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**Lack of a gender approach to guarantee the rights of women and LGBTI persons who are victims of enforced disappearance in Colombia**

Shadow Report to be presented to the

**Committee on Enforced Disappearances**

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Presented by:

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* Akahatá – Equipo de trabajo en sexualidades y géneros
* Synergia – Initiatives for Human Rights
* SRI – Sexual Rights Initiative

Caribe Afirmativo, an organization working on sexual and gender diversity with a post-conflict cross-cutting thematic focus[[1]](#footnote-1); Akahatá – Equipo de trabajo en sexualidades y géneros; Synergia – Initiatives for Human Rigths; and the SRI – Sexual Rights Initiative present the following information to the Committee on Enforced Disappearances. This report is aimed at making contributions related to the review of the implementation by the State of Colombia of the International Convention for the Protection of All Persons from Enforced Disappearance.

**Introduction**

1. Enforced disappearance is a form of violence that has been exerted on a systematic and widespread manner by a number of different armed actors in Colombia. According to the Unified Registry of Victims, 181.722 disappeared persons have been registered during the armed conflict[[2]](#footnote-2). Of those, 85.641 were women and 58 were LGBTI persons[[3]](#footnote-3). After the Peace Agreement was signed between the national government and the FARC-EP, the Integral System for Truth, Justice, Reparation and Guarantees of Non-Recurrence (SIVJRNR, by its Spanish acronym) was created to guarantee the rights of the victims, including the elucidation of truth, the guarantee of justice, the search for persons presumed disappeared, and the adoption of measures for reparation and non-recurrence.
2. SIVJRNR comprises the Commission for the Elucidation of Truth, Coexistence and Non-Recurrence (CEV, by its Spanish acronym); the Special Jurisdiction for Peace (JEP, by its Spanish acronym) and the Unit for the Search for Persons Presumed Disappeared in the Context of and Because of the Armed Conflict (UBPD, by its Spanish acronym). All these entities have an obligation to apply a cross-cutting gender approach, aimed at respecting and guaranteeing the human rights of women and LGBTI persons who are victims in the context of the armed conflict. When it comes to the obligations emerging from the International Convention for the Protection of All Persons from Enforced Disappearance (CED), obstacles to the protection of women and LGBTI persons victim of enforced disappearance have been identified, as well as obstacles to the protection of women and LGBTI persons who are relatives of victims in the context of the armed conflict.
3. In addition to that, it must be remarked that in Colombia the search has been led by civil society organizations instead of state authorities. Historically, organizations and collectives of relatives have been formed to lead search processes through assistance and humanitarian strategies. However, these unofficial search processes face big challenges in terms of implementing differential approaches, specifically gender approaches and ethnical-racial approaches.
4. This report provides information about: (i) the lack of a gender approach in the measures taken to investigate and sanction enforced disappearances; (ii) the need to understand that enforced disappearances against women and LGBTI persons respond to dynamics of their own; (iii) the under-registration of cases of enforced disappearance of women and LGBTI persons; and (iv) the difficulties found in the search process.

**Situation of women and LGBTI persons presumed disappeared in Colombia**

1. **Lack of a gender approach in the measures taken to investigate and sanction enforced disappearances**

**Articles 2 and 3**

1. Enforced disappearance is defined in article 165 of the Colombian criminal code as: “The individual who subjects another person to a deprivation of their liberty in any form, followed by hiding it and by a refusal to acknowledge such deprivation or to provide information on their whereabouts, removing them from the protection of law, will incur in prison (…) The same punishment will be imposed to the public servant, or the individual who acts under the orders or the acquiescence of a public servant, and performs the acts described in the previous section”.
2. The Special Jurisdiction for Peace (JEP) has received reports in which up to 67% of reported acts were of enforced disappearance[[4]](#footnote-4). Taking into account that the JEP operates on the basis of a case prioritization and selection process, enforced disappearance has not been prioritized and selected yet. In this same sense, the prosecution of this issue has only been started inside other thematic cases and territorial situations[[5]](#footnote-5), but which do not include the whole range of victims of enforced disappearance in the context of the armed conflict. In spite of many organizations asking for the prioritization and selection of these cases, the expectations and participation of victims have been affected due to the lack of transparency of the process. Since the beginning of the operation of JEP, the stablished prioritization and selection criteria have not been applied in a uniform way; prioritization is not performed on the basis of comparing some cases or situations against others, and victims have not had access to participate or their participation is limited.
3. Civil society organizations have asked precautionary measures because of the lack of treatment of an enforced disappearance case[[6]](#footnote-6). For example, petitions have been filed asking to protect 16 places where it was thought corpses could be found, possibly the bodies of victims of enforced disappearance[[7]](#footnote-7). The petitions were filed because of the absence of any investigation or diagnosis to determine the number of victims in those places, since those persons were buried as No Name Persons and cemeteries do not meet the protocols for the care and preservation of corpses, as stablished in international and national standards[[8]](#footnote-8).
4. On the other hand, the Unit for the Search for Persons Presumed Disappeared in the Context and Because of the Armed Conflict (UBPD, by its Spanish acronym) is a humanitarian and extra-judicial mechanism aimed at directing, coordinating and contributing to the search and location of persons presumed disappeared and to the recovery, identification and dignified deliver of corpses. In spite of the efforts to set up searching schemes and to implement a gender approach, the UBPD has not put them in place. Among the institutions of the SIVJRNR, the UBPD is the one that has faced more obstacles to its operation, specifically when it comes to political support and resources allocation[[9]](#footnote-9).
5. The UBPD collects information both from official and unofficial sources. However, in several parts of the country it was made clear that society at large was unaware of how UBPD works and which services it can provide. Regarding that, the UBPD teaches about its extra-judicial character, the ways to access to search and the participation of victims, organizations and society at large. These spaces did not apply a gender approach for LGBTI persons, specifically, they do not offer complete information on how to participate, how they will search and how to do follow-ups in the cases of LGBTI persons presumed disappeared in a way respectful of their rights and acknowledging their sexual orientations and gender identities.
6. In cases involving women and LGBTI persons presumed disappeared, concrete measures are needed for the investigation and sanction of enforced disappearance, as well as for the search, localization and recovery of the victims or their remains in a dignified way and using a gender approach.

**Recommendations**

**The State of Colombia should:**

1. Investigate the enforced disappearance of women and LGBTI persons with a gender approach and guarantee the search for them.
2. Guarantee that the process of cases prioritization and selection is applied by the JEP in a uniform way. To achieve that, the minimum requisite is to contrast and compare among cases and situations, and the effective participation of the victims as fundamental bases in these processes.
3. Adopt measures to investigate and determine the number of victims presumed disappeared in Colombia, carrying out a diagnosis of the places where it may be possible to find the remains of persons who are victims of enforced disappearance.
4. Give visibility to enforced disappearance, adopting measures to identify persons who have been buried as No Name Persons; document the cases of women and LGBTI persons who are victims and implement protocols to care for and to preserve the bodies, as established in international and national standards.
5. Allocate enough and proper public resources for the UBPD to develop its duties, as well as a prioritization of its objectives by the national government.
6. Implement pedagogical strategies on the territories, especially regarding the contributions that the UBPD can make to the search for women and LGBTI persons presumed disappeared.
7. Include strategies with a gender approach to advance the search for women and LGBTI persons.
8. **The need to understand the specific dynamics of enforced disappearance against women and LGBTI persons**

**Article 5**

1. The enforced disappearance of women and LGBTI persons in the context of the armed conflict was a systematic practice with specific characteristics based on sex/gender, sexual orientation, gender identity and gender expression of the victims. These differentiated forms of violence have been historically kept under silence, rendered invisible and covered with impunity. In a general way, they appear in contexts of structural violence, social complicity and as a strategy deployed by armed actors to gain control over the territory and the population and to gain social legitimation.
2. In Colombia, the institutions that should lead the investigation and sanction of enforced disappearance, including the JEP and the UBPD, had not adopted concrete measures to guarantee that enforced disappearance is understood as a form of violence based on gender and/or on prejudices related to sexual orientation, gender identity or gender expression and that it should be understood as a violence that constitutes a crime against humanity. Historically, enforced disappearance has been linked to other forms of violence, such as arbitrary detentions, torture and homicides. However, it has been documented that threats, enforced displacement, sexual violence and feminicides also resulted in the disappearance of women and LGBTI persons[[10]](#footnote-10).
3. Enforced disappearances of women and LGBT persons, including arbitrary detentions, threats, enforced displacements, sexual violence, torture and homicides/feminicides prior to or after the disappearance, have been perpetrated as systematic attacks. They were not isolated acts, but an integral part of criminal control plans on the part of armed actors. These violences were based on the sex/gender of the victims and on prejudices regarding sexual orientation, gender identity and expression, to rule over the bodies of women and LGBTI persons. It’s a violence that seeks to achieve control over an order based upon the cis-hetero-normative sex/gender system, and also as a means to control sexual and gender diversity expressions considered transgressive of the moral and social order that the legal and illegal armed groups wanted to impose. In this sense, enforced disappearance has not been investigated in Colombia as a crime against humanity and is benefited with structural impunity.

**Recommendations**

**The State of Colombia should:**

1. Adopt a gender approach in the understanding of the dynamics of enforced disappearance against women and LGBTI persons.
2. Give visibility to violence against women and LGBTI persons in the context of the armed conflict.
3. Train civil servants to understand gender based violence and violence based on prejudices regarding sexual orientation, gender identity and gender expression.
4. Guarantee the implementation of a cross-cutting gender approach in the cases of enforced disappearance against women and LGBTI persons.
5. Acknowledge that other forms of violence –such as arbitrary detentions, threats, forced displacements, sexual violence, torture and homicides/feminicides– occurring in the context of the armed conflict can take place prior to or after the enforced disappearance of women and LGBTI persons.
6. **Existence of under-registration of cases of enforced disappearance of women and LGBTI persons and barriers to the access to justice**

**Article 12**

1. Generally, violence against women and LGBTI persons in the context of the armed conflict has been rendered invisible and silenced, and therefore frequently exists a high level of difficulties to document such cases. Recently, and thanks mainly to the work of the Centro Nacional de Memoria Histórica (National Center for the Historic Memory) and social organizations, these violences are getting visible. Difficulties for documentation are especially high in cases of enforced disappearance.
2. Only since 2000 has the crime of enforced disappearance been typified in Colombia and therefore many cases have been documented as kidnapping, extrajudicial executions, or forced enlistment before the crime was included in national legislation. Many cases have been initially documented as kidnapping and then are registered again as enforced disappearance, counting them twice. As a result, registered figures do not reflect the real number of victims of enforced disappearance in Colombia[[11]](#footnote-11).
3. Additional obstacles have to be faced when it comes to document cases involving LGBTI persons. First, when registering, reporting or documenting the sexual orientation, gender identity or expression of the victim, both civil servants and relatives of the victims show prejudices. The state Unified Registry of Victims currently includes a variable to refer to LGBTI persons. However, victims and their relatives sometimes prefer not to declare their sexual orientation or gender identity to avoid being re-victimized due to prejudices. Also, some civil servants do no register all reported victimizations because they consider them false and lacking the support of proofs. Second, many times LGBTI persons face hostile environments not only on the part of armed actors, but also from their family of origin, and this poses more difficulties in seeing LGBTI persons as victims of enforced disappearances.
4. This under-registration demonstrates the barriers hampering the right to report and to document cases with no discrimination. Most often, a gender approach that could be helpful in reducing under-registration is not implemented. When violence constitutes enforced disappearance, no questions are asked about sexual orientation, gender identity or expression of the victim, which could have been hidden, denied or unknown to their relatives. Other times, relatives denied the sexual orientation or gender identity of their family members out of fear of being victims themselves.
5. This reality is worsened by the fact that institutions do not consider LGBT support networks, collectives or organizations as legitimate subjects to claim corpses or even to request the declaration of disappearance. Given the above mentioned difficulties in documentation and investigation, there is a need for the development of strategies for the reception and management of these cases that are capable of taking into account the context in which these victimizations take place[[12]](#footnote-12).

**Recommendations**

**The State of Colombia should:**

1. Adopt measures with a gender approach to reduce the under-registration of women and LGBTI persons who are victims of enforced disappearance.
2. Train civil servants in gender and sexual diversity issues so they can document and receive reports using a gender approach.
3. Compare and cross-check information to determine the number of women and LGBTI persons who are victims of enforced disappearance.
4. Implement documentation strategies that understand the contexts of gender based violence and violence based on prejudice faced by women and LGTBI persons.
5. Adopt measures to increase the confidence in institutions and to encourage the report of enforced disappearance of women and LGBTI persons and their families.
6. **Difficulties in the search process**

**Articles 19 and 24**

1. Difficulties to implement a gender approach arise in the search plans and process. In addition to under-registration and barriers to reporting, presumed disappeared women and LGBTI persons often are not searched for by relatives and there are not guarantees to the safety of those undertaking their search or contributing to it.
2. During the search, there is a risk for information not being used respectfully of the rights to identity, free development of the personality, autonomy and dignity. Victims have a right to know whether the disappearance was motivated by sex/gender, sexual orientation, gender identity or expression of the victim.
3. In the cases of dead persons, the identification process can render invisible their sexual orientation, gender identity or even the cause of death and, above all, there is a risk for genitals to be equated with the sex or gender of the victims who are presumed disappeared.

**Recommendations**

**The State of Colombia should:**

1. Implement concrete measures to guarantee a gender approach in the search process.
2. Train civil servants in issues of sexual and gender diversity, and also in issues of gender based violence and violence based on prejudice.
3. Adopt concrete measures to search for women and LGTBI persons victims of enforced disappearance. This cannot depend only on the families of origin filing search requests.
4. Implement public and transparent strategies promoting a gender approach to collect information during the search process.
1. Caribe Afirmativo is a Colombian organization advancing agendas of research, training, counselling, advocacy, mobilization and promotion of the human rights of LGBTI persons. These agendas cross-cuttingly address issues of post-conflict and peace building for persons with non-conventional sexual orientation, gender identity and expression. In this sense, Caribe Afirmativo has documented violence against LGBT persons in the context of armed conflict. In 2019, it submitted three reports on persecution of LGBT persons during the armed conflict to the Special Jurisdiction for Peace (a transitional justice court which is part of the Integral System for Truth, Justice, Reparation and Non-Recurrence created by the Final Peace Agreement between the government and the old FARC-EP guerilla). [↑](#footnote-ref-1)
2. Since fifty years ago until present days, Colombia has been involved in an internal armed conflict, characterized by the involvement of several different armed actors. Among these armed groups, one of them was the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP, by its Spanish acronym), with whom the national government signed in 2016 a Final Peace Agreement. [↑](#footnote-ref-2)
3. Number of persons who are victims of enforced disappearance as of June 30, 2020, in the Unified Registry of Victims. [↑](#footnote-ref-3)
4. Special Jurisdiction for Peace (May 18, 2020). Communiqué. “Así son los informes que se han presentado a la JEP”. Available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/As%C3%AD-son-los-informes-que-se-han-presentado-a-la-JEP.aspx> [↑](#footnote-ref-4)
5. JEP has prioritized and selected seven (7) cases and situations different from enforced disappearance. However, victims of enforced disappearance may be involved in some of these cases. For example, in territorial situations, which are areas severely affected by the conflict where JEP is prosecuting several victimizing acts among which enforced disappearances may be found. Three (3) territorial situations are being prioritized currently. See: <https://www.jep.gov.co/Paginas/Inicio.aspx> [↑](#footnote-ref-5)
6. Measures taken prior to legal proceedings to avoid irremediable damage. [↑](#footnote-ref-6)
7. Special Jurisdiction for Peace (March 6, 2019). “Avanzan actuaciones por solicitud de medidas cautelares de 16 lugares donde habría fosas con personas desaparecidas”. Available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Avanzan-actuaciones-por-solicitud-de-medidas-cautelares-de-16-lugares-donde-habr%C3%ADa-fosas-con-personas-desaparecidas.aspx> [↑](#footnote-ref-7)
8. National Movement of State Crimes Victims– Movice (April 23, 2020). “La JEP decreta protección en uno de los cementerios del país donde podrían encontrarse víctimas de desaparición forzada”. Available at: <https://movimientodevictimas.org/la-jep-decreta-proteccion-para-uno-de-los-cementerios-del-pais-donde-podrian-encontrarse-victimas-de-desaparicion-forzada/> [↑](#footnote-ref-8)
9. See: VerdadAbierta.com (March 5, 2019). “Queremos estar a la cabeza de la búsqueda de los desaparecidos”: Luz Marina Monzón. Available at: <https://verdadabierta.com/queremos-estar-a-la-cabeza-de-la-busqueda-de-los-desaparecidos-luz-marina-monzon/> [↑](#footnote-ref-9)
10. Caribe Afirmativo (2019) Nosotras Resistimos. Available at: [https://caribeafirmativo.lgbt/wp-content/uploads/2019/09/%C2%A1Nosotras-Resistimos-Informe-sobre-violencias-contra-personas- LGBT-en-el-marco-del-conflicto-armado-en-Colombia-web.pdf](https://caribeafirmativo.lgbt/wp-content/uploads/2019/09/%C2%A1Nosotras-Resistimos-Informe-sobre-violencias-contra-personas-%20LGBT-en-el-marco-del-conflicto-armado-en-Colombia-web.pdf); Centro Nacional de Memoria Histórica – CNMH (2016) “Hasta encontrarlos. El drama de la desaparición forzada en Colombia”. Available at: <http://centrodememoriahistorica.gov.co/descargas/informes2016/hasta-encontrarlos/hasta-encontrarlos-drama-de-la-desaparicion-forzada-en-colombia.pdf> [↑](#footnote-ref-10)
11. Centro Nacional de Memoria Histórica – CNMH (2016) “Hasta encontrarlos. El drama de la desaparición forzada en Colombia”. See at: <http://centrodememoriahistorica.gov.co/descargas/informes2016/hasta-encontrarlos/hasta-encontrarlos-drama-de-la-desaparicion-forzada-en-colombia.pdf> [↑](#footnote-ref-11)
12. Caribe Afirmativo (2019) Nosotras resistimos. Page 109. [↑](#footnote-ref-12)