed does not include information that describes victims' risk. Therefore, this investigative agency has no knowledge of the number of at-risk victims in cases examined in the confidential annex, as noted previously.¹³

Secondly, the possible connection between threats and victims' complaints are not investigated. Concerning this, the Working Group considers that state agencies have the duty to investigate the facts surrounding threats and a failure to do so may constitute a mechanism that discourages victims' participation in criminal proceedings¹⁴. It is important to note that the Prosecutor General's Office lacks information regarding investigations into complaints made in response to threats received by victims of sexual violence¹⁵.

Third, possible risks do not seem to be considered in designing plans for investigative methodology with the objective of minimizing existing threats. With respect to this, in June, 2013 the Prosecutor General's Office indicated having no knowledge as to whether or not threats are taken into consideration in establishing plans for investigation¹⁶.

The response of the Prosecutor General's Office to this situation has been limited to the indication that, in compliance with Memorandum 052 of 2011, it has emphasized the need for the special consideration of, among other issues, an assessment as to the immediate adoption of protection measures¹⁷. In other words, the strategy to define a connection between complaints and possible risks associated with investigative procedures is limited to compliance with Memorandum 052 of 2011. Although this is an important exercise, it is

¹⁰ Constitutional Court, Judgment T-234 of 2012; Auto 098 of 2013, Consideration 3.2.3.

¹¹ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

¹² This aspect was also emphasized by the court in relation to the program administered by the National Protection Unit. Constitutional Court, Auto 098 of 2013.

¹³ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

¹⁴ Constitutional Court, Auto 098 of 2013, Consideration IV.3.

¹⁵ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

¹⁶ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

¹⁷ "The strategy is directed at Prosecutors and other institutional officials so that they apply a differential approach as of the moment when care is initially provided so that victims can access justice in conditions of equality and better enjoy rights to truth, justice and reparation". Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

clearly insufficient to provide clear, specific guidelines that would regulate protocol in cases involving sexual violence, especially those with additional risks.

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to provide a thorough and detailed report regarding criminal investigations initiated in response to threats reported by victims of sexual violence in cases listed in the confidential annex to Auto 092, and to design protocol and guidelines to ensure that the investigation of sexual violence adequately considers situations of risk faced by women as a result of complaints.



V. PROBLEMS WITH HEALTH-RELATED ASSISTANCE

Auto 092 of the Constitutional Court indicates that sexual violence can have serious effects on victims' health in the form of physical illnesses (including sexually-transmitted diseases), unwanted pregnancies, gynecological problems, and psychological trauma – issues aggravated by a lack of specialized care and support for affected groups – that in turn generate higher risks of developing additional long-term health problems (Section III.1.1.5). In addition to this, Auto 098 of 2013, issued by the same court, identified several failures in health care provisions for women, among others inadequate coverage and a lack of immediate care¹.

The Working Group has consistently noted that access to justice depends on physical and emotional care². However five years have passed since Auto 092 was issued but the Working Group considers that progress in protection for rights associated with women's health have been limited and failed to improve access to justice.

This failure is the result of non-compliance with Judgment T-045 of 2010, in which the Ministry of Social Protection was instructed to design policies to address the needs of victims of the armed conflict, particularly with regards to psychosocial impacts³. The Working Group considers that the Health Ministry is responsible for leading efforts to respond to victims' health-related needs. However, given the direct impact such measures have on guarantees for victims who make complaints or participate in criminal proceedings, it is the responsibility of the Prosecutor General's Office to adopt internal policies and administer coordination that ensure women's access to state-administered health programs.

This section examines the following two major problems with health care as it relates to access to justice: (i) a lack of coordination and the consequent lack of care specifically in response to the consequences of sexual violence, and (ii) the lack of a psycho-legal approach in the advancement of criminal procedures.

1. LACK OF COORDINATION IN THE PROVISION OF CARE FOR THE CONSEQUENCES OF SEXUAL VIOLENCE

Given the close relationship between health care and access to justice, it is the responsibility of the Prosecutor General's Office to coordinate with other agencies in order to place victims of sexual violence in programs provided by competent entities to address the specific effects of violence. Impacts on sexual and reproductive health as well as emotional health are especially relevant in this sense.

¹ Constitutional Court, Auto 098 of 2013, Consideration 4. The Inspector General's Office established, in a report issued in December, 2012, that "mental health care is scarce and in some cases inexistent; it is therefore impossible to conclude that true physical and mental rehabilitation has been provided for victims and their families". Office of the Inspector General of the Nation, op. cit. Page 241.

² As the four previous reports published by the Working Group explain, health care is a condition for justice because strong physical and emotional impacts on victims discourage complaints and legal participation.

³ For additional information about non-compliance with Judgment T-045 of 2010 see documents developed by the working group that monitor this sentence and were presented to the Constitutional Court.

In response to a request for information, via right of petition, regarding mechanisms used to inform victims as to their sexual and reproductive rights and the entities responsible for providing such information, the Prosecutor General's Office indicated that it was the responsibility of all institutional personnel to contact relevant agencies in providing victims with comprehensive care and to produce written records of this activity⁴.

The Working Group considers this process to be ineffective in practice for the two following basic reasons: first, because those who are obliged to provide the information are apparently unfamiliar with the rights of women victims and the proper procedures in place to address such cases and, secondly, because public policies are completely inadequate both on the national level as well as in most territorial entities, in which – in breach of Law 1257 of 2008 – systems to attend victims have not been implemented.

Although the Working Group recognizes advances in recent regulatory initiatives, legal gaps continue to exist, especially problems in the implementation of existing policies that impede access to health care for victims of sexual violence associated with armed conflict.

On March 6, 2012, the Ministry of Health and Social Protection issued Resolution 459, which adopted *Protocols and Models of Comprehensive Health Care for Victims of Sexual Violence*. The Working Group believes that the adoption of this Protocol is an important step, as it provides conceptual tools and offers techniques for the care of women victims⁵.

However, it is important to note that the Protocol, while it recognizes the existence of conflict-related sexual violence, does not provide specific measures by means of which to provide care, and delegates this activity to professionals and institutions in the health care sector. Therefore all actions carried out according to this Protocol are to be applied generally, regardless of whether or not the offense was committed in the context of armed conflict. This causes particular concern with regards to mental health care, which should be defined according to criteria set forth in Judgment T-045 of 2010. Moreover, while several forms of sexual violence are discussed, it is not clear that measures exist to attend to victims of crimes beyond that of recent sexual assault. Finally, the Protocol does not specify actions to be carried out from a forensic approach, which is problematic in that it fails to regulate the gathering of evidence to be employed in legal procedures⁶.

⁴ However, the Prosecutor General's Office indicated having no knowledge as to *which agency provided this service, in what way, or to what extent it was effective*. Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012. This lack of information indicates once again a lack of coordination between systems that should provide quality care to victims and respond to health effects in order to promote justice.

⁵ The Protocol correctly posits that sexual violence calls for urgent medical treatment and urges an inter-sectorial approach to justice and protection. For more information, see Follow-Up to the Implementation and Compliance with the Protocol for Comprehensive Health Care for Victims of Sexual Violence, produced by the "Rape and Other Violence: Take My Body Out of War" campaign.

⁶ As noted by the "Rape and Other Violence: Take My Body Out of War" campaign, a year after it was issued the Protocol has budgetary problems, failures have occurred in epidemiological oversight, services available to victims are not well-known, education and skills for care are lacking, flaws exist in emergency care and the

In addition to these weaknesses the Protocol has not been applied, even in a general sense, nor has its content been adequately disseminated, as observed in cases accompanied by several of the Working Group's member organizations.

On the other hand, in a forum entitled "*Justice for Victims of Sexual Violence*" held in the Congress of the Republic on April 18, 2013 the Health Ministry discussed progress and challenges with regards to the institution's efforts to protect the health-related rights of women victims of sexual violence⁷. In this event, the ministry called attention to factors that obstruct comprehensive care for victims of sexual violence, among which the Working Group would emphasize prejudice, lack of training, multiple platforms that look to address the phenomenon of sexual violence in which delegates with decision-making power and knowledge do not participate, inconsistent action, and a lack of coordination. Concerning these barriers, the Health Ministry indicated having assessed that *health institutions do not meet standards that have been established for some time*. In response to this problem, the Ministry itself recognizes that compliance has been prevented by a lack of *will (...) and commitment in regional health entities*⁸.

According to the Ministry actions that have been taken include but are not limited to (i) progress made in the definition of a protocol that regulates comprehensive health care for victims of sexual violence, including all relevant components (it is recognized however that the problems described previously continue to exist), (ii) the development of a staff training program that incorporates activities in which participants' have access to health care professionals, (iii) the creation of *guidelines on how to carry out social mobilization strategies to raise awareness about the issues of sexual violence, masculinity, and the empowerment of organizations that work in sexual and reproductive rights*, and (iv) *the introduction of an inter-sectorial approach to comprehensive care for victims*. Concerning the latter point, the Health Ministry has voiced *the conclusion that to administer a single, national approach would be an error, given the diversity of our territory and regional institutional capacities, and that distinct strategies should be adopted on a regional basis in coalition with local institutions and with the participation of civil society*⁹.

The Working Group considers that this situation, described by the Health Ministry in the forum mentioned above, constitutes recognition of the lack of progress this institution has made in terms of care for victims of sexual violence. It is unfortunate that, five years since Auto 092, the response of the Health Ministry continues to be limited to a diagnosis of existing challenges, without a clear and articulate proposal for solutions.

prevention and treatment of STDs, access to emergency contraception is delayed; voluntary termination of pregnancy is denied; mental health psychosocial care is problematic; breach of duty exists in relation to referrals for protection and justice, and case follow-up and closure are not recorded.

⁷ Congress of the Republic, "*Justice for the Victims of Sexual Violence*" Forum, April 18, 2013. The intervention of the Health Ministry begins at minute 4:54 of the video. The sections that are transcribed subsequently were taken from the interventions in this forum.

⁸ Congress of the Republic, Forum "*Justice for the Victims of Sexual Violence*", April 18, 2013.

⁹ Congress of the Republic, Forum "*Justice for the Victims of Sexual Violence*", April 18, 2013.

Furthermore, there is reason for concern with regards to the conclusion reached by the Ministry that *a single, national approach would be an error and that distinct strategies should be adopted on a regional basis*. The Working Group considers that although regional development could occur – and could indeed be desirable – health care designed to address the phenomenon of conflict-related sexual violence must be national in scale. To implement this service in the manner proposed by the Health Ministry would violate the principle of equality and decentralize a task whose execution is the responsibility of the national government.

In addition to this, restricted definitions of the scope and content of rights have an amplified impact in the case of indigenous women, reflected in a lack of cultural dialogue and of a differential approach in activities carried out by the government, and violations of the right to access to justice, comprehensive care, and satisfactory reparation. A failure to recognize spiritual damages caused by acts of sexual violence committed against indigenous women, for example, hinders the administration of comprehensive care and the incorporation of traditional medical practices.

Therefore, the Working Group requests that the Constitutional Court order the Health Ministry to immediately provide information describing policies designed to provide comprehensive care for victims of sexual violence associated with armed conflict, considering all minimum rational requirements as established by constitutional jurisprudence and the terms set forth in Judgment T-045 of 2010, as well as measures taken to guarantee their applicability. Furthermore, we request that the Constitutional Court order the Prosecutor General's Office to provide detailed information as to procedures that have been defined by means of which those women victims who have made complaints are referred to the health care system and oversight mechanisms to ensure that such referrals are made in a dignified way.

2. LACK OF A PSYCHO-LEGAL APPROACH IN CRIMINAL PROCEDURES

Article 8 of Law 1257 of 2008 established that victims of gender-based violence have the right to “receive specialized medical, psychological, psychiatric, and forensic care for themselves and their children in the terms and conditions set forth by law”. Entities with health and justice-related missions have clearly violated this condition.

With regards to policy in the Prosecutor General's Office designed to provide victims of sexual violence in armed conflict access to health care with a psychosocial approach, thus increasing possibilities of access to justice, the Prosecutor General's Office reported that each prosecutor has been required to *adopt, if necessary, care and protection measures for victims, using criteria that allow for a differential approach to address their specific needs*¹⁰.

Despite this requirement, the Prosecutor General's Office has no information concerning victims listed in the confidential annex to Auto 092 who have received health care with a psychosocial approach in order to promote access to justice.

¹⁰ Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.

The investigating agency reported that *the psychosocial care provided to victims of sexual violence consists of initial care in moments of crisis, which does not constitute psychological therapy, that coordination with the Health Ministry consists of the referral of victims to care facilities, and is not limited to a specific context, that no controls exist of monitor the effectiveness of the psychosocial care provided to victims, that no information is available concerning measures taken to ensure that care is not interrupted as a result of trials, and that in regions with no Care Centers for Victims of Sexual Abuse (Centros de Atención a Víctimas de Abuso Sexual) officials must pursue and apply all available options for care*¹¹.

As can be observed, favorable responses have been provided regarding none of the minimum requirements related to health care and psycho-legal care that were to be addressed by the Prosecutor General's Office.

It is clear that care is provided in *moments of crisis*; the Working Group has no straightforward information with regards to who is responsible, what is meant by *crisis*, and regarding the period of time during which care is to be supplied. Subsequent to this moment of crisis the Prosecutor General's Office acknowledges no responsibility for health-related support, including that which addresses psychosocial health impacts and constitutes a mechanism that reinforces victims' access to justice¹².

Furthermore, as we examined in the previous section, practices referenced by the Prosecutor General's Office have had almost no effect in practice as illustrated by an almost complete lack of health-related policies for victims of sexual violence,

Therefore, the Working Group requests that the Constitutional Court order the Prosecutor General's Office to take immediate action to ensure the implementation of psychosocial and psycho-legal approaches in order to guarantee access to justice according to the terms set forth in Auto 092.

¹¹ Office of the Prosecutor General of the Nation, Memorandum DNF 13322 of June 13, 2013.

¹² The Prosecutor General's Office has no information regarding efforts to provide training about psycho-social tools or mechanisms for inter-institutional cooperation with the Ministry of Social Protection: “Given that psycho-social care is not part of our mission, we have no information that relates to these questions (...)”. Office of the Prosecutor General of the Nation, Memorandum DNF 22866 of October 1, 2012.



VI. CONCLUSIONS AND RECOMMENDATIONS

The Working Group to monitor compliance with Auto 092 of 2008 considers that five years since this Judgment was issued by the Constitutional Court, the situation of impunity remains almost entirely unchanged, for which reason it is concluded that the terms set forth in Auto 092 have not been complied with implemented.

This non-compliance continues to seriously affect levels of respect for the rights of women victims of sexual violence associated with armed conflict and sends a message of governmental tolerance for such violence, perpetuating its occurrence. It is therefore urgent that the state take immediate steps to ensure the effective enjoyment of the rights to truth, justice, and reparation for the women who are the victims of such acts.

Therefore, the Working Group respectfully requests that the Constitutional Court of Colombia:

1. **STATE** that the Colombian authorities at all levels have failed in their obligatory constitutional and international duty to act decisively to neutralize the root causes of the general phenomenon of sexual violence associated with armed conflict.
2. **STATE** that the Prosecutor General's Office has not fully complied with the second order issued in Auto 092 in failing to adopt appropriate measures to remedy the situations described in the confidential annex, and to guarantee that relevant investigations progress rapidly.
3. **STATE** that the Prosecutor General's Office has not fully complied with Auto 092 by failing to respond to the phenomenon of sexual violence to which Colombian women have been and continue to be exposed, in the context of armed conflict, in a way that reflects a high level of priority within the national agenda.
4. **SUMMON** a public oversight hearing before the Constitutional Court in which the Prosecutor General's Office, the Inspector General's Office, the Office of the Comptroller General, the Health Ministry, the Ministry of the Interior, the Ombudsman's Office, and the Working Group are to participate to monitor compliance with Auto 092.
5. **PRESENT** the Annex that the Working Group has attached to this document to the Prosecutor General's Office and the Inspector General's Office with the request that these agencies respond in a timely fashion to questions and comments regarding each of the cases examined.
6. **ORDER** the Prosecutor General's Office to submit a rapid and comprehensive action plan to the Constitutional Court within a non-renewable period of three months with the purpose of addressing each of the minimum rational requirements as outlined in constitutional jurisprudence that have as their purpose to overcome impunity in cases of sexual violence associated with armed conflict. The action plan should contain, in addition to this, the following elements:
 - a. Clear mechanisms to raise awareness regarding all policies introduced, as well as mechanisms to ensure compliance.
 - b. Parameters, criteria, and measures adopted to address specific issues of indigenous

women, Afro-Colombian women, women with diverse sexual orientations, women with diverse gender identities, women minors, disabled women, and elderly woman, as well as guidelines to ensure that these groups' rights are guaranteed during criminal investigations.

- c. Measures to guarantee conditions that encourage women victims to file complaints reporting the types of problems described in Auto 092.
 - d. A strategy, in response to Auto 092, to accelerate cases in the phases of preliminary investigation and inquiry and to review cases that have been made inactive or in which preclusion of investigation has occurred.
 - e. Defined efforts by means of which to further investigations into cases of conflict-related sexual violence, establish criteria for allocation and assignment of cases within the agency, and a plan for coordination with other competent agencies to provide comprehensive care.
 - f. Mechanisms to prevent acts of discrimination and to institute penalties for officials who commit discriminatory acts during the course of investigation.
 - g. A training plan, to be implemented with the use of internal resources for an extended period of time, that specifically responds to terms set forth in Auto 092. The plan should be define monitoring processes and penalties to be applied in cases in which the guidelines of the training processes are not followed.
 - h. Measures to guarantee compliance with Article 8 of Law 1257 of 2008, which establishes women victims' right to technical legal assistance.
 - i. Parameters and guidelines to ensure that investigations into acts of sexual violence consider risk faced by women as a result of complaints they have made.
 - j. Actions to ensure the implementation of psycho-social and psycho-legal approaches to guarantee access to justice according to the terms set forth in Auto 092.
7. **ORDER** the Prosecutor General's Office to provide information to the Constitutional Court within a non-renewable period of three months, regarding the following:
- a. All policies established, mechanisms employed to ensure compliance, and the principal results of their application, including activities related to internal disciplinary procedures.
 - b. The reasons why the Gender Committee, which was established in response to resolution 3788 of 2009, has met only twice, and the principal results of its activities according to terms set forth in Auto 092, platforms for internal and inter-agency coordination, and the dates and objectives of future meetings.
 - c. The designation of a group of personnel at the highest level within each institution, with the capacity to make decisions regarding internal policies, to continuously and periodically engage in dialogue with the Working Group and assume responsibility for the coordination of institutional responses.
 - d. The actions undertaken in response to all cases discussed in the confidential annex

- currently in the preliminary or investigative phases to ensure that all available evidence is obtained according to standards established by constitutional jurisprudence.
- e. Reasons for which preclusion of investigation has occurred or cases made inactive, and information regarding these decisions. A complete copy of all resolutions that have justified preclusion or inhibition should be provided.
 - f. Means of coordination with other competent entities to provide comprehensive care for women victims to guarantee the protection of all of their rights.
 - g. Mechanisms adopted to raise awareness within the justice system regarding the situation in Colombia in terms of sexual violence and to guarantee that reforms applied to Law 975 of 2005 will not discourage women from filing complaints.
 - h. Information regarding support and protection offered and provided throughout the past five years to each of the women victims described in the cases that appear in the confidential annex.
 - i. Information regarding criminal investigations that have been initiated to respond to threats reported by the victims of sexual violence mentioned in the cases that appear in the confidential annex to Auto 092.
 - j. Information regarding the procedure that was created to refer women victims (who have made complaints) to health care system and monitoring mechanisms to ensure that such referrals are made in a dignified fashion.
8. **ORDER** the Prosecutor General's Office to consider the 183 cases described in the confidential annex to Auto 092 as priority cases within the framework of the priority policy.
9. **URGE** the Inspector General's Office to carry out the following actions:
- a. Intervene in all cases described in the confidential annex by means of a comprehensive legal strategy defined according to terms set forth in Auto 092.
 - b. Report periodically (at least once every three months) on progress that has been made in each of the cases described in the confidential annex, with a special emphasis on progress made in processes that are inactive or in preliminary stages.
 - c. Clearly establish the time and resources available for the monitoring and evaluation exercises that were initiated in 2012. The Working Group suggests a frequency of at least every four months.
 - d. Incorporate the Working Group's observations into procedures of policy evaluation.
 - e. Incorporate specific indicators into procedures of policy evaluation to monitor and provide protection for issues related to women's sexual and reproductive rights, particularly those relating to the voluntary interruption of pregnancy.
 - f. Designate a group of personnel at the highest level, with the capacity to make decisions regarding internal policies, to continually and periodically engage in dialogue with the Working Group and assume responsibility for the coordination of an institutional response.
10. **URGE** the Ombudsman's Office provide the resources necessary to advice, orient, and provide technical legal assistance for women victims in the cases that appear in the

confidential annex and, generally, in all cases in which women are the victims of sexual violence associated with armed conflict.

11. **ORDER** the Higher Council of the Judiciary and the National Gender Commission of the Judiciary (Comisión Nacional de Género de la Rama Judicial) to submit to the Constitutional Court, within a non-renewable period of three months, the following:
 - a. A rapid comprehensive action plan that meets all the minimum rational requirements set forth in constitutional jurisprudence to overcome impunity in cases of sexual violence associated with armed conflict. Specifically, guidelines for action should be established to address all phases of legal procedures, in order to establish not only the particular circumstances in which crimes were committed but also the context and characteristics of armed conflict in which events occurred, and consider the factual and legal requirements established in Auto 092.
 - b. Establish clear parameters to ensure the activation of this institution's disciplinary powers when there is evidence that discrimination or harm has affected the rights of women victims.
 - c. Provide information as to parameters, criteria and measures that have been established in response to specific problems faced by indigenous women, Afro-Colombian women, women with diverse sexual orientation, women with diverse gender identity, girls, disabled women, and elderly women as well as guidelines set forth to ensure that these groups are guaranteed their rights during criminal investigations.
 - d. Provide information as to policies that have been designed, or will be designed, to govern legal reparation in order to ensure full reparation for women victims of sexual violence and *“transform the social and cultural factors that have caused sexual violence to occur”*.
12. **ORDER** the Prosecutor General's Office, the Higher Council of the Judiciary, and the Inspector General's Office to take the following measures:
 - a. The immediate implementation of a comprehensive official informational system that responds to considerations made by the Working Group's. Deadlines for this task should not be extended.
 - b. The establishment of mechanisms to provide oversight during the implementation of constitutional jurisprudence in providing clarification as to the nature of the connection between acts of sexual violence and the armed conflict, in particular the application of measures to promote an interpretation that favors the victim when the situation is ambiguous.
13. **REITERATE THE ORDER** issued in Auto 098 of 2013 that the Prosecutor General's Office and the Ministry of the Interior adjust protection programs to incorporate the principles and minimum rational requirements set forth by constitutional jurisprudence *as well as criteria and elements for the review and implementation of programs for comprehensive protection as described in Law 1448 of 2011 (Article 32)*. In addition, to **ORDER** these

agencies to provide information as to the nature of protection mechanisms for women who have not yet made complaints and require protection in order to do so.

14. **ORDER** the Prosecutor General's Office and the Ministry of the Interior to provide information describing actions that have been taken to ensure that risk assessments and the implementation of protection measures are carried out by trained professionals, address the specific conditions of women victims of sexual violence, endeavor to prevent re-victimization, and are carried out within a time period that reflects relevant urgency in each case; in addition, this agency should periodically provide information regarding protection measures that have been granted to victims in the cases mentioned in the confidential annex.
15. **ORDER** all applicable government agencies to develop and apply an inter-sectorial approach in cases involving indigenous women, in particular with regards to ethnicity, gender, and the close interplay between the collective rights of indigenous peoples and women's rights as recognized by the Colombian State.
16. **ESTABLISH** that *the existence of gender-related risk be presumed in cases in which victims of sexual violence have made criminal complaints* and, consequently, to **ORDER** the Prosecutor General's Office and the Ministry of the Interior to make the necessary arrangements in order to comply with this presumption.
17. **ORDER** the Health Ministry to immediately provide information describing policies that have been designed to provide complete care for victims of sexual violence associated with armed conflict, accounting for all minimum rational requirements as established by constitutional jurisprudence, and following the approach defined in Judgment T -045 of 2010, as well as measures that have been taken to ensure their application.
18. **CONSIDER** the issues described in the section entitled *Policies that Cast Doubt on Victims' Guarantees to Justice* of this report and determine guidelines and clear objectives to prevent impunity in the cases described in the confidential annex. In particular, the Working Group requests that studies regarding the constitutionality of statutory bill Number 211 of 2013 in the Colombian Senate and Number 268 of 2013 in the Colombian House of Representatives, by which reforms are proposed to military penal jurisdiction, consider the risks this reform could imply in cases involving sexual violence and, if applicable, to explicitly order that no case within this category be heard by military courts, and that a broad interpretation of the facts, international human rights standards, and international criminal law be made in such cases.
19. **REQUEST** that the Inspector General's Office and the Office of the Comptroller General, given examples of non-compliance that have been identified, initiate necessary investigations and procedures within the reach of their legal and constitutional powers and provide information regarding the results of investigations, on a quarterly basis, to the Special Monitoring Chamber (Sala Especial de Seguimiento T-025/04) of the Constitutional Court.

