

**NGO Parallel Report on Colombia's Ninth Report
on the Implementation of the
Convention on the Elimination of All Forms of
Discrimination against Women**

*Submitted to the
UN Committee on the Elimination of Discrimination against Women
for consideration in the formulation of the
Concluding Observations and Recommendations during
the 72nd Pre-Sessional Working Group (23-27 July 2018)*

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I. PURPOSE OF THE REPORT

1. The purpose of this “Parallel Report” is to assist the Committee on the Elimination of All Forms of Discrimination against Women (the “Committee”) in the formulation of its Concluding Observations and Recommendations during the 72nd Pre-Sessional Working Group (23 July 2018 – 27 July 2018), regarding Colombia’s Ninth Periodic Report on its implementation of the Convention on the Elimination of all Forms of Discrimination against Women (“Ninth Report”).
2. This report provides information and legal analysis concerning the issue of domestic violence in Colombia. Notably, the report acknowledges the evolving understandings of state obligations with respect to domestic violence that this Committee has set forth in its General Comment 35. It underscores this Committee’s recognition that certain state failures to prevent and provide redress for domestic violence may amount to torture.
3. Colombia signed the Convention on the Elimination of All Forms of Discrimination against Women (the “Convention”) on 17 July 1980 and ratified the treaty on 19 January 1982.¹ Its last periodic review was completed in 2013. It is currently undergoing its ninth periodic review.
4. Colombia’s Ninth Report to the Committee, published on 22 November 2017, however, has several lacunae.² For example, while Colombia has created legislation and government entities to address the increasing rates of domestic violence within the State, its Ninth Report does not address the failures of state authorities to implement and enforce such legislation by

¹ Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. [the “Convention”]. *States Party to the Convention on the Elimination of All Forms of Discrimination against Women*, United Nations Treaty Collection,

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

² CEDAW/C/COL/9

arresting and prosecuting perpetrators. As another example, notwithstanding this Committee's repeated recommendations to adopt gender-specific and non-discriminatory approaches to domestic violence, Colombia's report fails to address the pervasive culture of impunity and refusal to approach domestic violence from a non-patriarchal lens. This report aims to assist this Committee in forming a clear picture of Colombia's compliance with its obligations under the Convention.

II. ABOUT THE AUTHORS OF THIS REPORT

5. This report has been prepared by Alda Merino-Caan and Suhail Rajakumar, JD Candidates 2019, of the International Human Rights Clinic of Loyola Law School, Los Angeles, under the supervision of Professors Mary Hansel and Cesare Romano, and by the Colombian nonprofit organizations *Corporación Casa de la Mujer* and *Taller Abierto*.
6. The International Human Rights Clinic of Loyola Law School, Los Angeles, is committed to achieving the full exercise of human rights by all persons, and seeks to maximize the use of international political, judicial, and quasi-judicial bodies through litigation, advocacy, and capacity-building.
7. *Corporación Casa de la Mujer* is a pacifist, feminist, nonprofit organization in Colombia that works on behalf of women and peace in the country. Since its founding in 1982 in a time of civil war and critical gender-based violence, it has continued to fight for women's sexual, reproductive, economic, and political autonomy. *Casa de la Mujer* has been recognized for its human rights and women's rights work by Colombian entities including the Constitutional Court of Colombia and the Colombian Congress' Monitoring Commission over the Victims Act and the Mayor of Bogotá.

8. *Taller Abierto* is a Cali-based nonprofit focused on promoting gender equality and providing legal advice and psychological support to survivors of domestic violence. *Taller Abierto* promotes community education and grounds its work on a psychosocial pedagogical approach that is guided by a gender-specific and intercultural perspective. International organizations such as the Human Rights Watch depend on the work and statistics provided by *Taller Abierto* when investigating human rights abuses and producing parallel reports on Colombia.

III. INTRODUCTION

9. This Parallel Report presents this Committee with information and legal analysis regarding Colombia's compliance with its obligations under the Convention with respect to preventing domestic violence and providing victims with adequate redress.
10. This report defines "domestic violence" as any violence – physical, sexual, emotional/mental, psychological, economical, or patrimonial – that occurs between partners, ex-partners, or family members. Domestic violence may occur within the home as well as the public sphere. This report will use "domestic violence" and "intrafamilial violence" synonymously. It also recognizes that domestic violence is a form of gender-based violence, which is a broader term that encapsulates any violence directed towards women. Moreover, "sexual violence" may be a form of "domestic violence," but not all forms of "sexual violence" constitutes "domestic violence." Although domestic violence may be perpetrated by an individual of either gender, our data and information acknowledge that women are more often the victims of intra-familial violence. For the purposes of this report, survivors of domestic violence will refer to women-survivors unless otherwise stated.

11. This report evaluates Colombia's approach to preventing domestic violence and providing survivors with effective redress. It considers the effectiveness of Colombia's domestic legislation in fulfilling its obligations under the Convention as well as its compliance with the Committee's past concluding observations and recommendations. Moreover, it discusses Colombia's obligations within the context of General Comment 35 and recognizes that some forms of domestic violence may amount to torture, or cruel, inhuman or degrading treatment.

IV. BACKGROUND

12. This section explores Colombia's domestic legislation within the historical framework of civil unrest and gender-based violence while considering this Committee's prior concluding observations.

A. The Committee's Prior Concluding Observations Issued to Colombia

13. In 2013, the Committee issued Concluding Observations detailing its concerns with Colombia's institutional response to domestic violence, specifically Colombia's weak implementation of its laws regarding domestic violence. The Committee stressed its concerns with the high prevalence of violence against women, explicitly domestic violence, despite Colombia's considerable legal framework aimed at addressing domestic violence.³ The Committee expressed concern that women had inadequate legal protection because of government officials' unwillingness to uphold Law No. 1257.⁴ Furthermore, the Committee emphasized the problem of persistent impunity "with respect to the investigation, prosecution, and punishment of perpetrators of acts of violence against women." The Committee also

³ CEDAW/C/COL/CO/7-8

⁴ *Id.*

highlighted the societal pressures put on female victims to reconcile with their abusers during administrative and judicial processes, despite laws that prohibit reconciliation.⁵

14. Additionally, the Committee expressed concerns with Colombian laws aimed at addressing conflict-related gender-based violence.⁶ It noted significant underreporting of cases and impunity with regards to conflict-related sexual violence against women and girls, which the Committee believes contributes to the victim's lack of confidence in government response.⁷ The Committee also noted the persistent discrimination faced by rural women, indigenous women and Afro-Colombian women, particularly the threats and violence by armed groups and the lack of an effective and coordinated institutional response to this violence.⁸

B. Civil Unrest and Gender-Based Violence in Colombia

15. Colombia has endured decades of civil unrest, conflict and violence that has forcibly displaced more than 7.7 million people since 1985, resulting in the world's largest population of internally displaced persons.⁹ In 2016, the Colombian government and FARC finally reached an agreement to end their 52-year armed conflict.¹⁰
16. Despite peace negotiations, armed insurgent groups continue to commit human rights abuses, such as sexual and gender-based violence, kidnapping and forced disappearances, political

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Colombia*, Human Rights Watch World Report 2018, <https://www.hrw.org/world-report/2018/country-chapters/colombia>

¹⁰ *Colombia 2016 Human Rights Report*, US State Department, <https://www.state.gov/documents/organization/265786.pdf>

killings, subordination and intimidation of judicial officials, restrictions on freedom of movement, and killings and intimidation of human rights activists.¹¹

17. Violence and societal discrimination against vulnerable groups such as women, indigenous persons, Afro-Colombians, and LGBTI individuals, have been persistent and continuous throughout the conflict and severely restrict these groups from exercising their rights.¹²

18. Domestic violence perpetrated against Colombian women is an enduring problem that the Colombian government has acknowledged through legislation, yet the government has done little to implement the laws and prosecute those responsible.¹³

19. Violence against women, specifically domestic violence, reflects and perpetuates structural inequalities in Colombian society.¹⁴ Colombia's lack of training and poor implementation of treatment protocols impede access to medical services and create obstacles for women seeking post-violence care, and the ineffective and inefficient justice system fails to bring domestic violence perpetrators to justice.¹⁵ Moreover, sexual and gender-based violence in Colombia is "one of the most extreme expressions of structural violence against women, and forms part of a continuum of violence and power that predates the armed conflict."¹⁶ According to a study by Oxfam-International, nearly half a million women and girls in Colombia have experienced sexual and gender-based violence.¹⁷ There are thousands of cases of reported

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Gender and the Role of Women in Colombia's Peace Process*, UN Women, <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/women-colombia-peace-process-en.pdf?la=en&vs=17>

¹⁵ Colombia 2016 Human Rights Report, US State Department, <https://www.state.gov/documents/organization/265786.pdf>

¹⁶ *Gender and the Role of Women in Colombia's Peace Process*.

¹⁷ *Id.*

incidents of domestic violence in Colombia each year, and abuses such as marital rape are common and widely tolerated.¹⁸ Furthermore, societal attitudes and impunity prevent both women and men from reporting domestic and sexual violence.¹⁹

20. A study conducted by Colombia's *Universidad Libre* revealed that, as of March 2018, there have been 3,014 reported cases of domestic violence against women committed by their partners or ex-partners.²⁰ This figure suggests that an average of 50 women per day are abused or one woman being abused every 28 minutes.²¹ Additionally, 1,826 reported cases involved strong blows of violence with weapons or body parts, and 652 reported cases involved two or more of these types.²² Furthermore, the study found that women between the ages of 20 and 29 years were the most affected and that only three out of ten women reported their abuse to the authorities.²³

21. According to *Sisma Mujer*²⁴, in 2017 the Colombian government conducted medical exams on individuals who reported that they had experienced violence at the hands of a partner or ex-partner, and found that of the 49,423 individuals, 86% were women.²⁵

22. A 2014 study by Equality for Women found that around 54% of polled government officials believe that spousal abuse should be addressed in private and not by the judicial system, with 32% of officials stating that they “do not care” about domestic abuse stories.²⁶ Although

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *More than 3000 women abused in Colombia so far in 2018*, Colombia Reports, <https://colombiareports.com/more-than-3000-women-abused-in-colombia-so-far-in-2018/>

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Sisma Mujer* is a feminist, nonprofit organization located in Bogotá, Colombia.

²⁵ *Boletín No. 14*, Corporación Sisma Mujer, https://www.sismamujer.org/wp-content/uploads/2018/03/Bolet%C3%ADn-8-de-marzo-de-2018_8-03-18.pdf

²⁶ *More than half of Colombia officials think domestic violence “should be solved in privacy”*, Colombia Reports, <https://colombiareports.com/most-colombian-officials-say-domestic-violence-should-be-solved-in-privacy/>

reconciliation is prohibited by Colombian law, 64% of public officials hold the opinion that it is better “to attempt reconciliation between an abusive husband and his victimized wife.”²⁷ Also, 11% of officials hold the view that a woman must forgive her abusive partner if he was drunk, even though alcohol is not a mitigating circumstance under Colombian law.²⁸ Additionally, the study found that officials hold the opinion that the women in some instances are partly responsible for the violence carried out against them. Around 25% of officials believe that a woman who has previous knowledge of her partner’s violent tendencies cannot complain about what he does to her.²⁹ Moreover, 23% of officials believe that if a woman stays with her abuser following violence, “it is because she enjoys the mistreatment.”³⁰

C. Colombia’s Domestic Law and Ineffective Criminal Prosecutorial System

23. Columbia’s Constitution, adopted in 1991, established that women and men are equal before the law. Under Article 43 of the Constitution, “[w]omen and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination.”³¹ Pursuant to Article 13, “[t]he government will promote the conditions, for equality to be real and effective and will adopt measures in favor of discriminated or marginalized groups.”³²

(a) Law 1257 (2008)

24. In 2008, Colombia enacted Law 1257 as the controlling legislation on preventing violence and discrimination against women. Article 1 sets forth the objectives of guaranteeing women the ability to live a life free of violence in both the public and private spheres, to exercise their

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Colombian Constitution (1991), Article 43.

³² *Id.*, Article 13.

legal rights, and to access administrative and judicial proceedings for their protection, as well as the objective of adopting public policies that facilitate these goals. Pursuant to Article 4, these objectives are to be interpreted using the principles found in the Colombian Constitution, international human rights treaties and conventions, especially the CEDAW Convention and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.³³

25. Article 2 of Law 1257 defines “violence against women” as “any action or omission that causes a woman death, pain, or physical, sexual, psychological, economic or patrimonial suffering” including threats, coercion, or arbitrary deprivation of liberty.³⁴
26. Article 6 states that “women’s rights are Human Rights.” According to Article 7, women have the right not to be tortured, treated cruelly, or degraded. Women’s rights also include, but are not limited to, the right to a dignified life; to physical, sexual, and psychological integrity; privacy; liberty; autonomy; freedom to develop a personality; physical health; sexual and reproductive health; personal safety; equality and the right not to be discriminated against.³⁵
27. Law 1257 imposes an obligation on the Colombian State “to prevent, investigate, and sanction all forms of violence against women” under Article 6.³⁶
28. Article 6 also imposes an obligation on private actors, such as the family and members of society, to respect “rights and contributing to the elimination of violence against women.”³⁷

³³ Colombia Law 1257 (2008), https://www.oas.org/dil/esp/LEY_1257_DE_2008_Colombia.pdf

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

29. Under Article 8, victims of domestic violence have the following rights: the right to receive comprehensive, sufficient, accessible, and quality care; the right to receive free orientation, judicial advice, and technical legal assistance as soon as the authorities become aware that a violent act occurred; the right to receive clear, complete, true, and timely information regarding her rights and relevant mechanisms and procedures; the right to give informed consent before being subject to any medical-legal exams in cases of sexual violence as well as the right to choose the sex of the medical practitioner; the right to receive clear, complete, true, and timely information regarding sexual and reproductive health; the right to keep her identity as well as her dependents' identities confidential and private; the right of the victim and her children to receive medical, physical, psychological, and forensic assistance; the right to access protection through judicial mechanisms; the right to the truth, justice, representation, and guarantees of non-repetition; and the right to voluntarily decide whether or not to confront her aggressor in administrative, judicial, or any other type of proceeding. The State has the responsibility to ensure that the Office of Public Defense effectively protects a survivor's rights.³⁸

30. Law 1257 also seeks to protect victims from their abusers. Under Article 25, perpetrators of gender-based violence are prohibited from approaching or communicating with the victim and/or her family. In domestic violence cases, these prohibitions will be in effect during the time of the principal penalty and up to twelve months afterwards.³⁹

(b) Penal Law 559 (2000)

31. Penal Law 559 was amended by Law 882 in 2004, Law 1142 in 2007, and Law 1850 in 2017.

The Penal Law now penalizes anyone who has physically or psychologically mistreated a

³⁸ *Id.*

³⁹ *Id.*

member of his/her nuclear family with 4-8 years of imprisonment provided that the conduct does not constitute a crime punishable by a greater penalty. The penalty will be increased by half or by three-quarters if the conduct was directed towards a minor, a woman, a person above the age of 60, a person with a physical, sensory or psychological impairment or disability, or any defenseless person.⁴⁰

(c) Law 1826 (2017) and Law 1542 (2012)

32. Law 1826 (2017) repealed Article 3 of Law 1542 which imposed a due diligence obligation on judicial authorities to prevent, investigate, and punish violence against women as well as investigate alleged crimes against women *ex-officio*.⁴¹ Law 1826 establishes a special abbreviated procedure in the criminal system applicable to crimes considered to be of lesser impact, which include gender-based crimes and personal injuries.⁴² Currently, the government seeks to apply the abbreviated procedure to domestic violence cases as well.⁴³
33. The National Prosecutor's Office and the Criminal Policy Council presented legislation to the Colombian Congress that seeks to decriminalize, among other crimes, food insecurity and inducement to prostitution. It directly conflicts with Law 1257 and international law by providing for the creation of a "non-violent sexual act" crime where a victim's lack of consent would not constitute a violent action.

⁴⁰ *Id.*

⁴¹ Law 1542 (2012), <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=48239>

⁴² Law 1826 (2017), <http://es.presidencia.gov.co/normativa/normativa/LEY%201826%20DEL%2012%20DE%20ENERO%20DE%202017.pdf>

⁴³ Colombia Legal Corporation, <http://www.colombialelegalcorp.com/procedimiento-penal-abreviado-la-ley-1826-del-2017/>

(d) Colombia’s failures to adequately and effectively implement Law 1257

34. In 2012, four years after the enactment of Law 1257, “the Bureau for the right of women to a lead a life free of violence” (*La Mesa por el derecho de las mujeres a una vida libre de violencia*) (the “Bureau”) published a report investigating the government entities created pursuant to Law 1257, their compliance with the law, and the overall implementation of it.⁴⁴
35. According to the Bureau’s report, Law 1257 seeks to protect the family-unit, not women’s rights. Specific measures requiring due diligence in preventing, attending to, and protecting female victims of violence are entirely absent. Instead, the entities charged with the law’s implementation assume a family-oriented policy that understands women only in the family context and invalidates their individual rights. Women are subject to the institutional patriarchal practices and, consequently, are subordinate to the preservation of the family order.⁴⁵
36. While the legislation birthed a multitude of government agencies to address domestic violence, these agencies failed to explain specific advances in their compliance with Law 1257. Rather, the entities presented general results of their organizational management and reported compliance with varying normative and jurisprudential mandates that were not necessarily derived from Law 1257. Instead, they reported on general policies and institutional actions on gender issues and forced displacement.⁴⁶

⁴⁴ *Informe de la Mesa por el Derecho de las Mujeres a Una Vida Libre de Violencias Sobre la Implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento*, La Mesa por el Derecho de las Mujeres, <http://www.sismamujer.org/wp-content/uploads/2016/12/29.-03.2012.Informe-Derecho-Mujeres-Vida-Libre-De-Violencias-Implementaci%C3%B3n-Ley-1257.pdf>

⁴⁵ *Id.*

⁴⁶ *Id.* at 8.

37. The Bureau continued its investigation of the implementation of Law 1257 throughout 2013 and concluded that Colombia's legal authorities did not observe the penal codes incorporated under Law 1257, nor employ the judicial mechanisms created specifically to address the obstacles victims face within the legal system. The Bureau attributes such resistance to ignorance, disinterest in the subject of femicide, the political culture, and systemic pattern of discrimination against women. By refusing to adequately investigate reports of gender-based crimes, authorities systemically diminish the severity of these classes of crimes. Even when they open investigations, they require prosecutors to meet a higher standard of proof that is inherently difficult to meet in cases of sexual violence.⁴⁷
38. The Bureau's 2013 report also outlined principle obstacles preventing the accessibility of Law 1257 protections: (i) the authorities' unwillingness to observe the comprehensive protection model set forth by Law 1257; (ii) their ignorance of their own authority to order protective measures as well as their responsibility to comply with such measures; (iii) the entities' lack of internal procedures to receive, process, and respond to these orders; (iv) the authorities' persistence in applying a family-oriented approach in complying with such measures.⁴⁸
39. Entities charged with implementing Law 1257 applied varying methodological standards. For instance, Law 1257 defines "violence against women" as "any action or omission that causes a woman death, pain, or physical, sexual, psychological, economic or patrimonial suffering." Yet, the Ministry of National Education only recognizes "violence against women". By limiting the definition of gender-based violence, women's human rights are restricted to sexual

⁴⁷ *Ley 1257, Cinco años después... II Informe de seguimiento a la implementación de la Ley 1257 de 2008*, La Mesa por el derecho de las mujeres, http://media.wix.com/ugd/ff58cd_3920e93891194d4a8893656e3dbbc732.pdf

⁴⁸ *Id.* at 29.

and reproductive rights and Law 1257's purpose of creating a comprehensive approach to protecting women's human rights is undermined.⁴⁹

40. According to *Sisma Mujer's* 2016 report on the implementation of Law 1257, these obstacles persist and Colombia has not made any significant advances in overcoming them.⁵⁰

(e) Colombia's ineffective prosecutorial system

41. The Colombian government fails to provide victims of domestic violence with accessible judicial remedies. Colombian law allows authorities to prosecute domestic violence offenders when the victim does not testify only if there is another witness. Although the law provides for both fines and prison time, if an abuser causes grave harm or the abuse is recurrent, authorities reportedly do not impose fines.⁵¹

42. In August 2017, the Colombian Court of Justice reinterpreted the crime of domestic violence, enumerated in Law 1257, to only apply to cases where the victimizer and the victim coexist daily and permanently under the same roof thereby qualifying as a "family unit".⁵² Aggressors who do not live in the same household – including ex-husbands, ex-partners, fathers of the woman's children – are now only liable under personal injury law.⁵³ Personal injury law does

⁴⁹ *Id.*

⁵⁰ *Ley 1257, Ocho años de obstáculos en la protección integral para las mujeres víctimas de violencias* (2016), Sisma Mujer, <http://www.sismamujer.org/wp-content/uploads/2016/11/Ley-1257-ocho-a%C3%B1os-de-obstaculos-en-la-protecci%C3%B3n-integral-de-las-mujeres-v%C3%ADctimas-de-violencias.pdf>

⁵¹ *Colombia 2016 Human Rights Report*, U.S. Department of State <https://www.state.gov/documents/organization/265786.pdf>

⁵² Corte Suprema de Justicia, *SP8064-2017, Radicación 48047 (Aprobado Acta No. 182)*, República de Colombia (7 junio 2017) <http://www.cortesuprema.gov.co/corte/wp-content/uploads/2017/06/SENTENCIA-VIOLENCIA-INTRAFAMILIAR.pdf>

⁵³ *Riesgos de la Sentencia 48047 ¿Violencia intramiliar o lesiones personales?*, <http://colombiamaspositiva.com/regiones/riesgos-de-la-sentencia-48047-violencia-intrafamiliar-o-lesiones-personales.html>

not guarantee the arrest of an aggressor who does not meet this new criteria.⁵⁴ Moreover, pending arrest warrants may be suspended or nullified.⁵⁵

43. The United States' State Department noted in its 2016 Country Reports on Human Rights Practices that Colombia lacked a "comprehensive or consolidated database on the incidence of sexual violence." Relying on the Colombian Attorney General's Office self-reporting, 62,186 new investigations had been opened for cases of domestic violence of which women were victims in 53,596 of those cases.⁵⁶

44. Because victims of domestic violence fear being re-victimized by authorities and the judicial process, only three out of ten women report their abuse to authorities.⁵⁷

45. Women's main access to comprehensive justice is usually through family commissariats. Notwithstanding, female victims report violence committed by commissariat-officials attending to them and cases where officials have blamed them for the violence they have suffered, forced them to conciliate, and discredit their testimonies.

46. In a 2017 report by Presidential Counselor for the Equality of Women (*Consejera Presidencial para la Equidad de la Mujer*) to Colombia's Congress, domestic violence against women is a form of torture that reinforces the inequality between men and women and undoubtedly affects the human, social, cultural and economic development of the country. Because of domestic violence, women lost 98,000 years of healthy life in 2015.⁵⁸

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *More than 3000 women abused in Colombia so far in 2018*, Colombia Reports, <https://colombiareports.com/more-than-3000-women-abused-in-colombia-so-far-in-2018/>

⁵⁸ *Remisión informe al Congreso de la República Ley 1257 de 2008, Consejera Presidencial para la Equidad de la Mujer*, <http://www.equidadmujer.gov.co/ejes/Documents/Informe-Congreso-Ley-1257-2015-2016.pdf>

47. According to the Equality of Women's report, the investigation and prosecution of domestic violence is insufficient. In 2015, there was a 24% conviction rate. Between 2010-2015, the lowest conviction rate for domestic violence cases was 12% in 2012 and highest at 31% in 2011. While the lowest rate of charges was 2% in 2011 and highest in 2015 at 15%.⁵⁹

V. LEGAL ANALYSIS

48. This section discusses Colombia's ineffective implementation of its domestic violence laws within the context of CEDAW's 2013 Recommendations and General Comment 35. Because certain cases of domestic violence may amount to torture, or cruel, inhuman or degrading treatment, Colombia's obligations under the Convention are also *jus cogens* obligations. Therefore, Colombia's failure to prevent domestic violence and provide effective redress to domestic violence survivors is both a *jus cogens* violation as well as a violation of the Convention.

A. Colombia Has Refused to Comply with this Committee's 2013 Recommendations Regarding DV.⁶⁰

49. Colombia's noncompliance with this Committee's 2007 Recommendations required this Committee to echo its concerns in the 2013 reporting cycle. While nearly five years have elapsed, Colombia continues to disregard this Committee's most recent Recommendations, particularly Recommendations 16, 18, and 32.

50. This Committee's Recommendation No. 16 in 2013 highlighted the potential of Law 1257 in providing women with adequate access to resources and judicial support. This

⁵⁹ *Id.*

⁶⁰ CEDAW/C/COL/CO/7-8.

Recommendation advised Colombia to “[p]rioritize the full implementation of Law 1257” and “simplif[y] the procedures for access to” the protection and support measures envisaged in Law 1257. It stated that Colombia should “[e]nsure women’s access to justice, including by taking measures to combat impunity, enhancing the capacity of family police stations and providing mandatory training for judges, lawyers and law enforcement officers on the consistent application of the existing legal framework on human rights, in particular the provisions of the Convention, including the various forms of violence against women and gender stereotypes.” It further requested that Colombia “[e]stablish a standard system for the regular collection of statistical data on violence against women disaggregated by sex, age, ethnicity, type of violence and the circumstances in which the violence was committed, including the perpetrator and victim and whether they were related to each other.” Additionally, this Committee recommended that Colombia “[t]ake effective actions to ensure women victims of violence their right not to be confronted with their perpetrator or to be reconciled with him in conformity with the relevant legislation.”

51. Notwithstanding the express prescriptions set forth by this Committee in Recommendation No. 16, Colombia has failed to remove the obstacles preventing Law 1257’s full implementation, eradicate legal authorities’ willful ignorance and disregard of domestic violence, establish a system for collecting relevant data, and protect survivors of domestic violence from being re-victimized by the judicial process. Although Colombia bestowed authority to various entities to implement Law 1257, the Bureau chronicles the entities’ failure to report specific advances in their compliance with Law 1257 and the inconsistent standards among the entities.⁶¹ Legal authorities persistently devalue the gravity of domestic violence

⁶¹ Para. 42.

cases and underuse the judicial mechanisms and socioeconomic resources created by Law 1257.⁶² Given that most perpetrators of domestic violence are not prosecuted, survivors are often required to reconcile with their abusers extrajudicially or testify and confront their abuser during trial.⁶³

52. To comply with Recommendation No. 18, Colombia should take measures to prevent gender-based violence [and] [o]vercome impunity to conflict-related sexual violence by adopting, among others, a policy aimed at standardizing the methodology of investigation across the country, which applies international standards.” This Committee recommended that Colombia “[g]uarantee access to justice for all women affected by sexual violence” and build the capacity of judges and prosecutors dealing with these cases. Furthermore, Colombia should ensure access for victims of gender-based violence to “an environment of security and trust during the pre-investigation, investigation, trial and post-trial stages,” and to “transformative reparation measures which addressed the structural inequalities resulting in gender-based violence.”

53. Colombia fails to prevent the judicial system from re-victimizing survivors and fails to eradicate the systemic culture of impunity for perpetrators of domestic violence. While women constitute roughly 85% of domestic violence cases, the State’s efforts to adopt affirmative measures to protect women prove futile. 98,000 years of healthy life among Colombian women were lost in 2015 due to domestic violence, yet only 24% of abusers were convicted that year. Notwithstanding Colombia’s Constitution stating that women and men are equal

⁶² Para. 40, 41.

⁶³ Para. 44.

before the law, the culture of impunity violates the human rights principle of non-discrimination.⁶⁴

54. Per Recommendation No. 32, Colombia should have assumed a gender-based approach to addressing gender-based violence, sexual violence, forced displacement, and capacity-building among civil servants, judicial officials and health professionals.

55. Within the legal framework of Law 1257, the woman and her rights are subordinate to the preservation of a nuclear family-unit. The Supreme Court and other entities charged with the law's implementation assume a family-oriented approach that subjugates a woman and her children to suffer her partner's abuse in the private sphere isolated from judicial remedy. Colombia's abdication of providing women effective and appropriate judicial and prudential protection mechanisms threatens thousands of women at risk of femicide. Colombia's failure to train and require government entities to adopt a gender-specific approach demonstrates the State's unwillingness to heed Recommendation No. 32.⁶⁵

B. This Committee's General Comment No. 35 Makes Clear That Colombia Has Failed To Comply With Its Obligations Under Articles 1, 2, 5, And 15 Of The Convention.⁶⁶

56. General Comment No. 35 defined and reinforced state party obligations in relation to gender-based violence which echo Articles 1, 2, 5, and 15 of the Convention.⁶⁷ Per articles 1 and 2 of the Convention, gender-based violence constitutes discrimination against women, and States have a positive obligation to pursue, by all appropriate means and without delay, a policy of

⁶⁴ *Para.* 23, 41-47.

⁶⁵ *Para.* 25, 31, 32, 33, 35, 38, 42.

⁶⁶ CEDAW/C/GC/35

⁶⁷ *Id.*

eliminating discrimination against women, including gender-based violence.⁶⁸ General Comment No. 35 makes it expressly clear that the responsibility of the state party extends to acts or omissions of State actors and non-State actors.⁶⁹

57. Pursuant to Article 2(e) of the Convention, State-Parties must take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.⁷⁰ Furthermore, State-Parties must adopt and implement diverse measures to address gender-based violence committed by non-State actors. The State-Party must be held responsible if it fails to take all appropriate measures to investigate, prevent, and prosecute acts of gender-based violence committed by non-State actors.⁷¹ Moreover, the failure of a State Party to take action in preventing gender-based violence amounts to “tacit permission or encouragement to perpetrate” acts of gender-based violence against women. Such failures or omissions, therefore, constitute human rights violations.⁷²

58. General Comment No. 35 makes clear that Colombia has failed to comply with Articles 1 and 2 of the Convention. General Comment No. 35 and Article 2 require Colombia to take all appropriate and necessary means to eliminate gender-based violence in an immediate manner. Although Colombia has passed domestic violence legislation such as Law 1257, its implementation of these laws and its prosecution of perpetrators are inefficient and ineffective. By failing to enforce its laws, Colombia tacitly allows domestic violence perpetrators to commit acts of violence against women and is therefore responsible for human rights violations.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

59. General Comment No. 35 explains that Articles 2 and 5 require State-Parties to adopt and implement measures to eradicate prejudices, stereotypes, and practices that are the root causes of gender-based violence.⁷³ State-Parties are required to adopt legislation prohibiting all forms of gender-based violence including age-sensitive and gender-sensitive provisions, effective legal protections, and redress for survivors of gender-based violence.⁷⁴

60. As described above in the context of Law 1257, Colombia fails to assume a gender-sensitive approach and provide effective legal protection for women to be free from domestic violence. Colombia has failed to enact legislation that eradicates the causes of gender-based violence, such as educational campaigns to change societal attitudes concerning domestic violence and trainings for government agencies to take a gender-sensitive approach when dealing with domestic violence. Thus, Colombia has failed to comply with Article's 2 and 5 of the Convention.

61. General Comment No. 35 and Articles 2, 5, and 15 establish that women are equal to men before the law and require all judicial bodies to ensure that all legal procedures in cases involving gender-based violence against women are fair, impartial, and free from gender stereotypes.⁷⁵

62. As stated above, notwithstanding its Constitutional provisions, Colombia's judicial bodies do not afford women equality before the law. Furthermore, its judicial system has not afforded women-victims of domestic violence adequate protection nor has the system effectively prosecuted perpetrators of domestic violence. Instead, there is widespread impunity for male

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

perpetrators of domestic violence. Therefore, Colombia is in violation of articles 2, 5, and 15 of the Convention for failing to ensure that women are provided equality before the law in cases involving domestic violence.

C. Pursuant To General Comment No. 35, Colombia’s Failures To Prevent And Redress Certain Forms Of Domestic Violence May Amount To Torture Or Cruel, Inhuman, Or Degrading Treatment.⁷⁶

63. This Committee, in paragraph 16 of its most recent General Comment No. 35, declared that “gender-based violence against women, may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence, or harmful practices, among others.”

64. In paragraph 17, this Committee “endorse[d] the view of other human rights treaty bodies and special procedures mandate-holders that in making the determination of when acts of gender-based violence against women amount to torture, or cruel, inhuman or degrading treatment, a gender sensitive approach is required to understand the level of pain and suffering experienced by women.” Moreover, acts or omissions that are gender-specific or perpetrated against a person based on sex will satisfy the purpose and intent requirement of torture.

65. Paragraph 20 recognizes that gender-based violence may occur in both public and private spheres. Regardless of the setting, “gender-based violence against women can result from acts or omissions of State or non-State actors ... acting individually or as members of international or intergovernmental organizations or coalitions...”

⁷⁶ CEDAW/C/CG/35.

66. Paragraph 22 reiterates that “a State party is responsible for acts and omissions by its organs and agents that constitute gender-based violence against women.” Moreover, under paragraph 23, “States parties are responsible for preventing these acts or omissions by their own organs and agents – including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conducts – and to investigate, prosecute and apply appropriate legal or disciplinary sanctions as well as provide reparation in all cases of gender-based violence against women...”
67. Colombia has failed to act with due diligence to prevent, investigate, prosecute and punish non-State actors who have committed domestic violence. State authorities, operating within a culture of impunity, disregard the severity of domestic violence. Instead of prosecuting perpetrators of domestic violence and protecting the survivors, Colombian officials restrict the issue of domestic violence to the private sphere where the family-unit is preserved over a woman’s right to a dignified, safe, and healthy life. Without adopting a gender-specific approach to investigating and prosecuting non-State, the culture of impunity will prevail at the expense of women’s human rights.
68. Colombia’s failure to act to effectively prevent or protect against acts of torture and other ill-treatment committed by non-State actors, including abusive partners or family members, can be understood as the State condoning or ignoring ill-treatment within its territory. Because of Colombia’s failure to exercise due diligence to intervene to prevent, punish, and provide redress, it enables non-State actors to commit acts impermissible under the Convention with impunity. The State complicity cultivates an environment in which non-State actors may commit torture, cruel, inhuman, and degrading treatment within the private as well as the public sphere. As long as Colombia relegates issues of domestic violence to the private,

familial-life, victims of domestic violence are forced to endure ill-treatment that may constitute torture without State-provided protections and remedies.

69. Colombia's failure to exercise due diligence in the implementation of domestic legislation to prevent domestic violence and in the State-intervention to stop and prosecute abusers is also a failure to prevent torture – a *jus cogens* norm. When States know or ought to have known that an abuser is committing gender-based violence against a woman – especially when it has escalated to cruel, inhuman, or degrading treatment – they have a responsibility under international law to take appropriate steps to prevent, investigate or prosecute such acts. A State may then be held responsible for its failure to exercise due diligence to prevent a *jus cogens* violation.

70. Colombia's inadequate implementation of its domestic legislation designed to protect women from domestic violence, ineffective prosecutorial system, and preservation of a patriarchal culture of impunity breed an environment in which State-actors turn a blind eye to non-State actors' acts of gender-based violence – some of which may take the form of torture, cruel, inhuman or degrading treatment. By failing to comply with its obligations under the Convention, Colombia has failed to comply with its *jus cogens* obligations to prevent torture, cruel, inhuman or degrading treatment.

VI. RECOMMENDATIONS

A. That Colombia respects, protects, and fulfills its obligations toward all individuals subject to domestic violence.

- B. That Colombia complies with all Recommendations, General Comments, and Concluding Observations of this Committee and other sources of international law regarding domestic violence.
- C. That Colombia strengthens and makes public the unified system of information on violence against women (Sistema Integrado de Información sobre Violencia de Género) by articulating the databases of all State entities under common categories and creating databases for those State entities that do not have an information system.
- D. That Colombia consults with women and civil society actors when developing policies and initiatives, particularly those related to gender-based violence, and adopts a gender mainstreaming approach in its policy development.
- E. That Colombia develops a comprehensive and inter-agency strategy to overcome the high rate of impunity in cases of violence against women specifically domestic violence cases.
- F. That Colombia adopt a gender-specific approach to understanding domestic violence as a violation of a woman's rights in compliance with Law 1257 and international law while abandoning the family-centric and patriarchal perspectives it maintains.
- G. That Colombia create and augment public educational campaigns to change societal attitudes regarding domestic violence.
- H. That Colombia advance from a theoretical application towards an actual implementation of the existing domestic laws to ensure women's rights and to protect them from violence.
- I. That Colombia interpret the criminal application of Law 1257 in favor of women's human rights and in compliance with national and international law.

- J. That Colombia confronts the historical discrimination women experience by incorporating the concrete approaches and measures employed by diverse institutional programs that fight for women's rights.

- K. That Colombia, in recognition that women suffer gender-based violence at a disproportionate rate in times of war, guarantee peace on behalf of the State.