

Access to justice for **Women** victims of sexual violence

Sixth Monitoring Report on Auto 092 and the First Monitoring Report on Auto 009 of the Constitutional Court • Confidential Annexes

THE WORKING GROUP TO MONITOR COMPLIANCE
WITH CONSTITUTIONAL COURT AUTO 092 OF 2008 AND 009 OF 2015
AND ITS CONFIDENTIAL ANNEXES



MESA DE SEGUIMIENTO
Autos 092 y 009 Anexos Reservados
de la Corte Constitucional

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on *Auto* 009 of 2015 of the Constitutional Court - Confidential Annexes
The Working Group to monitor compliance with Constitutional Court
Auto 092 and 009 and its Confidential Annexes

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Confidential Annexes



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MONITORING THE SITUATION OF IMPUNITY FOR SEXUAL VIOLENCE
THE WORKING GROUP TO MONITOR COMPLIANCE WITH CONSTITUTIONAL
COURT *AUTO* 092 OF 2008 AND 009 OF 2015 AND ITS CONFIDENTIAL ANNEXES

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INTRODUCTION

The Working Group to monitor compliance with Constitutional Court *Auto* (Ruling) 092 of 2008 and 009 of 2015 and its Confidential Annexes in relation to the situation of impunity in cases of sexual violence against women in connection to the armed conflict (henceforth the Working Group)¹ presents the *Sixth Monitoring Report on Auto 092 of 2008 and the First Monitoring Report on Auto 009 of 2015 of the Constitutional Court and Confidential Annexes*. The Working Group is accompanied by observer UN Women; this report has been possible in thanks to its support.

In *Auto* 092 of 2008 (henceforth *Auto* 092), the Constitutional Court (henceforth the Court) determined that sexual violence in the armed conflict constituted a gender-based risk (due to armed actors' actions) and has a gender-based aspect (for example, one of the impacts of forced displacement), which has “consistent, widespread, systematic and invisible” characteristics. The Court ordered a series of measures focused on overcoming impunity and the obstacles identified in the *Auto* 092, in such a way that the response to this phenomenon should be included “within the highest priority levels in the official national agenda.”

Seven years later, by means of *Auto* 009 of January 27, 2015 (henceforth *Auto* 009), the Constitutional Court studied compliance with *Auto* 092 and determined “a continuation of incidents and risks constituting sexual violence against women in the context of the armed conflict and forced displacement.” Thus, it reiterated that sexual violence is a practice used by all actors, including paramilitary groups, guerrilla groups, state security forces² and criminal gangs. In addition it reiterated that “it was not the product of a casual and isolated disorder by low level combatants within the armed organizations; but on the contrary, it was the product of deliberate incentives and sanctions from the organizations' senior leadership or echelons, directed at all of their combatants.” It was also demonstrated that

1 The Working Group is made up by the *Alianza Iniciativa de Mujeres Colombianas por la Paz* (Alliance Initiative of Colombian Women for Peace), the *Centro de Estudios de Derecho, Justicia y Sociedad* (Center for Law Studies, Justice and Society), the *Colectivo de Abogados José Alvear Restrepo* (José Alvear Restrepo Lawyer's Collective), the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists), the *Consultoría para los Derechos Humanos y el Desplazamiento* (Consultancy for Human Rights and Displacement), the *Corporación Casa de la Mujer* (Corporation Women's House), the *Corporación Sisma Mujer* (Sisma Mujer), the *Liga de Mujeres Desplazadas* (League of Displaced Women), *Mesa de Trabajo Mujer y Conflicto Armado* (Women and Armed Conflict Working Group), the *Observatorio Género, Democracia y Derechos Humanos* (Gender, Democracy and Human Rights Observatory), the *Organización Nacional Indígena de Colombia* (National Indigenous Organization of Colombia) and *Ruta Pacífica de las Mujeres* (Women's Pacific Path). The Working Group is accompanied by observer UN Women. This document and the database which supports the quantitative data was developed by the consultant Liliana Chaparro Moreno, and finalized in December of 2015 with the information available as of October of 2015.

2 Translator's Note: State Security Forces (Fuerza Pública) refers to all of the Colombian security branches, including the Army and Police forces.

displaced women are not only vulnerable to sexual violence by armed actors, but also by unarmed actors, with a high probability of repetition and in connection with the conflict.

Given the armed actors' ongoing regional and social control, the Court established a *constitutional presumption of connection between sexual violence, the armed conflict and displacement*, according to which, in areas where there is a presence of armed actors,

it is reasonable to presume that acts of sexual violence perpetrated there are found to have a direct tie to the armed conflict and therefore, factor into new displacements or the re-victimization of women who have established themselves in a given location after displacement. Thus, competent authorities should apply this presumption in order to prevent, respond to, register, investigate, prosecute and redress acts of sexual violence against women that have occurred in a given location, taking into account the correlation between the armed conflict, the presence of armed actors, displacement and sexual violence.

The Working Group considers that this presumption should serve as an instrument for the adaptation of the entire State apparatus, in the interest of responding to this phenomenon in a coordinated and comprehensive manner.

The Court also determined the “persistence of shortcomings in the care, protection and access to justice for women victims of sexual violence” and declared that all authorities have the responsibility to act with due diligence and to guarantee victims' rights. With this aim, the Court issued orders directed at overcoming impunity in sexual violence cases associated with the armed conflict.³ The present report will focus on this issue.

The present document has five sources: 1. Reports presented before the Constitutional Court by competent entities, which were provided to the Working

³ Among others, the transfer of a new Confidential Annex to the Prosecutor General's Office and the Inspector General's Office, directed at adopting measures to investigate the incidents and monitor the cases. For this purpose the Inspector General's Office should provide a work plan and a comprehensive action plan, and the Prosecutor General's Office should adopt strategies to push the cases forward as well as a protection action plan. In addition, the Court invited the Superior Council on Criminal and Penitentiary Policy (*Consejo Superior de Política Criminal y Penitenciaria*) to adopt directives to guarantee the victims' rights to truth, justice and reparation; the Human Rights Ombudsman (*Defensor del Pueblo*) to design and implement a comprehensive action plan to advise and orient women survivors of sexual violence; the Superior Council of the Judiciary (*Consejo Superior de la Judicatura*) to design and implement a training program and an information system for these cases; the Ministry of Defense to present a report in relation to sexual violence prevention measures within the State Security Forces; and the Unit for Support and Comprehensive Reparations of Victims (UARIV, *Unidad para la Atención y Reparación Integral a las Víctimas*) and the Ministry of Health to work in a coordinated manner to adopt rational criteria for the Program on the Prevention of Sexual Violence against Displaced Woman and Comprehensive Support for Victims.

Group by the High Court.⁴ 2. Official data from State entities which was requested by the Working Group by means of freedom of information requests presented in June of 2015.⁵ 3. Firsthand experience and information from the cases represented or accompanied by the organizations that make up the Working Group. 4. The systematization of each of the sexual violence cases included in the Confidential Annexes, contained in their own database, to which data provided by the Prosecutor General's Office and the Inspector General's Office was added.⁶ 5. Information gathered during meetings between the Prosecutor General's Office, the Inspector General's Office and the Working Group. It is important to note that in the last two years there has been a shift in the disposition of the Prosecutor General's Office to share information in relation to its strategies, which the Working Group evaluates positively.

The Working Group believes that even though the entities that are responsible for overcoming impunity have advanced in promoting measures, they have not been sufficiently effective at guaranteeing rights to truth, justice and reparation for the victims of sexual violence included in the Confidential Annexes. The main cause of this insufficiency is related to a lack of a coordinated intra and inter-institutional strategies that would address, in a coordinated and comprehensive manner, the different obstacle areas identified by the Court, leading to the adoption of a comprehensive state policy of the highest priority, as was ordered by *Auto* 092.

In order to corroborate this conclusion, this document is divided into five parts: obstacles to accessing justice, obstacles in protection, obstacles in relation to health care, institutional obstacles and conclusions and recommendations.

4 The Constitutional Court shared information provided by the Superior Council of the Judiciary, the Human Rights Ombudsman's Office, the Prosecutor General's Office, the Ministries of Defense, Interior and Justice, the Inspector General's Office and the UARIV.

5 The Working Group presented freedom of information requests which were responded to by the Presidential Council for Women's Equity (*Consejería Presidencial para la Equidad de la Mujer*), the Superior Council of the Judiciary, the Human Rights Ombudsman's Office, Prosecutor General's Office, the ministries of Defense, Education, Interior, Justice, Health and the Inspector General's Office. The Working Group also requested information from the UARIV, which failed to respond. It is important to highlight that the majority of these entities provided general information, without detailing their advances to comply with *Autos* 092 and 009, and that although some entities responded, they did not provide relevant information regarding the work of all of their branches, as occurred with the Inspector General's Disciplinary Representative for the Defense of Human Rights (*Procuraduría Delegada Disciplinaria para la Defensa de los Derechos Humanos*).

6 The database takes into account the information provided by the Prosecutor General's Office to the Constitutional Court in January and August of 2009, March of 2013 and March of 2015, and to the Working Group in March and April of 2013 and January, April and July of 2015. In addition, it contemplates the information provided by the Inspector General's Office to the Working Group in November of 2012 and August of 2014, and to the Court in March and April of 2015.



1. OBSTACLES TO ACCESSING JUSTICE

In *Auto* 009, the Constitutional Court established that the nonobservance of a responsibility to act with due diligence in the investigation of sexual violence associated with the armed conflict perpetuates the violation of victims rights, in as much as inaction or deficient actions on this matter send a message of tolerance regarding violence against women and reinforces discriminatory patterns. For that reason, ensuring justice in itself is a prevention strategy for gender violence and, specifically, sexual violence, which continues to be unacknowledged by the State in these cases.

What the Working Group has observed is that in spite of the Court's declarations, there is a continued absence of a coordinated and comprehensive strategy based on the findings of *Autos* 092 and 009, affecting victims' effective access to justice. As will be shown, the Prosecutor General's Office has established a different strategy for each armed actor— which in part responds to the current scenario of the negotiation processes or agreements with these actors— and not an overarching strategy regarding sexual violence in relation to the victims. Therefore, the victim's access to justice is dependent on whom the aggressor was, thus generating a serious differentiation which affects women's right to equality.

To provide more detail in regards to these obstacles, the Working Group will present information on: 1. A lack of guarantees to file complaints. 2. The persistence of impunity. 3. The absence of intersectional approaches. 4. A lack of clear procedures (*rutas*). 5. The application of the constitutional presumption of connection. 6. Legal accompaniment. 7. Reparation.

1. A LACK OF GUARANTEES TO FILE COMPLAINTS

In the *Auto* 009, the Constitutional Court found there were ongoing obstacles to file complaints. These obstacles were associated with women's distrust in the State, shame, a lack of knowledge regarding procedures, weak or absent institutions, the influence of gender stereotypes, the presence of armed actors, and difficulty for women to exercise their rights, among others. When questioning the Prosecutor General's Office on the measures promoted to overcome these obstacles, the investigative body told the Working Group that, with the aim of facilitating safe channels to access justice, they have held sessions to receive the declarations and complaints of women victims/survivors, by means of which they look to avoid a second victimization.¹ Between July of 2014 and March of 2015, 12 of these sessions were held, during which a total of 695 denunciations were filed (223 in the ordinary justice system and 472 in the transitional justice system).² In addition, they reported that the Transitional Justice Office (*Dirección de Justicia Transicional*) participated in a total of 36 sessions

¹ Office of the Prosecutor General of the Nation, in response to freedom of information request, file number 20159430000541, July 23, 2015.

² Although the Prosecutor General's Office indicates that “[b]etween July of 2013 and December of 2014 nine sessions were held to attend to victims of gender based violence”, the table that they presented provides information on 12 sessions. For that reason the information is taken from the table.

for attention to victims of gender-based violence between May 2013 and June 2015, during which a total of 1,689 victims were attended to.

It is important that the Prosecutor General's Office establish strategies to make filing a complaint easier for victims. However, the Working Group has insufficient evidence to know if, during a daylong session when on some occasions more than 50 victims are attended to, it is possible to guarantee mechanisms for each woman to safeguard her rights, be adequately heard out, and receive sufficient orientation. Especially when the session's objective is such that "with a single, one time only procedure they can make known before the authorities the incidents they have faced, whether that be to initiate a criminal procedure, initiate the process for administrative reparation, adopt protection measures or initiate a psycho-social support process".³ In addition, the Working Group does not have clarity on the level of comprehensive accompaniment after a complaint has been filed, so as to guarantee an adequate follow-up and reparation process.

Regardless, given the objective of these sessions they will not culminate after one interview. That is to say, they should initiate criminal procedures and reparation measures because, on the contrary, they would generate expectations among the victims that the State will not fulfill, in spite of its obligation to investigate. When reviewing the database provided by the Prosecutor General's Office to the Court in fulfillment of *Auto* 009, of the 267 cases that were reported as processed during the en-masse denouncement sessions⁴ the Prosecutor General's Office did not report on the procedural status of 206 cases (77%) and there was not even a file number in 59 cases (22%). Two of the sessions reported by organizations which referred cases to the Prosecutor General's Office and the Court are not found in the Prosecutor General's report,⁵ and the two that are included do not report the corresponding numbers of victims who received services.⁶ In a report sent by one of the organizations, most cases do not have information regarding the occurrence, place, date or perpetrator. This is information that must be filled out completely by the Prosecutor General's Office, given its presence in these sessions.

The Working Group considers that these sessions cannot be simply used for victims to make denouncements, without also producing an institutional response at the highest level

3 Office of the Prosecutor General of the Nation, in response to freedom of information request, file number 20159430000541, July 23, 2015.

4 Even though the women's organization that reported the cases of the en-masse sessions indicated a total of 262 incidents, the Confidential Annex mentions 267 in this category, and for that reason this number is assumed.

5 This is in relation to sessions carried out in Santa Marta from August 30th to September 1st, 2013 and in Valledupar from February 13th to 15th, 2014. These sessions do not appear in response to the freedom of information request. Prosecutor General's Office, file number 20159430000541, July 23, 2015.

6 During the Sincelejo session from October 1st to 4th of 2013, the organization reported that a total of 51 people attended, whereas the Prosecutor General's Office spoke of 58. In the La Cocha (Nariño) session held from December 11th to 14th, 2013, the organization reports that 108 people were served, whereas the Prosecutor General's Office registered 81.

and without the Prosecutor General's Office having clear information on the incidents and victims. *The implementation of these sessions demonstrates that there is not a unified strategy to investigate sexual violence associated with the armed conflict. Instead, there are uncoordinated and isolated actions which do not result in the promotion of procedures and advances to overcome impunity.*

Moreover, the Working Group believes that these massive denunciation sessions are insufficient to overcome all the obstacles that prevent women from filing a complaint. In relation to the other scenarios indicated by the Court, there is no specific information on the strategies promoted by the Prosecutor General's Office. It is not clear what mechanisms are available, in the long term and with sustainable methods, for victims who do not participate in these (isolated and sporadic) sessions en-masse to allow women to file complaints, be protected, represented, redressed, and have their health situations addressed. It is neither known what the Prosecutor General's Office accountability strategies are for the women who, in an act of trust in the State, have turned to the justice system.

Given this panorama, the Working Group will request that the Court call upon the Prosecutor General's Office to urgently adopt clear and sustainable measures and strategies in response to each of the obstacles indicated in the *Autos*. The measures and strategies must allow the victims to file complaints and ensure that in correlation to the denunciations there is an articulated and comprehensive response at the highest level with effective monitoring from the Prosecutor General's Office. The measures should not conclude with the issuance of regulations; instead they must be verified through an effective enjoyment of rights.

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Obstacles to
Accessing Justice

2. PERSISTENCE OF IMPUNITY

More than seven years since *Auto* 092 was issued, the cases of sexual violence associated with the armed conflict included by the Constitutional Court in the Confidential Annexes remain in *almost absolute impunity*. Despite strategies promoted by the Prosecutor General's Office, there has been no change in the situation.

The Working Group established that the 627 cases reported by the Court in the annexes to *Autos* 092 and 009 indicate the occurrence of 634 incidents⁷ of sexual or gender violence that affected at least 768 victims, as is detailed in table 1.

Of the 553 incidents that have an exact year reported, the majority occurred between 2000 and 2006⁸ (331 cases, or 59.8%). 2004 had the highest level of occurrence (66 incidents), with a subsequent reduction until 2011, when another peak was registered. The 331

⁷ Several cases submitted by the Constitutional Court refer to more than one victimizing incident against one or several women; for that reason, when the Working Group speaks of an incident it refers to each victimizing incident and not the cases as they were submitted by the Court. It is important to take into account that, in the Annex in *Auto* 009, the Court once again included four cases (56, 82, 108 and 110) which had already been reported in the Annex of *Auto* 092. Nevertheless, as they are referred to in different *Autos*, the Working Group has included them separately.

⁸ Four cases report incidents which occurred in periods of years, for that reason they are not included in graph 1.

TABLE 1 DISTRIBUTION OF CASES, INCIDENTS AND VICTIMS BY ANNEX

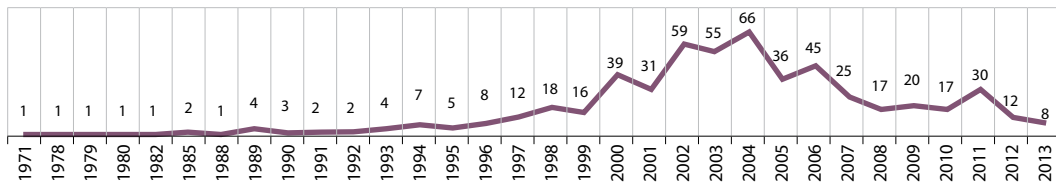
Auto	Reported Cases	Events	Victims
Auto 092	183*	178**	270
Auto 009	444	456	498
Total	627	634	768

* As was indicated by the Prosecutor General's Office, the Working Group found that seven cases included in the Confidential Annex of *Auto* 092 refer to the same incidents. The Inspector General's Office only reported three duplicated cases.

** In cases 87 and 179 of *Auto* 092, the Court included two events as a single case. Thus, the Working Group considers that there are not 176 incidents, as indicated by the Prosecutor General's Office, but 178.

SOURCE: Developed by the Working Group based on the systematization of the narratives from the Annexes in *Autos* 092 and 009.

GRAPH 1 DISTRIBUTION OF INCIDENTS BY YEAR



SOURCE: Developed by the Working Group based on the systematization of the narratives from the Annexes in *Autos* 092 and 009.

cases attribute responsibility to the following groups, according to information from both confidential annexes: paramilitary groups, 96; state security forces, 33; guerrilla, 29; state security forces and paramilitary groups, 6; unidentified armed group, 17; civilian, 8; criminal gangs, 4; undetermined perpetrator, 138.

Based on this information, the Working Group will present quantitative and qualitative data which hopefully will be useful to the different State entities and offer a more detailed panorama of the impunity in sexual violence associated with the armed conflict in Colombia. The cases in the Confidential Annexes are an example of this situation.

2.1. Information on General Procedural Status

To present information on procedural status it is important to differentiate between the cases provided in April 2008 (*Auto* 092) and those from January 2015 (*Auto* 009); the Working Group understands that the level of enforceability for a judicial response is greater in the first case, considering that only recently the Court sent information on the second *Auto* to the Prosecutor General's Office. Table 2 presents information on the procedural status disaggregated by *Auto*.

Procedural Status*	According to the Auto				Total	
	Auto 092		Auto 009		Total	%
Preliminary inquiry/investigation	40	22.5%	97	21.3%	137	21.6
Previous and dismissed investigation**	1	0.6%	0	-	1	0.2
Arraignment	20	11.2%	2	0.4%	22	3.5
Trial	3	1.7%	1	0.2%	4	0.6
Archived/dismitted	73	41%	7	1.5%	80	12.6
Preclusion	12	6.7%	0	-	12	1.9
Ruling	23	12.9%	4	0.9%	27	4.3
Ruling without report	0	-	4	0.9%	4	0.6
Bacrim (Criminal Gangs)	0	-	3	-	-	-
Civil	0	-	1	-	-	-
Acquittal	2	1.1%	0	-	2	0.3
State Security Forces	2	-	0	-	-	-
Conviction other than GBV	7	3.9%	0	-	7	1.1
Guerrilla	2	-	0	-	-	-
Paramilitary	5	-	0	-	-	-
Conviction of civilians for GBV	6	3.4%	0	-	6	0.9
Conviction of armed actors for GBV	8	4.5%	0	-	8	1.3
State Security Forces	5	2.8%	0	-	-	-
Paramilitary	3	1.7%	0	-	-	-
Prosecutor General's Office did not include this case	2	1.1%	17	3.7%	19	3
"There is no denouncement"	0	-	1	0.2%	1	0.2
No report	3	1.7%	327	71.7%	330	52.1
Special Indigenous Jurisdiction	1	0.6%	0	-	1	0.2
General Total	178	28.1%	456	71.9%	634	100

* The procedural statuses that appear in this table condense the information from the different stages in the criminal procedures from Law 600/00 and Law 906/04, grouped according to their commonalities.

** In case 90 of the April 2015 diagnostic of Auto 092, the Prosecutor General's Office reported on two procedures with two different file numbers and two different trial prosecutors (fiscalías de conocimiento). In one case, a prior investigation is reported and in the other, a dismissal. The Working Group maintains this classification, but it believes that the Prosecutor General's Office should be more precise in regards to procedural statuses in relation to sexual violence investigations.

Source: Developed by the Working Group based on information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

As can be observed, the sum of information on impunity is regrettable. *Of the 634 incidents of sexual violence included in the Confidential Annexes, only 14 cases have concluded in sex crime convictions (6 civilians and 8 armed actors),⁹ that is to say, 2.2% of 634 total incidents and*

⁹ Three of the rulings against armed actors were emitted before Auto 092 (cases 54, 110 and 169).

7.8% of the 178 incidents in *Auto 092*. Additionally, there have been seven convictions that did not include sexual violence, five for paramilitary groups and two in relation to the guerilla; two acquittals in favor of State Security Forces, and four more rulings (three on criminal gangs and one civilian), where there is no information [on sexual violence].

This means that the level of impunity surpasses 92% in the cases of Auto 092 and 97% in relation to all of the cases reported by the Constitutional Court in both Autos, in which a response from the highest authorities was to be expected.

In relation to the cases in *Auto 092*, the Working Group wants to highlight that 41% have been archived due to a dismissal decision (*decisión inhibitoria*) and 6.7% precluded, which means that currently 47.7% of the cases are not being investigated. In addition, 41 cases (23.1%) are in a preliminary investigation or inquiry phase, only 20 cases (11.2%) are in the arraignment stage and three (1.7%) in the trial stage. For the Working Group it is not clear if these investigations are moving forward for sexual crimes or other crimes. It is extremely serious that this panorama does not improve over time.

What has occurred with *Auto 009* throughout 2015 is equally discouraging. Of the 456 total submitted incidents, the Prosecutor General's Office, after six months¹⁰ stopped reporting on the procedural status of 327 cases (71.7%),¹¹ seven (1.5%) were archived and only 97 (21.3%) are under investigation or preliminary investigation. This lack of information on a majority of cases and the archiving of some processes leads the Working Group to think that *the Prosecutor General's Office is, in practice, abandoning its duty to investigate in 73.2% of the cases submitted by the Court in Auto 009.*

The high percentage of cases that have been archived or are in a preliminary stage of investigation without presenting any advances during many years is cause for serious concern for the Working Group. As will be seen throughout this report, there is no clear strategy for the review of decisions to archive cases or to advance in an accelerated manner in the investigation of these incidents. Although the Working Group has been informed on the creation of a Subcommittee to promote these cases (see Chapter IV, numeral 5 on the Prosecutor General's Office's strategy) there is no transparency regarding how it will respond to these incidents, or on what timeline. For that reason, the Working Group requests that the Court reiterate the orders found in *Auto 009*, to urge the Prosecutor General's Office to design and implement a *coordinated, comprehensive and accelerated plan* which contains strategies to re-

¹⁰ *Auto 009* was issued on January 27, 2015. The report from the Prosecutor General's Office to the Constitutional Court regarding the cases was dated March 24, 2015 and the database was given to the Working Group on July 23rd of that same year. This latest report contains the same information that was provided to the Court.

¹¹ It is important to clarify that the Prosecutor General's Office failed to fully inform, in a report given to the Constitutional Court where it had to demonstrate its compliance of the *Auto's* orders. Of the 327 cases on which no information is reported, 206 were responded to during mass denunciation sessions with the presence of the Prosecutor General's Office; in another 23 cases, the victims already had denounced the incidents. That means that 229 cases had already been denounced and only 98 could have required the initiation of a procedure.

activate the archived cases and, in addition, establishes clear mechanisms for the accelerated promotion of the cases currently under investigation or in a preliminary investigation phase.

This panorama is even more alarming when the information is reviewed taking into account the armed actor involved and factual patterns of sexual violence, which will be addressed in the following section.

2.2. Information on Procedural Status according to Perpetrator

According to the information reported in the cases provided by the Court, of 634 incidents, in 45% a perpetrator has not been determined; 20.5% were perpetrated by paramilitary groups; 9% by guerrillas; 6.9% by members of State Security Forces; 6.3% by members of criminal gangs¹²; 5.5% by an unidentified armed group; 1.7% represented collusion between State Security Forces and paramilitary groups (one of the incidents was committed in collusion with a criminal gang); and 5% by civilians.

PERPETRATOR DISTRIBUTION ACCORDING TO ANNEX

TABLE 3

Perpetrator	Auto 092	Auto 009	General total	%
Paramilitary	93	37	130	20.5
Guerrilla	15	42	57	9
State Security Forces	40	4	44	6.9
Criminal Gangs	5	35	40	6.3
Unidentified Armed Group	3	32	35	5.5
Civilian	13	19	32	5
State Security Forces -Paramilitary/ Bacrim	8	3	11	1.7
To be determined	1	284	285	45
General total	178	456	634	100

SOURCE: Developed by the Working Group based on the systematization of the narratives from the Annexes in Autos 092 and 009.

As can be observed in the following section, the response from the Prosecutor General’s Office varies according to the perpetrator. For example, the percentage of archived and precluded cases benefiting the State Security Forces and their joint operations with paramilitary groups is greater than that of other actors. The percentage of active cases in the stage of investigation or inquiry that implicate guerrilla groups and criminal gangs is greater than those involving other groups.

¹² Criminal gangs and their members are considered, by some State entities, to be organized armed groups or those who continued with criminal actions after the demobilization process of Law 975-2005. For characterization purposes, only case accounts are considered, given that the Prosecutor General’s Office designates perpetrators whose victims have indicated as being paramilitary groups as criminal gangs.

State Security Forces

The Constitutional Court indicated in *Auto* 009 that the State Security Forces had used the practice of sexual violence during the war “in relation to: (i) alliances with paramilitary groups, (ii) a stigmatization of the population as guerrillas and, (iii) making victims defenseless through the use of weapons.”

The annexes included a total of 44 cases in which the perpetrators of sexual crimes were State Security agents. Of these, five (11.3%) have a guilty verdict for sexual crimes, two were acquitted (4.5%), nine are in a phase of preliminary inquiry or investigation (20.5%), two are on trial (4.5%) and 21 are archived (47.8%)— 16 are archived through a dismissal of the investigation (*resolución inhibitoria*) (36.4%) and five with the preclusion of the investigation (11.4%). In addition, information was not reported in four cases (9.1%) and the victimizing incident was not included in one case (2.3%).

TABLE 4 PROCEDURAL STATUS OF STATE SECURITY FORCE CASES

Procedural Stage	<i>Auto</i> 092	%	<i>Auto</i> 009	%	Total	%
Ruling	7	17.5	0	-	7	15.9
Acquittal	2	-	0	-	-	4.5
Conviction for sexual violence	5	-	0	-	-	11.3
Preliminary inquiry/investigation	9	22.5	0	-	9	20.5
Arraignment	2	5.0	0	-	2	4.5
Archived/dismissed	16	40.0	0	-	16	36.4
Preclusion	5	12.5	0	-	5	11.4
No report	1	2.5	3	75.0	4	9.1
Prosecutor General's Office did not include this case	0	-	1	25.0	1	2.3
Total	40	-	4	-	44	-

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (*Auto* 009) and the annex of its April 2015 diagnostic of *Auto* 092.

According to the investigation strategy presented by the Prosecutor General's Office in 2015, State Security Force cases will remain in the local Prosecutor's Office, appealing to a regional criterion¹³. Due to the serious nature of these incidents and the implicated perpetrators, the Working Group believes that specialized prosecutors should be responsible for these cases within the strategic framework (such as the one proposed for guerilla cases— see page 22) and advance towards a comprehensive and uniform strategy which is based on the standards established in the *Autos*. This would allow for greater resources, trained personnel, and access to protection measures for public servants and victims, as well as superior elements to

¹³ Translator's Note: A regional criterion or *criterio de territorialidad* is a regional focus based on the decentralization of the national entities and centralized power.

build contextualized investigations based victimization patterns and the principle of victims' equality. Keeping these investigations in Prosecutor Offices in conflict zones without a coordinated strategy, without resources and/or where the state agents themselves can influence decisions, is condemning these cases to impunity. This is the same strategy that has been in place for the last several years and has been demonstrated to be ineffective.

The specific practices identified by the Working Group are examples of situations that impede advances in cases involving state security agents.¹⁴ It should be noted that three massacres perpetrated by paramilitaries with the support of the State Security Forces (Chengue, Tigre and Cabuya) have been archived without further information. In relation to violations carried out in the context of military operatives, five were archived without explaining the grounds. In two cases the responsibility to investigate was delegated to the victims, and two more cases were archived due to the preclusion of the investigation— one, without information and the other, apparently, was initially investigated in the military jurisdiction and dismissed because it did not find signs of rape on the victim's corpse. Also, it should be noted that in at least two cases the State Security Forces have participated in attacks against female leaders. These cases remain in impunity. One such case involved an extrajudicial killing where they wanted to dress a girl as a guerrilla member. This case has been archived without further information. Another such case had the investigation precluded without taking into account all the case evidence and without investigating the acts carried out against one of the victims.

The State Security Forces have benefited from acquittals in cases of sexual violence without the Prosecutor General's Office notifying of the grounds for those decisions. One case, a serious incident of sexual violence against at least 20 indigenous women, is currently "misplaced" and, in at least six cases, the Prosecutor General's Office has decided to archive the cases without reporting the grounds for that decision. In four cases, the Prosecutor General's Office decided to archive investigations that implicated State Security agents, citing that they were abstract incidents or that the victims did not cooperate in finding the responsible parties. And in three cases there were decisions to preclude the investigation, in apparent contradiction to the responsibility to investigate. All these elements will be looked at in more detail in the following sections of this chapter.

In addition to criminal impunity, the Working Group has noted that the Inspector General's Office has not shown an interest in investigating disciplinary actions in relation to incidents which involve State agents. When inquiring on disciplinary advances¹⁵ in 34 cases

¹⁴ For example, the Chengue, Tigre and Cabuya cases (cases 157, 162 and 167); abuses carried out in the framework of military operatives that were archived without information (cases 73, 87, 116, 139 and 163); burden of the investigation lies on the victims (cases 78, 118) and a decision to preclude the investigation (cases 53 and 81); participation of the State Security Forces in attacks against female leaders (cases 168 and 144); acquittal ruling (cases 80 and 176); lost cases (case 56); decision to archive the case without justification (cases 7, 17, 18, 158, 181, 183); file that alleges that they were abstract incidents (cases 84, 107) or that the victims did not cooperate (cases 45, 112); decision to preclude the investigation; contrary to the responsibility to investigate (cases 52, 69 and 136).

¹⁵ This information was provided by the Inspector General's Disciplinary Representative for the Defense of Hu-

against State Security Forces, the Inspector General's Office reported that its information system (SIM) did not reflect a change in 24 cases (70.5%). This is extremely serious given that from the response it can be seen that in more than 70% of these incidents a disciplinary investigation has not even been initiated. In addition, in two cases it was indicated that the data was insufficient and in only eight cases was the existence of a file number indicated. Of these, two cases were archived (no information regarding the grounds is available); in two other cases disciplinary investigations were opened (there is no information as to whether or not a substantive decision will be made); one case was sent to the Prosecutor General's Office; in two other cases it was not indicated if a decision had been made; and in another it was indicated that the investigation was sent to the National Army, as the allegedly competent authority. It is clear that the Inspector General's Office has not taken seriously its responsibility to investigate and determine potential disciplinary responsibilities. There is not a single sanction against members of the State Security Forces complicit in incidents of sexual violence.

The Working Group will request that the Court urge the Prosecutor General's Office—as part of an investigation strategy based on a criteria of investigating patterns of macro-criminality and not on regional authority—to reassign cases regarding the State Security Forces to specialized public prosecutors, guide investigations based on a contextual analysis, and adopt all measures which ensure that the current level of impunity will be overcome and not continue to increase. It will also request that the Court urge the Inspector General's Office to urgently and periodically send a detailed report on the disciplinary investigations promoted to investigate State Security agents involved in cases of sexual violence, the strategies that it will implement to promote these cases and to initiate those cases that have yet to be investigated.

Actions of Collusion Between State Security Forces and Paramilitary Groups

The Annexes included a total of 11 cases perpetrated by State Security Forces in collusion with paramilitary groups. Not one of these has seen a guilty verdict, two are in the preliminary inquiry or investigation phase (18.2%), one on trial (9.1%) and six are archived (54.5%)—of these, five due to a dismissal of the investigation (*resolución inhibitoria*) (45.5%) and one based on the preclusion of the investigation (9%). In two cases no information was reported (18.2%).

That only three cases of collusion between State Security Forces and paramilitary groups are being investigated is extremely serious, given the magnitude of these actions and the potential State responsibility in these incidents. For that reason, it is urgent that the Prosecutor General's Office adopt immediate measures to avoid this situation, review the five cases that are archived and the case in which the investigation has been precluded, and make significant advances to determine individual and institutional responsibilities. In this regard, the Working Group will ask the Court that it request a detailed report from the Prosecutor General's

man Rights to *Sisma Mujer* in response to a freedom of information request, file 710, February 27, 2014.

PROCEDURAL STATUS OF CASES OF COLLUSION
BETWEEN STATE SECURITY FORCES & PARAMILITARY GROUPS

TABLE 5

Procedural Stage	Auto 092	%	Auto 009	%	Total	%
Preliminary inquiry/investigation	1	12.5	1	33.3	2	18.2
Arraignment	1	12.5	0	-	1	9.1
Archived/dismitted	5	62.5	0	-	5	45.5
Preclusion	1	12.5	0	-	1	9.1
No report	0	-	2	66.7	2	18.2
Total	8		3		11	

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

Office which provides substantive information on the decisions made in these cases and the measures to overcome impunity.

Paramilitary Groups and Criminal Gangs (Bacrim)

The Annexes included a total of 170 cases where the perpetrators of sexual crimes were paramilitary groups or criminal gangs, of which 11 have a ruling (6.5%): three convictions for sexual crimes (1.7%), five convictions for crimes other than sexual crimes (2.9%) and in three other cases it was not possible to establish if there was a conviction or acquittal, nor for which crime (1.7%). In addition, 59 cases are in the preliminary inquiry or investigation phase (34.7%), 17 in pre-trial (10%), two on trial (1.2%) and 42 have been archived (24.7%)—of these, 39 due to the dismissal of the investigation (*resolución inhibitoria*) (22.9%) and three due to the preclusion of the investigation (1.8%). In 35 cases (20.6%), the Prosecutor General's Office did not report on the investigative advances and in two cases the incidents were not included in the databases (1.2%).

In these cases coordinated strategies have not been adopted, independent of the perpetrator. In cases perpetrated by criminal gangs, as well as by State Security Forces, the Prosecutor General's Office indicated that as a part of its strategy the cases will be assigned by a regional criterion, which is worrisome given the expansion and use of sexual violence and human trafficking with the aim of sexual slavery on a massive scale.¹⁶ The Working Group reiterates the importance of developing a comprehensive strategy which equally incorporates all perpetrators and, hence, will ask that the Court request disclosure of the Prosecutor General's Office's investigative strategy for all perpetrators to ensure that the victims' right to equal access to justice is not violated. In the specific case of criminal gangs, the Working

¹⁶ See Human Rights Ombudsman's Office, "Defensoría advierte presencia de 'bandas criminales' en 168 municipios de 27 departamentos," news article, November 4, 2014. Downloaded at: [http://www.defensoria.gov.co/es/nube/noticias/2631/Defensor%C3%ADa-advierte-presencia-de- "band-criminals" - en-168-municipios-de-27-departamentos-bandas-criminales-bacrim-Nariño-derechos-humanos-SAT-Clan-Usuga-Conflicto-armado-Derech](http://www.defensoria.gov.co/es/nube/noticias/2631/Defensor%C3%ADa-advierte-presencia-de-).

TABLE 6 PROCEDURAL STATUS OF PARAMILITARY GROUP AND CRIMINAL GANG CASES

Procedural Stage	Auto 092	%	Auto 009	%	Total	%
Paramilitaries						
Ruling	8	8.6	0	-	8	6.2
Conviction for crimes other than sexual violence	5	-	0	-	-	-
Conviction for sexual violence	3	-	0	-	-	-
Preliminary inquiry/investigation	25	26.9	15	40.5	40	30.8
Arrestment	17	18.3	0	-	17	13.1
Archived/dismitted	36	38.7	1	2.7	37	28.5
Preclusion	2	2.2	0	-	2	1.5
Trial	2	2.2	0	-	2	1.5
Special Indigenous Jurisdiction	1	1.1	0	-	1	0.8
No report	1	1.1	21	56.8	22	16.9
Prosecutor General's Office did not include this case	1	1.1	0	-	1	0.8
Total Paramilitaries	93		37		130	
Bacrim (Criminal Gangs)						
Ruling	0	-	3	8.6	3	7.5
No reports, neither on the crime nor whether there was a conviction or acquittal	0	-	3	-	-	-
Preliminary inquiry/investigation	2	40	17	48.6	19	47.5
Archived/dismitted	2	40	0	-	2	5
Preclusion	1	20	0	-	1	2.5
There is no denouncement	0	-	1	2.9	1	2.5
No report	0	-	13	37.1	13	32.5
Prosecutor General's Office did not include this case	0	-	1	2.9	1	2.5
Total Bacrim	5		35		40	

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (*Auto 009*) and the annex of its April 2015 diagnostic of *Auto 092*.

Group will request that the Court urge the Prosecutor General's Office, as a part of its investigative strategy for criminal gangs, to reassign cases to specialized public prosecutors under the criterion of investigating patterns of macro-criminality and not regional authority. Also, to guide the investigations based on a contextual analysis and adopt all measures to ensure that the current level of impunity will be overcome and not continue to increase.

Guerrilla Groups

The Confidential Annexes included a total of 57 cases in which the perpetrators of sexual crimes were guerrilla groups, of which zero have a guilty verdict for sexual crimes, two saw a conviction for crimes other than sexual crimes (3.5%), 22 are in the preliminary inquiry

or investigation phase (38.6%), one on trial (1.8%) and 13 are archived (22.9%)—of these, 12 due to a dismissal of the investigation (*resolución inhibitoria*) (21.1%) and one due to a preclusion of the investigation (1.8%). 17 cases do not have information on the procedural status (29.8%) and two cases are not included in the databases (3.5%).

PROCEDURAL STATUS OF GUERRILLA CASES

TABLE 7

Procedural Stage	Auto 092	%	Auto 009	%	Total	%
Ruling	2	13.3	0	-	2	3.5
Conviction for crimes other than sexual violence	2	-	-	-	-	-
Preliminary inquiry/investigation	2	13.3	20	47.6	22	38.6
Trial	0	-	1	2.4	1	1.8
Archived/dissmised	10	66.7	2	4.8	12	21.1
Preclusion	1	6.7	0	-	1	1.8
No report	0	-	17	40.5	17	29.8
Prosecutor General's Office did not include this case	0	-	2	4.8	2	3.5
Total	15		42		57	

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

The Working Group highlights that in its new strategy, presented in June of 2015, the Prosecutor General decided to remit these cases to the National Office on Analysis and Context as this will permit associations between cases and an investigation to be made based on the characterization of patterns of victimization. This strategy should be extended to all cases included in the Annexes, given that there is no explanation as to why priority is given to these incidents and not to all of the cases. The Working Group warns that even though it is always desirable to strengthen prosecutions in sexual violence crimes, when carried out partially the victims of sexual violence are used to strengthen the state position within the context of a negotiation process [with the Guerrillas].

Unidentified Armed Groups

The Annexes included a total of 35 cases where the perpetrator of sexual crimes is an unidentified group in the armed conflict. None of these cases have a ruling, eight are in the preliminary inquiry or investigation phase (22.9%), two have been archived (5.7%)—in one such case the investigation was dismissed (*resolución inhibitoria*) (2.9%) and in another there was a preclusion of the investigation (2.9%). 21 cases do not report a procedural status (60%) and four are not included in the databases (11.4%).

The Working Group urges the Prosecutor General's Office to optimize its inquiries into these incidents, given that the cases involve the responsibility of armed actors and their

TABLE 8 PROCEDURAL STATUS UNIDENTIFIED ARMED GROUP CASES

Procedural Stage	Auto 092	%	Auto 009	%	Total	%
Preliminary inquiry/investigation	0	-	8	25.0	8	22.9
Archived/dismissed	1	33.3	0	-	1	2.9
Preclusion	1	33.3	0	-	1	2.9
No report	1	33.3	20	62.5	21	60
Prosecutor General's Office did not include this case	0	-	4	12.5	4	11.4
Total	3		32		35	

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

inclusion to the strategic association of cases is urgent. It is very worrisome that in 25 of the 35 cases, the Prosecutor General's Office did not provide information or does not include the cases in its databases.

Civilians

The Annexes included a total of 32 cases in which the perpetrator of sexual crimes, usually against a displaced woman or girl, is a civilian. Of the 32 cases, seven have a ruling (21.9%), of which six are convictions (18.7%), in one case it is not known whether or not it is a conviction (3.1%). Five cases are in the preliminary inquiry or investigation phase (15.6%), one case is on trial (3.1%), and four have been archived (12.5%)—of these, three cases have been dismissed (*resolución inhibitoria*) (9.4%) and one had a precluded investigation (3.1%). There is no information on the procedural status of eight cases and seven cases (21.9%) are not included in their databases.

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Access to justice
for women victims
of sexual violence

TABLE 9 PROCEDURAL STATUS OF CASES OF CIVILIANS AGAINST DISPLACED WOMEN

	Auto 092	%	Auto 009	%	Total	%
Ruling	6	46.2	1	5.3	7	21.9
Guilty verdict	6		-	-	-	-
No information	-	-	1	-	-	-
Indagación/investigación preliminar	1	7.7	4	21.1	5	15.6
Juicio	1	7.7	0	-	1	3.1
Archivo/inhibitorio	3	23.1	0	-	3	9.4
Preclusion	1	7.7	0	-	1	3.1
No report	0	-	8	42.1	8	25
Prosecutor General's Office did not include this case	1	7.7	6	31.6	7	21.9
Total	13		19		32	

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

It is concerning that the Prosecutor General's Office has not included seven cases (21.9%) in its reports and that in eight cases (25%) there is no indication of the current procedural status. The Working Group has observed an ongoing reluctance from the Prosecutor General's Office to recognize these cases as incidents associated with the armed conflict, even though the Court has been emphatic in affirming that one of the gender facets of displacement is the risk faced by women and children to become victims of human trafficking, forced prostitution and acts of sexual violence, and that these incidents are connected to the armed conflict.

In Ruling T-595-2013, the Constitutional Court studied the situation of a young displaced woman who was a victim of sexual violence on two occasions by different neighbors in her neighborhood, which is settled by a displaced population (case 33 of the Annex of *Auto 092*). The Court indicated:

[T]he sexual crimes against displaced women are connected directly or indirectly to forced displacement itself or to the condition of being a victim of displacement, since sexual violence against displaced women is used either as a weapon or as a systematic military strategy in connection with forced displacement, or the very condition of being a victim of forced displacement creates a situation where women are subject to an extremely high degree of vulnerability to re-victimization by means of sexual crimes.

As with the other cases, the Working Group will request that the Court urge the Prosecutor General's Office, as a part of its investigative strategy on civilians, to reassign the cases to specialized public prosecutors under the criterion of investigating patterns of association; to guide the investigations based on a contextual analysis and under the hypothesis of connection to the armed conflict; and to adopt all necessary measures to ensure that the current level of impunity is overcome and does not continue to worsen. In addition, the Working Group will ask the Constitutional Court to establish a presumption of connection between sexual violence and forced displacement in cases of displaced women who are victims of sexual violence by civilians. This means that the investigations are carried out under the presumption of connection to the armed conflict and that the women will be attended based on this gender criterion.

Author to be Determined

The Annexes include a total of 285 cases where, based on the narrative information, it is not possible to establish the incidents' perpetrator. Only 32 are in the preliminary inquiry or investigation phase (11.2%), four have been archived (1.4%), one is simultaneously reported to be in a preliminary investigation stage and to be an archived case (0.4%), and two are in arraignment (0.7%). In 243 cases (85.3%), the Prosecutor General's Office did not report any procedural status and three cases (1.1%) are not included in its databases.

It is important to highlight that of the 285 cases in which the narrative information either does not establish the perpetrator and/or it is not clear if the incident was committed

TABLE 10 PROCEDURAL STATUS OF PERPETRATOR TO BE DETERMINED CASES

Procedural Status	Auto 092	%	Auto 009	%	Total	%
Preliminary inquiry/investigation	0	-	32	11.3	32	11.2
Archived/dismissed	0	-	4	1.4	4	1.4
Previous/dismissed investigation**	1	100	0	-	1	0.4
Arraignment	0	-	2	0.7	2	0.7
No report	0	-	243	85.6	243	85.3
Prosecutor General's Office did not include this case	0	-	3	1.1	3	1.1
General Total	1		284		285	

SOURCE: Developed by the Working Group based on the systematization of the annexes narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (*Auto 009*) and the annex of its April 2015 diagnostic of *Auto 092*.

by armed actors, the Prosecutor General's Office attributes a perpetrator in 90 incidents in its databases, 41 to the guerrilla, one to State Security Forces, one to paramilitary/guerrilla groups and four to individuals. The Working Group finds the attribution of these 137 incidents to specific perpetrators to be strange, as the Prosecutor General's Office does not explain the grounds for these designations nor by what criteria this distribution was carried out. In addition, in 145 cases the information is yet to be determined and three cases are not included.¹⁷

In addition to the aforementioned unjustified allocations, it is worrisome that in more than 85% of the 285 incidents which do not have an established perpetrator in the Annexes' narrative information, the Prosecutor General's Office does not report a procedural status, which would make it appear as if they are not being investigated.

Given this panorama, the Working Group will ask that the Court urge the Prosecutor General's Office to expedite the identification of the responsible parties in these incidents, to inform under what criteria it has attributed responsibility in the 137 aforementioned cases and for the Prosecutor General's Office to establish a procedure with objective criteria to assign responsibility within the framework of its strategy in response to the *Autos*, and permitting the Working Group's participation.

2.3. Procedural Status Information According to Factual Patterns of Sexual Violence

In *Auto 092*, the Constitutional Court included a catalogue of sexual crimes grouped into what it called "factual patterns of sexual violence." The Working Group has used this with the aim of presenting substantive information on the cases' procedural status.

¹⁷ This variation is shown when contrasting the database provided by the Prosecutor General's Office to the Court in March of 2015 with the narrative information from the Annexes. The Working Group does not have any explanation for this allocation; nevertheless, it is pertinent to look into this because if this distribution is true, the number of cases attributed to armed actors would be greater. For the effects of this report only the information which the Working Group has been able to verify from the data extracted from the narrative information provided by the Constitutional Court in the Confidential Annexes will be taken into account.

In the cases where it was possible to identify a factual pattern (213 cases),¹⁸ the majority of the incidents were *deliberate acts of sexual violence committed outside the framework of major violent actions, and instead were individual and premeditated acts* in the context of the armed conflict (45.5%). These are followed by: acts perpetrated in incidents of a greater magnitude such as massacres and military operatives (15%); with the purpose of obtaining sexual pleasure within the context of the armed conflict (10.8%); acts against female leaders or their family members (10.3%); cases of sexual slavery and forced prostitution (7.5%); acts against women accused of breaking social codes (3.8%); acts against women accused of a familial or

FACTUAL PATTERNS OF SEXUAL VIOLENCE

TABLE 11

Factual Patterns of Sexual Violence	Auto 092	Auto 009	General total	%
Deliberate, individual and premeditated acts	33	64	97	45.5
As a way to advance control over territory and resources	4	3	7	
As a way to intimidate the population	12	28	40	
To obtain information	1	1	2	
Due to basic ferocity	3	27	30	
Retaliation against enemy collaborators (real or perceived)	4	1	5	
Retaliation against females who resist having a relationship	2	2	4	
Retaliation for being accused of being a collaborator or informant	7	2	9	
Violent operatives of a greater magnitude	28	4	32	15
In the context of massacres	9	3	12	
In military operatives	19	1	20	
With the purpose of obtaining sexual pleasure	11	12	23	10.8
Against female leaders or their relatives	15	7	22	10.3
Forced prostitution and sexual slavery (includes forced marriage)	13	3	16	7.5
Against women accused of breaking social codes	7	1	8	3.8
As a punishment for sexual orientation		2	2	
For breaking social codes	5	1	6	
Against women accused of having a familial or emotional relationship (real or perceived) with a member of an enemy group	6	2	8	3.8
Within the framework of recruitment (including children and relatives)	0	4	4	1.9
Threats of sexual violence	3	0	3	1.4
General Total	116	97	213	100

SOURCE: Developed by the Working Group based on the systematization of the Annexes' narrative information.

¹⁸ The identification was carried out by the Working Group and 372 cases were excluded from this information where it was not possible to establish a victimizing pattern (58.7%), 30 cases of incidents carried out by civilians (4.7%) and 19 cases which did not include sexual violence (3%). The Prosecutor General's Office should recognize the patterns of victimization in incidents where the narrative information included in the Annexes does not allow it to be determined.

emotional relationship (real or perceived) with a member of an enemy group (3.8%); acts in the context of recruitment (1.9%); and as acts as a form of threat (1.4%).

The Working Group has noted that the Prosecutor General's Office's response varied depending on the victimization patterns under which the acts were perpetrated. Although all cases warrant a response from the highest level, some should receive a more urgent response and warrant the greatest possible use of resources due to the social relevance of specific incidents within the population, such as those cases carried out in violent operatives of a greater magnitude (massacres and military operatives), against women (or family members) who held some type of leadership role, and in the context of forced prostitution and sexual slavery. The following refers to these cases.

Legal Situation of Cases of Sexual Violence Carried out in Massacres

The Confidential Annexes include a total of 12 cases carried out in the context of a massacre, none of which have been ruled on, only two are in the preliminary inquiry or investigation phase (16.7%), three are in arraignment (25%), and in four instances the cases were archived due to a dismissal of the investigation (*resolución inhibitoria*) (33.3%). Two cases do not report a procedural status (16.7%) and one case (8.3%) is not included in the databases.

TABLE 12 PROCEDURAL STATUS OF CASES OF MASSACRES

Procedural Status	Auto 092	Auto 009	Total	%
Preliminary inquiry/investigation	2	-	2	16.7
Arraignment	3	-	3	25.0
Archived/dismissed	4	-	4	33.3
No report	-	2	2	16.7
Prosecutor General's Office did not include this case	-	1	1	8.3
Total	9	3	12	100

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (*Auto 009*) and the annex of its April 2015 diagnostic of *Auto 092*.

The level of impunity in these cases is not only alarming, but also truly threatens the rights of victims and of all of society to know the truth about what occurred in the armed conflict. Nine massacres were included in *Auto 092*, four of which have been archived, two are in the preliminary investigation and three in arraignment with information indicating that the incidents in relation to sexual violence are actually archived. The cases reported as archived correspond to the Chengue, El Tigre and La Cabuya massacres, perpetrated by paramilitaries with the support of State Security Forces and the Bajo Oso massacre perpetrated by the guerrilla.¹⁹ The Working Group cannot explain why such relevant events are archived

¹⁹ In the order that they are mentioned, cases 157, 167, 174 and 162 of *Auto 092* of 2008.

without indicating that all potential resources were deployed to investigate the incidents of sexual violence.

The cases that are reported to be in a preliminary investigation stage correspond to the El Salado massacre and a massacre of seven peasants in Antioquia, committed by paramilitary groups. The cases that are supposedly in arraignment are those of the El Limón and El Naya massacres and another carried out in Buenaventura; all three were perpetrated by paramilitary groups.²⁰ The common characteristic of these incidents is that, although the Prosecutor General's Office reported in its April of 2015 diagnostic that they are in the arraignment stage, in all three cases there is prior official information contradicting this procedural status and indicating that the investigations for sexual violence were archived.²¹

Auto 009 included three cases committed in the context of massacres. In one of the cases a woman was a victim on two occasions, but the Prosecutor General's Office did not include information on the second incident corresponding to a massacre committed by the guerrilla (case 5). In this case and two others the Prosecutor General's Office did not report any procedural status. One of these was in relation to the Capaca (Bolívar) massacre, committed by paramilitaries with the acquiescence of the Army, in which 12 people were assassinated and two girls were raped—one of whom was assassinated and the other disappeared. The other is the El Salado massacre, where it was reported that two minors were victims of sexual aggression.²²

This panorama clearly demonstrates the abdication of the responsibility to investigate incidents of national importance, which seriously affect the rights of the entire population and women specifically. The Working Group trusts that information provided by the Prosecutor General's Office was done so in good faith; nevertheless, there is official data which demonstrates that seven and not four cases have been archived. Beyond the numbers, it is extremely worrisome that the Prosecutor General's Office does not contribute relevant information on the actions it has implemented to unveil these incidents and achieve justice. For this reason, the Working Group will ask the Court to urge the Prosecutor General's Office

²⁰ In the order that they are mentioned, cases 160, 165, 175, 124, 150 and 156 of *Auto* 092 of 2008. In the diagnostic presented in April of 2015, the Prosecutor General's Office indicated that the El Salado massacre case also has a guilty verdict for gender based violence; however, when reporting the procedural status, it only indicated a preliminary investigation, thus it is necessary to use the latest information. According to *Sisma Mujer*, there are criminal charges for violent carnal knowledge against at least 28 demobilized paramilitary members as individual joint offenders (*coautores improprios*), among them are 10 high level commanders of the Heroes of Montes de María Bloc and the AUC. The majority have requested a plea bargain. Four plea bargains have been granted. Not one has been charged as the direct author in an incident of sexual violence.

²¹ In the case of the El Limón massacre, the Inspector General's Office reported in August of 2014 that it accepted a dismissal based on a lack of evidence (*fallo inhibitorio*); regarding the El Naya massacre, the Prosecutor General's Office reported in March of 2013 that on October 11th of 2011 it had deferred from continuing with the criminal investigation, "since there is a total lack of knowledge regarding the probable victims," an action which was confirmed by the Inspector General's Office reports in 2012 and 2014; and in the case of the Buenaventura massacre, in a January 2015 report the Prosecutor General's Office indicated that the case had been archived since August of 2010, which was ratified by the Inspector General's Office's 2012 report.

²² In the order that they are mentioned, cases 5, 38 and 56 of *Auto* 009 of 2015.

to hand over a detailed report on the actions undertaken in cases of massacres, emphasizing work to encourage review of the decision to archive cases. In addition, to examining the cases in the pretrial stage to clarify if they are being investigated for sexual violence. Also, the Prosecutor General’s Office should develop a comprehensive strategy to investigate sexual crimes in the context of massacres, which associates cases and takes into account the specific nature of these incidents.

Legal Situation of Cases of Sexual Violence Carried out in Military Operatives

The Confidential Annexes include a total of 20 cases carried out in the context of military operatives, of which none have been ruled on, seven are in the preliminary inquiry or investigation phase (35%), three are in an arraignment stage (15%), and nine were archived (45%)—of these, seven for dismissal due to a lack of evidence (*resolución inhibitoria*) (35%) and two cases due to preclusion (10%). In one case no information was reported (5%).

TABLE 13 PROCEDURAL STATUS OF CASES OF MILITARY OPERATIVES

Procedural Status	Auto 092	Auto 009	Total	%
Preliminary inquiry/investigation	7	-	7	35
Arraignment	3	-	3	15
Archived/dismissed	7	-	7	35
Preclusion	2	-	2	10
No report	-	1	1	5
Total	19	1	20	100

SOURCE: Developed by the Working Group based on the systematization of the annexes’ narratives and information provided by the Prosecutor General’s Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

Of the seven archived cases perpetrated during military operatives, six had a direct participation of State Security agents. In five of these cases there is no information to determine the reason they were archived, and in two cases the Prosecutor General’s Office’s actions constitute an abdication of its obligation to investigate, in as much as it delegates this responsibility to the victims, without clarity that they have received psycho-social support and security measures which favor their participation in the process. In one of these cases, the Prosecutor General’s Office considers that these incidents are representative of the situation, but it indicated that they could not demonstrate why “the victim focused the discussion on reestablishing her reputation.” In another case, which involves seven peasant soldiers (*soldados campesinos*), the investigation was archived based on the argument that the victim “assures that the only thing that the soldiers did was grab her hard by the wrist, but there was no sexual aggression. Nonexistence of factual support for the crime.”²³

²³ In the order that they are mentioned, cases 73, 87, 116, 139 and 163 were archived without information and

In addition, there were two decisions for preclusion which favored members of the State Security Forces: in one case the reasons behind the decision were not explained and the other was a military operative where the Prosecutor General's Office evaluated evidence initially collected by the Military Criminal Investigative Court and later opted for preclusion as no evidence was found on the victim's corpse.²⁴

Military operative cases demonstrate a major participation of State Security agents; nevertheless, it is not clear that there are lines of investigation which aim to clarify these incidents as patterns of conduct for this armed actor. It is evident that the contributed information is insufficient to conclude that there is an abdication of the obligation to investigate, but it seems to suggest that the Prosecutor General's Office has not placed all of its will and interest in deciphering these conducts. For that reason, the Working Group will ask the Court to request qualitative information from the Prosecutor General's Office regarding the advances in these cases, the reasons that led to their being archived and the strategies promoted to investigate these incidents as part of a possible pattern of conduct within the State Security Forces.

Legal Situation of Cases of Sexual Violence Perpetrated Against Women (or Family) who Held Some Type of Leadership

The Confidential Annexes include a total of 22 cases involving women (or their family members) who held some kind of leadership role. None of these cases have a ruling, 11 are in the preliminary inquiry or investigation phase (50%), two are on trial (9.1%), one more in arraignment (4.5%) and five cases have been archived (22.7%)—of these, four have been

PROCEDURAL STATUS OF CASES AGAINST FEMALE LEADERS

TABLE 14

Procedural Status	Auto 092	Auto 009	Total	%
Preliminary inquiry/investigation	6	5	11	50
Trial	2	-	2	9.1
Arraignment	1	-	1	4.5
Archived/dismised	4	-	4	18.2
Preclusion	1	-	1	4.5
Previous/dismised investigation**	1	-	1	4.5
"There is no denouncement"	-	1	1	4.5
No report	-	1	1	4.5
Total	15	7	22	100

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic of Auto 092.

cases 78 and 118 constitute an abdication of the responsibility to investigate. All are cases from Auto 092 of 2008. In the last case the information was obtained by *Sisma Mujer*.

²⁴ Cases 53 and 81 from Auto 092 of 2008.

dismissed due to a lack of evidence (*resolución inhibitoria*) (18.2%) and one for a decision of preclusion (4.5%). In one case the procedural status has not been reported (4.5%) and another indicates that “there is no denouncement” (4.5%), which is disconcerting, given that a case being sent to the Court in itself is a criminal report and its investigation is mandatory.

Of the four cases where there was a decision to archive the case, two incidents were perpetrated by paramilitaries, one by the guerrilla and another by State Security Forces. The latter is a very serious case of an extrajudicial execution, where the girl was made to appear to be a guerrilla member. As female leaders or human rights defenders, the State has an increased obligation and it should use all possible actions, up until the last available resource, to clarify the truth around the incidents. Nevertheless, in one of these cases, the Prosecutor General’s Office simply indicated that, apparently, the incidents did not occur. In another case, information was not provided; in another, it was indicated that it was not possible to identify the victim. In the case with the State Security Forces the diagnosis indicated that the case is representative of military operatives “where doubtful operational results are obtained,” however, all the same, the case was archived. In addition, one of the acts committed against a member of the Communist Party and a girl, perpetrated by members of the Police during a search, has a preclusion ruling without taking into account all the evidence of sexual violence available in the file and without investigating the incidents committed against the girl.²⁵

Three other cases of women leaders or their relatives generate concern: one case deals with the disappearance of a female leader’s daughter, with no information regarding the actions undertaken to find her. Another involves the rape and homicide of a female leader’s daughter. The Prosecutor General’s Office says that the case is under investigation, but the Inspector General’s Office has indicated that it cancelled its special agency (*agencia especial*) based on a dismissal due to lack of evidence (*resolución inhibitoria*). A third case reports the rape of three female leaders, where, apparently, a decision was made to archive the case as they could not find the complainant, “who did not leave an address where she could be found.”²⁶

Due to the nature and social impact of attacking women human rights defenders or their relatives, the State must increase its efforts in the interest of advancing investigations based on due diligence. Nevertheless, it seems that the Prosecutor General’s Office has not incorporated, as part of its investigation categorization, the hypothesis that sexual violence is a response to women’s leadership and for that reason they continue to be disjointed investigations which do not take this factor into account. The lack of information is disconcerting and it becomes clear that there is a disregard for investigating cases of this dimension of importance. For that reason, the Working Group will ask the Court to urge the Prosecutor General’s Office to provide a report indicating if it has incorporated attacks against female leaders as a hypothesis in the investigation of sexual crimes, how the cases will be associated

25 In the order that they are mentioned, cases 46, 50, 180, 168 and 144 of *Auto* 092 of 2008.

26 In the order that they are mentioned, cases 37, 151 and 90 of *Auto* 092 of 2008.

and what actions it will undertake in response to the archived cases or cases with concerning information.

Legal Situation in Cases of Sexual Violence Within the Context of Forced Prostitution and Sexual Slavery

The Confidential Annexes include 16 total cases of women who were forced to prostitute themselves or where sexually enslaved, of which one has a guilty verdict (6.3%), three are in the preliminary inquiry or investigation phase (18.8%), one is in the arraignment phase (6.3%), eight were archived due to a lack of evidence (*resolución inhibitoria*) (50%) and three cases do not report a procedural status (18.8%).

PROCEDURAL STATUS OF CASES OF FORCED PROSTITUTION AND SEXUAL SLAVERY

TABLE 15

Procedural Status	Auto 092	Auto 009	Total	%
Ruling	1	-	1	6.3
Preliminary inquiry/investigation	3	-	3	18.8
Arraignment	1	-	1	6.3
Archived/dismissed	8	-	8	50
No report	-	3	3	18.8
Total	13	3	16	100

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (*Auto 009*) and the annex of its April 2015 diagnostic (*Auto 092*).

Of the eight archived cases, two refer to generalized situations of forced prostitution and sexual slavery. Six of these cases are particularly striking: in one, the Prosecutor General's Office ruled out continuing the investigation because the victim stated that she had lied; however, this does not taken into account that she was kidnapped by one of the conflict's actors and that she is victim to ongoing aggressions. In three cases, the Prosecutor General's Office reported that they were archived, but did not provide information on the grounds for those decisions. A duplicated case offers apparently contradictory information (one is registered to be in the pretrial phase and another to be archived); therefore, the present state is unclear. In another case, the Prosecutor General's Office said that the incident is archived due to the death of the accused party; meanwhile, the Inspector General's Office indicated that the case was archived since it wasn't possible to identify the subjects who participated in the incident.²⁷

²⁷ In the order that they are mentioned, cases 4, 5, 102, 129, 134/145 (the indicated data appears in the Prosecutor General's Office's report from January 2015) and 170 of *Auto 092* of 2008.

The cases of forced prostitution and sexual slavery are particularly worrisome for two reasons. First, the violence is usually carried out for prolonged periods of time and under surveillance, which prevents victims from accessing justice, and second, because many of the women who have managed to leave have reported that where they were held there are other women in the same situation. This should lead the State to take these investigations seriously and not to dismiss them without justification. The Working Group categorically affirms that the State has not undertaken actions to investigate these situations, achieve justice, or rescue the victims who surely continue in situations of prostitution or sexual enslavement. For that reason, the Working Group will ask the Court to request a detailed report from the Prosecutor General's Office on its actions on these cases, the strategies promoted to investigate the denounced incidents, and to establish, given the presumption of connection with the armed conflict, if there are still other victims of this kind of sexual violence in the locations where the complainants were held.

2.4. Practices that Influence Impunity

In addition to the previously described context, the Working Group has found that there are certain practices which influence impunity. These practices include archived cases on generalized situations of sexual violence, a lack of investigation in cases with rulings for crimes other than sexual crimes, cases that have been reported as “misplaced” by the Prosecutor General's Office, and cases archived based on a dismissal due to a lack of evidence (*decisión inhibitoria*) or preclusion which do not report the grounds for that decision or where the right to investigate was contravened.

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Abdicating the Obligation to Investigate Generalized Situations

In at least 16 cases, the Constitutional Court sent the Prosecutor General's Office cases on generalized situations of sexual violence against women. The majority of these cases were reported by international entities. Over time, the Prosecutor General's Office has archived these investigations considering the information to be abstract. However, strategies have not been implemented which allow the Office to understand the magnitude of these situations which, if they are true, surely have affected numerous women in diverse regions of the country.²⁸ The Working Group believes that Colombia has lost an opportunity to understand, in greater detail, the repertoires of generalized sexual violence used by all of the conflict's actors in diverse regions and with distinct intentions. It is not clear that the Prosecutor General's Office has implemented exhaustive investigative actions.

The Prosecutor General's Office states that the cases were archived due to nonexistent incidents, insufficient information, because the organization reporting the case offered minimal detailed information²⁹ or simply because there are contradictory reasons as to why the

²⁸ Cases 25, 41, 42, 43, 59, 63, 64, 67, 71/74, 91, 94, 120, 121, 122, 123 and 125 of *Auto* 092 of 2008.

²⁹ In the order that they are mentioned: archived due to a nonexistence incident, case 25; lack of information,

decision to close a case was made.³⁰ In one case, the Prosecutor General's Office does not offer information on the case's advances, which is worrisome, when taking into account that this is a situation of mass violence against indigenous women. In other cases, the Prosecutor General's Office offers information that is contradictory to the information presented by the Inspector General's Office regarding the procedural status or even where the incidents took place.³¹

The Working Group understands that the investigation of generalized situations can be more complex and requires a greater effort from the Prosecutor General's Office in comparison to cases where there is an established victim. However, these cases constitute an important opportunity to understand the conflict dynamics in relation to sexual violence with a perspective that addresses variables such as armed actors, territory and the time period of the incidents. The Prosecutor General's Office could have advanced in the identification of patterns of conduct, accumulating cases and offering substantive information; nevertheless, all these cases are in complete impunity. For that reason, the Working Group will ask the Court to urge the Prosecutor General's Office to provide a detailed report on these cases and the strategies that will be used to investigate the general situation of sexual violence that was reported in the Annexes.

Abdicating the Obligation to Investigate Sexual Violence in Cases Where There is a Ruling for Other Crimes

The Prosecutor General's Office has reported that several cases included in the Annexes have a guilty verdict for incidents other than sexual violence where, apparently, it has abdicated the investigation of these crimes. Within due process and the right to a defense, the accused can be declared innocent of sexual violence; however, the Working Group has found that several of these rulings, without any explanation, did not include sexual crimes or they stopped investigating the sexual crimes even with the possibility of reviewing the decisions based on recent jurisprudential developments.

In some cases, there was a guilty verdict for incidents other than sexual violence before *Auto* 092 was issued. There is no information whether these decisions were reviewed with respect to sexual violence after the *Auto*. However, everything seems to indicate that these incidents remain in impunity and that the Prosecutor General's Office did not take into account the Court's considerations to review the decisions.³²

cases 41, 59, 63, 67, 94 and 125; lack of detailed information, case 43. All from *Auto* 092 of 2008.

³⁰ This happened in case 91 of *Auto* 092 of 2008. In its January 2015 report, the Prosecutor General's Office indicated that the case was in process for sexual slavery and that the dismissal due to lack of evidence was from June 19, 2010. In August 2009, the Prosecutor General's Office indicated that the decision to close the case was made due to the death of the accused party. The Inspector General's Office's report from November 2012 says that on June 19, 2010 a ruling was made to dismiss due to a lack of evidence because it had not been possible to identify the alleged responsible parties.

³¹ In the order that they are mentioned, cases 42, 64, 71/74 and 120 to 123 of *Auto* 092 of 2008.

³² This can be demonstrated in cases 15, 75, 76 and 117 of *Auto* 092 of 2008.

In one case, the grounds for not filing charges for sexual violence was due to “the expert opinion from Forensic Medicine (*Medicina Legal*) which did not accredit the existence of abuse or carnal knowledge in the victims.” In the well-known case of Rina Bolaños, who was raped by a guerrilla commander during her kidnapping, the Prosecutor General’s Office convicted the accused for the latter crime, but precluded the investigation for sexual violence, supposedly because the victim consented to the act (in addition, she was detained for several months on rebellion accusations and, later, the victim had to go into exile). In another case, the Prosecutor General’s Office indicated that there is a conviction for acts other than sexual violence, but did not report on the state of the investigation for these crimes. Further, in another case, the Prosecutor General’s Office ruled out the occurrence of sexual violence; nevertheless, the information that it contributed seems to indicate that it did occur and was not taken into account.³³ The two acquittals in relation to sexual violence have benefited members of the State Security Forces, and there was no information regarding the grounds to make those rulings in any of the Prosecutor General’s Office’s reports.³⁴ The Working Group believes that it is possible for investigations to conclude in an acquittal, but the Prosecutor General’s Office should explain if these decisions respond to the law or not, especially when dealing with State Security agents.

The Working Group will ask that the Court urge the Prosecutor General’s Office to provide a report which indicates the strategies it will implement to review cases that already have a ruling, but where sexual violence was not analyzed or, if it was, has not reported the grounds which justify an acquittal.

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Abdicating the Obligation to Investigate Sexual Violence in Cases that are Misplaced

The Working Group has knowledge of two cases that should be investigated and, apparently, no proceedings have been initiated given that the Prosecutor General’s Office itself recognizes that it does not know where these investigations are. In other words, they are “misplaced.” One of these cases addresses the rape of at least 20 indigenous women by members of State Security Forces, which is especially serious given the State body’s position as guarantor. The other case is the rape of a woman by paramilitaries.³⁵

For the Working Group it is completely unacceptable that the Prosecutor General’s Office renounces its obligation to investigate these incidents, simply stating that they are looking for the cases seven years after the Office was informed of these denunciations. Without a doubt, this is an example of the precarious manner that the Prosecutor General’s Office has for monitoring these cases and shows the weaknesses in its information registries. For this reason, the Working Group will ask the Court to urge the Prosecutor General’s Office to

³³ In the order that they are mentioned, cases 15, 117, 101/115 and 126 of *Auto* 092 of 2008.

³⁴ Cases 80 and 176 from *Auto* 092 of 2008.

³⁵ These are cases 56 and 137 of *Auto* 092 of 2008.

provide a report detailing the procedural status of both cases and the actions implemented to ensure serious investigations which lead to the truth.

Decisions to Archive Cases: Dismissal Due to a Lack of Evidence and Preclusion, Without Information on the Grounds for these Decisions

In at least 35 cases where the Prosecutor General's Office has decided to archive the procedures based on a dismissal due to a lack of information (*resolución inhibitoria*) or preclusion, the investigative body did not explain the grounds used to make those decisions. This situation involves all of the conflicts' actors: fifteen cases of paramilitary groups, seven of State Security Forces and four of guerrilla groups. Nine other cases were already mentioned in other sections of this report.³⁶

This situation is of particular concern because archiving the cases implies a decision to suspend the investigation process. In a majority of the cases, this is based on a unilateral decision from the Prosecutor General's Office without participation from the victims; it is even possible that the [victims] have not been identified. In many cases, these decisions are made without executing all the possible means to obtain evidence on the incidents, which constitutes an abandonment of the obligation to investigate. The Working Group does not know the grounds that motivated the decision to archive these 35 cases. It cannot ensure that it is being used as an impunity mechanism; nevertheless, the Working Group fears that since qualified information has not been provided, this is the case. The Prosecutor General's Office reported in its 2015 strategy that a Subcommittee will review the decisions on archived cases; however, the Working Group does not have information regarding what strategy will be used, nor the timeline.

Seemingly Contradictory Decisions to Archive Cases Despite the Obligation to Investigate

The Working Group found that there are 10 archived cases resulting from a dismissal due to a lack of evidence (*resolución inhibitoria*) where the Prosecutor General's Office offered information on the grounds for archiving the cases. Nonetheless, they do not clearly demonstrate that the incidents had been adequately investigated and that all possibilities to find the victims and responsible parties had been exhausted before the ruling.³⁷

In one case, the Prosecutor General's Office cited that the reporting organizations did not provide sufficient information. In three other cases, it was not possible to corroborate the incidents due to their abstract nature, even though it is the Prosecutor General's Office which heads the obligation to investigate and should implement the maximum number of

³⁶ In the order that they are mentioned: cases of paramilitary groups (16, 48, 50, 53, 61, 65, 88, 98, 100, 103, 105, 106, 155, 178 and 179); cases of State Security Forces (7, 17, 18, 144, 158, 181, 183); cases of guerrilla groups (32, 79, 146 and 147); previously mentioned cases (73, 87, 102, 116, 118, 129, 134/145, 139, 163).

³⁷ Aside from the cases presented in this section, others have already been mentioned. These are cases 41, 59, 78, 90, 94 and 168 of *Auto* 092 of 2008.

possible activities to implement the broadest possible evidentiary procedures before throwing out these investigations. In three other cases, the grounds for archiving the case were alleged situations where the victims did not wish to continue with the investigations or they did not provide helpful information to find the responsible parties. In one of these cases involving an Army member, it was apparently archived because “the victim, who is the only person who can provide valid information in the absence of witnesses, did not make a direct accusation.” In another, the reason for archiving the case was that “the victim is not interested in continuing the investigation.” This clearly places the burden of the investigation on the women, which is absolutely unacceptable and demonstrates that the Prosecutor General’s Office has not implemented strategies in regard to protection and psycho-social attention before deciding to archive the cases.³⁸

Three other cases are representative of a lack of systematic investigations which would incorporate a complete evidentiary procedure: one deals with the rape of two women and the later homicide of one of them. Apparently, the Prosecutor General’s Office only investigated the actions against the adult woman who was assassinated, but did not successfully obtain information about the girl who was also a victim and is alive. Another case addresses the homicide, torture and rape of a girl due to her sexual orientation. This investigation lasted less than a year and was archived because “it was based on undetermined incidents, people and situations.” And another case, against a sex worker, was archived because it was considered that the incidents were not perpetrated within the context of the conflict, even though it was recognized that the aggressors were members of a paramilitary group. The Prosecutor General’s Office argued that the paramilitary members acted in a “pacific” way and that the rape did not have an aim within the armed conflict.³⁹

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Seemingly Contradictory Decisions to Preclude the Investigation Despite the Obligation to Investigate

A resolution to preclude an investigation implies that the alleged aggressor was identified, but the Prosecutor General’s Office made the decision not to accuse the aggressor, based on the compliance of diverse grounds which prevent or do not merit a continuation of criminal proceedings. This is legitimate and when there are sufficient grounds to make that decision in relation to a specific person, in favor of due process and the victim’s right to truth, it must occur together with a continued investigation until the responsible parties are found or sufficient evidence has been collected. However, the Working Group has found that in six of the precluded cases where the Prosecutor General’s Office did provide information, there has not been a continued investigation to find the true responsible parties and/or not all the evidential possibilities have been exhausted, or the information contributed is confusing or contrary to the obligation to act with due diligence.

³⁸ In the order that they were mentioned, cases 154, 68, 84, 107, 45, 104 y 112 of *Auto* 092 of 2008.

³⁹ These are cases 95, 128 and 182 of *Auto* 092 of 2008.

In one case, one of the (paramilitary) aggressors accepted the charges for sexual violence, but the Prosecutor General's Office indicated that the process was precluded. In another case it is unclear if the decision was to archive or preclude the case, and the Prosecutor General's Office indicated that it felt that it is "truly regrettable that with sufficient incriminating evidence within the plenary to charge the accused party, it was not possible to identify the victim." In two other cases, the decision to preclude the investigation was made before *Auto* 092, and it is not clear if there has been a revision of the cases, one involving State Security agents which was precluded due to a lack of evidence and the other which cited that the 13-year-old victim did not show an interest in the proceedings.⁴⁰

Two cases are of particular concern: one is extremely serious as it addresses the rape of two girls by Army members, in which the grounds to preclude the investigation stated that they visited the battalion and that the medical-legal evaluation did not confirm the rapes. The other addresses the rape of a female small-scale farmer by Army members; the preclusion was apparently based on a lack of additional information from the victim and testimony from the municipal human rights ombudsman (*Personero*), who indicated that the complaint was filed with the "interest of discrediting the Army and accusations from other inhabitants that the victim was a member of the guerrilla or militia."⁴¹ Without a doubt, the most representative case of a decision for preclusion which should be reviewed is the aforementioned case of Rina Bolaños. This incident involved a guerrilla commander who, within the context of kidnapping the victim, stated that she had participated in consensual sexual activities. The Prosecutor General's Office not only believed the aggressor, but precluded the investigation in his favor, without reporting a later revision of the decision.

The Working Group believes that the cases archived due to a lack of evidence (*decisión inhibitoria*) or preclusion are valid as long as they are duly justified and all the evidentiary procedures were previously executed to make it possible to demonstrate the occurrence of the incidents, identify the victims and determine the aggressor's responsibility. If this does not happen, these concepts will continue to constitute an impunity mechanism in relation to sexual violence. For that reason, the Working Group will ask the Court to urge the Prosecutor General's Office to provide a report for all the cases that have a dismissal due to a lack of evidence (*resolución inhibitoria*) or a preclusion of the investigation, detailing the grounds which motivated the decisions to archive, as well as a timeline and the strategy to review each of these decisions based on the standards established in the *Autos* and the presumption of connection declared in *Auto* 009.

3. ABSENCE OF INTERSECTIONAL APPROACHES

In *Auto* 009 the Constitutional Court indicated that when there are diverse vulnerabilities derived from ethnic origin, age, disability, sexual orientation or gender identity, the State

⁴⁰ In the order that they are mentioned, cases 47, 55, 136 and 148 of *Auto* 092 of 2008.

⁴¹ These are cases 69 and 52 of *Auto* 092 of 2008.

must increase its efforts as these conditions increase the risk of facing sexual violence. When asking the Prosecutor General's Office how it incorporated these approaches, the investigative body reported that it had created thematic working groups, but did not clearly show how they contribute to an intersectional approach which responds to the multiple risks and the real and immediate impact they have had in criminal investigations and methodological investigation programs.⁴²

Of the 768 victims included in both annexes, the Working Group found that 9% were afro-descendants, 8.3% indigenous, 20.3% girls, seven were women with some kind of disability and two were cases relating to women with a diverse sexual orientation. These factors influence the victimizing process and have left repercussions which must be redressed taking these perspectives into account. However, the Working Group does not have information to show that a complete characterization of all the victims occurred or that they have received a differential treatment, and that these factors have been taken into account to establish patterns of victimization and appropriate response and reparation measures, as will be shown in the following section.

3.1. Ethnic and Racial Perspectives

Of all the victims, 69 were reported to be afro-descendants (9%), in as many incidents, whereas 64 (8.3%) were indigenous women who were victims in a total of 28 incidents. Of the 69 incidents against afro-descendant women, the Prosecutor General's Office has not reported the procedural status in 63.8% of the cases; it has indicated that 30.4% are in a preliminary inquiry or investigation and that 5.8% have a ruling. In relation to indigenous women, of the 28 incidents, the Prosecutor General's Office reported that 35.7% were archived due to a lack of evidence (*resolución inhibitoria*) or preclusion; 28.6% are in a preliminary investigation; 7.1% in arraignment; 7.1% have a ruling (one acquittal and the other with a conviction; one case was sent to the indigenous jurisdiction, apparently based on a request from the local indigenous government (*cabildo*) (3.6%); and there was no report in 17.9% of the cases.

It is important to remember that the Court has insisted upon the fact that, indigenous and afro-descendant women are the population with the highest exposure rates for sexual violence and that this has a specific and disproportionate impact on these women and their communities. This is even more concerning when taking into account that for indigenous women, the Prosecutor General's Office's diagnosis showed that "52% of cases against this population group were committed by members of the State Security Forces."⁴³ Despite un-

⁴² There are 13 working groups: "women, LGBTI people, human trafficking, social and political leaders, land restitution leaders, indigenous, afro-descendants, people with a disability, teachers, journalists, children and adolescents, human rights defenders and trade unionists." The women's thematic working group had only met three times as of July (Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015).

⁴³ Office of the Prosecutor General of the Nation, Report from the National Office on Analysis and Context (DINAC), *Auto* 092 of 2008, April 2015, p. 85.

PROCEDURAL STATUS BASED ON AN ETHNIC AND RACIAL PERSPECTIVE

TABLE 16

Procedural Status	Auto 092	Auto 009	Total	%
Afro-descendants: 69 victims - 69 incidents	1	68	69	
Preliminary inquiry/investigation	1	20	21	30.4
Ruling	-	4	4	5.8
No report	-	44	44	63.8
Indigenous: 64 victims - 28 incidents	23	5	28	
Archived/dismissed	9	-	9	32.1
Preclusion	1	-	1	3.6
Preliminary inquiry/investigation	6	2	8	28.6
Arrestment	2	-	2	7.1
Ruling	2	-	2	7.1
Special Indigenous Jurisdiction	1	-	1	3.6
No report	2	3	5	17.9
General Total	24	73	97	

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic (Auto 092).

derstanding this situation, none of these cases seem to include an explicit ethnic and gender component in the investigation methodologies allowing for an incorporation of evidence from these perspectives, including interpreters and/or explicitly addressing the specific limitations faced by these women to access justice—which have been repeatedly identified by national and international organizations. It is urgent that the Prosecutor General's Office immediately adopt measures to review the archived cases and promote this perspective in active cases.

3.2. Age Perspective

Of the 768 total victims, the Working Group identified the age of 238 victims (30.9%) at the time of the incidents: 65.5% were girls (of them, 42.9% were under the age of 14, 22.4% were between 15 and 17-years-old, and 34.6% were minors, but it was not possible to accurately establish their age). 34.5% of the victims were adult women (of them, 47.6% were young women between 18 and 25 years of age, 41.5% were adults at least 26 years old and for 11% of the adult women it was not possible to determine their exact age). Furthermore, of the 238 victims whose age could be established, they were victimized in 194 incidents: 60.8% of the incidents were carried out against girls (118 incidents) and 39.1% against adult women (76 incidents).

When contrasting procedural status, the Working Group found that the percentage of archived and precluded cases in incidents against girls is much higher than those of adult women (21.2% for girls and 13.1% for women) and that the percentage of women's cases

TABLE 17 NUMBER OF VICTIMS AND INCIDENTS BASED ON AGE

Age	Auto 092	Auto 009	Total Victims	% of Victims	Total Incidents	% of Incidents
Girls	78	78	156	65.5	118	60.8
Between 3 and 14- years old	34	33	67	42.9	55	46.6
Between 15 and 17- years old	17	18	35	22.4	26	22
Minor without exact data	27	27	54	34.6	37	31.3
Adults	29	53	82	34.5	76	39.1
Between 18 and 25-years old	16	23	39	47.6	36	47.3
Over 26-years old	12	22	34	41.5	31	40.7
Adults without exact data	1	8	9	11	9	11.8
General Total	107	131	238	100	194	100

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic (Auto 092).

being investigated is almost double that of girls (59.1% of cases in preliminary investigation, arraignment or trial for adult women and 37.2% for girls).

The armed actors particularly attacked girls. However, the Working Group does not have information regarding strategies implemented by the Prosecutor General's Office to take into account this factor when investigating the incidents.

TABLE 18 PROCEDURAL STATUS BASED ON AGE

Procedural Status	Girls	% Girls	Adult Women	% Adult Women
Archived/dismissed	20	16.9	8	10.5
Preclusion	5	4.2	2	2.6
Preliminary inquiry/investigation	38	32.2	41	53.9
Arraignment	5	4.2	3	3.9
Trial	1	0.8	1	1.3
Ruling	7	5.9	6	7.9
Special Indigenous Jurisdiction	0	-	1	1.3
No report	36	30.5	14	18.4
Prosecutor General's Office did not include this case	6	5.1	0	-
General Total	118	100	76	100

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (Auto 009) and the annex of its April 2015 diagnostic (Auto 092).

3.3. Disability Perspective

In seven cases (five carried out by armed actors and two by civilians against displaced women), the Working Group identified that the victims had some type of disability at the time of the incidents. In cases of victims of armed actors, two suffered sexual violence in the context of massacres and three more to obtain sexual pleasure or due to simple ferocity. Of these seven cases, one is in a preliminary investigation, two on trial, one has a guilty verdict and in three cases no information was reported.

PROCEDURAL STATUS BASED ON DISABILITY PERSPECTIVE

TABLE 19

Procedural Status	Auto 092	Auto 009	Total
Preliminary inquiry/investigation	-	1	1
Trial	1	1	2
No report	-	3	3
Trial	1	-	1
Total	2	5	7

SOURCE: Developed by the Working Group based on the systematization of the annexes' narratives and information provided by the Prosecutor General's Office in its July 23, 2015 database (*Auto 009*) and the annex of its April 2015 diagnostic (*Auto 092*).

The Working Group does not have information that the Prosecutor General's Office has taken into account the implications of a disability to clarify the truth in these cases and to adequately prosecute the perpetrators of these incidents.

An example of this is the case of "Lucia,"⁴⁴ a young Afro-Colombian victim of displacement who has a cognitive disability. Lucía's mother, who looks after her, is an Afro-Colombian woman, head of her household, illiterate, with a physical disability that limits her mobility. Lucia was a victim of sexual violence on two occasions (2005 and 2006) by two different subjects in her neighborhood, which is settled by a displaced population. The Constitutional Court informed the Prosecutor General's Office of these two incidents (cases 33 and 57) by means of the Annex of *Auto 092* and requested advances in the cases. Nevertheless, the Court later had to rule on two writs of protection of constitutional rights (*tutela*) to protect her right to access justice and to guarantee that she be adequately responded to and redressed (rulings T-973-2011 and T-595-2013), given that her rights were openly unacknowledged and that the special conditions and reinforced vulnerability that she and her caregiver face were not taken into account. The inclusion of these incidents in the Annex of *Auto 092* had zero impact on the development of the criminal procedures or in the protection of this woman's rights.

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Obstacles to
Accessing Justice

⁴⁴ This is the name used by the Constitutional Court to talk about the victim to protect her identity in the two writs of protection of constitutional rights (*tutela*) rulings where the court learned of her case.

The fact that victims must use a *tutela* for the protection of their rights is a sufficient example of the lack of coordinated and comprehensive strategies which address the differences and specific characteristics among women victims. This is unacceptable so many years after *Auto* 092 was issued.

3.4. A Sexual Orientation and Diverse Gender Identity Perspective

Of all the incidents reported by the Constitutional Court, only two explicitly refer to attacks against three women due to their sexual orientation and there are no cases that reference victimization due to gender identity. Both processes have been archived. One such case involved the rape, sexual torture, mutilation and homicide of a 14 year old girl by paramilitaries, due to the accusation that she was a lesbian. According to the Inspector General's Office this case has been archived because it was based on undetermined incidents, people and situations. The other case involved two paramilitary members in the rape, which they called corrective, of two lesbian women. This case is archived without further information.⁴⁵

The Working Group asks that the Court request a detailed report from the Prosecutor General's Office on the advances in each of the cases where the victims are afro-descendent, indigenous, girls, women with disabilities and of diverse sexual orientations, showing how these elements have impacted the investigations and the development of a clear program which incorporates these perspectives in each case.

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Access to justice
for women victims
of sexual violence

4. LACK OF CLEAR PROCEDURES (RUTAS)

In *Auto* 009, the Constitutional Court found that the victims were kept without information on their rights and procedures, and that victims were forced to undertake "long institutional pilgrimages" where in many occasions their needs were not responded to. This in itself constitutes re-victimization.

In spite of the strategies implemented by the Prosecutor General's Office, this obstacle has yet to be overcome; the justice system is confusing, offering varied and complex responses to victims, without clear procedures for victims to follow to have their case investigated, nor information about what proceedings must be followed to obtain comprehensive attention, given the specific nature of these incidents.

Throughout the five previous reports, the Working Group has indicated that disjointed procedures lacking uniformity are problematic, as well as the fact that various offices within the Prosecutor General's Office have information on the incidents of sexual violence without the restructuring resulting from Decree 016 of 2014 remedying these problems. Currently, the National Public Policies Office (*Dirección Nacional de Políticas Públicas*), the National Office on Analysis and Contexts (*Dirección Nacional de Análisis y Contextos*), the National Prosecutors Office (*Dirección de Fiscalías Nacionales*), the Specialized Office on Human Rights and IHL (*Dirección Especializada de Derechos Humanos y DIH*), the Specialized Transitional

⁴⁵ These are cases 128 and 131 of *Auto* 092 of 2008.

Justice Office (*Dirección Especializada de Justicia Transicional*), the Regional Offices Directorate (*Dirección de Seccionales*) and the Citizen Security Office (*Dirección de Seguridad Ciudadana*) have information on the incidents. This distribution has not remedied the problems faced by victims when they file a complaint, as they do not have information on the procedures and are sent from office to office. For example, only in Bogota can victims access the Prosecutor General's Office through the Center for Attention to Victims of Sexual Violence (CAIVAS- *Centro de Atención a Víctimas de Violencia Sexual*), the Comprehensive Criminal Response Center for Victims (CAPIV- *Centro de Atención Penal Integral a Víctimas*), the Office on Transitional Justice, or others. It is also unclear which avenues must be followed to access specialized care and the diverse benefits offered by the law. This situation becomes even worse in places where the Prosecutor General's Office does not have a presence or where it has a presence but does not recognize the Constitutional Court's *autos* and guidelines from the Prosecutor General's Office.

For example, the female victim in case 148 of *Auto* 092's Annex, in addition to being a leader of a displaced population, was a victim of sexual violence when she was a girl, and once again was victimized in an episode of sexual violence in 2014. According to *Sisma Mujer*, which legally represents her, the authorities did not apply the Ministry of Health's protocol for these incidents and the Regional Prosecutor's Office which received the complaint does not have an investigation strategy which takes into account *Autos* 092 and 009 or even *Auto* 098 of 2013 (which studied the situation of women defenders).

For this reason, the Working Group will ask the Court to urge the Prosecutor General's Office to design, in a clear and accessible manner, an applicable procedure for cases of sexual violence against women within the context of the armed conflict that responds to regional characteristics and that clearly incorporates and makes accessible procedures, rights (taking into account differential perspectives), a directory of entities and indications of where to go in the event of procedural noncompliance or denial of rights.

5. APPLICATION OF THE CONSTITUTIONAL PRESUMPTION OF CONNECTION

In *Auto* 009, the Constitutional Court declared "a presumption that an act of sexual violence has a close and sufficient relationship with the armed conflict and generalized violence if it has occurred in a region or district which has a presence of armed actors, whatever their name or *modus operandi*." In order to constitute this presumption, "it is sufficient to present two objective elements: (i) a sexual aggression has taken place and (ii) the presence of armed actors."

In practice, this presumption:

...should be established in the victim's favor during the preliminary stage of the criminal proceedings by the Prosecutor General's Office, which should informally verify the presence of the objective elements that establish the presumption. Consequently, once the presumption is established [...] the methodological investigative plan should be guided by this consideration, and as thus, the public prosecutor should fulfill its mandate of due diligence.

This means that each incident of sexual violence associated with the armed conflict must be analyzed by the Prosecutor General's Office based on the presumption of connection, which can be rebutted as long as it based on legal grounds and done so explicitly. However, unless this occurs the investigations must go forward based on a presumption of connection. Consequently, the Court indicated that "the Prosecutor General's Office should take into account this presumption, with the aim of reevaluating the decisions to preclude, dismiss or archive the cases in the Confidential Annexes of *Auto* 092 of 2008. Thus, as long as it is applicable, these cases should be reopened immediately."

When investigating the application of the presumption of connection, the Prosecutor General's Office responded that "it is the responsibility of the case's public prosecutor to define whether the factual conditions limiting the investigation fall within criminal definitions that contemplate a relationship between the incidents and the armed conflict."⁴⁶ The Working Group manifests its opposition to the Prosecutor General's Office's interpretation regarding presumption of connection, as it reduces the investigation solely to criminal conducts included in Title II of the Criminal Code. In other words, people protected by international humanitarian law. This is erroneous for two reasons: first, because it is possible that the incidents carried out in the context of the armed conflict not be investigated on the basis of those criminal conducts, which does not circumvent its connection to the conflict; and second, because it makes it possible to see that the Prosecutor General's Office limits the application of the presumption of connection, adapting it to the framework of specific criminal definitions, instead of reinforcing its obligation to act with due diligence to investigate, prosecute and sanction these incidents and to provide special attention to victims. Thus, the Prosecutor General's Office has emptied the meaning of the presumption as established by the Court of its content, reducing it to a mere categorization of criminal conduct from Title II of the Criminal Code.

The Working Group understands by means of the diverse responses from the Prosecutor General's Office that it has yet to establish a revision strategy, based on this presumption of constitutionality, for the 80 cases from the Annexes which are archived or for the 12 precluded cases, nor has it issued clear indications directed at public prosecutors to incorporate within their investigation methodologies the presumption of connection as was established by the Court. For this reason, the Working Group will request that the High Court urge the Prosecutor General's Office to provide a detailed report on how it has applied the presumption of connection in each of the archived and precluded cases and on how the presumption has been used in revisions and also its application in active cases. The Working Group considers that, given the presumption's nature, the decisions to archive and preclude cases should be made only after the implementation of technical-legal committees, where there is mandatory participation of gender perspective experts from the Public Ministry and Pros-

⁴⁶ Office of the Prosecutor General of the Nation, in response to freedom of information request, file no. 20159430000541, July 23, 2015.

ecutor General's Office,⁴⁷ and where a discussion on connection to the conflict takes place. Thus, the Working Group will also ask the Court to invite the Prosecutor General's Office to formally adopt this procedure.

6. LEGAL ACCOMPANIMENT

In relation to legal and psycho-social support and accompaniment, the Court found coordination problems in the programs and that “many are still in a design phase, without having been executed, and others have not surpassed the pilot phase.” According to Law 1257-2008, female gender violence victims have the right to receive specialized, immediate and free legal orientation and advice, and that it should be guaranteed by means of a Public Defender.⁴⁸

The Working Group has knowledge of two principle actions promoted by the Human Rights Ombudsman's Office: on the one hand, it is the responsibility of the delegate for Women's Rights and Gender Issues to create *in situ* teams made up of pairs of gender lawyers and psychologists in 13 regions throughout the country and, on the other hand, it is the responsibility of the National Office of Public Defenders to provide victims with legal representation (368 lawyers up to December 2014 in the ordinary justice and 174 lawyers up to December 2014 within the framework of Law 975-2005).⁴⁹

Even though they are important actions, according to the information presented by the Human Rights Ombudsman's Office, it is not possible to establish how many victims of the cases included in the Confidential Annexes have benefited from the counsel provided by the *in situ* teams or public defenders. The Working Group wants to emphasize that although the accompaniment and counsel are very important, a greater effort is required from the Human Rights Ombudsman's Office so that all the cases included in the Annexes receive legal representation, given that this mechanism is not only meant to provide support for the victim but also to defend their rights during the criminal process.⁵⁰

The Working Group will ask the Court to urge the Human Rights Ombudsman's Office to provide disaggregated and detailed information regarding the accompaniment and

⁴⁷ The Prosecutor General's Office informed the Working Group that it had prioritized in each of the regional offices a public prosecutor who is an “expert in human rights, gender and a differential perspective, with the aim of serving as bridge with the National Office for monitoring the investigations and to accompany the technical-legal committees, as a guarantee of the effectiveness of victims' rights” (Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015).

⁴⁸ Law 1257-2008, Article 8.b. This right was reiterated by Law 1448-2011 (Art. 43) and Law 1719-2014 (Article 13.9 and 27, paragraph 2).

⁴⁹ Human Rights Ombudsman's Office, Delegate for Women and Gender Issues, *Auto* 009 of 2015 Monitoring Report, Document 40100 DMM-0090, March 30, 2015, and a Report directed to the Inspector General's Office on compliance with the responsibilities established in Law 1719-2014, document 40100 DDM-0117, June 1, 2015.

⁵⁰ According to information held by the Working Group, of the 14 guilty verdicts for sexual violence that have been issued to date, 5 had legal representation, that is to say, 35.7%, and none of the remaining 13 cases with an acquittal or conviction for crimes other than sexual violence had legal representation for the victims.

legal representation of victims carried out in favor of each of the women included in the Confidential Annexes and to assign a public defender to each of the proceedings included in the Annexes—including those that were archived—to carry out analysis of the procedural status, take into account the presumption of connection and, if applicable, request a revision or carry out any potential legal action.

7 REPARATION

In spite of repeated declarations from the Constitutional Court to guarantee women victims' comprehensive reparation, there are ongoing difficulties which seriously affect this right in ordinary criminal procedures, procedures stemming from Law 975-2005 and in the case of reparations through administrative channels, as will be detailed upon continuation.

The Working Group was not informed of legal reparation measures for the victims in the Annexes who suffered incidents of sexual violence, nor of the development of policies designed to redress these women in a comprehensive manner in the framework of ordinary criminal procedures. In its *Fifth Report*,⁵¹ the Working Group indicated that the Inspector General's Office had found that there were no legal reparation policies and for that reason it required the Superior Council of the Judiciary to create a policy from a transformative perspective.

When inquiring before the Superior Council of the Judiciary about the measures implemented to comply with *Autos* 092 and 009, it indicated that it was not within its jurisdiction to have knowledge of actions in relation to the *Autos*,⁵² that is to say, these legal reparation policies have not been promoted by the Superior Council. When asking the Prosecutor General's Office about this issue, the investigative body responded that it did not have "systematized information on the proceedings for comprehensive reparation."⁵³ The Working Group concluded that, these measures have not been implemented in the ordinary justice system on an institutional level and that their promotion is dependent on individual civil employees.

In relation to Law 975-2005 procedures, the Working Group recognizes that there have been important advances in the incorporation of the phenomenon of sexual violence as one of the violent methods scrutinized in the context of the law. Even though none of the victims who benefitted from Justice and Peace Tribunal rulings are included in the Annexes, it is important to recognize that these courts have advanced in issuing generalized orders that lead

51 Working Group on the compliance of *Auto* 092 of the Constitutional Court, Confidential Annex, *Access to Justice for Women Victims of Sexual Violence*, Fifth Report on the compliance of *Auto* 092 of 2008 of the Constitutional Court, Confidential Annex, Bogotá, October 2013.

52 "According to Agreement PSAA08-4552 of 2008, the National Gender Commission does not have jurisdiction on the actions that are being carried out in relation to the Confidential Annexes of *Auto* 092 of 2008 and 009 of 2015" (Superior Council of the Judiciary, Administrative Chamber, document PSA15-3277, July 28, 2015).

53 Office of the Prosecutor General of the Nation in its response to freedom of information request file no. 20159430000541, July 23, 2015.

to the implementation of programs and regional policies to benefit victims of sexual violence. The Working Group hopes there will be full compliance with these policies.⁵⁴ However, within the framework of a legal procedure, there should be advances in the identification of individual damages for each victim of sexual violence in accordance with the case's particular characteristics, instead of reducing reparations to a referral to administrative entities which then proceed with what some laws, such as 1448-2011, order of them in a general sense.⁵⁵

In relation to administrative reparation, the Unit for Support and Comprehensive Reparations of Victims (UARIV) provided to the Constitutional Court a report of actions relative to satisfaction measures and symbolic reparation for victims of sexual violence.⁵⁶ With respect to individual reparations, the UARIV indicated that it has four measures: i) the Victims Unit's Operational Model for Victims with a Differential and Gender Perspective, adopted by means of Resolution 0758 of November 21, 2014; ii) the National Day for the Dignity of Women Victims of Sexual Violence within the framework of the internal armed conflict, adopted by means of Decree 1480 of August 5, 2014; iii) the Comprehensive Reparation Strategy for Women Victims of Sexual Violence, which is carried out in three sessions; and iv) the Group Emotional Recovery Strategy, carried out during nine gatherings. Although the Working Group believes that these strategies are an advancement, it is not clear how the damages to be redressed are previously identified, what the particular characteristics of measures for victims of sexual violence are and whether there is some level of coordination with the criminal procedure.⁵⁷

With decision 24 of *Auto* 009, the Constitutional Court ordered the UARIV to provide “the corresponding procedures to evaluate, register and later implement Attention, Assistance and Comprehensive Reparation Plans (PAARI - *Planes de Atención, Asistencia y Reparación Integral*), for women victims of sexual violence” as referenced in the Annexes. The UARIV presented confusing advances, since it connected the victims mentioned in the Annexes with “a world [of victims] [...] totaling 967 registries,” which later, after filtering the informa-

⁵⁴ The rulings against Ramiro Vanoy Murillo, alias “Cuco Vanoy” (sentenced on February 2, 2015, file number: 110016000253200680018 of the Medellín Tribunal) and Orlando Villa Zapata and others (sentenced February 24, 2015, file number: 110016000253200883612-00) are particularly interesting. Reparation measures were ordered to be headed up by the UARIV, the National Center for Historical Memory (*Centro Nacional de Memoria Histórica*), the Ministry of Social Protection, the regional health departments (*Secretarías de Salud*), the Army, the Police and the Prosecutor General's Office, among others.

⁵⁵ The Constitutional Court ruled along these lines in rulings C-438-2013, SU-254-2013, C-912-2013 and C-180-2014. The Court has been emphatic in recognizing that the “comprehensive reparation of victims must be different from assistance, social services and humanitarian aid offered by the State, so that there is no confusion as to why it differs in nature, character and purpose” and that judicial and administrative reparation are complementaries..

⁵⁶ Unit for Support and Comprehensive Reparation of Victims, April 9, 2015, document 20152007100651.

⁵⁷ For a more detailed look at the challenges of individual reparation measures and incorporating a gender perspective in them, see International Center for Transitional Justice, *Estudio sobre la implementación del Programa de Reparación Individual en Colombia*, Bogotá, ICTJ, March 2015.

tion, led to 649 registries.⁵⁸ This is confusing because the registries from both *autos* total approximately 768 victims. Beyond these inconsistencies, the Working Group is concerned that the annex named “*Work Plan, procedure, evaluation and registry of confidential annexes*,” provided by the UARIV to the Court, has a five-month-long action timeline which has only two phases: “purging and classifying the registries” and “evaluation and registry process.” The UARIV does not present a timeline incorporating specific reparation mechanisms for these victims, as ordered by the Court. In addition, in accordance with the Unit’s response, it is not possible to know if the victims included in the Confidential Annexes have been redressed.

The Working Group considers it necessary for the different organizations to incorporate strategies which allow them to be accountable to the Constitutional Court, and society, on the reparation advancements for all the cases included in the Confidential Annexes, where greater speed is expected, both because the included women are beneficiaries of a court order which protects them and because their cases should be seen as an opportunity to promote transformative reparation measures.

The Working Group will ask the Constitutional Court to request from the Superior Council of the Judiciary (or the body acting on its behalf), the Prosecutor General’s Office, and the UARIV, detailed information on the measures implemented for the reparation of each victim included in the confidential annexes, according to its specificities. This information should not be presented universally, but instead be specific to each case.

⁵⁸ Unit for Support and Comprehensive Reparation of Victims, March 19, 2015, document 20152005725481.

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II. OBSTACLES IN PROTECTION

In *Auto* 009 the Constitutional Court found ongoing protection obstacles which inhibit victims from filing complaints: “The women do not feel adequately protected by the official protection programs, and these fears increase when the acts of sexual violence have been carried out by members of the State Security Forces or paramilitary groups.” The Court also indicated that when victims or their counsel denounce threats or risk, probably due to the criminal procedures, there are no “variables designed to learn about, mitigate and overcome the risk faced by victim complainants and their counsel.” This means, according to the Court, that the threats are not investigated based on a causal relationship with the sexual violence proceedings and these risks are not taken into account when developing methodological plans. The Working Group shares these considerations and has shown that these obstacles remain.

Even though in the last years there have been important regulatory advances, sufficient corrective measures to remedy the indicated obstacles have yet to be taken. Law 1719-2014 established regulations to protect victims of sexual violence¹ and Decree Law 016-2014 indicated that the Prosecutor General’s Office’s National Office on Protection and Assistance (*Dirección Nacional de Protección y Asistencia*) had to incorporate differential perspectives in the protection measures it implemented (Art. 28.7). Although these regulations are very important, it is unclear how they have been implemented. For example, the Prosecutor General’s Office indicated that Article 28.7 of the aforementioned Decree Law 016 was reflected in “the application of a set of elements which should be taken into account to generate adequate knowledge of the guidelines and complementary legal, administrative, social, and economic measures, which can be individual and collective, designed to avoid discrimination against people or populations and which guarantee the application of the Equality Policy.”² However, the Prosecutor General’s Office did not indicate what this “set of elements” consists of.

In order to demonstrate the gap that continues to exist between regulations and practice, the Working Group will present information on these compliance setbacks in relation to the Constitutional Court orders in *Auto* 009 and the lack of coordination between protection and criminal investigations.

1. SETBACKS IN THE COMPLIANCE OF ORDERS IN AUTO 009

The Court established that it would invite the Prosecutor General’s Office to adopt a protection *action plan*, so that in coordination with the National Protection Unit it would design and implement concrete strategies to apply the presumption of extraordinary risk for female

1 The impossibility of subordinating the provisional protection measures to risk studies; the incorporation of differential perspectives; ongoing psycho-social services as a protection measure; the inclusion of family members, persons under their care and their counsel in these measures; the prohibition of subordinating the granting of measures to a previous denouncement; the impossibility of conditioning access to the protection programs to the victim’s effectiveness or utility in the criminal procedure; among others.

2 Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015.

victims of sexual violence, which are enhanced when the risk originates from a legal declaration or denouncement. The Court indicated that, although the measures should apply to all female victims, “for the effect of their implementation in the short term, it requests that priority be given to the cases included in the Confidential Annex of *Auto* 092 of 2008 and the Confidential Annex of the current *Auto*, as appropriate.” The Working Group will next look at these three elements.

1.1. Protection Action Plan

When researching the advances in the action plan requested by the Court, the Prosecutor General’s Office reported³ that two different protection avenues (*rutas*) exist: one is the Law 975-2005 procedure⁴ and that of “victims of sexual violence assaulted outside of the armed conflict,” implemented by the Prosecutor General’s Office Protection and Assistance Program.⁵ However, for the Working Group it is unclear how the consolidation of avenues constitutes an action plan within the terms indicated by the Constitutional Court, although it recognizes that the transparency of the procedures is an advance in itself.

In any case, there are at least six persistent problems in the indicated procedures. First, the Working Group finds it concerning that the Protection and Assistance Program explicitly indicates that it will provide protection through the described avenues to victims outside of the armed conflict. This is problematic for two reasons: because the concept “within the

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- 3 Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015.
 - 4 It consists of: 1) A protection request, which arrives by means of the Correspondence Group, which is sent to the Police for the immediate implementation of preventative measures or initial assistance. Parallely, preferential treatment is given to the protection request and a work mission is requested from the Police or Prosecutor General’s Office to initiate a risk evaluation. “Thus, the Technical Group for Risk Evaluations (GTER -Grupo Técnico de Evaluación de Riesgo) is expected to determine the most appropriate protection measures which cover both the victim and their nuclear family”; 2) Once the technical risk study has been argued, the GTER considers and establishes the most beneficial protection measures for the victim; 3) Formal entry into the Program; 4) Implementation of measures; 5) Reevaluation of the case’s protection measures every six months; and 6) A request for complementary measures before regional entities by means of the Ministry of Interior’s Human Rights Office.
 - 5 The process consists in: 1) Protection request received by the Correspondence Group, which immediately remits a work mission to the Investigation and Evaluations Unit, which reports the case to the adviser on Differential and Gender Perspectives; 2) Selection of the profiles of the civil employees who will provide assistance to victims who then directly contact the victims; 3) Initial interview carried out by an investigator and psychologist who request the written consent to enter the program and emit a concept to grant temporary protection; 4) Formalizing entry into the program which orders the granting of temporary protection measures which last a month; 5) Implementation of the temporary protection measures by members of the Operative Unit; 6) Request for complementary protection measures from the Comprehensive Assistance Unit before regional entities; 7) Evaluation of the threat and risk rating: “After the victim files the respective complaint an evaluation of the threat and a risk rating is carried out, and a conditioned protection concept is issued, which lasts three months and is subject to advances in the investigation carried out by the case’s Public Prosecutor”; and 8) Implementation of conditional protection measures and follow-up.

armed conflict” used by the program is unclear, and because it is unknown what the protection mechanism will be for victims of armed actors who are not part of Law 975-2005.

Second, it is unclear how an exception will be implemented when there is a complaint-request as a condition for protection, since, as was established in step seven of the second avenue, the victim will have to present the complaint a month after being granted the provisional measures. The Prosecutor General’s Office indicated in its response:

[A]s a part of the mechanisms implemented so that victims present their protection request before formulating their denouncement [...] it has established a direct link with the CAPIV - CAIVAS - CAVIF and GEDES, with the Delegate Ombudsman for Women’s Rights and Gender Issues of the Human Rights Ombudsman’s Office and with the National Protection Unit -UNP, which remit, by means of direct communication with the adviser on a Differential and Gender Perspective of the DNPA, regarding cases of sexual violence, to initiate the immediate attention procedure for victims who have indicated their desire to enter the protection program.⁶

Nevertheless, it is not evident if this procedure has been implemented and if it has been effective, given that in another response, the Prosecutor General’s Office indicated that it “currently does not have, within its radius of action, women with protection measures who have not presented a criminal complaint, within or outside of the armed conflict”.⁷

Third, it is unclear how the legal and psycho-social support is provided in the context of protection, specifically when the granted measures stem from extraordinary risk. Fourth, the Working Group finds it extremely concerning that health, education, employment, psychological and other measures are delegated to regional entities, given that in many regions neither the mayor’s nor governor’s offices have resources or have implemented policies on these issues. This has been sufficiently clear in the monitoring of Law 1257-2008,⁸ and the recognition of this situation is as such that in Law 1761-2015 (Art. 9), which categorizes femicide as a crime, Congress gave the regional entities a year to create the bodies and mechanisms established in Article 9 of Law 1257-2008.

Fifth, it is extremely concerning that in the protection procedure in cases outside of Law 975-2005 protection is subordinate to procedural advances; point seven of the procedure indicates that “it is subject to advances in relation to the investigation carried out by the case’s Public Prosecutor,” which openly opposes Law 1719-2014.⁹ Finally, there is an ongoing

6 Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015.

7 Office of the Prosecutor General of the Nation in response to freedom of information request file no. 20159430000761, dated September 29, 2015 and provided to the Working Group on October 23, 2015.

8 See both monitoring reports on the implementation of Law 1257-2008, written by the Working Group for Women’s Right to a Life Free of Violence, Law 1257 of 2008.

9 Article 22.10 indicates: “[A] victim’s participation cannot be conditioned upon the effectiveness or usefulness in the collection of evidentiary elements or the identification of the incident’s author; it should be understood

lack of clarity regarding how the protection measures will be coordinated with the criminal procedure in the terms indicated by the Constitutional Court. This aspect has been an object of reiterated concern from the Working Group as it considers that there is a connection between the criminal procedure and the victim's risk. Nevertheless, to date, it does not seem as if this coordination exists.¹⁰

The Working Group asks that the Constitutional Court urge the National Protection and Assistance Office of the Prosecutor General's Office to review its procedures and their effectiveness, based on these observations, specifically to ensure that the presumption of risk materializes in concrete measures and that a victim's continuation in the program is not dependent on a filed complaint or their effectiveness in the criminal procedure.

1.2. Application of the Presumption of Extraordinary Risk and Risk Evaluation for Sexual Violence

Law 1719-2014, Article 22.1 established, in favor of victims of sexual violence associated with the armed conflict, a presumption of risk to face new aggressions. Consequently, the Court, in *Auto* 009, requested the design and implementation of concrete strategies for its application. When inquiring in the Prosecutor General's Office about these strategies, the investigative body indicated that it agreed to sign a letter of intent with the National Gender Commission of the Judiciary Branch, based on which a Technical Committee was created,¹¹ calling on the National Protection Unit to participate in this initiative where the different jurisdictions will be evaluated. One of the issues that this Committee has worked on is "the need to design a universal format to request protection, which would facilitate the proceedings for people looking for protection, and which takes into account the protection program to which they will be directed." This measure would overcome a problem indicated by the Working Group in the *Fifth Report*,¹² in relation to the distinct criteria established by each program. However, to date it is only a projection. The Prosecutor General's Office also in-

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that the final aim of protection in these cases corresponds to generating adequate security and trust conditions for the victim to fully exercise their rights and to guarantee the victims participation during the criminal procedure."

¹⁰ In its July 23, 2015 response, the Prosecutor General's Office indicated that "the identification of the existence of protection measures granted by the FGN [Office of the Prosecutor General of the Nation] in favor of victims included in confidential annexes of *Autos* 092 of 2008 and 009 of 2015 has not concluded." Thus, it requested an extended period to provide a response.

¹¹ "Technical Committee to design, promote and monitor the inter-institutional action mechanisms coordinated and articulated for prevention, attention, protection, investigation and adequate prosecution of sexual violence and the adequate incorporation of a gender perspective and a differential perspective in these processes" (Office of the Prosecutor General of the Nation in response to the freedom of information request, file no. 20159430000541, July 23, 2015).

¹² Working Group on the compliance of *Auto* 092 of the Constitutional Court, Confidential Annex, *Access to Justice for Women Victims of Sexual Violence*, Fifth Report on the compliance of *Auto* 092 of 2008 of the Constitutional Court, confidential annex, Bogotá, October 2013.

licated that civil employees in the Protection Program will attend sessions promoted by the Ministry of Justice on access to justice.

Even though the Working Group considers these actions to be important, they do not constitute concrete strategies to apply the presumption of risk, as was requested by the Court. As happens with many elements of policies on attention, these measures are projected actions which will probably be implemented in the future, but do not respond to the High Court's request.

In addition to a lack of concrete strategies for the presumption of risk's application, the Working Group found that the Protection Programs do not have mechanisms to identify sexual violence as a specific risk which occurs under certain conditions and is not necessarily associated with a risk of being killed. In case 148 of the Confidential Annex of *Auto 092*, the female leader of a displaced population denounced a risk of sexual violence due to her leadership role; however, the Protection Program did not offset the risk, to the point where the violence was carried out against her. The lack of suitable measures to identify sexual violence as a risk and appropriate protection measures led the Inter-American Commission on Human Rights to grant the woman precautionary measures on June 20, 2014.

For that reason, the Working Group will ask that the Court reiterate before the Prosecutor General's Office the need for peremptory actions to formulate concrete strategies to apply the presumption of risk established in Law 1719-2014 and to establish specific mechanisms to identify the autonomous risk of sexual violence.

1.3. Protection Measures for Victims Included in the Confidential Annexes

The Constitutional Court requested a prioritization of the cases included in Confidential Annexes to evaluate the risks faced by those women and to grant protection measures, if pertinent. The response from the Prosecutor General's Office's protection programs is very concerning: "[E]ven though specific avenues have been designed to address cases of sexual violence in accordance with the current regulations, a specific prioritization strategy does not exist in relation to the application of protection for the victims of incidents profiled in the *Autos'* confidential annexes."¹³ This means that the Prosecutor General's Office is openly in noncompliance with the prioritization request made by the Court in *Auto 009* and is not applying the presumption, due to which it is possible that these risks become a reality without the Prosecutor General's Office having done anything to prevent it.

The Prosecutor General's Office reported that of all the victims included in the Confidential Annexes (768), only 12 women have received protection measures;¹⁴ there is no in-

¹³ Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000761, dated September 29, 2015 and provided to the Working Group on October 23rd of the same year.

¹⁴ Of these, two were included after the expedition of Law 1719-2014, and as thus, the described procedure was applied to them. In one of those cases, GTER did not issue a concept because the victim is a beneficiary of the National Protection Unit Program as a female leader, and in the other case, the risk was described as ordinary

formation on how the presumption of risk of sexual violence was applied, or on the potential risks due to criminal procedures.

The Working Group concludes that for the cases included in the Confidential Annexes there is a complete noncompliance of the prioritization request to evaluate risk level and it is unknown how the presumption established by the Court is being applied in these cases. For that reason, it will ask the Constitutional Court to order the Prosecutor General's Office, in coordination with the National Protection Unit, to report in a detailed manner and on each of the cases included in the Annexes: the diagnosis carried out on each woman, the application of the presumption of risk (also taking into account the presumption of connection of sexual violence associated with the armed conflict in regions with a presence of armed actors) with due observance, and the grounds for inclusion or exclusion in the programs and the measures granted.

2. LACK OF COORDINATION BETWEEN PROTECTION AND CRIMINAL INVESTIGATIONS

The Working Group considers that there are ongoing coordination problems between the protection programs and the criminal investigations: those responsible for monitoring the cases included in the Annexes do not have all the information which allows them to understand the victims' risk situation; threatening acts are not investigated under the assumption that they are due to the complaint or legal process, and the methodological plans are not developed taking into account the possible risks faced by the victims and their relatives.

The Prosecutor General's Office did not report on the adoption of any measures to overcome these obstacles, which is why the Working Group has concluded that they are still valid. Hence, it will ask the Constitutional Court to order the Prosecutor General's Office to urgently adopt the following measures: include variables in monitoring registries on cases of sexual violence with an emphasis on the cases reported in the Confidential Annexes to allow for a monitoring of the women's risk situation and the adoption of protection measures; send a meticulous and detailed report on criminal investigations that have been initiated due to the threats denounced by victims of sexual violence in the cases included in the Annexes; and design parameters and guidelines to guarantee that the investigation of incidents of sexual violence takes into account the risks faced by women due to their denouncements.

because the threat was collective and not individual. In the case of two women, it was not possible to confirm that it is the same person because the identity cards do not coincide.



III. OBSTACLES IN RELATION TO HEALTH CARE

In *Auto* 009, the Constitutional Court determined that women have an ongoing lack of trust in the justice system, caused by, among other reasons, “the severe psychological burden that initiating, continuing and terminating a judicial process implies for women, without appropriate psychological and legal support from the responsible entities and, even when they have some kind of support.” It also indicated that one of the greatest difficulties that these victims face is the absence of adequate, expeditious and timely treatment for the extremely serious repercussions that these incidents tend to produce in their sexual and reproductive health. For that reason, it emphasized the State obligation to provide ongoing, complete and free medical assistance, which should include “complete medical examinations and quality treatments, which on the one hand, detect, in a comprehensive manner, the survivor’s health impacts, and on the other hand, order the necessary measures and treatments to overcome these repercussions.”

The Working Group fully shares these evaluations and in this chapter it will provide more detailed information on the persistent coordination challenges to achieve an identification of, and services for, the repercussions of sexual violence, the deficiency of a psycho-legal approach in the proceedings of criminal cases and the insufficient services for victims’ sexual and reproductive health.

1. LACK OF COORDINATION IN ATTENTION FOR THE REPERCUSSIONS INHERENT IN SEXUAL VIOLENCE

The submission of the Annexes to the Prosecutor General’s Office and the UARIV had the objective of not only promoting criminal procedures but also guaranteeing that victims received comprehensive services. The Working Group observed that, to date, the level of the lack of coordination is of such magnitude that even though the Prosecutor General’s Office indicated that it had referred cases to the Ministry of Health,¹ it does not know which women have received services.² Meanwhile the Ministry of Health reported that it has not received information on these cases.³ Nor did it indicate that it had requested information so as to be able to provide these services to the women indicated in the Psycho-social Attention and Comprehensive Health for Victims Program (PAPSIVI- Programa de Atención Psicosocial y Salud Integral a Víctimas). Therefore, everything indicates that there has not

1 Office of the Prosecutor General of the Nation in response to freedom of information request, document DNSSC 00793 file no. 20157720007321, January 16, 2015.

2 “There is no related and specific information, which helps to determine how many of the victims included in the Confidential Annex of *Auto* 092 are receiving medical and psycho-social services” (Office of the Prosecutor General of the Nation in response to freedom of information request, document DNSSC 00793, file no. 20157720007321, January 16, 2015).

3 The response says: “[I]t is necessary to report that in order to guarantee the application of the Protocol and Model of Comprehensive Health Services for victims of Sexual Violence, specifically for women associated with the confidential annex, it is necessary to have this population’s identification registration, information whose submission by the Prosecutor General’s Office is pending.” (Ministry of Health in response to freedom of information request, file no. 201516001374541, August 14, 2015).

been compliance with the order to provide comprehensive health services to the victims of the Confidential Annexes. Under no circumstances should this be used as an excuse by the Ministry of Health, given that in its coordination with the UARIV it should have looked for this information to provide the women with the services indicated in the PAPSIVI.

When inquiring about the Prosecutor General's Office's internal mechanisms to guarantee women's rights to receive specialized and comprehensive psychological, psychiatric and forensic services, it responded that it does not have an established mechanism to guarantee this right, but that "it generated a coordinated space with the Social Promotion Office of the Ministry of Health and Social Protection, with the aim of guaranteeing their medical and psychological services."⁴ The Working Group does not have additional information on this coordination, its reach, frequency and the formulation of clear and expeditious mechanisms which allow for an adequate coordination of justice and health tasks. Nevertheless, due to the response, it seems as if this mechanism has not resulted in the promotion of a process which considers health services as a mechanism to guarantee justice.

The Working Group does not understand why, more than seven years after *Auto* 092 was issued, the Prosecutor General's Office has been unable to establish clear coordination mechanisms with the health sector, so that its actions on this issues are not a mere referral, but achieve adequate coordination leading to comprehensive services, recognizing that attention and stabilization of the victim's physical and mental impacts positively contribute to a women's increased interest, will and disposition to participate in criminal procedures. For that reason, it will ask that the Constitutional Court order the Ministry of Health to send periodic reports to the Prosecutor General's Office and the Court regarding advances in services for physical and mental repercussions of victims and their family group, prior to developing individual diagnoses which take into account the findings of the *Autos* 092 and 009.

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2. LACK OF INCORPORATION OF THE ARMED CONFLICT'S SPECIFIC NATURE IN HEALTH SERVICES

The available mechanisms for services to women victims of sexual violence by armed actors or due to displacement still do not take into account their character as victims of the conflict. The services should be carried out under the general measures established in the Protocol and Model of Comprehensive Health Services for Victims of Sexual Violence (Resolution 459-2012). The Protocol has shortcomings which worsened with the expedition of Law 1719-2014 by means of which its obligatory character was eliminated and it became optional. A lawsuit was brought against this regulation in the Constitutional Court and the Working Group contributed a concept on the protocol's obligatory nature. By means of ruling C-754 (2015), the Constitutional Court declared that the regulation was unconstitutional considering that "guaranteeing, under equal conditions, the health rights of victims

4 Office of the Prosecutor General of the Nation in response to freedom of information request, document DNSSC 00793 file no. 20157720007321, January 16, 2015.

of sexual violence includes a **minimum guarantee** for a vulnerable population's access to the right to health services which is not fulfilled by the regulations contested concept"⁵ (original emphasis). The Working Group hopes that there is full compliance with this ruling.

When inquiring before the Ministry of Health about the adopted measures on this issue, the entity responded that it had contracted an "expert entity" to carry out some workshops, make diagnoses and, based on those, obtain a baseline for the protection of differential services, which in the near future would be complemented to construct a differential approach."⁶ The Working Group considers that the Ministry of Health's response is unacceptable and sees in the response a very clear example of the lack of action on this issue. It is not permissible that the entity responsible for issuing guidelines and supervising the satisfaction of health rights has yet to adopt formal and material measures to guarantee that victims of sexual violence are responded to given their particular repercussions and that the guarantee of their rights is subordinated by studies carried out by an "expert body" that in the "near future" will continue and complement its results.

For that reason, the Working Group will ask that the Court order the Ministry of Health to issue clear guidelines on specialized services for the physical and mental health of victims of sexual violence in the armed conflict and forced displacement, which incorporate all the principles of rationality indicated in ruling T-045-2010, responds in differential manner to the contexts of victimization and takes into account gender, age, ethnic, racial, disability and sexual orientation perspectives. In the case of indigenous and afro-descendent women, the incorporation of this perspective should take into account the spiritual and community damages and work in coordination with traditional medicine.

3. LACK OF INCORPORATION OF A PSYCHO-LEGAL PERSPECTIVE IN CRIMINAL PROSECUTION PROCEEDINGS

Time and again the Working Group has indicated the importance of incorporating a psycho-legal perspective in criminal proceedings to avoid re-victimization, based on the belief that the process in itself should be *restorative*. For that reason, on repeated occasions the Working Group has urged the Prosecutor General's Office to establish immediate actions to guarantee the incorporation of psycho-social and psycho-legal approaches as a guarantee

⁵ Constitutional Court C754 of 2015. Reporting Justice Gloria Stella Ortiz, section VII paragraph 52.

⁶ The response indicates that the Ministry contracted "an expert entity in attention to victims of sexual violence, "Círculos de Estudio," to implement workshops on mutual support, closure (*resolución de duelos*) and resilience; directed towards women victims of sexual violence in the context of the armed conflict, with the aim of obtaining a specific and differentiated diagnosis regarding repercussions and damage generated by violence in the context of the conflict and to obtain a baseline for the projection of differential services [...]. In the near future it is projected to continue and complement these results to construct a differential approach in attention to victims of sexual violence in the conflict armed"(Ministry of Health in its response to freedom of information request, file no. 201516001374541, August 14, 2015).

in access to justice. In spite of this, the Working Group has once again observed that these approaches and the measures for their implementation have yet to be adopted.

The Prosecutor General's Office indicated that "it still does not have an attention protocol for victims of sexual violence within the context of the armed conflict which considers investigative guidelines or directives with a psycho-social approach." It is also lacking "registries on training initiatives or specific training for the civil employees responsible for these cases to guarantee that guidelines are adopted on victims' emotional care." Nevertheless, it indicated that it has an "[a]ttention strategy with a differential perspective in services for women victims of violence, contained in memorandum 052 of 2011."⁷

Until the Prosecutor General's Office takes seriously the incorporation of a psycho-legal approach in its actions, it will not only continue to be deficient in its obligation to act with due diligence, but will continue to increase the harm caused by violence against women.⁸ Thus, the Working Group will ask the Constitutional Court to order the Prosecutor General's Office to emit clear guidelines on the incorporation of a psycho-legal approach and provide human and technical resources to public prosecutors and all civil employees who interact with victims— starting with the initial contact— in such a way so that their actions are coordinated, observant of women's rights and fulfill the obligation to act with due diligence.

4. INSUFFICIENT SEXUAL AND REPRODUCTIVE HEALTH SERVICES FOR VICTIMS

There are disproportionate impacts on victims' sexual and reproductive health which are directly linked to the incidents of sexual violence. In reaction to this situation, the Colombian State's response has been precarious, which reinforces the gravity of these repercussions. This was verified by the Court in *Auto* 009, where it demonstrated that there are persistent and serious difficulties in accessing examinations and treatment for sexually transmitted diseases and the voluntary interruption of a pregnancy, which in many occasions are denied for economic reasons, regardless of the existing legal mandate that the service be free of cost. Two cases included in the Confidential Annexes illustrate this situation.

The first incident (case 33 in *Auto* 092's Annex) refers to a young, displaced Afro-Colombian woman with a cognitive disability, who was a victim of sexual violence on two occasions within the context of forced displacement. Her only support system is her mother, who suffers from a physical disability which limits her mobility. As a result of the incident,

⁷ Office of the Prosecutor General of the Nation in response to freedom of information request, document DNSSC 00793 file no. 20157720007321, January 16, 2015.

⁸ As Jineth Bedoya indicated in a hearing before the Inter-American Commission on Human Rights: "The lack of actions by the Office of the Prosecutor General of the Nation, in addition to increasing the levels of impunity which today reaches 98% in cases of sexual violence, also generates a daily re-victimization of these women with irreversible consequences in their health and emotional stability" (Hearing before the Inter-American Commission on Human Rights, "Right to health and the justice of victims of sexual violence in Colombia", held on October 22, 2015).

the young woman is facing serious repercussions in her sexual and reproductive health which were studied by the Court in Ruling T-595-2013. To protect her right to health, the Court ordered the UARIV, in coordination with the Ministry of Health, to carry out a specialized diagnosis, approve ongoing and comprehensive treatment for women with disabilities and to agree upon the definition of any other intervention recommended by medical personnel. According to *Sisma Mujer*, the organization which represents the victim, in spite of the legal decision there has not been a full diagnosis of the young woman or her mother to respond to their health repercussions.

The second case refers to woman and her son (included in case 154 of *Auto* 009's Annex) who were victims of sexual violence by criminal gangs. After the incidents, multiple impacts on their sexual and reproductive health have appeared. The Court ruled on this case in Ruling T-418-2015 where it established that health services for victims of sexual violence in incidents associated with the armed conflict cannot be limited to basic health care plans because they “do not include essential treatments to recover from the impacts generated by human rights violations” and indicated that the State must provide a diagnosis and complete medical examinations and specialized, appropriate and quality treatments. Consequently, the Court ordered the Ministry of Health to render a report within no more than two months on the actions advanced to provide mental and sexual health to victims of human rights violations.⁹ According to information available to the Working Group, five months after the order was issued, the Ministry had not provided a report to the Court.

Given this panorama, the Working Group will ask that the Court declare a presumption of disproportionate impact on the sexual and reproductive health of victims of sexual violence associated with the armed conflict, as a direct consequence of the incidents of sexual violence. In addition, it will request that the Court order the Ministry of Health to immediately and fully diagnose the health repercussions on each woman included in the Confidential Annexes and order the necessary measures and treatments to overcome these impacts in an immediate, comprehensive, specialized manner, with a differential perspective, free of charge, and lasting the time necessary according to the specific nature of each case. Finally, it will ask the Court to order the Ministry of Health to comply with the orders in Ruling T-418-2015 and provide a report, at least every six months, on the provision of health services to women victims of sexual violence associated with the armed conflict.

⁹ The complete order to the Ministry of Health is: “1. Undertake a verification and monitoring plan on the implementation of the PAPSIVI in relation to providing mental and sexual health services to victims of grave human rights violations. 2. Carry out verification visits to the mental and sexual health care providers. 3. Provide a report on the actions carried out by the institutions responsible for the mental and sexual health of victims of grave human rights violations in relation to the delivery of mental and sexual health services, which should be provided in a maximum period of two (2) months.”

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IV. INSTITUTIONAL OBSTACLES

The aforementioned persistence of impunity and obstacles in protection and health services are a consequence of the absence of a coordinated and strategic response which guarantees justice for victims of sexual violence associated with the conflict. In spite of the orders issued by the Constitutional Court in *Autos* 092 and 009, the Working Group highlights the following persistent institutional obstacles: problems with information registries, difficulties in intra and inter-institutional coordination, and problems with the training systems and some elements of the strategies promoted by the Inspector General's and Prosecutor General's Offices. These obstacles will be addressed in this order in the following section.

1. PROBLEMS WITH INFORMATION REGISTRIES

In *Auto* 009, the Court concluded that the State still lacks the data on sexual violence in the armed conflict that would allow it to design and implement attention, prevention and reparation policies. Hence, it urged the entities to consolidate an information source useful for decision making using all of its administrative, budgetary and managerial efforts. In the context of this conclusion, the Working Group will contribute information on three scenarios: 1. the Court order to design and implement a unified and coordinated information system by the Superior Council of the Judiciary; 2. the Office of the Prosecutor Generals' information system, and 3. The Office of the Inspector Generals' information system.

1.1. Superior Council of the Judiciary's Information System

In *Auto* 009 (Decision 16), the Court requested that the Superior Council of the Judiciary design and implement an information system on the criminal procedures related to sexual violence associated with the armed conflict. When inquiring about the implementation of this system, the Superior Council of the Judiciary reported the existence of four data collection spaces—all created before *Auto* 009 was issued. None offer complete information on case advancements, specifically regarding the cases included in both *Autos*' Confidential Annexes.¹

The lack of a system demonstrates a deterioration of the guarantee of victims' right to justice. When questioning the Superior Council of the Judiciary about the inclusion of cases from the Confidential Annexes in these information systems, it responded that, according to Agreement PSAA08-4552 (2008), it does not have jurisdiction over the Annexes. The mentioned agreement is from February 20, 2008 (prior to both *autos*) and dictates the

¹ The four systems are: the Statistical Information System of the Judicial Branch (SIERJU- *Sistema de Información Estadística de la Rama Judicial*), which “does not have information with sufficient detail to characterize victims and gender”; the National System of Judicial Statistics (SINEJ- *Sistema Nacional de Estadísticas Judiciales*), which “has incorporated into its design baseline indicators on sexual violence, specifically taking gender into account. It is awaiting approval in the SINEJ's Inter-institutional Committee”; the XXI Century Justice Web (Justicia Siglo XXI Web) system, which is being updated to work online and which “is estimated that it will have national coverage by June 30, 2016”; and the Criminal Observatory for Sexual Crimes against Children and Adolescents (*Observatorio Penal para Delitos Sexuales contra Niños, Niñas y Adolescentes*), which due to its nature does not have the capacity to respond to the Constitutional Court (Administrative Chamber of the Superior Council of the Judiciary in response to freedom of information request, document PSA15-3277, July 28, 2015).

“rules for the application of gender equity in the Judicial Branch.” For obvious reasons, the *autos* are not included. However, for the Working Group, this level of rigidity is unnecessary, especially when the Court orders do not oppose its jurisdiction but instead, ask that they be fulfilled in the specific case of sexual violence associated with the armed conflict.

The Working Group concludes that the information system ordered from the Superior Council of the Judiciary has not been implemented and that the existing systems do not respond to the shortcomings found in the Constitutional Court’s *Auto* 009. Consequently, the Working Group will ask the Court to urge the Superior Council of the Judiciary (or body acting on its behalf) to comply with the order issued by the Constitutional Court in *Auto* 009 and to design and implement an information system on the criminal procedures related to sexual violence associated with the armed conflict.

1.2. Prosecutor General Office’s Information System

In *Auto* 009, the Constitutional Court demonstrated that the Prosecutor General’s Office still does not have “a unified information system, with reliable and up-to-date information on the investigations.” This not only makes it more difficult to make strategic decisions which promote the cases, but is also an obstacle for the victims and their representatives in accessing reliable information.

The Working Group found two different information registration efforts which are not complementary: on the one hand, a group of people have access to an Excel database used to respond to the Constitutional Court and establish strategies in the Prosecutor General’s Offices, but its content is not included in the institutional information system. On the other hand, the remaining personnel who have access to the institutional information systems must carry out manual searches to establish a connection between incidents of sexual violence and the armed conflict. The system does not allow this information to be automatically extracted and less so in reference to the presumption of connection with the armed conflict as established by the Court.² This is serious if considering that the second group is made up of public prosecutors and groups of investigators who are responsible for an important number of cases included in the Annexes, and who, with this kind of information, will not be able to access data to identify criminal patterns.

The Working Group recognizes the work done to provide reports to the Court by those within the Prosecutor General’s Office who monitor the cases; nevertheless, it calls on the institution to make these registries more sophisticated and mission focused so as to

² When inquiring about the possibilities of identifying cases of sexual violence associated with the armed conflict in the official registration systems, the Prosecutor General’s Office reported that “some categories exist which could facilitate consultations in the systems to identify these kinds of cases, such as the following: relationship between the defendant and an armed group, narration of the incidents and circumstances, time and place.” For the Working Group, this means that the category does not exist in the system, and the search must be carried out manually. Office of the Prosecutor General of the Nation in its response to freedom of information request, file no. 20159430000541, July 23, 2015).

be able to carry out a dynamic monitoring of the cases. As long as the Prosecutor General's Office maintains the current mechanism to update information, there will be ongoing difficulties in accessing trustworthy data that meets the minimums established by the Court.³ Some of the inconsistencies found by the Working Group in the Prosecutor General's Office databases will be mentioned next.

When reviewing the report on the cases in *Auto 009* provided by the Prosecutor General's Office to the Court in March 2015, the Working Group found that the Prosecutor General's Office reported on fewer cases than those included in the Annex, that several were duplicated and others omitted,⁴ in addition to excluding reports where a person was victimized on several occasions.⁵ In at least five cases, the incidents being investigated did not correspond to the location where they were committed,⁶ and in 26 cases the location of the incidents reported by the Court changes in relation to those indicated by the Prosecutor General's Office without clarity if it is due to an error or because the investigating body has different data.⁷ In addition, in 167 cases the investigation's file number was omitted; in 176 cases there is no information on the Public Prosecutor's office assigned to investigate the incidents; in 356 cases information is not included about where the investigations are taking place; and in 327 the procedural status is not reported. In relation to the perpetrator, the information reported by the Court and the Prosecutor General's Office varies in at least 192 of the 456 incidents included in *Auto 009*'s Annex: this includes 284 narratives

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- 3 The difficulties to carry out follow-up are clearly shown in the following response from the Prosecutor General's Office: "The level of information in relation to advances in information requires a detailed revision of the information systems and, in many cases, a careful revision of the files and folders that are held by the Prosecutor's Offices around the country. This situation obligates a restriction on updates, given the time and resources required to acquire new data" (Office of the Prosecutor General of the Nation, response to a freedom of information request, file no. 20159430000761, dated September 29th, 2015 and provided to the Working Group on October 23rd, 2015).
 - 4 The Court reported a total of 444 cases (cases 223 and 224 are numbered twice, but they correspond to different incidents). The Prosecutor General's Office reported in its database a total of 442 cases, but omitted seven without justification (cases 223 (b), 224 (b), 355, 439, 440, 441 and 442). On the other hand, it duplicated four cases which correspond to the same victims and they have been assigned inconsistent annex numbers (in cases 11, 91, 130 and 109 they are assigned numbers 436, 437, 438 and 439).
 - 5 In the Confidential Annex, several women reported that they had been victimized on more than one occasion; nevertheless, the Prosecutor General's Office only reported one of the incidents, leaving out other narratives which merit an investigation. This happened with ten victims' cases: 5, 15, 40, 41 (three victims), 43, 53, 60 and 124. This also implies that the Prosecutor General's Office did not report a file number for each incident, nor any other element on the cases that are not included, based on which the Working Group assumes that they have not been investigated.
 - 6 One case which took place in Valle de Cauca is investigated in Antioquia (case 201); another that occurred in Caquetá was assigned to Cauca (case 19); another committed in Arauca has been given to Norte de Santander (case 34); another carried out in Antioquia is in the Soacha office (case 140); and one more that took place in Putumayo is being investigated in Valle de Cauca (case 196).
 - 7 In four cases, the Annex reports "no information" for the department and the Prosecutor General's Office indicated (cases 54, 55, 150 and 206), and in 22 cases, the Annex reports a different department than the one reported by Prosecutor General's Office (cases 53, 289 to 301, 304 to 307, 333, 340, 385 and 398).

where the perpetrator has not been identified, but in 137 of those the Prosecutor General's Office assigned a specific perpetrator,⁸ and in another 55 cases the information is different from the narrative information presented to the Court.⁹ Given that the identification of an alleged perpetrator has consequences for the strategy and allocation of incidents, the Prosecutor General's Office should provide information on the grounds which explain these differences (See page 25 on the procedural status for author to be determined).

The information registry is even more concerning for *Auto* 092. Over the last seven years, the Working Group has obtained a total of six different reports, either directly from the Prosecutor General's Office or by means of the Court. Not one has had the same structure, nor do they present the same data, or contain previous information. Each time the Prosecutor General's Office reports information it seems that distinct reporting models are being used, starting from zero, time and time again. Providing information in this way makes monitoring more difficult, as it impedes the detection of advances, impasses and setbacks, as was indicated by the Working Group in its five previous reports.

For example, with less than a four month time difference between two reports — a January 2015 database and an April 2015 diagnostic— the Prosecutor General's Office reported different file numbers in 32 cases,¹⁰ presented information on procedural statuses which are incoherent between the two documents,¹¹ and in 45 cases it changed information on the Prosecutor's Office that is responsible for the cases oversight, without information if the assignment has changed or if this is product of an error.¹²

⁸ It is unclear to the Working Group if the difference is due to an advance in the investigations, an error, or an assumption based on correlating the date and location of the incident with the presence of armed actors.

⁹ This occurred in three cases, the Prosecutor General's Office attributed responsibility to criminal gangs, but the victims indicated an unidentified group (two cases) and a paramilitary group (one case); five cases that the Prosecutor General's Office attributed to the guerrilla, but the narratives correspond to unidentified groups; eight cases where the Prosecutor General's Office cited paramilitaries and the narratives indicated criminal gangs (two cases), joint operations with the State Security Forces (two cases) and unidentified groups (four cases); one case that the Prosecutor General's Office attributed to an individual, but the Annex speaks of an unidentified armed group; and 38 cases where the Prosecutor General's Office stated that the author is undetermined, but the narratives assigned responsibility to criminal gangs (14 cases), civilians (one case), unidentified armed groups (17 cases), guerrillas (two cases) and paramilitaries (four cases).

¹⁰ Cases 2, 3, 5, 13, 14, 18, 21, 31, 33, 35, 39, 40, 55, 57, 60, 76, 80, 84, 97, 102, 109, 110, 119, 120, 123, 124, 136, 148, 150, 156, 174 and 176.

¹¹ As an example, in case 101/115 in January 2015 the Prosecutor General's Office indicated that the first case had been dismissed and the second was in preclusion, but in April it indicated that they are the same case and had a guilty verdict for a crime other than sexual violence. In relation to four incidents, on the mentioned date, the Prosecutor General's Office had indicated that they were archived, but in April 2015 it indicated that two were precluded (cases 81 and 136) and another two in arraignment (cases 40 and 156). Three cases that reported a guilty verdict in January were reported to be in a preliminary investigation phase or archived in April (cases 13, 15 and 22).

¹² These are cases 9, 32, 34, 40, 41, 43, 44, 45, 47, 51, 56, 66, 68, 69, 70/74, 71, 72, 76, 77, 84, 91, 94, 106, 107, 109, 118, 120, 127, 134/145, 136, 137, 140, 141, 142, 148, 153, 156, 157, 162, 166, 170, 171, 172, 174 and 180. This is especially serious when considering that cases 34, 70/74, 71 and 142 reportedly were being investigated by

The Working Group requests that the Court, in response to the deficiencies verified in *Auto* 009,¹³ urge the Prosecutor General's Office to adopt collection mechanisms for its institutional information systems which provide quantitative and qualitative data, integrating the data from both *Auto*'s Annexes and all incidents of sexual violence associated with the armed conflict in such a way that it is possible to progressively access case information, advances and impasses. It also requests the use of a unified structure which integrates substantive data on the cases' advances when providing information.

1.3. Inspector General Offices Information System

The Inspector General's Office reported that an information document exists to collect information and monitor cases. The Working Group does not have detailed information, so it cannot comment.¹⁴ Nevertheless, it does have the database used in the September 2014 report, with an August 2015 cutoff date, with serious deficiencies in its information collection. It is an Excel document and, in comparison with the data from the Prosecutor General's Office, it establishes significant amount of data (such as procedural status) in a distinct and in some cases even contradictory manner.¹⁵

This is just an example of the difficulties found in the Inspector General's Office registries, as shown in prior reports,¹⁶ and it shows the precarious nature of information from

the National Human Rights Unit or specialized Prosecutor's offices in January, and then in April 2015 they were reported to be under the jurisdiction of regional Prosecutor's offices.

- 13 See footnote 341 of *Auto* 009, that indicated these difficulties: lack of technical support, fragmented information, incompatibility of variables, a lack of rigor in the conceptual construction of variables, insufficient information reporting on victims' rights within the framework of the process, deficient information on health and protection measures, a lack of intra and inter-institutional coordination and a lack of procedural and information collecting protocols for those who carry out these tasks.
- 14 According to the Inspector General's Office, the document "contains criteria established by the Constitutional Court and is filled out by the court procurators (*procuradores judiciales*) who intervene in these procedures. They should be updated each month. The document allows for an evaluation of the Public Ministry agents' intervention and provides input for the databases" (Inspector General's Office Delegate from the Public Ministry on Criminal Affairs (*Procuraduría Delegada para el Ministerio Público en Asuntos Penales*) in response to freedom of information request, document DMP 10596, August 11, 2015).
- 15 For example, in 17 cases the Inspector General's Office reported an archived case, whereas the Prosecutor General's Office indicated a preliminary investigation in nine of them (cases 30, 64, 66, 71, 95, 132, 140, 142 and 149), arraignment in five (cases 44, 96, 138, 150 and 156) and a guilty verdict in three (cases 82, 110 and 126); in 12 cases the control body indicated an arraignment stage, and the Prosecutor General's Office reported a preliminary inquiry or investigation stage in six cases (19, 24, 34, 85, 143, 151), a guilty verdict in two (cases 38 and 75) and dismissal in one (case 172); in one case the Inspector General's Office reported a trial stage and the Prosecutor General's Office, an archived case (case 5); and in four cases the Inspector General's Office indicated a guilty verdict whereas the Prosecutor General's Office reported an archived case (case 15), arraignment (case 173) and preliminary investigation (cases 13 and 22).
- 16 For example, both in the *Fifth Report on Compliance* presented in 2013 as well as in an attached document called "Assessment Document on the Findings from the Legal Response to the 183 Cases Included in the Confidential Annex of *Auto* 092 of 2008" (*Documento de balance sobre los hallazgos encontrados en el estudio de respuesta judicial a los 183 casos incluidos en el Anexo reservado del Auto 092 de 2008*), the Working Group detailed some of the Inspector General's Office information registry problems.

this entity, as well as its lack of coordination with the Prosecutor General's Office. For this reason, the Working Group will ask the Court to urge the Inspector General's Office and the Prosecutor General's Office to coordinate information comparisons between their respective registries, and to urge the Inspector General's Office to improve its data collection systems so that it can monitor not only the actions of special agents, but also the guarantee of a victim's right to know when a disciplinary action should be carried out. The Inspector General's Office should also have registration systems for disciplinary procedures against public officials involved in the incidents and civil employees who have re-victimized or violated victim's rights.

2. INTRA AND INTER-INSTITUTIONAL COORDINATION PROBLEMS

The coordination required to respond to *Autos* 092 and 009 involve two parallel scenarios: intra and inter-institutional. For the effects of this report, the Working Group will concentrate on evaluating the internal coordination at the Prosecutor General's Office and the Inspector General's Office, and inter-institutional coordination, with directives issued by the Superior Council of Criminal Policy headed by the Ministry of Justice.

2.1. Internal Coordination: Prosecutor General's Office and Inspector General's Office

The Working Group considers that, since its internal restructuring, the Prosecutor General's Office is taking steps to achieve greater coordination between its national offices. This is reflected in the consolidation of an informal space called the Women's Thematic Working Group and the proposal to create a National Committee for the Monitoring and Orientation of Investigations and Prosecutions of Violence which Occurred in the Context of the Armed Conflict, which will be made up of nine offices from the Prosecutor General's Office.¹⁷

The Working Group hopes that this space will be created and that its operation is different from that of others which have been presented as coordination spaces, but that have not been functional, as happened with the Gender Committee, created by Resolution 3788 (2009), which, according to information from the Prosecutor General's Office, "has only met a few times" and has not managed to mainstream a gender approach in the entity and much less respond to the specific orders in *Auto* 092. Six years have passed since it was created and it has had zero effectiveness, which is why the Working Group makes the respectful recommendation that the recently created Committee avoid similar results.

The Inspector General's Office results are discouraging. When inquiring on the actions promoted by the control body, the Working Group obtained partial and completely disjointed responses from three delegates and no response from two others.¹⁸ It seems as if

¹⁷ This information was presented by the Prosecutor General's Office in a meeting with the Working Group on June 17, 2015.

¹⁸ There were responses from the Public Ministry's delegates on Criminal Affairs, Prevention on Human Rights

an internal coordination space does not exist and/or is not operating, to permit joint efforts and coordinate the distinct functions within the Inspector General's Office to fully and adequately respond to the Constitutional Court's requirements.

2.2. Inter-institutional Coordination

In *Auto* 009, the Constitutional Court considered that there had been an increase in regulations which were not reflected in practice. For that reason, it urged the diverse entities to develop strategies, among them articulation and coordination to implement legal reforms, in step with adequate budgetary allocations for implementation, so that the different entities would not have to respond to these reforms with a precarious capacity. Hence, it invited the Superior Council of Criminal Policy to adopt directives for the promotion of inter-institutional coordination within the justice administration (resolution item 10).

The Superior Council on Criminal Policy informed the Constitutional Court of the creation of a Subcommittee dedicated exclusively to *Auto* 009 and the design of an action plan that would operate between February 26, 2015 and March 2016 to build a state of knowledge, monitor the Confidential Annex's cases, create a proposal of directives, and adjust and turn in a final document.¹⁹ As of June 11, 2015, the Ministry of Justice - Council Secretariat- reported that the Subcommittee met for the first time on May 20th and "began to write a rough draft of the state of knowledge."²⁰

There are four concerning aspects in this response: the evident delay already present in the action plan (the construction of the state of knowledge had a four month timeline that ended in June); the absence of the Prosecutor General's Office in the meetings and by not delegating someone to the Subcommittee; the evident lack of coordination between the Superior Council on Criminal Policy and other bodies with the same aim, such as the Inter-institutional Committee to Expand and Shape Access to Justice for Victims of Sexual Violence Inside or Outside of the Armed Conflict;²¹ and, a lack of inter-institutional coordination which to date continues to be evident and dramatically affects victims' rights to access the administration of justice. For example, when looking into the coordination between the Prosecutor General's Office and the Inspector General's Office, the latter only indicated that coordination was carried out via a document.²²

Issues and Ethnic Affairs and for the Defense of Children's, Adolescents and Family Rights. No response was provided by the Disciplinary Delegates for the Defense of Human Rights or the Armed Forces.

¹⁹ Technical Secretariat of the Superior Council of Criminal Policy. Report given to the Superior Council on Criminal Policy, document OFI15-0006543-DCP-3200, March 9, 2015.

²⁰ Superior Council on Criminal Policy. Report given to the Constitutional Court, document OFI15-0015182-DCP-3200, June 11, 2015.

²¹ Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015.

²² Inspector General's Office Delegate from the Public Ministry on Criminal Affairs in response to freedom of information request, document DMP 10596, August 11, 2015.

Although multiple coordination spaces exist,²³ they have not had the capacity to directly impact victims or cases to such an extent that directives for joint action exist to reduce the emotional and physical risk of “institutional pilgrimage.” A high-level response is required; the Superior Council on Criminal Policy is the appropriate body to consolidate this coordination. Accordingly, the Working Group calls on the Prosecutor General’s Office, the Inspector General’s Office, and the Superior Council on Criminal Policy to establish a single inter-institutional coordination space focused on monitoring and coordinating the investigation and prosecution strategies for cases of sexual violence associated with the armed conflict, which can respond from the highest level in the short, mid and long term, prioritizing the cases in the Confidential Annexes with the minimums indicated in *Auto* 092 and 009 of the Constitutional Court.

3. TRAINING SYSTEM PROBLEMS

In *Auto* 009, the Court requested that the Superior Council of the Judiciary design a training program for people who are responsible for sexual violence cases associated with the conflict, with the aim of training them on different aspects of women’s rights (resolution item 16). The Superior Council of the Judiciary reported diverse actions carried out by the Rodrigo Lara Bonilla Judicial School.²⁴ The training programs are considered to be a 100% advancement, given that guidelines were already completed and that 12 workshops with 500 civil employees are planned so that the civil employees can take ownership of the guidelines²⁵. The verification measures for the compliance of the training objectives are documents, reports, participant lists and photographic registries. That is to say, there is no measurement of the real impact of workshops and documents in promoting the criminal procedures.

Although the Working Group recognizes that these activities are important actions, it has found that they do not respond to the Court indications: this program is general and, according to the Council, “only directed at judicial officials located in the municipalities where the Institutional Capacity Building Project is being implemented.”²⁶ When asking

23 The Prosecutor General’s Office mentioned at least 11 coordination spaces specifically related to women, but clarifies that coordination spaces “focused on the monitoring and coordination of investigation and prosecution strategies in cases of sexual violence” do not exist (Office of the Prosecutor General of the Nation in minutes from a coordination meeting to monitor the thematic focus of women’s access to justice, May 7, 2015. This information was ratified in a joint meeting with the Working Group on June 17, 2015).

24 Among others, a video conference held in 2014, a self-learning module, two trainings for trainers workshops, a project with the International Organization for Migration (IOM) which has led to a protocol for the Judiciary called Guidelines for Attention and Protection for Women Victims of Sexual Violence, and academic material (Superior Council of the Judiciary, Administrative Chamber, in response to freedom of information request, document PSA15-3277, July 28, 2015).

25 Superior Council of the Judiciary, Administrative Chamber, in response to freedom of information request, document PSA15-3277, July 28, 2015.

26 Superior Council of the Judiciary, Administrative Chamber, in response to freedom of information request, document PSA15-3277, July 28, 2015.

about involvement in the training processes of authorities who carry out investigations on cases included in the Confidential Annexes, the Council limited itself to stating that, according to Agreement PSAA08-4552 of 2008, it does not have jurisdiction in this area. The Working Group considers that the Superior Council of the Judiciary is not fulfilling the content of *Auto* 009. On the other hand, the Working Group wants to highlight that the Prosecutor General's Office has reported a series of trainings on different levels since Law 1719-2014 was issued. Nevertheless, the Working Group does not have information on the results from the multiple training initiatives reported by the entity since *Auto* 092 of 2008 was issued.

The Working Group will request that the Constitutional Court urge the Superior Council of the Judiciary (or body acting on its behalf) to develop an independent training process along the lines established in *Auto* 009 which directly involves the persons responsible for promoting the cases included in the Annexes. Also, it will ask the Prosecutor General's Office to evaluate the impact of the multiple trainings that it has offered and consolidate a comprehensive, ongoing training process with an independent budget and verifiable impact indicators and which lends itself to specifically promoting the cases included in the Annexes.

4. OBSERVATIONS ON THE OFFICE OF THE INSPECTOR GENERAL'S STRATEGY

In relation to the Office of the Inspector General's strategy, the following section will look at the implementation of plans ordered by the Court in *Auto* 009, the application of indicators in the monitoring of other institutions and the creation of special and disciplinary agencies.

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Institutional
Obstacles

4.1. The Implementation of Plans as Ordered by the Court

The Constitutional Court invited the Inspector General's Office to adopt two plans: the first should contain "the methodology, human resources and compliance indicators to carry out a strict monitoring process of the criminal procedures for sexual violence cases" in the Confidential Annexes; the second should consider:

- (i) an articulated legal strategy in all cases, especially those which are archived or in a preliminary stage; (ii) monitoring and evaluation mechanisms for its administration of criminal procedures related to incidents of sexual violence associated with the armed conflict and forced displacement, and (iii) indicators to evaluate the oversight management in accordance with women's sexual and reproductive rights, specifically in relation to the voluntary termination of pregnancy, as consecrated in Ruling C-355 (2006).

In regards to the first plan, the Inspector General's Office reported that the proposed strategy is made up of five elements: development and application of a document for data collection and monitoring the cases related to the *autos*; redesign of the database; evaluations to identify which cases have special agency (*agencia especial*), prioritizing those that do not and fulfilling the requirements to do so; issue Memorandum 038 of 2014; and, de-

velop a training plan directed at Public Ministry employees responsible for monitoring the cases.²⁷ Although these are important actions, they do not respond to the Court's requirements: it does not indicate methodology, human resources, or compliance indicators for the monitoring process in these cases.

For the second plan, the response from the Inspector General's Office is generic. It indicated that the interventions from personnel in the Public Ministry who have a role in the investigations must be active and timely and in the interest of material justice, which is why they must ensure adequate attention with a psycho-social approach. In addition, 32 other actions based on the general responsibilities of the Inspector General's Office or sexual violence standards.²⁸ Nowhere, does the Inspector General's Office outline a legal strategy or mechanisms to monitor and evaluate its work, or indicators in relation to sexual and reproductive rights, which is why the Working Group has concluded that this plan has not been designed.

4.2. Monitoring the Work of Other Entities

In its *Fifth Report*,²⁹ the Working Group indicated that it considered the Inspector General's Office 2012 design of monitoring indicators to be very important in governance oversight as they "could be used to measure advances or stagnation in women victims' enjoyment of rights". For that reason, it requested that the Inspector General's Office report the "frequency with which the indicators will be applied and the specific budget to make this a sustainable process." In August 2015, the Inspector General's Office stated that it was updating the indicators that had been applied in 2012 to include an ethnic approach and a focus on LGBTI populations, as well as indicating that there was not a specific budget for its implementation.³⁰ In addition, it presented a "Monitoring and Preventative Control Plan" for 2015-2016 which includes the indicators' application and presentation through periodic reports.

The Working Group regrets to inform that in the three years since the indicators' implementation, this has not occurred in a manner which allows for periodic monitoring of the recommendations' compliance. In any case, it hopes that this adjustment does not imply a total transformation of indicators, making it possible to demonstrate if there is continued

27 Office of the Inspector General of the Nation in response to freedom of information request, document 10596, file no. 275291/15, August 11, 2015. This same information was provided to the Court. See Office of the Inspector General of the Nation Report to the Constitutional Court, document 02734, file no. SIAF 78883/15, March 6, 2015.

28 Office of the Inspector General of the Nation in response to freedom of information request, document 10596, file no. 275291/15, August 11, 2015.

29 Working Group on the compliance of *Auto* 092 of the Constitutional, Confidential Annex, *Access to Justice for Women Victims of Sexual Violence*, Fifth Report on the Compliance of *Auto* 092 of 2008 of the Constitutional Court, Confidential Annex, Bogotá, October 2013.

30 Inspector General's Office Prevention Delegate on Human Rights and Ethnic Affairs in response to freedom of information request, document 1110-460000011-253151/15-225071/15, August 10, 2015.

noncompliance from the entities and to activate the disciplinary role. The Working Group believes that it is fundamental for the entity to have a specific budget for monitoring the compliance of related regulations and it calls on the entity to establish timelines and to designate a budget allocation for this activity.

4.3. Oversight and Disciplinary Investigation Tasks

In relation to oversight in criminal processes, the Inspector General's Office has reported actions in three areas: issuing regulations and projects, constituting special agencies (*agencia especial*) and promoting disciplinary investigations.

The Inspector General's Office indicated that one advance in the first area was issuing Directive 006 of 2012 and Resolution 248 of 2014, which ordered a prioritization of cases under diverse criteria, among other crimes against sexual freedom, and Directive 005 of 2015, by means of which directives were established for judicial intervention in cases of sexual violence in the context of the armed conflict; specifically, the content in Law 1719-2014 and Law 1761-2015. The Inspector General's Office also reported to the Constitutional Court that in 2013 it had developed a strategic project focused on monitoring the cases, carrying out criminal proceedings, presenting reports and formulating recommendations, and that it would be modified to include the cases in *Auto* 009's Annex.³¹ Although these are important actions, the Inspector General's Office did not contribute information on the impact of the issued regulations and project. Therefore, the Working Group believes it necessary to shift from projections to implementation from a perspective of monitoring the effective enjoyment of women's rights.

In relation to the creation of special agencies, the Inspector General's Office indicated that it designated agents in each of the cases in *Auto* 092.³² Nevertheless, the Working Group found that only 77 cases have an assignment number: Seventeen of those cases are archived, three precluded and seven have a ruling (five of which were emitted before the designation of special agency). Of the 77 agencies, ten were cancelled (found to have a lapse of time inferior to six months) and in 15 cases, the intervention was carried out by a municipal human rights ombudsman. This can be problematic due to its high turnover rates, the lack of training in these entities to act adequately in these cases and because the entities have a low levels of knowledge on jurisdiction and a high tolerance for violence against women.³³ In regards to the cases included in *Auto* 009, the Inspector General's Office arranged special visits in 24 processes, but it did not report that it had created agency

³¹ The Project is called Access to Justice for Women Victims of the Armed Conflict – Monitoring of *Autos* 092-2008 and 098-2013 of the Constitutional Court. Office of the Inspector General of the Nation, Report to the Constitutional Court document 02734, file no. SIAF 78883/15, March 6th, 2015.

³² Inspector General's Office Delegate from the Public Ministry on Criminal Affairs, report to the Constitutional Court, document DMP-02735, March 6th, 2015.

³³ Presidential Council for Women's Equality, *Second Measurement of Social and Institutional Tolerance of Violence Against Women*, Bogotá, D.C., UN Women and AECID, March 2015.

(*agencia*) in any of the cases.³⁴ The Working Group finds it regrettable that the number of special agencies is so low and considers that, given that the Inspector General's Office does not offer qualitative information on the work its office carries out, it cannot be concluded that they have contributed to promoting the procedures.

Finally, regarding the disciplinary procedures, the Working Group found that according to information contributed by the Inspector General's Office,³⁵ there are no sanctions against State agents directly linked to perpetrating acts of sexual violence in any of *Autos* 092 and 009's Confidential Annexes. Nor has the Inspector General's Office provided information to help establish whether investigations were initiated against public officials who through criminal procedures or attention to the victims have re-victimized or violated women's rights.

Based on the prior, the Working Group requests that the Court urge the Inspector General's Office to develop both plans indicated in *Auto* 009 in a short period of time, that it establish timelines and budgets for the application of indicators designed in 2012, that it create special agencies in each of the cases included in the Annexes and offer qualitative information on the activities undertaken to promote them, and that it establish mechanisms for the investigation and promotion of procedures to determine the disciplinary responsibilities against State agents who infringe on victims' rights or who are directly responsible for the sexual violence.

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Access to justice
for women victims
of sexual violence

5. OBSERVATIONS ON THE OFFICE OF THE PROSECUTOR GENERALS' STRATEGY

In *Auto* 009, the Constitutional Court asked the Prosecutor General's Office to develop joint actions to overcome the difficulties identified by *Auto* 009 and promote the investigations of cases included in *Auto* 092's Confidential Annexes; to adopt strategies to improve the proceedings, administrative management problems and shortcomings in protection programs; to evaluate the inclusion of the cases in the Confidential Annexes within the prioritization and context analysis policy, applying the presumption established in *Auto* 009, among others (resolution items 7, 11 and 12).

The Working Group has information that the Prosecutor General's Office has developed strategies in at least four focus areas: prioritizing policy in relation to the *Autos*' Confidential Annexes, the Sexual Violence Investigation Protocol ordered by Law 1448-2011, promoting technical-legal committees and the procedure of Law 975-2005. These efforts will be evaluated in the same order.

³⁴ The Inspector General's Office reports on the internal request documents sent to judicial procurators and Inspector General's Office's coordinators in cases 3, 5, 9, 31, 50, 57, 71, 154, 169, 170, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185 and 186 (Inspector General's Office Delegate from the Public Ministry on Criminal Affairs, Report to the Constitutional Court, office DMP-03976, April 6, 2015).

³⁵ Inspector General's Disciplinary Representative for the Defense of Human Rights, in response to a freedom of information request from *Sisma Mujer*, document 710, February 27, 2014.

5.1. Prioritizing Policy in Relation to the Cases Included in the Confidential Annexes

The Prosecutor General's Office reported that on June 17, 2015, the National Office on Analysis and Context (DINAC- *Dirección Nacional de Análisis y Contextos*) presented a strategy to the National Prioritization Committee that used the diagnostic for cases in *Autos* 092, 093 of 2013 and 009 as a reference.³⁶ The prioritization strategy proposed by the Prosecutor General's Office has three action areas: the prosecution of incidents reported in *Auto* 009 that are not being investigated, attention provided in the cases as input for the three aforementioned diagnostics, and the creation of a Coordination Subcommittee for the prioritization strategy.³⁷

1. For the prosecution of incidents yet to be investigated (172 corresponding to 39% of *Auto* 009's cases, according to the Prosecutor General's Office), the Prioritization Committee ordered the creation of four working groups, which, with a specialized prosecutor and a "psycho-investigative pair," should advance the investigations, taking into account the perpetrator and the conflict's regional dynamics. This group will be evaluated after six months to decide if it continues or if it will be terminated. As of October 2015, the Prosecutor General's Office indicated that "it does not have updated information regarding the investigation's advances."³⁸

When analyzing the databases provided by the Prosecutor General's Office to the Court and Working Group and the reports on *Auto* 009's Annexes, the Working Group found that the Prosecutor General's Office stopped reporting a file number in 167 cases³⁹ instead of 172. Of these 167 cases: 59 were responded to during massive denunciation sessions, meaning that they should already have an active criminal process; 18 which were not registered in these sessions had previously filed complaints, according to the Annexes reports. This means that of the 167 cases without a file number, the Prosecutor General's Office could only justify that it had to initiate procedures in 90 cases and not in 172, as was stated in the first strategy area.

³⁶ The Working Group had access to the case diagnostics included in *Autos* 092 and 009's Annexes and considers that they are important advances in so far as, for the first time, the Prosecutor General's Office addressed its analysis from a perspective of identifying patterns, associations and macro-criminality. *Auto* 092's diagnostic was developed by the DINAC in April 2015, the diagnostic of *Auto* 098 of 2013 was developed by the National Office of Regional Offices and Citizen Security (DNSSC- *Dirección Nacional de Seccionales y Seguridad Ciudadana*) (the Working Group does not have information on its content) and *Auto* 009's diagnostic was carried out by the National Office of Public Policies and Planning in May 2015.

³⁷ Office of the Prosecutor General of the Nation in response to freedom of information request, file 20159430000541, July 23, 2015. This strategy was presented to the Working Group in a joint meeting held June 17, 2015 and its reach was reported in another meeting on October 26, 2015.

³⁸ Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000761, dated September 29, 2015 and provided to the Working Group on October 23, 2015.

³⁹ When studying the database provided by the Prosecutor General's Office to the Court it can be observed that 168 cases do not have a file number; however, Report 8 talks about three victims of two different incidents and both have this data, therefore, this case is not included among those without this information.

2. On the investigation of incidents already denounced, the Prosecutor General's Office reported four focus areas: (i) cases related to paramilitary groups will be transferred to the National Office on Transitional Justice to be documented; (ii) those attributed to guerrilla groups will be reviewed by the DINAC "so they can be included in its analysis and if necessary, request its assignment to the Prosecutor General"; (iii) all other cases (which include State Security Forces, Criminal Gangs, unknown perpetrators and civilians against displaced women) will continue in the same offices where they have been investigated. These offices will receive the "suggestion" to move forward "in accordance with the developed analyses [...] and attempt a comprehensive understanding of the incidents which takes into account the armed conflict's regional dynamics," and (iv) for the inactive cases in *Auto* 009's Confidential Annexes a working group created by means of Resolution 0-0256 (2015) will advance in their analysis.
3. The Coordinating Subcommittee created by the National Prioritization Committee is made up of nine offices from the Prosecutor General's Office and its functions are: to review cases with dismissals due to lack of evidence (*resoluciones inhibitorias*), that have been archived, precluded or found not guilty; to study cases where it is necessary to change the case assignment and designate new public prosecutors; and carry out follow-up and monitoring of procedures. However, the Working Group does not have information on the timelines and methodologies that will be used to carry out these tasks.

The Working Group believes it is important that the Prosecutor General's Office has established a strategy; nevertheless, it is unclear how each of the obstacles, difficulties and challenges identified by the Constitutional Court in *Autos* 092 and 009 have impacted that strategy and how, in individual cases, it will be guaranteed that criteria and patterns identified in the respective diagnostics are taken into account. Although it is an important first step, they are insufficient and do not refer, as a whole, to all the dynamics of sexual violence, actors, or regions.⁴⁰ The diagnostics are an exercise in the analysis and association of cases which does not seem to translate into the promotion of the procedures. For example, in the diagnosis of *Auto* 092, the Prosecutor General's Office mentioned a total of 31 cases as emblematic or exemplary situations: of these, 14 are archived, three precluded and one not guilty.⁴¹ The Working Group asks itself: if they are emblematic cases, why aren't they being investigated?

⁴⁰ The Prosecutor General's Office indicated in the *Auto* 092 diagnostic that it is "a starting point to provide a series of reports," in accordance with the contextual analysis manual, that will include "a social-historical context or macro-context report," the "construction of micro-contexts with the identification of patterns" and "the presentation of a proposal to connect cases to the National Prioritization Committee." The Working Group does not have information on the existence of any timeline to present these reports and the proposed strategy does not incorporate them.

⁴¹ The archived cases are: 5, 59, 65, 72, 73, 78, 98, 116, 139, 158, 159, 167, 168 and 174; precluded: cases 32, 52 and 55; and the acquitted case is 176.

For the Working Group it is extremely worrisome that cases committed by State Security Forces and criminal gangs or civilians against displaced women remain in the offices that have, until now, carried out these investigations. These prosecutor's offices have demonstrated their low level of effectiveness in advancing procedures; they do not have all the tools that would allow them to advance investigations in an accelerated manner and, in many occasions, cases are investigated in the same places where the incidents occurred, which can constitute a risk for victims and civil employees, representing an obstacle in the promotion of these procedures.

For the Working Group it is evident that the Prosecutor General's Office is generating a hierarchy in response to sexual violence committed by armed actors within the conflict, giving crimes committed by State Security Forces, criminal gangs and civilians the lowest priority level, without clear arguments to justify this decision. This can be interpreted, given the precarious state of advances in these cases, as an abdication of the obligation to investigate. In addition, it implies that only some cases included in the *Autos'* Annexes will be prioritized, which means that the Constitutional Court's indications are not being responded to in the sense "that these become pilot cases to strengthen the Prosecutor General's Office's activities in other cases." Finally, it is not clear how this strategy incorporates the presumption of connection established by the Court in *Auto* 009.⁴²

The Working Group will ask the Court to urge the Prosecutor General's Office to prioritize all cases included in the Confidential Annexes—independent of the perpetrator—under the same logic and standards established for those assigned to the DINAC and that the process of identifying patterns in all of the Annexes' cases be concluded.

5.2. Sexual Violence Investigation Protocol (Law 1448-2011)

Law 1448-2011 ordered the Prosecutor General's Office to develop an investigation and prosecution protocol for sexual crimes. This process should take into account the Working Group's March 2014 recommendations on the proposal of phases, including a preliminary phase (an inventory and report on what already exists) and three later phases (revision of input, consultations, and construction of the text with technical contributions from organizations). *Sisma Mujer* took on the responsibility to create an input document to develop the protocol, which it gave to the Prosecutor General's Office on June 12, 2015. The Working Group shares the Prosecutor General's Office assessment when it indicated that "the process of constructing the Protocol has been an opportunity to generate and consolidate dialogue and discussion spaces with civil society and organizations representing victims and to define institutional public policies that address the phenomena that affects them."⁴³ The

⁴² The Working Group presented a communication to the Prosecutor General's Office on September 18, 2015 with observations on the strategy and diagnostics developed by the different branches of the investigative body. It indicated some positive elements and others that the Working Group believes need to be modified.

⁴³ Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015.

Working Group hopes that, in the short term, the Prosecutor General's Office will issue the Protocol so that it can fulfill the obligations established four years ago by Law 1448-2011 and that it guarantee its implementation and effectiveness.

5.3. Promotion of Technical-Legal Committees

The Prosecutor General's Office reported to the Working Group that the technical-legal committees are a tool to promote procedures which "have allowed for obstacles to be overcome in the investigative and strategic approach for cases."⁴⁴ It indicated that it had held committees on 101 cases, without specifying if they correspond to cases from the *Autos*' Annexes, given that it did not have consolidated information on this aspect.⁴⁵ It also reported that commissions of experts were created in each of the Prosecutor General's 35 regional offices⁴⁶ in charge of implementing these committees. However, it does not report how those committees promoted cases and incorporated standards as indicated by the Constitutional Court in its *Autos* or guaranteed victims' rights. Thus, although the Working Group is in agreement on the importance of this tool to promote the cases, it does not agree that, to date, they have allowed obstacles to be overcome in the investigations.

The Working Group reiterates that the technical-legal committees can be a valuable tool to promote the cases of sexual violence associated with the armed conflict and, given the "pilot" nature of the Annexes' cases, will ask that the Court urge the Prosecutor General's Office to provide disaggregated information on the technical-legal committees held on the Annexes cases and to determine how they have been effective in advancing the investigations, specifically the archived and precluded cases.

5.4. Strategy in the "Justice and Peace" Procedure (Law 975-2005)

In *Auto* 009, the Constitutional Court summoned the Superior Council on Criminal Policy to evaluate the positive impacts of the transitional regulations in the effective enjoyment of victims' rights and to promote the pertinent adjustments. In agreement with the information available to the Working Group, to date the Superior Council on Criminal Policy has not carried out this evaluation, which is in the process of development.

⁴⁴ Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000541, July 23, 2015.

⁴⁵ "Even though several regional offices have sent information to the central level, to date there is no consolidated or systematized information with respect to the 101 technical-legal committees held in the 19 regional offices indicated in the initial response to the freedom of information request. Which is why it is impossible to respond to these questions" (Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000761, dated September 29, 2015 and provided to the Working Group on October 23rd of the same year).

⁴⁶ Made up by directors and sub directors of the Prosecutor's Offices and the Judicial Police, the cases' public prosecutor and judicial police, and a psychologist and public prosecutor expert on human rights, gender and a differential approach, with experience in the prosecution of sexual crimes, who have been trained.

On the other hand, according to information from the Prosecutor General's Office, of the cases included in *Auto* 092's Annex, 31 are reported in the Justice and Peace Information System (SIJYP) and 138 of those included in *Auto* 009's Annex.⁴⁷ All these incidents are in the documentation and registry process,⁴⁸ without information regarding the accusations.

The Prosecutor General's Office reported that within the framework of Law 975-2005 there have been seven rulings against 15 paramilitary members that are part of the Justice and Peace process that include charges for gender based violence and "some recognize the existence of a macro-criminality pattern."⁴⁹ None of these rulings included victims of cases included in the *Autos* Confidential Annexes,⁵⁰ with no clarity as to why, given that some refer to incidents carried out in the same regions and by the same perpetrators as those in the Annexes.

The Working Group recognizes that there were substantial advances in the Justice and Peace tribunal's latest rulings recognizing the use of sexual violence as a criminal pattern used by paramilitary groups. However, as was recognized by the courts, it is necessary for the Prosecutor General's Office to: continue investigating this practice;⁵¹ prioritize these cases and review how charges are brought to include all the factual situations included in sexual crimes;⁵² construct a prevention, protection and attention policy for victims of gen-

47 Even though upon reviewing the database provided by the Prosecutor General's Office to the Court, the Justice and Peace prosecutors have knowledge of 157 cases.

48 Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000761, dated September 29, 2015 and provided to the Working Group on October 23, 2015.

49 These respond to rulings 110016000253200883612-00 from February 24, 2015 of the Superior Court of Bogotá, against Orlando Villa Zapata and others from the Arauca Bloc; 11001-22-52000-2014-00058-0 internal file no. 2358 from December 16, 2014 of the Superior Court of Bogotá, against Arnubio Triana Mahecha and others; 11 001 22 52 000 2014 00027 from November 20, 2014 of the Superior Court of Bogotá, against Salvatore Mancuso and others of the Catatumbo, Córdoba, Norte and Montes de María Blocs of the defunct United Self-defense Forces of Colombia (AUC); 11001-22-52000-2014-00019-00 from September 1, 2014 of the Superior Court of Bogotá, against Luis Eduardo Cifuentes Galindo and others from the AUC's Cundinamarca Bloc; 11-001-60-00253-2007 82855 of May 29, 2014 of the Superior Court of Bogotá, against Ramon Isaza and others; 110016000253-200681366 from December 7, 2011 of the Superior Court of Bogotá, against Édgar Ignacio Fierro Flores of the Norte Bloc, "Jose Pablo Diaz" Front; 1100160002532008-83194; 1100160002532007-83070 from December 1, 2011 of the Superior Court of Bogotá, against José Rubén Peña and others.

50 This information was corroborated by the Prosecutor General's Office. See Office of the Prosecutor General of the Nation in response to freedom of information request, file no. 20159430000761, dated September 29, 2015 and provided to the Working Group on October 23 of the same year.

51 Ruling against Orlando Villa Zapata and others, resolution item 57. In the rulings against Fredy Rendón Herrera (ruling December 16, 2011) and Jhon Fredy Rubio Sierra (ruling July 3, 2015). The tribunal did not convict him for sexual violence and instead, it asked the Prosecutor General's Office to advance in the documentation and investigation of these incidents.

52 Ruling against Orlando Villa Zapata and others, paragraph 1401 and resolution item 38: "For the Chamber it is necessary that the FGN [Office of the Prosecutor General of the Nation] investigate the serious impacts in relation to slavery, human trafficking, forced labor, sexual violence and gender-based violence resulting from the acts carried out by the ACMM [Self-defense Forces of the Magdalena Medio]".

der violence;⁵³ investigate implicated members of State Security Forces;⁵⁴ and document cases against men and boys, based on sexual orientation and gender identity.⁵⁵

The Working Group will ask the Court to urge the Superior Council on Criminal Policy to urgently evaluate the results of implementing the transitional justice system and to propose the necessary corrections to overcome obstacles and respond to the standards established in *Auto* 009. In addition, it will request detailed information from the Prosecutor General's Office on how it will comply with the requests for adjustments and advances as formulated by the Superior Justice and Peace Tribunals, and that it report on the procedural status for each case included in the Annexes and within the jurisdiction of Law 975-2005.

53 Ruling against José Rubén Peña and others, resolution item 34.

54 Ruling against Salvatore Mancuso and others, paragraph 1312.

55 Ruling against Arnubio Triana Mahecha and others, resolution items 55 and 56.



V. CONCLUSIONS AND RECOMMENDATIONS

The Working Group concludes that there are ongoing obstacles for women victims of sexual violence associated with the armed conflict to access justice, and to obtain protection and comprehensive services, obstacles that originate from a lack of comprehensive investigation strategies and an absence of a complete state policy incorporating all aspects of its obligation to act with due diligence.

For that reason, the Working Group requests that the Constitutional Court take these arguments into account for the *Autos* 092 and 009 compliance monitoring framework and that it:

1. **DECLARE** that Colombian authorities on all levels continue in noncompliance of their imperative constitutional and international obligations to act decisively to avoid the root causes of a generalized context of sexual violence associated with the armed conflict.
2. **DECLARE** that the Prosecutor General's Office has not fully complied with the orders in *Autos* 092 and 009, not adopting in the greatest possible brevity appropriate measures in relation to the incidents described in the Confidential Annex, nor has it ensured that the investigations advance in a rapid manner.
3. **DECLARE** that the Prosecutor General's Office has not fully complied with *Autos* 092 and 009, as it has not included a response from the highest priority levels of the official national agenda to the phenomenon of sexual violence, to which Colombian women have been and are exposed within the framework of the armed conflict.
4. **ESTABLISH** a presumption of connection between sexual violence and forced displacement in cases of displaced women victims of sexual violence by civilians, which will mean that the investigations are carried out under the presumption of connection with the armed conflict and that the women be attended to based on this gender facet.
5. **ESTABLISH** a presumption of disproportionate repercussions for victims of sexual violence associated with the armed conflict in their sexual and reproductive health, which is a direct consequence of the incidents of sexual violence.
6. **ORDER** the Prosecutor General's Office within a maximum period of three (3) months:
 - 6.1. In relation to the lack of measures to file complaints, that it adopt urgent measures and strategies which are clear and sustainable over time in response to each of the obstacles indicated in the *Autos*, allowing victims to make denouncements and that these denouncements have in correlation an articulated and comprehensive response from the highest level and effective monitoring from the Prosecutor General's Office. These measures should not conclude in issuing regulations, but must be verified through an effective enjoyment of rights.
 - 6.2. Design and implement the Coordinated, Comprehensive and Accelerated Plan, ordered in *Auto* 009 that should include strategies to reactivate archived cases and establish clear mechanisms for the accelerated promotion of the cases that are currently under investigation or in a preliminary investigation phase.

- 6.3. Report on an investigation strategy for all perpetrators to ensure that the victims' right to equal access to justice is not violated.
- 6.4. Reassign cases involving State Security Forces to specialized public prosecutors, instead of a regional authority, under the criterion of investigating patterns of macro-criminality; guide the investigations based on contextual analysis, and adopt all possible measures to ensure that the current level of impunity is overcome and does not continue to increase.
- 6.5. Provide detailed reports regarding the adopted decisions in each one of the cases perpetrated in collusion between State Security and Paramilitary Forces, and indicate the measures that it will adopt to overcome impunity.
- 6.6. Reassign cases involving criminal gangs to specialized public prosecutors, instead of a regional authority, under the criterion of investigating patterns of macro-criminality; guide the investigations based on contextual analysis, and adopt all possible measures to ensure that the current level of impunity is overcome and does not continue to increase.
- 6.7. Reassign cases involving civilians against displaced women to specialized public prosecutors under the strategy of associated cases, guide the investigations based on a contextual analysis and under the hypothesis of connection to the armed conflict, and adopt all possible measures to ensure that the current level of impunity is overcome and does not continue to increase.
- 6.8. Expedite the identification of the responsible parties in those incidents where it is not possible to establish the perpetrator of the incidents, based on the Annexes narrative information. Report on the criteria used to attribute responsibility to armed actors in the 137 cases and establish, within the framework of its strategy in response to the *Autos*, a procedure with objective criteria to assign responsibility, where the Working Group's participation is allowed.
- 6.9. Report on the actions undertaken in cases of massacres, emphasizing the work promoted to review the decisions in archived cases and clarify if the cases which are said to be found in the arraignment stage are being investigated for sexual violence. In addition, develop a complete investigation strategy for sexual crimes in the context of massacres, associating cases and taking into account the incidents specific characteristics.
- 6.10. In cases of sexual violence carried out in the framework of military operatives, report on the advance in these cases, why they were archived and the strategies promoted to investigate these incidents as a part of a possible pattern of conduct within the State Security Forces.
- 6.11. Report if it has incorporated attacks against female leaders as an investigative hypothesis for sexual crimes, how they will be associated and what actions it will undertake in response to the archived cases or cases with relative information.

- 6.12. Report on the actions it has carried out in the cases of forced prostitution and sexual slavery as well as the strategies promoted to investigate the denounced incidents, and establish, given the presumption of connection with the armed conflict, whether there are other victims of this kind of sexual violence being held in the locations where the complainants were [subject to forced prostitution or sexual slavery].
- 6.13. Report on the advances in cases that include a general situation of sexual violence and the strategies used to investigate the cases that were reported in the Annexes.
- 6.14. Report on the strategies implemented to review cases that already have a ruling, but where sexual violence was not analyzed or, if it was, has not reported the grounds to justify an acquittal.
- 6.15. Report on the procedural status of cases 56 and 137 of *Auto* 092's Annex, catalogued as "misplaced," and the actions carried out to ensure serious investigations leading to the truth.
- 6.16. Report the grounds for archiving all the cases that have a dismissal due to a lack of evidence (*resolución inhibitoria*) or a preclusion of the investigation, as well as a timeline and strategy to review each of these decisions based on the standards established in the *Autos* and the presumption of connection declared in *Auto* 009.
- 6.17. Report on the advances in each case where the victims are afro-descendant, indigenous, girls, women with disabilities or diverse sexual orientations, how these elements have impacted the investigations and a clear program which incorporates these perspectives in each case.
- 6.18. Design an applicable procedure (*rutas*) for cases of sexual violence against women within the context of the armed conflict which responds to the regional specificities and incorporates clear and accessible avenues, rights (taking into account differential perspectives), the directory of entities and where to turn in the case of a noncompliance of these procedures and rights.
- 6.19. Report on how it has applied the presumption of connection in each of the archived and precluded cases, how it has been used in revisions, and how it is being used in active cases.
- 6.20. Formalize a mechanism which establishes that, in virtue of the presumption of connection set forth in *Auto* 009, decisions to archive and preclude cases should be made only after the implementation of technical-legal committees, with the obligatory participation of the Public Ministry's and Prosecutor General's expert on a gender perspective, and with a discussion on the connection to the conflict.
- 6.21. In relation to protection procedures for victims of sexual violence associated with the conflict, review its procedures based on the present reports observations, value the effectiveness of these observations and ensure that the presumption of risk is consolidated in concrete measures and that an ongoing presence in the program is not subordinated to denunciation or to the effectiveness of the criminal process.

- 6.22. Formulate concrete strategies to apply the presumption of risk established in Law 1719- 2014 and establish specific mechanisms to identify the autonomous risk of sexual violence.
- 6.23. Urgently adopt the following measures to connect criminal procedures with the victims protection: include cases of sexual violence in monitoring registries, with an emphasis on the cases reported in the Confidential Annexes, incorporate variables which allow for the monitoring of women's risk and the adoption of protection measures; send a meticulous and detailed report on criminal investigations that have been initiated due to the threats denounced by victims of sexual violence in the cases including in the Annexes, and design parameters and guidelines to guarantee that the investigation of the incidents of sexual violence takes into account the risk faced by women due to denouncements.
- 6.24. Emit clear guidelines on the incorporation of a psycho-legal perspective and provide human and technical resources to public prosecutors and all civil employees who interact with victims, starting with initial contact, so that their actions are coordinated, respectful of the women's rights and fulfill the obligation to act with due diligence.
- 6.25. Adopt information collection mechanisms in its institutional information systems responding to the shortcomings verified in *Auto* 009 and provide quantitative and qualitative data, integrating data from both *Auto's* Annexes and all of the incidents of sexual violence associated with the armed conflict, so that it is possible to access case information in a progressive manner, and to access advances and impasses. Also, provide information in a unified structure which integrates substantive data on the cases' advances.
- 6.26. Evaluate the impact of the multiple trainings that it has offered and consolidate a comprehensive, ongoing training process with an independent budget, verifiable impact indicators and that leads to a concrete promotion of the cases included in the Annexes.
- 6.27. Prioritize all the cases included in the Confidential Annexes— independent of the incidents perpetrator— under the same logic and standards established for those assigned to the DINAC.
- 6.28. Conclude the process of identifying patterns in all of the Annexes' cases.
- 6.29. Report in a disaggregated manner on the cases included in the Confidential Annexes and on how the technical-legal committees have been effective in advancing the investigations, especially for the revision of archived and precluded cases.
- 6.30. Report on how it will comply with requests highlighted in this report for the adjustments and advances formulated by the Superior Justice and Peace Tribunals.
- 6.31. Report on the procedural status for each of the Annexes cases found within the jurisdiction of Law 975-2005.

7. **ORDER** the Inspector General's Office within a maximum period of three (3) months to:
 - 7.1. Urgently and periodically send a detailed report on the disciplinary investigations promoted to investigate the State Security agents involved in cases of sexual violence and the strategies that it will implement to promote these cases and to initiate those that have yet to be investigated.
 - 7.2. Improve its data collection systems, so that it can carry out monitoring not only on the actions of the special agents, but also on the guarantee of the victims' rights to know when a disciplinary action should be implemented.
 - 7.3. Report on the activation and consolidation of a registry system for disciplinary procedures against public officials involved in incidents of sexual violence.
 - 7.4. Report on the activation and consolidation of a registry system for disciplinary procedures against public officials involved in the re-victimization or violation of the rights of women victims of sexual violence.
 - 7.5. Develop, on short notice, both plans indicated in *Auto* 009, containing each of the elements requested by the Constitutional Court.
 - 7.6. Establish timelines and designate an independent budget allocation to apply the indicators designed in 2012.
 - 7.7. Establish special agencies in each case included in the Annexes and offer qualitative information about the activities undertaken to promote them.
 - 7.8. Establish mechanisms to investigate and promote procedures to determine disciplinary responsibilities for state agents who infringe on victims' rights or who are directly responsible for sexual violence.
8. **URGE** the Inspector General's Office and Prosecutor General's Office that they work in a coordinated manner to compare information from their respective registries.
9. **URGE** the Human Rights Ombudsman's Office that within a maximum period of three (3) months it:
 - 9.1. Report in a disaggregated and detailed manner on the accompaniment and legal representation carried out in favor of each of the women included in the Confidential Annexes.
 - 9.2. Assign a public defender to each of the cases included in the Confidential Annexes, including the proceedings which have been archived, so as to carry out analysis, take into account the presumption of connection and, if applicable, request a revision or carry out any possible legal action.
10. **URGE** the Superior Council of the Judiciary (or the body acting on its behalf) so that in a maximum term of three (3) months it:
 - 10.1. Comply with the order issued by the Constitutional Court in *Auto* 009, to design and implement an information system on the criminal procedures related to sexual violence associated with the armed conflict.

10.2. Independently develop a training process along the lines established in *Auto* 009 which directly involves the persons responsible for promoting the cases included in the Annexes.

11. **ORDER** the Superior Council of the Judiciary (or the body acting on its behalf) and the Unit for Support and Comprehensive Reparation of Victims that they provide detailed information on the measures promoted for the reparation of each victim included in the confidential annexes, according to the specific characteristics. This information should not be presented generally, but instead be specific to each case.
12. **ORDER** the Prosecutor General's Office, in coordination with the National Protection Unit, report in a detailed manner and regarding each of the cases included in the Annexes: the diagnosis carried out for each woman, the application of the presumption of risk (also taking into account the presumption of connection in relation to sexual violence with the conflict armed in regions with presence of armed actors), and with due observance, the reasons for inclusion or exclusion in programs and the granted measures.
13. **ORDER** the Ministry of Health that within a maximum period of three (3) months it:
 - 13.1. Send periodic reports to the Prosecutor General's Office and the Court regarding the advances in the attention for the physical and mental repercussions of victims and their family group, prior to developing individual diagnoses which take into account the findings of the *Autos* 092 and 009.
 - 13.2. Issue clear guidelines on specialized services for the physical and mental health of victims of sexual violence in the context of the armed conflict and forced displacement, which incorporate all the principles of rationality indicated in ruling T-045-2010 to respond in a differential manner to the contexts of victimization and take into account a gender, age, ethnic, racial, disability and sexual orientation perspective. In the case of indigenous and afro-descendent women, the incorporation of this perspective should take into account the spiritual and community damages and work together with traditional medicine.
 - 13.3. Immediately and completely diagnose the health repercussions for each woman included in the Confidential Annexes and order the necessary measures and treatments to overcome those impacts in an immediate, comprehensive, specialized manner, with a differential perspective, which is free of charge and lasts the necessary time according to the specifics of each case.
 - 13.4. Comply with the orders in Ruling T-418-2015 and provide a report at least every six months about the provision of health services to women victims of sexual violence associated with the armed conflict.
14. **URGE** the Prosecutor General's Office, the Inspector General's Office, and the Superior Council on Criminal Policy to establish a single inter-institutional coordination space focused on monitoring and coordinating the investigation and prosecution strate-

gies for cases of sexual violence associated with the armed conflict, which can respond from the highest level in the short, mid and long term, prioritizing the cases in the Confidential Annexes and with the minimums indicated in *Auto* 092 and 009 of the Constitutional Court.

15. **URGE** the Superior Council of Criminal Policy to urgently evaluate the results of the implementation of the transitional justice system and propose the necessary corrections to overcome obstacles and respond to the standards established in *Auto* 009.



The Working Group made up by the Alianza Iniciativa de Mujeres Colombianas por la Paz (Alliance Initiative of Colombian Women for Peace), the Centro de Estudios de Derecho, Justicia y Sociedad (Center for Law Studies, Justice and Society), the Colectivo de Abogados José Alvear Restrepo (José Alvear Restrepo Lawyer's Collective), the Comisión Colombiana de Juristas (Colombian Commission of Jurists), the Consultoría para los Derechos Humanos y el Desplazamiento (Consultancy for Human Rights and Displacement), the Corporación Casa de la Mujer (Corporation Women's House), the Corporación Sisma Mujer (Sisma Mujer), the Liga de Mujeres Desplazadas (League of Displaced Women), Mesa de Trabajo Mujer y Conflicto Armado (Women and Armed Conflict Working Group), the Observatorio Género, Democracia y Derechos Humanos (Gender, Democracy and Human Rights Observatory), the Organización Nacional Indígena de Colombia (National Indigenous Organization of Colombia) and Ruta Pacífica de las Mujeres (Women's Pacific Path), presents the *Sixth Monitoring Report on Auto 092 of 2008 and the First Monitoring Report on Auto 009 of 2015 of the Constitutional Court and Confidential Annexes*. The Working Group is accompanied by observer UN Women; this report has been possible in thanks to its support.