

Working Group to Monitor Auto 092 of 2008 and 009 of 2015 of the
Constitutional Court – Confidential Annexes
Colombia

IMPUNITY AND SEXUAL VIOLENCE ASSOCIATED WITH ARMED CONFLICT IN COLOMBIA

Executive Summary

Of the Report Prepared for the Office of the
Prosecutor at the International Criminal Court
November, 2015



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The Working Group to Monitor Auto 092 (2008) and Auto 009 (2015) of the Constitutional Court - Confidential Annexes - (hereinafter the Working Group)¹, presents the following information to the Office of the Prosecutor at the International Criminal Court regarding State efforts to investigate and prosecute cases of sexual violence referred to the Colombian National Office of the Prosecutor General (hereinafter the Prosecutor General’s Office) as ordered by Auto 092 and Auto 009. The intention of the Working Group is that this report will provide analyses that can complement the efforts of the Office of the Prosecutor at the International Criminal Court to monitor the situation in Colombia and consider our report’s content in the ICC’s preliminary investigation.

This report addresses a total of 634 acts of sexual violence related to armed conflict, involving at least 768 female victims, of which 178 acts of sexual violence (involving 270 victims) are associated with Auto 092, and 456 (involving

498 victims) fall into the category of Auto 009 (2015).

In 2008 the Constitutional Court ruled, via Auto 092, that sexual violence targeting women in the context of armed conflict was “common, widespread, systematic and invisible”, and therefore ordered that a series of measures be applied to hold guilty parties responsible and increase access to justice, among other measures. Following this ruling, the court issued Auto 009 (2015) in which it noted “persistent failures in care, protection and access to justice for female victims of sexual violence and forced displacement in the context of armed conflict”.

The Working Group considers that although competent authorities have advanced strategies to end impunity and meet the Court’s requirements, actions have been insufficient to ensure a comprehensive and coordinated investigation into sexual violence targeting women in the context of armed conflict.

¹ The Working Group is made up of the Alliance Initiative of Colombian Women for Peace (Alianza Iniciativa de Mujeres Colombianas por la Paz), the Centre for Studies on Law, Justice, and Society (Centro de Estudios de Derecho, Justicia y Sociedad), the Jose Alvear Restrepo Lawyers Collective (Colectivo de Abogados Jose Alvear Restrepo), the Colombian Commission of Jurists (Comision Colombiana de Juristas), Consulters for Human Rights and Displacement (Consultoria para los Derechos Humanos y el Desplazamiento), the Women’s House Corporation (Corporacion Casa de la Mujer), Sisma Mujer (Corporacion Sisma Mujer), the League of Displaced Women (Liga de Mujeres Desplazadas), the Women and Armed Conflict Working Group (Mesa de Trabajo Mujer y Conflicto Armado), the Democracy, Gender and Human Rights Observatory (Observatorio Genero Democracia y Derechos Humanos), the National Indigenous Organization of Colombia (Organizacion Nacional Indigena de Colombia) and Ruta Pacifica de las Mujeres. The Working Group is accompanied by UN Women, in capacity of observers. The present document was written by the consultant Liliana Chaparro Moreno.



1. Information Regarding the General State of Legal Procedures

Information on impunity in general is alarming; **only 8 of a total of 634 cases involving acts of sexual violence have resulted in the conviction of members of armed groups. This represents 1.3% of the aforementioned cases and 4.5% of cases associated with Auto 092 (2008).** Six sentences have been issued that establish the responsibility of civilians for acts of sexual violence targeting displaced women. In addition, four sentences have been issued (three against criminal gangs and one against a civilian) in cases in which it is unknown whether or not culpability is related to sex crimes.

Regardless, more than 95% of the crimes committed by armed groups reported by the Constitutional Court, which require a response on the highest level, have gone unpunished.

With regards to cases associated with Auto 092, 41% have been suspended due to termination of investigation (decision inhibitoria) and 6.7% due to preclusion of investigation (preclusion). This means that **47.7% of these cases are not currently being investigated.** In addition, 41 cases (or 23.1%) are in the preliminary investigation or inquiry stage, 20 (or 11.2%) are in the arraignment stage (instrucción) and only three (or 1.7%) have resulted in a trial. With regards to the latter it has not been made clear to the Working Group whether these investigations involve sexual offenses or other crimes. The fact that this situation has not improved over time in unacceptable.

Developments related to Auto 009 in 2015 have been equally discouraging. Six months² since the Constitutional Court presented 456 cases to the Prosecutor General’s Office (in January, 2015) the latter reports no information regarding 327 cases (or 71.7%), that 97 (or 21.3%) are in the phase of preliminary investigation, and that seven (or 1.5%) are inactive³. Due to a lack of information in a majority of cases, the Working Group insists **that the Colombian State, under the leadership of the Prosecutor General’s Office, is not fulfilling its duty to investigate in 73.2% of the cases referenced by the Constitutional Court in Auto 009.**



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² Auto 009 was issued on January 27, 2015. The Prosecutor General’s Office presented a report to the Constitutional Court addressing developments as of March 24, 2015. The present report refers to information presented in the latter.

³ It is important to clarify that the Prosecutor General’s Office report to the Constitutional Court was to demonstrate compliance with Auto 009. It contains the same information that was provided to the Working Group in July, 2015. Of the 327 cases in which no information was reported, 206 were registered during official sessions at which the Prosecutor General’s Office was present. An additional 23 victims had filed complaints previously. Therefore complaints have been registered in at least 229 of these cases and complaints could be missing in only 98 cases.

2. State of Procedures According to Armed Actor

Information provided by the Constitutional Court indicates that, of 634 cases, 20.5% were committed by paramilitary groups, 9% by guerrilla groups, 6.9% by members of the armed forces, 6.3% by members of criminal gangs⁴, 5.5% by unidentified armed groups, 1.7% in collusion between the

armed forces and paramilitary groups (one of these in association with criminal gangs) and 5% by civilians. In the remaining 45%⁵ of cases, the armed actor(s) with whom guilty parties were associated has not been established.

2.1 Armed Forces

In Auto 009 the Constitutional Court indicated that all actors, including the armed forces, used sexual violence as a common practice in the context of war. The Court also indicated that the armed forces, specifically, (i) *formed alliances with paramilitary groups*, (ii) *stigmatized communities as pertaining to guerrilla groups* and (iii) *rendered their victims submissive by force using weapons*. In addition, it noted that victims were less likely to denounce crimes in these cases, as in cases involving paramilitary groups, due to fear. This phenomenon is exacerbated by the failures of protection programs.

The Confidential Annexes included a total of 44 cases in which the perpetrators of sexual crimes were agents of the armed forces (40 associated with Auto 092 and four with Auto 009). Of these 44 cases, five (or 11.3%) have resulted in convictions for sexual offenses, two (or 4.5%) in acquittals, nine (or 20.5%) are in preliminary inquiry or investigation, two (or 4.5%) are in arraignment, and 21 (or 47.8%) are inactive. Of the latter, 16 (or 36.4%) are inactive due to termination of investigation (*resolución inhibitoria*) and five (or 11.4%) due to preclusion of investigation (*preclusión*).

2.2 Joint Actions between the Armed Forces and Paramilitary Groups

The Confidential Annexes refer to a total of 11 cases in which perpetrators of sexual crimes were agents of the armed forces acting in collusion with paramilitary groups (eight associated with Auto 092 and three with Auto 009). Of these cases, none have resulted in a conviction, two are in preliminary inquiry or investigation, one is in arraignment and six (or 54.5%) are inactive. Of the latter,

five (or 45.5) are inactive due to termination of investigation and one (or 9.1%) due to preclusion of investigation.

The Working Group is extremely concerned that these crimes are not being investigated with due diligence, given their seriousness and the alleged responsibility of the Colombian State for events that occurred.

⁴ Criminal gangs refers to armed groups formed after Law 975 (2005). For purposes of characterization we takes into account only narrative information relating to cases (the Prosecutor General's Office refers to members of criminal gangs in many cases in which victims refer to *members of paramilitary groups*).

⁵ One case associated with Auto 092 and 284 with Auto 009.

2.3 Paramilitary Groups and Criminal Gangs

The Confidential Annexes included a total of 170 cases in which perpetrators of sexual crimes were members of paramilitary groups or criminal gangs (98 associated with Auto 092 and 72 with Auto 009). Judgements have been issued in 11 (or 6.4%) of these cases, of which three (or 1.7%) included convictions for sexual crimes, and five (or 2.9%) convictions for crimes other than sexual crimes. Of the remaining three cases (1.7%) it

has not been possible to establish if convictions or acquittals were issued, nor as to which crimes occurred. Some 59 (or 34.7%) cases are in preliminary inquiry or investigation, 17 (or 10%) are in arraignment, two (or 1.1%) are in the trial stage and 42 (or 24.7%) are inactive. Of the latter, 39 (or 22.9%) are inactive due to termination of investigation and three (or 1.7%) due to preclusion of investigation.

2.4 Guerrilla Groups

The Confidential Annexes refer to a total of 57 cases in which perpetrators of sexual crimes were members of a guerrilla group (15 associated with Auto 092 and 42 with Auto 009). Of these cases, none have resulted in convictions for sexual crimes, two have resulted in convictions for other crimes, 22 are in preliminary inquiry or investigation (38.6%), 1 in the trial stage and 13 (22.9%) are inactive. Of the latter, 12 (or 21.1%) are inactive due to termination of investigation and one (or 1.8%) due to preclusion of investigation.

The Working Group notes that a new strategy presented by the Prosecutor General's Office in June, 2015 indicates that these cases would be referred to the National Directorate of Analysis and Context (Dirección Nacional de Análisis y Contexto), in order to compare cases and identify patterns of victimization. However, as noted previously, it is the position of the Working Group that such a strategy should include all cases included in the Confidential Annexes given the lack of any explanation as to why these cases should be given priority over the rest.

2.5 Unidentified Armed Groups

The Confidential Annexes refer to a total of 35 cases in which the perpetrators of sexual crimes were members of an unidentified actor/group in the armed conflict (3 associated with Auto 092 and 32 with Auto 009). Of these, none has resulted in

a conviction, eight (or 22.9%) are in preliminary inquiry or investigation and two (or 5.7%) are inactive. Of the latter cases, one is inactive due to termination of investigation and one due to preclusion of investigation.

3. State of Procedures According to De Facto Patterns of Sexual Violence

The Constitutional Court included a catalog of sexual crimes in Auto 092, grouped into what it refers to as de facto patterns of sexual violence. The Working Group has analyzed information

in order to organize substantive information on methods most used by armed actors and/or with the most pronounced social impacts.



Through the systematization of accounts included in the Confidential Annexes, the Working Group found that, in cases in which it was possible to identify de facto patterns (numbering 213)⁶, the majority of crimes were committed as deliberate acts of sexual violence committed not in large-scale violent actions, but individual and premeditatedly in the context of armed conflict (in 45.5% cases), followed by acts committed in the context of larger operations such as massacres and military campaigns (15%), acts committed in order to obtain sexual pleasure in the context of armed conflict (10.8%), crimes committed against female leaders or their relatives (10.3%), cases of sexual slavery or forced prostitution (7.5%), crimes committed targeting women informally accused of having broken social norms (3.8%), crimes committed targeting women informally accused of having family or emotional ties (real or alleged) with members of an enemy group (3.8%), crimes

in the context of recruitment (1.9%) and crimes as a form of threat (1.4%).

As with armed actors, the Working Group has noted that the response of the Prosecutor General's Office varies according to the context in which acts of sexual victimization were perpetrated. The Working Group considers that while all cases merit a response at the highest level, some cases should be addressed urgently and with the most efficient allocation of resources due to the heightened social impact of particular crimes. These cases include crimes committed in the context of large, coordinated operations (massacres and military campaigns), crime targeting women who held some sort of leadership role (or their family members) and crimes committed in the context of forced prostitution or sexual slavery. The following section describes the state of legal proceedings according to patterns of victimization.

3.1 Legal Situation in Cases of Sexual Violence Perpetrated During Massacres

The Confidential Annexes refer to a total of 12 cases committed in the context of massacres (9 associated with Auto 092 and three with Auto 009). Of these, none has resulted in a sentence, only 3 (or 16.6%) are in the stage of preliminary inquiry or investigation, three (or 25%) are in arraignment and four (or 33.3%) are inactive due to termination of investigation. The situation of impunity in cases of sexual violence in the context of massacres is not only alarming, it actually undermines the rights of victims and society at large to knowing the truth regarding what occurred during these important events. The understanding

of the Working Group is that information provided by the Prosecutor Generals' Office was provided in good faith, however we have official information which indicates that not four but seven of these cases are actually inactive.

The Working Group considers that the information provided by the Colombian government, under the leadership of the Prosecutor General's Office, is a clear demonstration of its inability to perform investigative duties, especially in cases of national importance, seriously affecting the rights of all people and women in particular.

⁶ Information was not included regarding some 372 cases (or 58.7%) in which it was not possible to determine patterns of victimization, 30 cases (or 4.7%) in which alleged crimes were committed by civilians and 19 cases (or 3%) in which sexual violence was not committed. The Prosecutor General's Office should be able to determine patterns of victimization in areas in which the Confidential Annexes were unable to do so. Although the Prosecutor General's Office has made progress in its analyses, it has not established global patterns of victimization.

3.2 Legal Situation in Cases Involving Sexual Violence Perpetrated during Military Campaigns

The Confidential Annexes refer to 20 cases committed in the context of military operations (19 associated with Auto 092 and one with Auto 009). None of these cases have resulted in a judgment, seven (or 35%) are in preliminary inquiry or investigation, three (or 15%) are in arraignment and nine (or 45%) are inactive. Of the latter cases, seven (or 35%) are inactive due to termination of investigation and two (or 10%) due to preclusion of investigation.

These cases involve a high level of participation by agents of the armed forces, however it is unclear whether clear lines of research exist in efforts to clarify the facts and identify patterns of behavior. The information provided is not sufficient to conclude that there has been negligence in the duty to investigate, but it does seem to suggest that the State lacks will and interest to examine this behavior.

3.3 Legal Situation in Cases of Sexual Violence Targeting Women with Leadership Roles.

The Confidential Annexes refer to 22 cases committed against women who held leadership roles, or their family members (15 associated with Auto 092 and seven with Auto 009). None of these cases have resulted in a sentence, 11 (or 50%) are in preliminary inquiry or investigation, two are in the trial phase (or 9.1%), one is in arraignment and five (or 22.7%) are inactive. Of the latter cases, four (or 18.2%) are inactive due to termination of investigation and one (or 4.5%) due to preclusion of investigation. It is disconcerting that the Prosecutor General's Office has indicated

that in one case a complaint was never formally registered, especially given that a transfer from the Constitutional Court in itself constitutes a complaint and requires an official investigation.

The Working Group has observed that the State has failed to incorporate the hypothesis that the leadership role of these female victims was associated with crimes' motives into its investigations, which are therefore disconnected and do not account for this factor.



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

The Confidential Annexes refer to 16 cases committed against women who were forced into prostitution or sexually enslaved (13 associated with Auto 092 and three with Auto 009). Of these, one has resulted in a conviction, three (or 18.7%) are in preliminary inquiry or investigation, one is in the arraignment stage and eight (or 50%) are inactive due to termination of investigation.

The Working Group categorically affirms that the Colombian State has taken no action to investigate this behavior, to provide justice or to rescue the victims, who likely continue to be forced into prostitution or sexually enslaved by armed actors.



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