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Obstacles to Health, Justice, and Protection for Displaced Victims
of Gender-Based Violence in Colombia



Rights Out of Reach

**Obstacles to Health, Justice, and Protection for Displaced
Victims of Gender-Based Violence in Colombia**

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- Summary..... 1**
 - Obstacles to Medical Attention 2
 - Obstacles to Justice..... 3
 - Shortcomings in Humanitarian Assistance and Protection Measures 3
 - Illustrative Cases..... 5
 - Action Needed 8
- Recommendations..... 10**
 - To the President of the Republic: 10
 - To Congress: 11
 - To Colombian Government Ministries and Agencies: 12
 - Ministry of Health13
 - Department of Public Administration13
 - Attorney General’s Office 14
 - National Police 14
 - Family Commissioners15
 - INMLCF15
 - ICBF.....15
 - Public Ministry 16
 - Ministry of Interior’s National Protection Unit..... 16
 - Victims’ Unit of the Department of Social Prosperity17
 - To Donors and the International Community:17
- Methodology.....18**
- I. Gender-based Violence and Displacement 21**
 - Conditions of Displacement..... 21
 - Scope of Gender-Based Violence in Colombia Generally, and Related to the Conflict and Displacement..... 24
 - Displacement Exacerbates the Effects of Gender-Based Violence 27

II. Colombia’s Normative Framework for Gender-Based Violence and Rights of the Displaced ..	30
Laws Protecting Women and Girls in Colombia from Gender-Based Violence	30
Sexual and Intra-Familial Violence Laws and Policies	30
Victims’ Rights to Health Services	32
Criminal Laws Related to Intra-Familial and Sexual Violence	34
Laws on Displacement that Should Help Displaced Victims of Gender-Based Violence.....	34
Auto 092/2008: Constitutional Court Order Protecting Displaced Women and Girls	35
The Victims and Land Restitution Law.....	36
Referral Pathway: How Victims of Gender-Based Violence Connect to Services.....	37
The Gap between Laws and Reality	38
III. Shortcomings of Health Services after Gender-Based Violence	39
Health Officials Lack Adequate Knowledge or Training of Law and Policies.....	39
Problems Displaced Women and Girls Experienced When Seeking Health Services	
after Rape or Intra-familial Violence	41
Inadequate Screening	41
Mistreatment by Staff in Health Facilities.....	44
Arbitrary Delays or Denial of Treatment.....	47
Failure to Ensure Victims Have Information about Healthcare Options	52
Referral Problems	54
IV. Obstacles to Justice after Gender-Based Violence	59
Mistreatment by Authorities	60
Evidentiary Challenges	64
Intra-familial Violence as a Private Offense during 2011 and 2012.....	67
Limited State Resources	69
Poor Referrals	70
Costs of Seeking Justice	72
Fear of Retaliation	74
V. Barriers to Assistance and Protection Measures	78
Humanitarian Assistance for Displaced Persons.....	78
Protection Measures under Law 1257/2008	81
Protection for Human Rights Defenders.....	84
VI. International Legal Obligations	90
Right to Freedom from Gender-Based Violence.....	90
Right to Health	93
Right to Privacy and Bodily Integrity	95
Right to a Remedy	96
Acknowledgments	97

Summary

There are currently around four million people in Colombia who have been driven from their homes by the horrific abuses and violence associated with the country's nearly five-decade-long internal armed conflict. For many, the suffering does not end after they flee their homes. Thrown into new lives in unfamiliar cities, with few resources and little support, they live in shoddy housing in dangerous neighborhoods, face high unemployment and limited state services, and confront the continued threat of violence by armed groups, sometimes the very same groups from which they fled.

These hardships are all too often compounded by another very serious human rights problem: gender-based violence. Every hour there are an average of nine new acts of sexual violence against women and girls in Colombia. Thirty-seven percent of Colombian women—according to a 2010 state-sponsored survey—report suffering violence at the hands of their intimate partners. For displaced women and girls, available evidence strongly suggests that the prevalence of these and other forms of gender-based violence is even higher: up to almost one in two displaced women, according to one survey conducted by USAID and Profamilia. As the country's Constitutional Court concluded, patterns of violence and discrimination within Colombian society are “exacerbated and worsened by [displacement], impacting displaced women most acutely.”

In recent years, Colombia has made important progress in constructing a legal and policy framework to protect women and girls from gender-based violence and to promote the rights to health and justice for survivors. In 2008, the Congress passed some of the most comprehensive legislation on violence against women in the region, although some small gaps in legal protections remain. The same year, the Constitutional Court ordered various ministries to address gender-based violence against displaced women and girls. In 2011, the government issued regulations to implement the laws and court orders, and developed a comprehensive “referral pathway” to ensure that service providers can guide victims of gender-based violence to all of the services available in the government's integrated, multi-sector response to the problem—including health services, justice, protection, and psycho-social support.

To find out if this legal framework and pathway has made a difference for displaced victims of gender-based violence, Human Rights Watch conducted fieldwork in four major cities in Colombia, interviewing 80 displaced women and girls, nearly all of whom had been victims of gender-based violence: ranging from individual and gang rape by members of armed groups to violence and rape by spouses or intimate partners. We also interviewed 46 government officials and health care practitioners, 65 rights advocates, service providers, and other civil society representatives who have worked extensively with victims.

Our research revealed that the legal framework and referral pathway, when properly applied, can be effective, with government officials helping displaced victims of gender-based violence to access justice and health services. But in the cases reviewed by Human Rights Watch, far more often than not, the framework and pathway are not properly applied, the victims do not receive the medical attention they are entitled to, and the perpetrators are not brought to justice.

Obstacles to Medical Attention

Access to timely and quality health services is essential after sexual or domestic violence, both for the wellbeing of the victims and for the collection of forensic evidence necessary to bring perpetrators to justice. Yet displaced victims of gender-based violence in Colombia typically have practical access to neither.

Human Rights Watch's interviews with women, health providers, advocates, and officials revealed a daunting array of obstacles to medical services for victims. These include the failure of health facilities to properly implement the relevant laws and policies, resulting in inadequate screening for signs of gender-based violence, mistreatment of victims, and arbitrary denial or delays in providing essential services. In some cases, rape victims said they were able to secure doctors' appointments only well past when time-bound treatments to prevent pregnancy or HIV infection would be effective. In others, forensic testing occurred so late that no physical evidence of the crimes remained.

Another major obstacle is a widespread lack of knowledge regarding the requisite medical services, both among the women and girls who are entitled to them and, worse yet, among the health officials and practitioners responsible for providing them. It is precisely this lack of knowledge among victims of gender-based violence that the "referral pathway" was designed to overcome. Yet the lack of knowledge among officials

and practitioners prevents the pathway from functioning as it should. The failure to provide health workers with proper training on handling cases of gender-based violence—as mandated by law—results in them failing to provide victims with the referrals they need.

For many displaced women and girls, these obstacles of poor service and lack of information are compounded by the precarious circumstances in which they live. Compared to the general population, they often have less familiarity with the health institutions and service providers in the places where they have settled, less money to cover transportation costs, and greater fear of retribution from their victimizers if they seek care.

Obstacles to Justice

Our interviews also revealed a wide range of obstacles displaced women and girls face when seeking justice after gender-based violence, including mistreatment by authorities, evidentiary challenges, and fear of retribution.

Displaced women and girls reported to Human Rights Watch that police and prosecutors failed to take their cases seriously. Dolores G., for instance, told a prosecutor that when her husband (who had abused her for years) threatened to hit her son, she told him to hit her instead, which he did. The prosecutor retorted, “You said, ‘Hit me,’ and he did. What do you want me to do?” He took no action on the case. Another woman said investigators seemed to doubt her friend’s report of rape, saying, “But she doesn’t have that good of a body.”

Others reported being told that there could be no criminal prosecution of their cases unless they could produce physical evidence of the abuse, which in some instances was impossible due to delays in accessing forensic testing. While Colombian law does in fact allow criminal prosecution on the basis of non-physical evidence, justice officials and rights advocates who work with victims of gender-based violence reported that prosecutors commonly shelve such cases, a practice which leads women and girls to give up on justice.

Shortcomings in Humanitarian Assistance and Protection Measures

The Colombian government has established humanitarian assistance measures for displaced families and has innovative protection measures for victims of gender-based violence and for human rights leaders. These programs offer essential—even lifesaving—

support for the displaced, for victims of violence, and for individuals at risk of violence. Yet displaced women, as well as rights advocates and service providers, identified shortcomings in their implementation that warrant attention.

With respect to humanitarian assistance, the Colombian government provides displaced families with food, housing, and other benefits. To apply, families must register as a single unit under the name of a primary registrant, who then effectively controls the family's access to the benefits. When the husband is the primary registrant, as is often the case, victims of domestic violence may believe that they have to choose between staying in abusive households and losing crucial benefits. Dulcea A., for example, said she put up with her husband's beatings after they were displaced, but left him when he raped her daughter. As a result, she lost housing, food aid, and other assistance.

While women can attempt to change their registration after leaving abusive husbands, victims of gender-based violence who attempted to do so told Human Rights Watch that the process was slow, and sometimes never completed.

Protection measures for victims of gender-based violence are available under several laws. Victims can start the process of procuring orders for protection measures through several government offices, including municipal officers, family commissioners, courts, or prosecutors. Unfortunately the system does not always operate effectively.

Since 1997, Colombia also has had a specialized unit within the Ministry of the Interior tasked with protecting human rights defenders and other at-risk individuals. The program is the most advanced of its kind in the region. After years of problems and critiques, this protection unit instituted sweeping reforms in 2011. But several women leaders told Human Rights Watch that the system still has problems. A common complaint by women leaders is that the program does not cover their families, although Human Rights Watch hopes that regulations issued in May 2012 will begin to remedy this particular concern.

Illustrative Cases

- **Lucia M.**, 37, fled her small, rural community in Antioquia with her husband and six children when an armed group threatened her son for refusing to join their ranks in 2010. Her husband had mistreated her before: he was violent and two of her pregnancies resulted from forced sex. The violence became worse after the family fled to Medellín. Lucia reported the abuse to prosecutors, filing criminal charges. Lucia hid with her six children in a temporary shelter, but when her time ran out, a child protection agency took her children until she could find housing and stable employment. Lucia tried to change her displacement registration with government authorities to reflect her separation from her husband so that she could directly access humanitarian assistance for herself and her children. The agency never responded. Lucia and her children are receiving no benefits. Lucia's husband continues to threaten her and she has lost hope that the government can help her. She told Human Rights Watch that she wonders if it would have been better to have stayed with her husband, even if he hurt her.
- **Monica N.**, 28, has been displaced seven times. Armed groups killed her uncles, her brother and her mother were disappeared, and guerrilla groups recruited her cousins as young as 11 years of age. By 2008, she had become a leader in her community in Cartagena, and began receiving threats to stop her leadership work. "I would leave my house, and people would be waiting for me," she told Human Rights Watch. In 2009, alleged armed groups killed her partner. Monica fled to Bogotá, and sent her oldest child to Chocó for safety. In 2011 an unknown attacker raped Monica in Bogotá, she believes as punishment for her leadership activities. She immediately reported the rape to authorities. The government forensic medical institute would not see her for 10 full days, well beyond when physical evidence was likely to remain. No official referred Monica for health treatment during the period when she could have gotten prophylaxis to prevent pregnancy or sexually transmitted infections, including HIV. When Monica finally did access health treatment, a doctor prescribed medicines for a fungal vaginal infection from the rape and to belatedly attempt to avoid HIV infection. The medicines were expensive, and Monica could only afford the one for the fungal infection. There is no progress in her criminal case.

- Mercedes D.**, 44, lived in a rural community where, in 1997, guerrilla groups tried to recruit her husband. Afraid, the family fled and did not report the incident or their displacement. In 2004, paramilitaries killed her husband believing him to be a guerrilla sympathizer. During this same period, Mercedes's 16-year-old daughter, Beatriz, was raped. Mercedes fled with her children to Medellín. Her daughter became pregnant, and bore a child from the rape. Mercedes was not trained for urban employment, so she worked in the outskirts of the city on a farm. In late 2009, on her way to work, someone she identified as a member of a paramilitary group raped her. Mercedes did not seek medical treatment or go to the police after the rape. Four months later Mercedes realized she was pregnant. Concerned about how she would continue to work and feed her children, and a new baby, she went to the municipal human rights ombudsman, who directed her to a shelter for victims of gender-based violence. The shelter program helped her regain economic and social stability. Then in 2011, Beatriz was shot dead by crossfire in a neighborhood shootout. There is an ongoing investigation, but Mercedes does not know the status. Her two youngest children were taken from her and placed in an institution until she finds a job. "I am afraid all of the time, in every moment," she told Human Rights Watch.
- Maria Claudia M.**, 42, was displaced to Cartagena by violence. She has two children, a daughter and a son. For six years she was in a relationship with a demobilized member of a paramilitary group who verbally abused her, but she never reported the abuse. In July 2011 he raped her then-13-year-old daughter; he was not her daughter's father. She tried to stop him. She says that when she caught him, he pushed her against a wall with a machete to her throat and threatened her not to tell anyone, saying, "Do anything, and I will kill you." Maria Claudia immediately took her daughter to report the crime and receive medical treatment. Both her daughter and younger son were placed in a child welfare institution for a month for psycho-social services. Maria Claudia did not receive any such services. Her ex-partner fled Cartagena, but continued to have powerful connections in her neighborhood because of his former affiliation with a paramilitary group.

Maria Claudia's children were released back to her, but she says that authorities did not provide any further protection measures to prevent retaliation for reporting

the crime. She had made her security concerns clear to the prosecutor in her daughter's case, but says that the prosecutor did not inform her of any potential protection measures, including providing safer locks for her house or a cellular phone with direct line to police. Maria Claudia told Human Rights Watch that she was afraid for her and her children's safety. "It makes me afraid that he is free," she said. "He is an aggressive, dangerous man. He has links to paramilitaries." Two months after speaking with Human Rights Watch, her ex-partner returned, threatening Maria Claudia, her children, and the women who have helped them.

- **Dolores G.**, 38, was displaced to Cartagena with her husband and two children in 2002. Within a year, her husband began beating her severely. After he began also threatening her son, she reported the abuse to the police, who referred her to a prosecutor. Rather than investigating her complaints, the prosecutor blamed her for her situation, saying, "You said, 'Hit me,' and he did. What do you want me to do?" Dolores fled home and for 3 months went into hiding, as her husband tried to hunt her down, carrying a machete as he went through the neighborhood. When he found her at a friend's house one night, he grabbed her by the throat, held her down at knifepoint, and raped her.

After her previous experience with the police and prosecutor, she felt she could not find help there. She turned instead to the Acción Social (a predecessor to the current Department for Social Prosperity), the agency in charge of humanitarian affairs for displaced persons. "I need a solution to my problem," she told them, "this man will kill me and nothing will happen." In June 2004, Acción Social gave Dolores money to relocate with her children back to her hometown. For eight months, she lived in peace at her parents' home with her children, until she received threats from two armed men who gave her 24 hours to leave the town. Once again she fled to Cartagena and—feeling she had nowhere else to go with her children—moved back in with her husband. He soon took to abusing her as before, but she did not bother seeking help from the government again, and instead endured for another six years. Over the span of the abuse, Dolores saw doctors and other health professionals, sometimes for injuries associated with the abuse. She was not screened for abuse, nor referred to any additional services for victims of domestic violence. Only in 2011 did she finally manage successfully to leave the abusive relationship.

Action Needed

The Colombian government should take the following steps in order to protect the human rights of displaced victims of gender-based violence:

- Establish an independent commission to conduct a rigorous review of current practices in the institutions that directly provide care or services to displaced victims of gender-based violence to address ineffective implementation of the existing legal and policy framework;
- Collect accurate data regarding the scope of gender-based violence related to the conflict and displacement to better understand the current context of violence suffered by displaced women and girls and to provide baseline data for monitoring the impact of policies and adjusting them over time to better serve this population;
- Expand, strengthen, and ensure continuity of training programs for health and justice system employees and carry out public awareness campaigns to familiarize displaced women and girls with their rights and the services available to them in an effort to address lack of knowledge regarding rights of displaced gender-based violence victims;
- Pass pending legislation on access to justice for victims of sexual violence to facilitate successful prosecution of perpetrators of gender-based violence crimes.

Many of the obstacles displaced women and girls face in accessing health services, justice, and protection after gender-based violence are not unique to displaced victims. These recommendations will benefit victims across all sectors of society. Nevertheless, displaced women and girls live in extreme vulnerability, and the government response must take into account their specific needs. This may require taking additional proactive steps to overcome the historical lack of trust in government institutions, severe social and economic marginalization, and the continuing security concerns of displaced women and girls.

Failure to fill the gap between the government's progressive laws and policies and the difficult realities victims confront when they seek help will perpetuate impunity for abuses against displaced women and girls, and continue to impede their access to essential medical attention. Fear and desperation will remain a part of everyday life for thousands

of displaced women and girls. “All that has happened to me is difficult, but what’s worse is the fear that remains with me,” Angela D., a rape survivor, told Human Rights Watch. “It’s a malignancy.... Ever since I left my beautiful little village, I have not found a tranquil place to rest.”

Recommendations

To the President of the Republic:

- Provide a clear, inter-ministerial plan for implementation of the measures of prevention and punishment of violence against women and protection and care of victims, as well as programs outlined in the Constitutional Court's ruling Auto 092 (on displaced women), in consultation with Colombian civil society. The plan should specifically articulate how the government's 2012 National Integrated Plan to Guarantee Women a Violence-Free Life will address displaced women and girls.
- Commission a national survey on the scale of sexual violence related to the armed conflict, and on intra-familial and sexual violence experienced by displaced individuals. The survey should include the collection of quantitative and qualitative data, and collect disaggregated data related to geography, ethnicity, age, number of displacements, sexual orientation, disability, and other relevant categories. The data should be considered in any adjustments of current laws and policies and be used as a baseline for monitoring successful implementation of laws, policies, and programs.
- Establish an independent commission composed of state representatives, including the human rights ombudsman's office, and civil society representatives to conduct a rigorous review of current practices in the institutions that constitute the government's response to sexual and intra-familial violence, both within and outside the conflict. The commission should review justice processes relating to such violence, identify the causes of impunity for these crimes, assess breakdowns in referral pathways to other services, and evaluate where services are not responsive to the needs of displaced women and girls. The commission should examine how multiple forms of discrimination impact the government response to gender-based violence, should work in coordination with other government commissions that monitor implementation of policies and laws on violence against women, and review reports of civil society organizations regarding the implementation of Law 1257/2008 and Auto 092.
- Publicly declare the prevention, punishment, and the eradication of gender-based violence a priority of the executive within its broader goal of ending the conflict, reestablishing peace, and strengthening the rule of law.

- Ensure, through the Presidential Advisor on Gender Equity, that the document prepared for the National Council for Economic and Social Policy (Consejo Nacional de Política Económica y Social, CONPES) related to the 2012 National Integrated Plan to Guarantee Women a Violence-Free Life adequately addresses the risks and obstacles faced by displaced women and girls.
- Ensure sufficient resources so that the human rights ombudsman's office, charged with the responsibility to care for, accompany, and provide legal representation to victims of sexual violence, will have dedicated personnel to complete this function throughout the country. Resources should be used to reinforce the division for the protection of women, girls, and adolescent victims and the delegate for the rights of children, youth, and women.
- Tailor education campaigns envisioned in the National Integrated Plan to Guarantee Women a Violence-Free Life to marginalized populations, like displaced women and girls.

To Congress:

- Pass into law draft bill number 037 on access to justice for victims of sexual violence, introduced on August 1, 2012.
- Update the criminal code to define rape and sexual assault to include penetration with other body parts or objects, in addition to penile penetration.
- Update the criminal code to recognize lack of consent as an essential element in crimes of sexual violence, rather than use of force, and ensure that coercive circumstances can be recognized as evidence of a lack of consent.
- Pass no legislation that allows crimes of sexual violence to be investigated or tried in military jurisdiction.
- Ensure that budget allocations for ministries, the human rights ombudsman's office, and the judiciary are sufficient to provide appropriate staffing and resources to deal with gender-based violence.
- Pass authorization to allow the Ministry of Health to implement protocols for medical institutions that ensure victims have timely access to legal and safe abortion, even when a physician has claimed conscientious objection.
- Ask the Presidential Advisor on Gender Equity to include in her annual report to Congress on the implementation of Law 1257/2008 specific information about

- measures adopted by entities of the state to prevent and punish gender-based violence and to provide services to survivors, including the internally displaced.
- Include the participation of women victims and civil society experts on violence against women in hearings on the implementation of Law 1257/2008 and Law 1448/2011.

To Colombian Government Ministries and Agencies:

To all Ministries and Government entities that have contact with victims of gender-based violence, including the Ministry of Health, the attorney general's office, the National Police, family commissioners, the INMLCF, the ICBF, institutions within the Public Ministry, the Ministry of Interior's National Protection Unit, and the Department of Social Prosperity's Victims Unit:

- Expand current training programs on gender-based violence for all employees to ensure any personnel that interacts with victims understands how to:
 - Apply the normative framework governing gender-based violence in Colombia;
 - Detect signs of gender-based violence;
 - Work and communicate with victims of gender-based violence;
 - Educate victims of gender-based violence about their rights, including protection measures, judicial remedies, and medical treatment;
 - Navigate the referral pathway, including contacting counterparts at other government institutions to ensure victims reach needed services; and
 - Implement protocols and models of attention for gender-based violence.
- Ensure training programs are offered on a consistent basis, with refresher courses available to all employees. Training should be mandatory for employment.
- Design and implement mechanisms for monitoring and evaluating the impact of these trainings on the performance of official duties.
- Provide reference materials to employees that include checklists for detection, treatment, referrals, and education of victims on their rights.
- Post notices in places where victims of gender-based violence seek care and assistance that clearly outline their rights.
- Establish monitoring and evaluation programs to ensure implementation of laws, policies, protocols, and guides for providing care. Quickly address failures of implementation, and disciplinarily sanction willful negligence by individual officials.

- Monitor and ensure that allocated budgets are adequate for the resources and staff needed to address gender-based violence.
- Establish and enforce a zero tolerance policy for discrimination, abuse, or negligence by government employees toward victims of sexual or intra-familial violence.
- Raise awareness among government employees that gender-based violence is a crime, not a cultural practice.
- Establish clear policies on maintaining victim confidentiality and explain to victims how their personal information will be used.

In addition, the following state entities should take the specific steps:

Ministry of Health

- In coordination with the INMLCF:
 - Ensure all medical professionals who may have clinical contact with gender-based violence victims are trained in protocols related to the forensic examination of victims of gender-based violence;
 - Encourage the incorporation of forensic examination and medical treatment of victims of gender-based violence in medical school curricula; and
 - Provide immediate support to doctors called on to perform forensic examination of victims, in particular new doctors completing their mandatory year of service.
- Educate medical providers on the correct procedure for claiming conscientious objection, and disciplinarily sanction misuse of conscientious objection.
- Identify and eliminate barriers to health services for victims of sexual and intra-familial violence, particularly displaced women and girls. Minimize transport and administrative costs related to seeking health services.
- Ensure all health facilities comply with new gender-based violence reporting requirements for the National Public Health Vigilance System (Sistema Nacional de Vigilancia en Salud Pública – SIVIGILA) of the National Institute of Health.

Department of Public Administration

- Develop a public, integrated database for all government data on gender-based violence. Work with all ministries and government entities to conform data collection to a similar, disaggregated format, to allow for coordination, sharing, and comparing of data.

Attorney General's Office

- Develop detailed technical protocols on the investigation and prosecution of gender-based violence crimes, providing specific instruction on pursuing cases that lack physical evidence.
- Ensure prompt, thorough investigations of all reported crimes against displaced women. In cases of displaced leaders, when multiple crimes against a single leader are reported, conduct a comprehensive investigation that examines all of the alleged crimes in order to identify possible connections and patterns that could help to determine all responsible parties.
- Ensure private spaces for reporting cases and providing testimony.
- Develop trust-building programs within displaced communities to overcome the fear many women and girls have of reporting violence to authorities.
- Ensure that prosecutors understand the registration process for displaced persons and counsel displaced victims of intra-familial violence filing complaints on their right to also register a rupture in the family unit to ensure continued access to emergency humanitarian assistance.
- Implement protection programs for victims of gender-based violence, as envisioned under Law 1257/2008, so that victims receive adequate and durable protection.
- Review cases of intra-familial violence closed at the victim's request in the period when intra-familial violence was classified by law a private offense in 2011 and 2012, to ensure that the victim was not threatened into dropping the case and that she remains safe from further violence. Re-open closed cases where necessary.
- Identify and eliminate barriers to justice for victims of sexual and intra-familial violence, particularly displaced women and girls, including minimizing transport and administrative costs related to seeking justice.

National Police

- Develop training programs on working with victims of gender-based violence for all personnel that interact with victims. These training programs should complement and further develop the Ministry of National Defense's Public Policy on Sexual and Reproductive Rights, Gender Equity and Gender-based Violence, Sexual and Reproductive Health, with an emphasis on HIV.
- Develop detailed, technical protocols on the investigation of gender-based violence crimes, providing specific instruction on pursuing cases that lack physical

evidence and on interviewing victims and maintaining a victim's confidentiality during the investigation.

Family Commissioners

- Counsel displaced victims of intra-familial violence filing complaints on their right to also register a rupture in the family unit to ensure continued access to emergency humanitarian assistance.
- Ensure private spaces are used for reporting cases and providing testimony.
- Educate women about protection programs for victims of gender-based violence, as envisioned under Law 1257/2008, so that victims who report violence receive adequate and durable protection.

INMLCF

- Monitor implementation of protocols related to the forensic examination of victims of gender-based violence to ensure implementation across the institution.
- Implement a certification process, whereby all forensic doctors confirm victims received information about their rights to other services, including healthcare, and referrals to relevant services.
- Work with the Ministry of Health to:
 - Ensure all medical professionals who may have clinical contact with gender-based violence victims are trained in protocols related to the forensic examination of victims of gender-based violence;
 - Encourage the incorporation of forensic examination and medical treatment of victims of gender-based violence in medical school curricula; and
 - Provide immediate support to doctors called on to perform forensic examination of victims, in particular new doctors completing their mandatory year of service.

ICBF

- Ensure that adult victims of domestic violence who have lost custody of children are not pressured to return to abusive relationships in order to have the economic means necessary to be reunited with their children.
- Develop clear protection protocols, with the Ministry of Interior, for children of threatened displaced leaders.

Public Ministry

- Work with civil society to establish and fund independent accompaniment programs to ensure that sexual and domestic violence victims are guided throughout the referral pathway by knowledgeable staff trained in psycho-social support and who understand the unique needs and challenges faced by displaced women and girls.
- Provide support and accompaniment to victims who have become pregnant after rape, including with respect to their decision concerning whether to terminate the pregnancy.
- Establish as a priority the dissemination of information on sexual and reproductive rights, including relevant decisions of the Constitutional Court on legal abortion.
- Disciplinarily sanction officials who do not uphold the established rights of victims of gender-based violence, including the right to access a safe and legal abortion after rape or incest.

Ministry of Interior's National Protection Unit

- Ensure that all government officials understand the new gender and women's rights protocol for its protection program—as outlined in Resolution 0805/2012—and monitor implementation of this resolution.
- Work with affected leaders to develop more durable protection solutions for displaced women leaders.
- Enforce protection measures in Law 1257/2008 and ensure that women leaders who are victims of gender-based violence are provided all necessary measures to guarantee their safety. This should include measures not typically applied by the unit, such as the installation of deadbolt locks or security cameras in victims' homes.
- Ensure that displaced women leaders that are victims of sexual violence seeking or already under the unit's protection are guaranteed prompt, free, and comprehensive medical treatment after rape.
- Implement Resolution 0805/2012— so that protection measures extend to the nuclear family of displaced women leaders when necessary.
- Develop clear protection protocols, with the ICBF, for children of threatened displaced leaders.

Victims' Unit of the Department of Social Prosperity

- Ensure that all victim assistance programs are designed to address gender-based violence.
- In cases of new families registering as displaced, list both spouses or partners as heads of household.
- Ensure that displaced women and children continue to receive aid after a rupture in the family, even if the registered head of household is a male.
- Train justice officials, representatives of the human rights ombudsman's office, and family commissioners to understand the registration process for displaced persons, so that they can counsel displaced victims of intra-familial violence on their right to register a rupture in the family unit to ensure continued access to assistance.
- Educate displaced persons about the opportunity to register changes in the household unit.

To Donors and the International Community:

- Continue to provide technical support to Colombian ministries and agencies charged with addressing gender-based violence.
- Fund programs to establish effective training models on the care of victims of gender-based violence, including online trainings.
- Monitor funded programs to ensure implementation.
- Require a gender analysis for funded projects, including an assessment of whether projects can contribute to preventing and addressing gender-based violence.
- Work with the Colombian government to address resource gaps in the funding programs related to gender-based violence prevention, redress and the care of victims, and develop strategies for the government to continue funding programs after donor assistance expires.

Methodology

This report is based on research conducted by Human Rights Watch researchers in Bogotá, Cali, Cartagena, and Medellín between December 2011 and October 2012. We chose these locations because they are areas that receive a large number of displaced persons and, as department capital cities, they should provide a picture of victims' best access to good quality services after gender-based violence.¹

Human Rights Watch researchers carried out interviews with 80 displaced women and girls, all of whom were survivors—or family members of survivors—of gender-based violence. Of these, 67 sought services for sexual or intra-familial violence. Human Rights Watch also interviewed the lawyers of four additional displaced women and girls who had been victims of sexual violence and sought to legally terminate pregnancies resulting from the violence. In addition, Human Rights Watch conducted 65 interviews with rights advocates, service providers, and other civil society representatives who have worked extensively with victims. Human Rights Watch also met with 46 local and national authorities, including local and national officials from the attorney general's office, the national police, the National Institute for Legal Medicine and Forensic Sciences, the inspector general's office, the national ombudsman's office, municipal officers, local "justice houses," the Department for Social Prosperity, the Colombian Institute of Family Welfare (ICBF), the Agency for Family Services, and the presidential advisor for equity of women. In Bogotá Human Rights Watch met with diplomats, experts on Colombian security issues, and United Nations (UN) officials. Nearly all interviews were conducted in Spanish (the sole exceptions are interviews with diplomats or foreign staff at international organizations). Human Rights Watch received and reviewed documents, reports, policies, and case files from multiple sources.

Interviewees were identified with the assistance of civil society groups, government officials, and other victims. Most interviews with victims were conducted individually in private settings, except in a few instances where interviewees preferred to speak in small groups.

¹ According to government statistics, Bogotá, Cali, Cartagena, and Medellín received 320,518; 82,896; 71,361; and 222,945 displaced persons, respectively, between 1998 and the first quarter of 2011. Departamento de Prosperidad Social, Estadísticas de población desplazada, <http://www.dps.gov.co/contenido/contenido.aspx?catID=621&conID=556&pagID=838> (accessed September 19, 2012).

Several interviewees expressed fear of reprisals and for that reason requested to speak anonymously. Details about individuals have been withheld if information could place a person at risk, but are on file with Human Rights Watch. All victims have been provided pseudonyms.

In most instances, interviews were conducted in person. In a small number of cases, follow-up interviews were conducted telephonically.

All victims interviewed provided oral informed consent to participate. Individuals were assured that they could end the interview at any time or decline to answer any questions, without any negative consequences. All participants were informed of the purpose of the interview, its voluntary nature, and the ways information would be collected and used. Care was taken with victims to minimize the risk that recounting their experiences could further traumatize them.

No interviewee received compensation for providing information. Some interviewees received reimbursement for transportation expenses they incurred while traveling to the interviews. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, counseling, health, or social services.

In this report, the word “child” refers to anyone under the age of 18, with “girl” referring to a child.

Gender-based violence is used throughout this report to mean violence targeted at or disproportionately affecting an individual or group on the basis of their gender, including sexual and intra-familial violence. This can include a wide array of violence that results in physical, sexual, or psychological harm, including sexual violence and intra-familial violence.² The term sexual violence as used in this report encompasses violence that falls

² The Committee on the Elimination of Discrimination against Women has defined gender-based violence as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 (1994) (hereinafter General Recommendation 19), p. 84, para. 1. Types of violence that might constitute this type of violence include violence against women, as defined by the United Nations to include “violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” United Nations Declaration on the Elimination of Violence Against Women, December 20, 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/RES/48/104 (1993), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/095/05/PDF/N9409505.pdf?OpenElement> (accessed August 10, 2012), art. 1. This encompasses “(a) physical, sexual and psychological violence occurring in the family,

within the definitions of sexual crimes under Colombia’s criminal code—rape, sexual assault, and sexual abuse of a person 14 years of age or less.³ Intra-familial violence is used according to its definition in Colombia’s criminal code—physical or psychological maltreatment of any member of the nuclear family or of a person under the care of members of the household or residence.⁴

The experiences documented in this report are drawn both from victims themselves and from government or NGO representatives with direct experience working with displaced women and girls who have suffered sexual or intra-familial violence. The findings are not a statistical representation of the entire displaced population, but indicate what kinds of obstacles displaced women and girls must overcome in seeking services and accountability after acts of sexual or intra-familial violence. A limitation in the research was the difficulty of identifying women and girls who had not only experienced gender-based violence, but had also sought services from government agencies, as many victims of gender-based violence do not seek such services.

As described in this report, some victims of violence in Colombia fear retaliation if they disclose the abuse they have suffered, so it is possible that some women and girls interviewed by Human Rights Watch recounted only parts of their full experience. For this reason, Human Rights Watch relied on multiple types of sources to establish the broadest possible view of the gaps in implementation of the government’s normative framework on gender-based violence. The report discusses similar trends found in the government response to gender-based violence against displaced women and girls in the four cities of Bogotá, Cali, Cartagena and Medellín.

including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.” Ibid. The 1995 Beijing Platform for Action provided an expanded definition to include violations of the rights of women in situations of armed conflict, including systematic rape, sexual slavery and forced pregnancy; forced sterilization, forced abortion, coerced or forced use of contraceptives; prenatal sex selection and female infanticide. Beijing Declaration and the Platform for Action: Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995), <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (accessed August 10, 2012), paras. 112-17.

It further recognized the particular vulnerabilities of women belonging to minorities: the displaced; indigenous, refugee and migrant communities; women living in impoverished rural or remote areas, or in detention.

³ See Criminal Code of Colombia, Law 599/2000, arts. 205-212.

⁴ See Law 599/2000, art. 229, as modified by Law 1142 of 2007, art. 33.

I. Gender-based Violence and Displacement

You hear that in Colombia, the laws are beautiful, and then when you learn the truth, you realize it's nothing more than words on a page.

—Olga M., displaced woman and victim of gender-based violence, Cali,
May 2012

Gender-based violence is not unique to displaced women and girls in Colombia, but it is particularly acute for displaced women and girls. Available data strongly suggests it is more prevalent than for the non-displaced population. Studies (described in more detail below) have found displaced women experience more frequent incidents of rape and other physical abuse by spouses and others compared to the non-displaced. Extreme levels of socio-economic disadvantage mark the lives of the majority of displaced women and girls. This both increases their risk and constitutes a challenge to accessing government services when they are victims of gender-based violence.

Conditions of Displacement

Along with Sudan and Iraq, Colombia has one of the largest populations of internally displaced people in the world—roughly 10 percent of the total population by most estimates.⁵ Cumulative estimates of the size of Colombia's displaced population range from approximately 3.9 million⁶ people registered by the government since 1997, to almost 5.5 million people reported by a prominent Colombian NGO since 1985.⁷ The latter estimate includes individuals who have not been registered with the government's registry of internally displaced persons (formerly the Registro Único de la Población Desplazada-

⁵ United Nations High Commissioner for Refugees (UNHCR), "Internally Displaced People: On the Run in their Own Land," undated, <http://www.unhcr.org/pages/49c3646c146.html> (accessed August 10, 2012).

⁶ Both the Government of Colombia and UNHCR have estimates close to 3.9 million displaced as of late 2011. See UNHCR, "2012 UNHCR Country Operations Profile-Colombia," <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e492ad6&submit=GO> (accessed August 10, 2012). Sistema de Información para la Población Desplazada, Reportes de Información General de Población Desplazada, generated August 13, 2012 (accessed August 13, 2012).

⁷ This number is the cumulative estimate from 1985 to December 2011 and includes both registered and unregistered internally displaced peoples. Consultoría para los Derechos Humanos y el Desplazamiento-CODHES, "Desplazamiento creciente y crisis humanitaria invisibilizada," Boletín número 79, March 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Informe%20Completo_101.pdf (accessed August 2012, 2012), pp.8. For background on the conflict, see Human Rights Watch, *Colombia— Displaced and Discarded: The Plight of Internally Displaced Persons in Bogotá and Cartagena*, Human Rights Watch vol. 17, no. 4(B), October 2005, <http://www.hrw.org/sites/default/files/reports/colombia1005.pdf>, pp. 11 -15.

RUPD, and now combined with the government's registry of victims in general under the Registro Único de Víctimas created by Law 1448 of 2011).

Although government figures indicate that the rates of new displacements have declined in recent years, they continue to be high: the government registered 143,116⁸ people as newly displaced in 2011, while the respected Colombian civil society organization, CODHES, reported 259,146⁹ newly displaced the same year.

Studies have found that displaced individuals tend to have lower rates of education and literacy than the general population.¹⁰ One study in Valle del Cauca department, for example, found that in 2008 and 2009 over 50 percent of displaced women in the region had received five years of schooling or less, with six percent having received no formal education at all.¹¹ This compares to an average of 10 years of school for the general population ages 20 to 34 for this department.¹² Less schooling means higher rates of illiteracy. The government's Department for Social Prosperity estimates that the rate of illiteracy for displaced heads of households is about 20 percent.¹³ This compares to the national total illiteracy rate of 6.3 percent for persons over 15 years of age.¹⁴

Indigenous and Afro-Colombian individuals constitute a large number of the displaced population—potentially creating another level of discrimination for certain displaced

⁸ Departamento de Prosperidad Social, "Informe de Gestión," 2011, <http://www.dps.gov.co/documentos/InfoDPS/INFORME%20DE%20GESTI%C3%93N%20%202011-FEB01%20con%20Ajustes.pdf> (accessed September 19, 2012).

⁹ CODHES, "Desplazamiento creciente y crisis humanitaria invisibilizada," March 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Informe%20Completo_101.pdf (accessed September 19, 2012).

¹⁰ See, for example, Mónica M. Alzate, "The sexual and reproductive rights of internally displaced women: the embodiment of Colombia's crisis," *Disasters*, vol. 32, issue 1, 2008, p. 137.

¹¹ Taller Abierto (Cali), "Del Campo a la Ciudad...De lo Domestico a lo Público...Un Continuo de Violencias y Lucha por Sus Derechos: Mujeres en Situación de Desplazamiento Forzado por el Conflicto Armado en el Valle del Cauca," 2009, p. 5.

¹² Departamento Administrativo Nacional de Estadística (DANE), "Encuesta de Calidad de Vida, Region Valle," (2010), http://www.dane.gov.co/files/investigaciones/condiciones_vida/calidad_vida/ECV_2010_Valle.pdf (accessed August 7, 2012). The comparison is not perfect, as the age range of the Taller Abierto survey ranged from 21 to 60 years of age, with 59 percent of respondents between the ages of 21 and 40. The DANE number refers to respondents ages 20 to 34.

¹³ Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, "Tercer Informe de Verificación sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento," December 2010, <http://mesadesplazamientoydiscapacidad.files.wordpress.com/2011/01/iii-informe-de-verificacic3b3n-cs-2010.pdf> (accessed August 7, 2012), pp. 58-59. The rate of illiteracy for registered internally displaced women and girls is 14 percent of those over the age of 15, but jumps to almost one in three registered internally displaced women over the age of 40.

¹⁴ DANE, "Encuesta de Calidad de Vida," 2010, http://www.dane.gov.co/files/investigaciones/condiciones_vida/calidad_vida/Presentacion_ECV_2010.pdf (accessed August 7, 2012), p. 22.

persons. The government estimates that, as of November 2011, 105,818 registered internally displaced people were indigenous and 383,924 were “black or Afro-Colombian”.¹⁵ However, civil society organizations estimate the true number to be much higher, with the discrepancy perhaps due to lower registration rates among indigenous and Afro-Colombians. The Constitutional Court-mandated Monitoring Committee for Public Policy on Forced Displacement estimates that in 2010, 22 percent of the internally displaced were Afro-Colombian and 6.1 percent indigenous.¹⁶ Moreover, while government figures show that the national trend has been to fewer displacements since 2006, the internal displacement rates for Afro-Colombians reached its highest levels in 2007 and 2008.¹⁷

The Monitoring Committee found in 2010 that only 11 percent of displaced persons with employment earned the monthly minimum wage set by the government, and almost 60 percent received less than half of that amount, jumping to 68 percent for internally displaced women.¹⁸ Displaced individuals are also more than twice as likely to live below the poverty line as the general population. According to the committee, in 2010, 97.6 percent of registered displaced families and 96 percent of non-registered families had income below the poverty line, which compared to an estimated 45 percent of the general population (from the same study and date).¹⁹ The number of extreme poor among displaced populations is even more striking, with nearly 79 percent of registered internally displaced families living below the extreme poverty line as of 2010, compared to only 17 percent of the general population. The rate of extreme poverty among female-headed displaced households was even higher, at 86 percent.²⁰

¹⁵ See Departamento para la Prosperidad Social, Unidad de Atención a Víctimas, “Estadísticas de la Población Desplazada,” undated, <http://www.dps.gov.co/EstadisticasDesplazados/GeneralesPD.aspx?idRpt=5> (accessed August 7, 2012).

¹⁶ Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, “Tercer Informe de Verificación sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento,” December 2010, <http://mesadesplazamientoydiscapacidad.files.wordpress.com/2011/01/iii-informe-de-verificaciac3b3n-cs-2010.pdf> (accessed August 7, 2012), pp. 57-58.

¹⁷ Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, “Aportes de Política Pública para la Superación del estado de Cosas Inconstitucional: Seguimiento a la Sentencia T 025-04 y sus Autos Diferenciales,” October 2011, http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52 (accessed August 7, 2012), pp. 40-42.

¹⁸ *Ibid.*, pp.171-182.

¹⁹ *Ibid.*, pp.182-186. Some current government estimates now consider 39 percent of the general population to live below the poverty line.

²⁰ *Ibid.*

Living conditions are also difficult for many displaced families. While the government has subsidized—and in some cases built—housing for displaced populations in certain cities, many displaced families live in cramped, shoddy housing far from schools, health clinics, food markets, and town centers. Just 5.5 percent of displaced households registered by the government live in decent housing, according to a 2009 study.²¹

Over half of those registered as displaced in Colombia are female: adults, adolescents, and girls.²² About 50 percent of displaced households are female-headed, double the national average.²³ Many of the displaced women and girls with whom Human Rights Watch spoke identified themselves as heads of their households, yet struggled to find formal employment in their new cities. Many had insecure and low-paid informal jobs as domestic workers, street vendors, artisans, or recyclers.²⁴ One woman said she engaged in sex work to support her family.²⁵

In addition to the daily challenges of displacement, displaced women and girls are at high risk for an additional trauma: gender-based violence. Gender-based violence is a risk for all women in Colombia, but the problem is more acute for displaced women and girls.

Scope of Gender-Based Violence in Colombia Generally, and Related to the Conflict and Displacement

Gender-based violence is a pervasive problem throughout Colombia. A government-sponsored national demographic and health survey, La Encuesta Nacional de Demografía y Salud or ENDS, is conducted every five years by Profamilia (a Colombian health organization) in partnership with the government and international agencies, such as USAID. The survey covers about 50,000 households and includes questions about intra-familial and sexual violence in the population generally—finding high rates of violence.

²¹ Luis Jorge Garay Salamanca, “Tragedia humanitaria del desplazamiento forzado en Colombia,” *Estud. polit.*, Medellín no.35 Medellín, July/Dec. 2009, http://www.scielo.org.co/scielo.php?pid=S0121-51672009000200008&script=sci_arttext (accessed September 19, 2012).

²² See, for example, Mónica M. Alzate, “The sexual and reproductive rights of internally displaced women: the embodiment of Colombia’s crisis,” *Disasters*, vol. 32, issue 1, 2008, p. 137.

²³ *Ibid.*

²⁴ A recycler is someone who sorts trash for valuable items that are sold to recycling centers for cash. Human Rights Watch interview with Valeria G., Bogotá, April 21, 2012.

²⁵ Human Rights Watch interview with Sofia V., Bogotá, February 24, 2012. See also Human Rights Watch interview with Pilar A., Bogotá, February 25, 2012, Human Rights Watch interview with Andrea S., Cartagena, February 26, 2012, and Human Rights Watch interview with Nora P., Cali, May 7, 2012, confirming many displaced women engage in this type of work.

From 2005 to 2011, the National Institute for Legal Medicine and Forensic Sciences (INMLCF) conducted almost 420,000 forensic exams on victims of intra-familial violence.²⁶ Along with the health sector, the INMLCF conducted almost 19,000 exams in 2011 of female victims of sexual violence, up from less than 17,000 in 2010. According to the INMLCF, the total rate of cases of sexual violence increased 11 percent from 2010 to the highest rate in ten years; 49 cases for every 100,000 inhabitants.²⁷

Neither the ENDS nor INMLCF distinguish whether respondents or victims are displaced or whether the violence was linked to the conflict. The INMLCF has acknowledged that little is known regarding the full dimension of sexual violence suffered by women and girls in connection with the conflict and displacement.²⁸ The National Institute of Health began a public health reporting program in June 2012.²⁹ The program requires medical facilities to report treatment of cases of sexual or intra-familial violence as a public health problem, similar to reporting mechanisms required for certain communicable diseases. The data are disaggregated by cases related to the conflict.³⁰

While the magnitude of gender-based violence linked to the conflict and displacement in Colombia is difficult to approximate due to underreporting and gaps in government data collection, civil society organizations and independent agencies have undertaken their own studies. A body of independent research strongly suggests a high rate of conflict-related sexual violence and that displaced women and girls face a greater risk of gender-based violence than other sectors of the population. Notably, a 2011 Profamilia and USAID study that looked specifically at the sexual and reproductive health of two marginalized

²⁶ On file with Human Rights Watch. The 2011 data is preliminary, and subject to change. The fundamental mission of the National Institute for Legal Medicine and Forensic Sciences is to provide scientific and technical assistance and support related to medical legal exams and forensic sciences for the administration of justice. Organic Law of the Attorney General of the Nation, Law 938/2004, 2004, <http://www.cidh.com/archivos/pdf5371146277.pdf> (accessed July 7, 2012), art. 35. Its data is limited to the number of cases referred to it for forensic exams. INMLCF has 8 regional locations, 25 sectional locations, and 116 basic units, totaling coverage of 66 percent of the population. Since 2009, it has managed a National System of Indirect Statistics (SINEI – Sistema Nacional de Estadística Indirecta) for registration of forensic exams conducted by rural doctors or officials in 504 municipalities.

²⁷ Instituto Nacional de Medicina Legal y Ciencias Forenses, *Forensis 2010 Datos para la vida: Herramienta para la interpretación, intervención y prevención de lesiones de causa externa in Colombia* (Bogotá, 2011), p. 162; and Instituto Nacional de Medicina Legal y Ciencias Forenses, *Forensis 2011: Datos oficiales sobre la violencia en Colombia en el 2011* (Bogotá, 2012), p. 210-11.

²⁸ Instituto Nacional de Medicina Legal y Ciencias Forenses, *Forensis 2010 Datos para la vida: Herramienta para la interpretación, intervención y prevención de lesiones de causa externa in Colombia* (Bogotá, 2011), p. 162.

²⁹ Human Rights Watch interview with Drs. Maritza Gonzalez, Luz Janeth Forero and Maira Alejandra Ortize, National Institute of Health, Bogotá, October 12, 2012.

³⁰ *Ibid.*

communities—poor and displaced—found higher rates of intra-familial violence and sexual violence among displaced women than was reported in the national ENDS survey of the general population.³¹ The survey found that almost 48 percent of displaced women who were or had been married or partnered reported having suffered violence at the hands of their intimate partners.³² Over nine percent of displaced women reported being raped by someone other than their partner.³³ This contrasts with the 37 percent of women in the general population who were or had been married or partnered reported in the 2010 ENDS survey having suffered physical violence at the hands of their partners, and almost 10 percent reported that the form of violence was rape.³⁴ Nearly six percent of the women of the general population said they had been raped by someone other than their husband or current partner.³⁵

The most expansive study of conflict-related violence—looking at rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization—was a survey by Intermón Oxfam in collaboration with national women’s civil society organizations, including Casa de la Mujer, Sisma Mujer, Ruta Pacífica de las Mujeres, Fundsarep, and Vamos Mujer.³⁶ Together they conducted the first-ever prevalence study regarding sexual violence against women in the context of the conflict in the years 2001 to 2009, based on interviews with 2,693 women. This study, released in 2011, found that in 407 municipalities in which armed groups were present, 17.6 percent of women—that is almost half a million women—were direct victims of sexual violence.³⁷ The sample is randomized

³¹ Profamilia has pioneered investigations into intra-familial violence in Colombia since 1990, and thus has comparable data over the last 23 years.

³² USAID/ProFamilia, *Encuesta en Zonas Marginadas 2011: Salud Sexual y Salud Reproductiva, Desplazamiento Forzado y Pobreza 2000-201* (Bogotá, 2000-2011), p. 153.

³³ *Ibid.*, pp. 71 and 162.

³⁴ Profamilia, Ministry of Social Protection, Bienestar Familiar, and USAID, *Encuesta Nacional de Demografía y de Salud 2010* (Bogotá, 2011), pp. 4 and 371 (hereinafter ENDS 2010).

³⁵ *Ibid.*, p. 386.

³⁶ The Oxfam survey looked at the prevalence of forms of sexual violence specifically enumerated in the Rome statute. See Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, arts. 7(1)(g) and 8, which defines crimes against humanity and war crimes to include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity. The ICC’s Elements of Crimes explains what actions constitute these crimes. International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000), arts. 7(1)(g)1-6. Forced pregnancy is defined in the statute of the International Criminal Court as the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

³⁷ Intermón Oxfam et al., “Primera encuesta de prevalencia: Violencia sexual en contra de las mujeres en el contexto del conflicto armado colombiano 2001-2009,” January 2011, p. 13. It provides lower estimates than other reports relying only on convenience samples. For example, a 2008 Doctors Without Borders’s (MSF) survey covering conflict zones and areas with displaced populations found that 35 percent of the women attending its mobile clinics and 22 percent of those seeking care

and systematic, identifying a small number of municipalities for the survey, but then the statistics can be extrapolated to the broader population living in the 407 municipalities in the study area. This is slightly higher than estimates from a smaller 2008 study by Colombia's ombudsman's office that was based on a convenience sample covering four municipalities and about 2,000 respondents, which found that almost 16 percent of the survey participants indicated they had been victims of sexual violence.³⁸

Other studies on specific departments or municipalities have also found that displaced women and girls face high rates of gender-based violence. For example, a small 2009-2010 study of 98 displaced women in Valle del Cauca department found that 38 percent of respondents reported being victims of forced sex and 51 percent reported being victims of sexual assault.³⁹ Another study of 187 women from Bogotá and Bolívar, Chocó, Cundinamarca, Tolima, and Valle de Cauca departments found that 50 to 88 percent of women in some regions had been victims of intra-familial violence since their displacement.⁴⁰ The same study found that up to 58 percent of women in these regions had been victims of sexual violence since their displacement.⁴¹

Displacement Exacerbates the Effects of Gender-Based Violence

Any victim of gender-based violence in Colombia may experience obstacles in seeking justice or accessing services after violence, but displaced women and girls face distinct barriers by virtue of being displaced. The Constitutional Court has found at least 18 different facets of forced displacement that impact women differently.⁴² The court

at the health facilities had been raped at least once. See MSF, "Shattered Lives: Immediate Medical Care Vital for Sexual Violence Victims," March 2009, <http://www.doctorswithoutborders.org/publications/article.cfm?id=3422> (accessed August 10, 2012), p. 34.

³⁸ Defensoría del Pueblo, *Promoción y Monitoreo de los Derechos Sexuales y Reproductivos de Mujeres Víctimas de Desplazamiento Forzado con Énfasis en Violencias Intrafamiliar y Sexual* (Bogotá, 2008), p. 169. Almost 18 percent of women participating in the same survey indicated that sexual violence against them or a family member served as the cause of their displacement.

³⁹ Taller Abierto (Cali), "Los Derechos en Salud Sexual y Reproductiva de Mujeres Víctimas del Conflicto Armado en el Valle del Cauca," 2010, p. 27.

⁴⁰ Observatorio de los Derechos Humanos de las Mujeres en Colombia, "Informe de seguimiento al Auto 092 de 2008: prevención y atención de las violencias contra las mujeres," December 2011, p. 67. The rates were: 84 percent for Bogotá, 88 percent for Bolívar, 50 percent for Chocó, 56 percent for Cundinamarca, and 63 percent for Tolima and for Valle de Cauca.

⁴¹ *Ibid.*, p. 68. The rates were: 58 percent for Bogotá, 55 percent for Bolívar, 27 percent for Chocó, 24 percent for Cundinamarca, 27 percent for Tolima, and 51 percent for Valle de Cauca.

⁴² The 18 facets of forced displacement that the Court identified as impacting women differently are: (i) sexual violence and abuse, including forced prostitution, sexual slavery or human trafficking for sexual exploitation; (ii) intrafamilial and community gender-based violence; (iii) the lack of knowledge of sexual and reproductive rights at all levels, with particular gravity in the case of girls and adolescents, and pregnant and lactating mothers; (iv) the assumption of the role of head of

identified structural patterns of gender-based violence and discrimination exacerbated by displacement, as well as specific problems faced by women due to their increased vulnerability that do not affect women who are not displaced.⁴³ It also found that displacement itself makes access to health care harder to achieve.⁴⁴ The UN Special Representative on the human rights of internally displaced persons noted in his report on Colombia that domestic violence and other forms of gender-based violence rise sharply in conflict and, he expects, in displacement as well.⁴⁵

The difficult conditions of displacement combined with the high-risk of violence make the need for services for displaced women and girls particularly acute. However, the increased vulnerabilities of displaced women and girls make access to these services difficult. Displaced women and girls often arrive in new urban areas with few belongings and no connections. Ana Maria, a 27-year-old woman displaced to Bogotá alone with her small children, told Human Rights Watch, “If you are given 24 hours to leave [your home], you don’t want to take 24 hours to leave. You leave with what’s on your back.”⁴⁶ Often, they settle in marginalized communities at the edge of urban centers. Some face stigmatization for being identified as displaced.⁴⁷

When displaced women and girls need access to government services in Colombia, they struggle to reach them. A UN treaty body reviewing Colombia’s performance under CEDAW

household without access to the material subsistence minimally required for human dignity; (v) aggravated obstacles preventing access to the education; (vi) aggravated obstacles to participation in the economic system and access to the labor market; (vii) domestic and labor exploitation; (viii) aggravated obstacles to land ownership and protection of future patrimony, especially in regards to plans for return and restitution; (ix) acute social discrimination of indigenous women and Afro displaced (x) violence against women leaders; (xi) discrimination in political and public spaces, with special impact on the right to participation, and (xii) lack of knowledge regarding the rights as victims of armed conflict to justice, truth, reparation and guarantees of non-repetition, (xiii) the special need for care and psychosocial support for displaced women, (xiv) specific problems regarding the official registration system of the displaced population (xv) accessibility to humanitarian assistance programs; (xvi) a high frequency of officials not trained to care for displaced women or openly hostile and insensitive to their situation; (xvii) the familial focus of the system of care for displaced population, neglecting the care of a very large number of displaced women, and (xviii) the reluctance to grant an extension of the emergency humanitarian assistance to women who meet the conditions for it.

⁴³ Constitutional Court of Colombia, Auto 092 of 2008,

<http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/6321> (accessed July 7, 2012).

⁴⁴ Constitutional Court of Colombia, Ruling No. T-138-06, sec. 3, February 2006.

⁴⁵ Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Mission to Colombia, U.N. Doc. A/HRC/4/38/Add.3, para 48, January 24, 2007, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/104/50/PDF/G0710450.pdf?OpenElement> (accessed September 25, 2012).

⁴⁶ Human Rights Watch interview with Ana Maria P., Bogotá, February 25, 2012.

⁴⁷ Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Mission to Colombia, para 64.

found that displaced female heads of household are “disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence.”⁴⁸ As a representative of Profamilia who coordinates health programs for displaced women explained to Human Rights Watch, “if a displaced woman is the head of household, lives alone in a community at the margins of a large city, has no money and has six children, it is difficult to go to the hospital.”⁴⁹ Moreover, fear of more abuse is more likely to stop these women from reporting cases of gender-based violence to authorities.⁵⁰

⁴⁸ See CEDAW, Concluding Comments: Colombia, (2007), CEDAW/C/Col/Co/6, paras 10-11. The Committee also found that displaced women and children “continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence.” See CEDAW, Concluding Comments: Colombia, (2007), CEDAW/C/Col/Co/6, paras 12-13. Accordingly, it called on the government to increase efforts to meet this population’s specific needs.

⁴⁹ Human Rights Watch interview with Patricia Ospina M., Coordinator for Displacement Program, Profamilia, Bogota, March 13, 2012.

⁵⁰ See USAID/ProFamilia, *Encuesta en Zonas Marginadas 2011*, Anexo 9.10, p. 160. The study also found that higher numbers of displaced versus non-displaced women said they did not report due to lack of faith in the justice sector, negative experiences with denouncing, not knowing where to go, belief that the violence was not severe, not wanting to harm the aggressor.

II. Colombia's Normative Framework for Gender-Based Violence and Rights of the Displaced

Starting in 1996 shortly after ratifying a regional treaty to eradicate violence against women, Colombia's congress has passed a series of laws aimed at increasing the protection of women's rights under Colombia's domestic law, culminating in a comprehensive law on gender-based violence in 2008. The Constitutional Court has also issued rulings related to the rights of internally displaced women and girls, and the congress has promulgated legislation on the rights of victims of the conflict.

Colombia's legal framework takes into account the unique needs of displaced women and girls, and assigns government actors specific obligations to prevent gender-based violence against displaced women. But poor implementation of these laws fails to diminish or eliminate barriers encountered by displaced women and girls seeking justice and services.

Laws Protecting Women and Girls in Colombia from Gender-Based Violence

Colombia's normative framework related to intra-familial and sexual violence is grounded in the Constitution of 1991. Article 42 of Colombia's Constitution provides that "any form of violence in the family is considered destructive to the family's harmony and unity, and should be sanctioned in conformity to the law."⁵¹

Sexual and Intra-Familial Violence Laws and Policies

In 2008 Colombia passed its first comprehensive law to address all forms of gender-based violence: Law 1257/2008.⁵² This law created new norms for the prevention and punishment of violence and discrimination against women, established a definition for violence against women,⁵³ reformed the criminal code and the criminal procedure code, and amended an earlier law on intra-familial violence.⁵⁴ The law recognizes the physical,

⁵¹ See Political Constitution of Colombia, 1991, art. 42.

⁵² Law 1257/2008, 2008, http://www.secretariassenado.gov.co/senado/basedoc/ley/2008/ley_1257_2008.html (accessed July 3, 2012).

⁵³ The definition of gender-based violence provided by the law is "any action or omission that causes death, or physical, sexual, psychological, economic, or proprietary injury or suffering to a woman because of her status as a woman, including threats of such acts, coercion, or the arbitrary deprivation of liberty, whether these occur in the public or private sphere." See Law 127/2008, art. 2.

⁵⁴ See Law for the implementation of article 42 of the Constitution and to dictate norms for the prevention, remediation, and punishment of intra-familial violence, Law 294/1996.

emotional, and psychological harm gender-based violence can cause victims,⁵⁵ and enumerates specific rights of victims.⁵⁶ It builds on early laws passed in 1996, 2000, and 2006 related to intra-familial violence, including against minors.⁵⁷

Rights of Victims under Law 1257/2008

Under Law 1257/2008, a victim of gender-based violence has the right to:

- receive comprehensive, integrated care that is adequate, accessible, and of good quality;
- guidance, legal advice, and legal assistance free of charge;
- clear, complete, timely, and accurate information regarding a victim's rights and the legal mechanisms and processes she may follow to vindicate those rights;
- give informed consent for medical legal exams and to have the exam performed by the doctor of the sex she chooses;
- clear, complete, timely, and accurate information regarding sexual and reproductive health services;
- confidentiality when receiving medical, legal, or social assistance;
- receive specialized medical, psychological, psychiatric, and forensic assistance for herself and children;
- access protection measures for herself and children;
- truth, justice, reparation, and the guarantee of non-repetition for the constitutive crime;
- stabilization of her situation according to the provisions established in the law;
- decide whether or not she wants to face the aggressor in judicial or administrative proceedings.⁵⁸

⁵⁵ Law 1257/2008, art. 3.

⁵⁶ *Ibid.*, art. 7.

⁵⁷ Law 575 of 2000 reformed portions of the 1996 law to allow family commissioners also to issue protective orders in cases of intra-familial violence. See *Por medio de la cual se reforma parcialmente la Ley 294/1996, Law 575/2000*. In 2006, Colombia passed a Child and Adolescent Code, which provided specific protections under the law to child victims of intra-familial or sexual violence. Law 1098/2006.

⁵⁸ Law 1257/2008, art. 8. Article 19 of 1257/2008 extends additional entitlements to victims through the health system, including loans, room and board services in institutions providing health services, hotel services, and transportation services for victims and their children, or a monthly cash allowance if he/she decides not to stay in the accommodations provided (usually equivalent to monthly minimum wage). This is extendable by 6 months, as the situation warrants.

The law also prescribes specific awareness and prevention measures to be taken by various actors in government and society.⁵⁹ The law charges the national government with executing training programs—guaranteeing prevention, protection, and care for women victims of violence—for all public servants. The law focuses in particular on the need to train judicial officers, health personnel, and police.⁶⁰ The national government must also implement measures to change social attitudes to encourage the social sanctioning and the reporting of discrimination and violence against women.⁶¹ It specifically assigns a duty to the national government to develop programs for prevention, protection, and care in relation to acts of violence against displaced women.⁶²

While the law comprehensively addressed gender-based violence, ministries still needed to draft their own regulations to implement those elements of Law 1257/2008 within their jurisdiction. In November and December 2011, almost three years after the law was passed, four ministries released administrative decrees concerning their duties under the law. Ministry of Justice Decree 47999— issued in December 2011—regulates the provision of protective measures under the law.⁶³ The Ministries of Labor and Education similarly defined their duties to implement Law 1257/2008 through decrees in November and December 2011.⁶⁴

Victims' Rights to Health Services

Colombia's sophisticated normative framework and policies regarding gender-based violence guarantee displaced women and girls free health services after sexual or intra-familial violence, including examination and treatment for the prevention of HIV/AIDS and

⁵⁹ Law 1257/2008, arts. 9-15.

⁶⁰ *Ibid.*, art. 9.2.

⁶¹ *Ibid.*, art. 9.9

⁶² *Ibid.*, art. 9.7.

⁶³ In addition, the decree outlines minimum requirements for safe homes or shelters: that they must provide a dignified and reparative environment, avoid separating families that wish to remain together, avoid proximity to the aggressor, and ensure security of the victim and her family. In proceedings for intra-familial violence, the law and regulation assure women have the right to declare before the attorney general's office their desire not to participate in mediation.

⁶⁴ Department of Labor, Administrative Decree 4463/2011, November 25, 2011, regulating the labor rights and measures of protection in the workplace for women. The decree recognizes that violence in the workplace could have a differential impact on particular vulnerable sectors such as women who are heads of household, the internally displaced, and victims of political, sexual, or domestic violence. The decree binds both private and public employers—requiring dissemination of information regarding Law 1257/2008, women's rights, and the national and international standards that protect women in the workplace. See also Ministry of Education, Administrative Decree 4798/2011, which provides guidance on the implementation of Law 1257/2008 in schools, and makes suggestions for institutions of high education, although they are independent from the ministry.

other sexually transmitted infections, physical and emotional trauma, and to collect forensic evidence.⁶⁵ The treatment of trauma is understood to include the administration of emergency contraception to prevent unwanted pregnancy and—in light of a 2006 Constitutional Court opinion allowing abortion after rape or incest—abortion services.⁶⁶

The Ministry of Health has provided health care professionals guidance on treatment of victims of gender-based violence since 2000.⁶⁷ In December 2011 the Ministry of Health promulgated Decree 4796 to implement Law 1257/2008—laying out the steps health providers need to take to detect, prevent, and provide comprehensive services to women victims of violence, including the provision of temporary housing, food, or transportation—creating a more expansive web of responsibility than previously held by the health system.⁶⁸ It also mandates the update of existing guidelines for the treatment and protection of abused women and children and the adoption of a protocol and model of comprehensive care to victims of sexual violence.⁶⁹ According to the regulation, cases of violence must be reported in the Information System of Social Protection (Sistema de Información de la Protección Social or SISPRO). In March 2012 the ministry issued a new protocol and model of care for victims.⁷⁰

⁶⁵ See Law 360/1997.

⁶⁶ See Colombian Constitutional Court, Sentencia C-355 of May 10th, 2006.

⁶⁷ Ministry of Health, *Guide for the Attention of Abused Adults* (Bogotá, 2000) http://www.dadiscartagena.gov.co/web/images/docs/saludpublica/saludsexual/guias-y_protocolos_vif_vs_y_vbg/guia_de_atencion_al_menor_maltratado_res_0412_de_2000.pdf (accessed July 27, 2012); and, *Ministry of Health, Guide for the Treatment of Abused Minors* (Bogotá, 2000) <http://www.clae.info/downloads/NormasAE/GAIAtenciondelamujermltratadaColom.pdf> (accessed August 10, 2012). See also Resolution 412 of 2000, issued by the Ministry of Health; and Ministry of Health, “National Policy for Sexual and Reproductive Health,” February 2003.

⁶⁸ Decreto 4796/2011, issued by the Ministry of Health, <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/20/dec479620122011.pdf> (accessed September 19, 2012). The services provided by the health system extend beyond basic healthcare, and include the provision of temporary housing, food or transportation upon the recommendation of a health professional or other competent authority—creating a more expansive web of responsibility than previously held by the health system. The Social Security Health General System will guarantee the provisions of those services according to the existing funds and it will provide them according to the level of physical or mental affectation of women and according to the special risk situation in which the victim is involved (articles 7-8). The level of affectation of the victim will be determined by her medical history or by the medico-legal opinion. See Law 1257/2008, arts. 8, 9, 13 and 19.

⁶⁹ Both the protocol and model of integrated health care for victims of sexual violence were adopted on March 6, 2012. Ministry of Health, Resolution 459/2012, March 6, 2012, <http://actualisalud.com/images/stories/res459.pdf> (accessed July 4, 2012). The Ministry of Health issued guidelines on treatment of abused women and children in 2000—one for the attention of Abused Women and the other for Abused Minors. Ministry of Health, Resolution 412 of 2000. It is these that are to be updated.

⁷⁰ See Resolution 459/2012, issued by the Ministry of Health, <http://actualisalud.com/images/stories/res459.pdf> (accessed July 4, 2012).

Criminal Laws Related to Intra-Familial and Sexual Violence

Colombia also has reformed provisions of the criminal code and criminal procedure code relating to gender-based violence. Reforms in 1997 increased the penalties for sexual crimes from eight to 20 years, established aggravating factors related to intra-familial violence, and addressed the rights afforded to victims of sexual violence.⁷¹ Later reforms created new categories of intra-familial and sexual violence.⁷² A 2004 reform eliminated sexual violence as a manifestation of intra-familial violence, instead classifying it as a general crime against human dignity and sexual formation.⁷³

Despite these reforms, Colombia's criminal code continues to define rape in terms of sexual relations with someone through the means of force.⁷⁴ This definition is inconsistent with international legal norms that consider lack of consent rather than use of force as the primary element of rape.⁷⁵

Colombia's criminal code also specifically proscribes violent sexual acts, forced prostitution, or slavery of persons protected under international humanitarian law.⁷⁶ Draft legislation introduced in Congress in August 2012 would amend the criminal code to include additional prohibitions against categories of sexual violence enumerated in the Rome Statute of the International Criminal Court.⁷⁷

Laws on Displacement that Should Help Displaced Victims of Gender-Based Violence

Colombia has an extensive network of social assistance programs for internally displaced persons, first established by Law 387 of 1997.⁷⁸ The Constitutional Court of Colombia has

⁷¹ Law 360/1997, arts. 2-15.

⁷² See Law 599/2000, arts. 205-212, 229-230.

⁷³ Law 882/2004, art. 1.

⁷⁴ Law 599/2000, art. 205.

⁷⁵ See, for example, CEDAW, Communication No. 18/2008, CEDAW/C/46/D/18/2008, Sept. 1, 2010, at para. 8.7, stating, "[t]hrough its consideration of States parties' reports, the Committee has clarified time and again that rape constitutes a violation of women's right to personal security and bodily integrity, and that its essential element was lack of consent."

⁷⁶ Law 599/2000, arts. 139-141.

⁷⁷ Colombia ratified the Rome Statute of the International Criminal Court on August 5, 2002 and incorporated it into domestic law by Law 742/2002. Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002. Under the Rome Statute sexual violence is a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population or when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

⁷⁸ See Law 387/1997, <http://www.alcaldiaBogotá.gov.co/sisjur/normas/Norma1.jsp?i=340> (accessed July 17, 2012), arts. 15-17. The law is partially regulated by Decree No. 2569/2000, published on December 19, 2000, establishing the registration of internally

ruled on the protection of the rights of displaced people generally, and specifically addressed the vulnerabilities of displaced women and girls to violence. In its 2004 landmark ruling, T-025-04 found that the state's response to internal displacement constituted an "unconstitutional state of affairs" and recognized that there exist certain minimum rights of the internally displaced population that must be satisfied by the authorities to ensure a life with dignity.⁷⁹ The Court's jurisprudence has confirmed the constitutional right of internally displaced people to preferential treatment by the state.⁸⁰

Auto 092/2008: Constitutional Court Order Protecting Displaced Women and Girls

The Constitutional Court has issued a number of orders, called "autos," related to the implementation of its 2004 ruling. In 2008 the Court issued order Auto 092/2008, which specifically recognized the unique needs of displaced women and girls and ordered the government to take comprehensive measures to protect the fundamental rights of internally displaced women and to prevent the disproportionate gender impact of the conflict and forced displacement.⁸¹ The Court found that "sexual violence against women is a habitual practice that extends, systematically and invisibly, throughout the context of the armed conflict in Colombia."⁸² Auto 092/2008 instructs the government to establish 13 programs to fill gaps in public policy on forced displacement from the perspective of women's rights.⁸³ The Court proposed programs for the prevention of sexual, intra-familial, and community violence against displaced women and girls, and highlighted the special need for the prevention of violence against women human rights defenders. It also

displaced people in the Unified Registry of Displaced Populations. See Decree No. 2569, Department of Interior, December 19, 2000, <http://www.dnp.gov.co/LinkClick.aspx?fileticket=8oUl3VP8z8%3D&tabid=1080> (accessed July 17, 2012). Articles 8, 11, 14, 16, 18, 21 and 26 of the Decree were declared partially invalid by a ruling adopted by the State Council (Consejo de Estado) on June 12, 2008.

⁷⁹ Colombian Constitutional Court. Ruling No. T-025-04, January 2004, <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/2501> (accessed August 10, 2012).

⁸⁰ Colombian Constitutional Court. Ruling No. T-025-04, January 2004, <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/2501> (accessed August 10, 2012), section 5.2.

⁸¹ Constitutional Court of Colombia, Auto 092 of 2008, <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/6321> (accessed July 7, 2012).

⁸² See Constitutional Court of Colombia, Auto 092, 2008, III.1.1.1. Women's rights groups also filed with the Court over 600 complaints of sexual violence in the context of the armed conflict. In an annex to the judicial decision, the Court referred 183 of these cases to the attorney general with an order to ensure truth, justice and reparation for the victims.

⁸³ The 13 programs are: 1) prevention of the disproportionate impact of displacement; 2) prevention of sexual violence against women; 3) prevention of intra-familial and community violence; 4) promotion of health; 5) support for female heads of households through access to job opportunities and the prevention of domestic and labor exploitation; 6) education support for women over 15 years of age; 7) access to land ownership; 8) protection of the rights of indigenous women; 9) protection of the rights of Afro-Colombian women; 10) promotion of the participation of and prevention of violence against women leaders; 11) justice, truth, reparation, and non-repetition; 12) psycho-social support; and 13) elimination of barriers to accessing the protection system.

proposed programs for the promotion of health and for the elimination of barriers to Colombia's protection system.

In other orders related to its 2004 ruling, the court has determined that displaced persons require special attention from the authorities—particularly in relation to health—because of the deplorable life conditions they face and the fact that displacement itself makes access to health care harder to achieve.⁸⁴ Moreover, due to the higher risks of sexual and intra-familial violence toward this population, the court clarified that affirmative actions are needed to guarantee fundamental rights of women, in particular the right to health.⁸⁵

The Victims and Land Restitution Law

Aside from the Constitutional Court's jurisprudence on the displaced, in 2011 the Colombian congress also adopted a law on compensation and reparations for victims of the armed conflict, including displaced individuals. Law 1448/ 2011, known as the Victims and Land Restitution Law, allows victims (as defined by the law) to file for judicial, administrative, social and economic, individual, and collective measures to restore or repair their rights. In some cases this means monetary compensation or the reclamation of stolen land.⁸⁶

The law emphasizes non-discrimination and the need for a differential approach when implementing the law vis-à-vis members of vulnerable groups, including women.⁸⁷ It specifically provides that women victims have the right to a life without violence and for victims of sexual violence to make claims for compensation.⁸⁸ It also provides for protective measures for women who institute administrative or judicial proceedings for the vindication of their rights.⁸⁹ Most importantly, it establishes that every victim must be provided information regarding available services, that judicial authorities questioning victims must do so with respect for a woman's dignity and moral integrity, and that certain evidence may not be used against the victim in cases of sexual violence. For example,

⁸⁴ Constitutional Court of Colombia, Ruling No. T-138-06, sec. 3, February 2006.

⁸⁵ Constitutional Court of Colombia, Ruling No. T-045-10, sec. 4, February 2010. This ruling also highlights the importance of psychiatric and psychological healthcare services to internally displaced persons.

⁸⁶ Persons who are considered victims according to the Victims' law are entitled to benefits and reparations if the violations of their rights occurred from January 1, 1985. Victims of events which took place before January 1, 1985 will only have access to symbolic reparations, right to truth and guarantees of no repetition. See Law 1448/2011, art. 3.

⁸⁷ Law 1448/2011, art.6, establishing non-discrimination, and art. 13, recognizing the need for a differential approach when implementing provisions of the law.

⁸⁸ Ibid., art.28.

⁸⁹ Ibid., arts.31-32.

consent will not be inferred from the victim when her capacity to pronounce a free and voluntary consent was diminished by the use of force, the threat of use of force, coercion, or the use of a coercive environment.⁹⁰

Referral Pathway: How Victims of Gender-Based Violence Connect to Services

Under the policy framework related to gender-based violence, different ministries and authorities have obligations to provide services for victims. Together, these entities represent the government’s integrated, multi-sector response to address a victim’s need to access health services, the justice sector, protection, and psycho-social support.

Between the laws, decrees, protocols, and guidelines from multiple government actors, the response to gender-based violence in Colombia is complex. To make the system understandable for victims, providers, and officials, the government ombudsman’s office—with the support of USAID and the International Organization for Migration (IOM)—developed flow charts which represent the “pathway of care” (also referred to as a referral pathway). Though widely used, these charts are not formally adopted by ministries, and no formal inter-ministerial protocol compiling all obligations of the government and rights of victims exists to guide officials treating victims. Some ministries have developed their own internal charts to assist officials helping victims navigate within a single ministry or agency.

The entry point into either pathway is dependent on the victim, who can decide to whom to disclose an incident: a trusted friend or family member, a community leader, a teacher or faith leader, a health worker, the police or prosecutors, or others. Once a victim has told someone about the violence, it is important that this person, the “entry point”, has the ability to provide complete information about what services are available and provide appropriate referrals.

Colombia’s referral pathway charts depict the possible role of several institutions in responding to gender-based violence: the attorney general’s office, national police, health sector, Colombian Institute for Family Welfare, units of care and orientation for displaced persons, the Department of Social Action (now known as the Department for Social Prosperity), family commissioners, educational institutions, NGOs, or any of the agencies in the Public Ministry (the ombudsman, the municipal ombudsman, or the inspector general).

⁹⁰ See, for example, *ibid.*, arts.35-38.

The pathway for victims of sexual violence provides that all victims be referred to the attorney general's office to file a criminal complaint. The pathway for victims of intra-familial violence provides that victims can decide between the civil pathway, where the perpetrator will not face criminal charges, and the criminal pathway, where the perpetrator may face criminal charges.⁹¹ If the victim chooses to go the civil route, she will go to a family commissioner, who can assist with a protection order. If she chooses the criminal route, she will go to the attorney general's office to file a criminal complaint.⁹²

Next, a victim of either type of violence may be referred to the National Institute for Legal Medicine and Forensic Sciences for forensic examination. At any point, authorities may also refer a victim to a health facility.⁹³

The Gap between Laws and Reality

Colombia's progressive legal framework concerning both the government's response to gender-based violence, and to displacement, should create systems that ensure displaced women and girls are protected from violence and have uninhibited access to services should violence occur. As detailed in the following chapters, Human Rights Watch documented instances where this was simply not the case. There was a consensus among the victims, government officials, and civil society representatives who spoke with Human Rights Watch that, while the laws are good, implementation is failing. As Socorro Y., a displaced woman and human rights defender raped in 2009, explained to Human Rights Watch, "Law 1257 is passed, and Auto 92 issued, and nothing changes for us women ... more has happened to us since then, and we don't feel any more protected."⁹⁴ The following chapters look at barriers to access health, justice, and protection services that continue to exist for displaced women and girls who are victims of gender-based violence.

⁹¹ See International Organization for Migration (IOM), United States Agency for International Development (USAID), and Defensoría del Pueblo, Attention Pathway for Victims of Intra-familial Violence with an emphasis on displaced populations; see also IOM, USAID, and Defensoría del Pueblo, Attention Pathway for Victims of Sexual Violence with an emphasis on displaced populations (Bogotá, 2008), <http://www.acnur.org/biblioteca/pdf/6683.pdf?view=1> (accessed August 10, 2012), p. 116-17.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Human Rights Watch interview with Socorro Y., Bogotá, February 24, 2012.

III. Shortcomings of Health Services after Gender-Based Violence

Intra-familial or sexual violence can have a profound and lasting effect on physical and psychological health: Colombia's 2010 demographic and health survey found that 85 percent of women who had suffered domestic violence reported injuries, other physical harm, and psychological harm as a result of the abuse.⁹⁵

Access to adequate medical care after an act of intra-familial or sexual violence is a fundamental human right. Colombian law and its referral pathway aim to guarantee this right by ensuring that all victims of gender-based violence, including the displaced, can access essential health services. But a wide range of obstacles currently prevent them from doing so, including the failure of health facilities to properly implement the relevant laws and policies, inadequate screening for signs of gender-based violence, mistreatment of victims, and arbitrary denial or delays in providing essential services.

Colombia's laws and policies should ensure women and girls who are victims of gender-based violence—even if internally displaced—have access to health services. But, as a director of an organization in Cali that provides support and training to displaced women told Human Rights Watch, “with health, the law is one thing, but it is difficult to get the care survivors are entitled to.”⁹⁶

Often victims do not know these services exist or that they have a right to access them for free. Worse yet, some health officials do not know this either.

Health Officials Lack Adequate Knowledge or Training of Law and Policies

Health professionals and advocates who accompany women and girls for health services told Human Rights Watch that health providers' insufficient knowledge or training can impede care for victims. Even when laws and policies are strong, the government has a further obligation to train healthcare professionals to ensure these laws and policies are implemented at the most important point: where victims seek care.

⁹⁵ ENDS 2010, p. 372. Other harms can include sexually transmitted infections or unwanted pregnancies.

⁹⁶ Human Rights Watch interview with Maria Elena Unigarro Coral, Coordinator of Taller Abierto, Cali, May 7, 2012.

Training should address the mechanics of treating victims of violence, how to identify signs of violence, sensitivity on how to work with victims, what rights victims have, and how to handle referrals. The UN special representative on sexual violence in conflict has noted that emphasis should be placed on building this type of capacity in rural areas.⁹⁷ But, Human Rights Watch documentation shows that lack of training is a problem in Colombia's major cities, and not just limited to rural communities or small municipalities.

Human Rights Watch interviewed health providers in hospitals in Bogotá, Cartagena, and Medellín who said they had not been trained in the laws or protocols governing treatment for victims of gender-based violence. In Bogotá, for example, health care professionals told Human Rights Watch that they were unaware that protocols existed. A health care union representative in Bogotá told Human Rights Watch that its members are in 11 hospitals in Bogotá, but none are aware of any protocol for treating victims of gender-based violence, nor had they received training on it.⁹⁸ At one hospital in Bogotá, Human Rights Watch spoke with doctors, nurses, administrators, and social workers in six departments, all of whom claimed that no protocol or referral pathway existed at the hospital for treating victims of sexual or intra-familial violence. Only one social worker in one department had received training, and she said she was working to train colleagues on the new protocol.⁹⁹

Indeed, one consistent exception to the general lack of training was in the ranks of social workers: every hospital visited had at least one social worker who had been trained in the protocols. Even so, training may not be sufficient to ensure that the protocol is implemented correctly. Speaking of the protocol related to Law 1257, one social worker told Human Rights Watch, "I don't really know this law—it hasn't been implemented yet. I went to a workshop [in 2011] on this, but it hasn't been regulated yet."¹⁰⁰ At the time of the interview, four regulations related to Law 1257 had been issued. Moreover, social workers rely on health care professionals actually seeing patients to refer cases to them, some of whom they claim have not been trained.¹⁰¹ One health care union organizer explained,

⁹⁷ United Nations, Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Report: Visit to Colombia, 2012, para. 19. On file with Human Rights Watch.

⁹⁸ Human Rights Watch interview with Esperanza L., union representative, Bogotá, March 2, 2012.

⁹⁹ Human Rights Watch interview with social worker (name withheld), Samaritan's Hospital, Bogotá, April 27, 2012.

¹⁰⁰ Human Rights Watch interview with social worker (name withheld) in the National Police Hospital, Bogotá, April 20, 2012.

¹⁰¹ See, for example, Human Rights Watch interviews with health providers from General Hospital—Medellín, March 7, 2012, and Samaritan's Hospital—Bogotá, April 27, 2012.

“unless the victim herself knows about [her rights under Law 1257], people at the hospitals don’t know”.¹⁰²

Some of these policies are new and training health providers in them will require time. However, some officials and health providers see high rates of turnover as an obstacle to training staff adequately. One [official/health care provider] cited the use of short-term contract workers as an obstacle to adequate training.¹⁰³ According to one psychologist in Medellín, ongoing training is needed: “They are trained, [and then leave]. [Then,] there is a new group – they need training all over again.”¹⁰⁴

Some officials who work with victims of sexual violence also told Human Rights Watch that they were aware of health providers who did not know that the law states that emergency medical care is free in cases of sexual violence. One in Medellín said, “There are clinics and hospitals that don’t know the laws and don’t know it’s free. There needs to be more training so people know it’s free.”¹⁰⁵

Problems Displaced Women and Girls Experienced When Seeking Health Services after Rape or Intra-familial Violence

Failure to ensure adequate training for health professionals who treat victims of gender-based violence can create obstacles for women and girls seeking services. Displaced women and girls interviewed by Human Rights Watch described a range of obstacles, including inadequate screening for signs of gender-based violence, failure to refer victims to additional services available to them, mistreatment of victims, and arbitrary denial of treatment or delays in providing it.

Inadequate Screening

Screening by health professionals of women who seek treatment helps increase detection of gender-based violence and can help prevent future acts of violence. The Pan-American Health Organization recommends that health providers be trained to ask women about physical, sexual, and psychological violence in direct and indirect ways, whether through

¹⁰² Human Rights Watch interview with Esperanza L., union representative, Bogotá, March 2, 2012.

¹⁰³ Human Rights Watch interview with Dr. Consuela Zapata, CAIVAS, Medellín, March 5, 2012.

¹⁰⁴ Ibid.

¹⁰⁵ Human Rights Watch interview with Dr. Zulima Mosquera, CAIVAS, Medellín, March 5, 2012.

routine screening questions, or in response to signs or symptoms of violence or risk of future violence.¹⁰⁶ A 2010 report by the United Nations Fund for Achievement of the Millennium Development Goals—based on interviews with Colombian nurses and doctors—found that most victims of gender-based violence do not present themselves as victims, and are only recognized or identified as victims if a health professional makes appropriate inquiries.¹⁰⁷

Screening is important because of social obstacles that may prevent a woman from revealing that she is a victim of violence when seeking health services. One health professional explained, “[V]ictims sometimes don’t want to report it [themselves] out of fear, economic dependence, or lack of education.”¹⁰⁸

New obligations created under Law 1257/2008 require health professionals to report suspected cases of violence or abuse to SISPRO, the public health database maintained by the Ministry of Health.¹⁰⁹ In addition, the law entitles victims of gender-based violence to seek emergency social protection measures from the health system, including temporary housing, food, and transportation services, which requires a risk assessment by medical providers.¹¹⁰ The law does not, however, specifically require healthcare providers to screen for gender-based violence.

While there are protocols to follow when a victim of violence is identified—and social workers available at many hospitals to work with survivors of violence—health providers do not always detect the symptoms and signs of abuse when they should. One official in Colombia’s Ministry of Health told Human Rights Watch, “Detection is very difficult—it’s really bad here. There remains a lack of knowledge, and sometimes [health providers] want to *not* see the signs of violence.”¹¹¹

¹⁰⁶ PAHO and International Planned Parenthood Federation, Western Hemisphere Region, “Improving the Health Sector Response to Gender Based Violence: A Resource Manual for Health Care Professionals in Developing Countries,” 2010, http://new.paho.org/hg/dmdocuments/2010.GBV_cdbookletandmanual_ha_final%5b1%5d.pdf (accessed August 1, 2012), p. 83.

¹⁰⁷ UN Fund for the Achievement of the Millennium Development Goals, *Estudio sobre tolerancia social e institucional a la violencia basada en género en Colombia* (Bogotá, 2010), p. 199.

¹⁰⁸ Human Rights Watch interview with Esperanza L., union representative, Bogotá, March 2, 2012.

¹⁰⁹ See Decree 4796/2011, art. 4.

¹¹⁰ See Law 1257/2008, art. 19. See also Decree 4796/2011, arts. 3, 8-12.

¹¹¹ Human Rights Watch interview with government official, specialist on the prevention of domestic and sexual violence, Bogotá, April 27, 2012.

One long-time women’s rights advocate—whose organization has worked with hundreds of victims of gender-based violence—explained to Human Rights Watch that short clinical examinations hinder screening for gender-based violence: “Doctors have about 15 minutes when they see a patient. Most are not specialized in this and they don’t have enough time even to get into it, to know if there is intra-familial violence.”¹¹²

Obvious cases of abuse, particularly in minors, are easier for health professionals to identify. One social worker in a hospital in Cartagena explained that doctors at her hospital often refer cases to her where there is a young pregnant girl, but they have more difficulty identifying cases where a husband has mistreated his wife:

[Doctors] contact me when they suspect a case ... If there is a really young pregnancy, or, say, a 10-year-old with a sexually transmitted infection, they immediately call me and we follow the protocol. What is visible, we report. What isn’t visible, we can’t do anything about. If a husband is limiting a woman’s access to contraception, or forcing her to have sex within the relationship ... this we can only identify in an interview.¹¹³

Even when abuse is visible, because the beatings are severe or cause clear injuries or harm, it appears that some health professionals have failed to identify gender-based violence. Human Rights Watch interviewed several victims of intra-familial violence who had visited health facilities over the period of abuse. Despite bruises or broken bones, they said their health providers had not inquired about domestic violence.¹¹⁴

For example, Sofia V., age 37 with two children, said her husband began abusing her after their first displacement in 2003. He beat her so severely during pregnancy that she miscarried in Cali. “I went to the hospital, but I lost the baby, a baby girl,” she told Human Rights Watch.¹¹⁵ For four and a half more years he continued to beat her severely and she sought treatment at hospitals. “I went to the hospital in Caquetá, in Florencia, in Cali—

¹¹² Human Rights Watch interview with Olga Amparo, director of Casa de la Mujer, Bogotá, February 20, 2012.

¹¹³ Human Rights Watch interview with Yovanna Torres Berrio, social worker for promotion and prevention, Clínica de Maternidad Rafael Calvo, Cartagena, April 26, 2012.

¹¹⁴ See Human Rights Watch interviews with Sofia V., Bogotá, February 24, 2012, Dolores G., Cartagena, April 24, 2012, Lucia M., Medellín, May 2, 2012, and Dulcea A., Medellín, May 2, 2012. See also the case of Elena L., in summary of cases provided in Human Rights Watch interview with Beatriz Quintero, La Mesa por la Vida y la Salud de las Mujeres, May 10, 2012.

¹¹⁵ Human Rights Watch interview with Sofia V., Bogotá, February 24, 2012.

where I had an operation from the beating, in Quindío, and in Bogotá more than four times.... The hospital[s] knew where the hits came from,” she said. Sofia was sure the health providers recognized she was being abused, but says that none proactively asked her about the abuse.¹¹⁶ Finally, in October 2008, when she went in for a routine medical appointment in Bogotá, she raised the abuse with her doctor. “I was crying, ‘He hits me, he hits me, I’m not crazy, help me.’”¹¹⁷ This doctor did refer her for services, and she was placed in a safe home for four months. She left her husband in 2011, after he broke her nose.

Similarly, Dolores G., a 38-year-old woman in Cartagena, also experienced abuse by her husband over seven years.¹¹⁸ During that time, health officials never discussed intra-familial violence with her—not even when, in 2007, she went to the hospital after a miscarriage. She said that her husband was verbally abusive to her during the miscarriage—blaming her for it. She was visibly distraught and inconsolable at the hospital, but no one screened her for potential abuse. She continued in the relationship. In 2009, he physically abused her during a subsequent high-risk pregnancy. Because the pregnancy was high-risk, she saw health professionals often. Dolores says none of them raised concerns or screened her for possible abuse.¹¹⁹

Mistreatment by Staff in Health Facilities

Mistreatment by staff in health facilities treating victims of gender-based violence sometimes results in denial or delay of care and may deter others from seeking care. Human Rights Watch interviewed displaced survivors of gender-based violence who reported that staff in health facilities mistreated them when they entered health facilities, pressured them not to seek legal abortion after sexual violence, or neglected them.

Hospitals and health centers in Colombia often have a guard or gatekeeper, who questions people wishing to enter the facility. Survivors of gender-based violence, NGOs, and government officials told Human Rights Watch that these guards’ poor treatment of victims seeking help has posed a barrier to services. One healthcare worker in Cartagena explained that security guards and other hospital staff can pose an obstacle for women

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Human Rights Watch interview with Dolores G., Cartagena, April 24, 2012.

¹¹⁹ Ibid.

seeking services because they had not been trained and misinformed victims about costs of treatment. She said, “They ask everyone, ‘What insurance card do you have?’ before they let them pass.”¹²⁰ She said that it is difficult for victims of gender-based violence to get treatment if a security guard, nurse, or an administrator does not know she has a right to be there.¹²¹

One displaced woman, Socorro Y., was a victim of sexual violence in 2009 in Bogotá. She said that when she went to a hospital, the guard at the front door asked why she was there, and then yelled down the hall, “This is a raped woman!”¹²² Socorro also works with survivors of sexual violence and displaced women, and accompanied another victim of sexual violence to the same hospital over two years later. She said that she was horrified when the same thing happened again.¹²³

This treatment is not only humiliating, but it constitutes a breach of confidentiality and jeopardizes the security of the victim. Several victims told Human Rights Watch that they refrained from seeking medical treatment since they feared the facilities would breach confidentiality, and their attackers might find out.¹²⁴ Clara V., another victim of sexual violence in 2004 and a human rights defender who accompanies victims regularly in Bogotá, said that many women feel that “unless it is really grave, then it’s better to stay quiet” than risk seeking medical treatment.¹²⁵

Some victims said health providers tried to pressure or shame them into abandoning abortion after rape, or allowed others to do so. Colombia’s Constitutional Court lifted the absolute ban on abortion in 2006—decriminalizing abortion in three instances, including when the pregnancy is the result of rape, sex without consent, or incest.¹²⁶ Human Rights Watch spoke with the advocates of Elena L., a 35-year-old displaced woman in Bogotá, who was hospitalized waiting for an abortion after she became pregnant from a rape in

¹²⁰ Human Rights Watch interview with Yovanna Torres Berrio, social worker for promotion and prevention, Clínica de Maternidad Rafael Calvo, Cartagena, April 26, 2012.

¹²¹ *Ibid.*

¹²² Human Rights Watch interview with Socorro Y., Bogotá, February 24, 2012.

¹²³ *Ibid.*

¹²⁴ See, for example, Human Rights Watch interviews with Clara V., Bogotá, February 24, 2012, Gloria L., Medellín, May 2, 2012, and Paloma L., Medellín, May 2, 2012.

¹²⁵ Human Rights Watch interview with Clara V., Bogotá, February 24, 2012.

¹²⁶ See Colombian Constitutional Court, Sentencia C-355 of May 10th, 2006.

2011. The hospital allowed clergy to visit her room and try to convince her to forego the abortion, according to the advocates.¹²⁷ Marleny Y., a 10-year-old girl who was gang raped by members of an armed group in 2011, also sought an abortion for a pregnancy resulting from the rape. According to Marleny’s advocates, while in Colombian Institute of Family Welfare (ICBF) custody—awaiting an abortion to which she had consented— ICBF officials tried to pressure her to cancel the procedure, in contravention of ICBF policy.¹²⁸ After receiving additional psycho-social support, Marleny was able to procure the abortion.¹²⁹

Some advocates told Human Rights Watch that they have witnessed doctors ask victims of sexual violence inappropriate questions. Several had heard doctors ask victims what they were doing and wearing when they were raped. They said this is particularly true in the case of women seeking abortions. One advocate explained, “They don’t believe the women. They will ask them questions to see if they are lying about the rape.”¹³⁰ Juana C. told Human Rights Watch she has seen similar distrustful behavior on the part of doctors. She experienced such mistreatment when raped in 2001, at age 14, and became pregnant. Her doctor did not believe that she was raped, and asked her what she had done to provoke the attack.¹³¹ Now a human rights defender who accompanies victims to seek health services, she sees similar behavior by medical professionals.

The laws, policies, and protocols set by the Colombian government and health ministry exist to minimize the risk of re-traumatizing patients. Yet, some officials and NGO representatives say healthcare providers fail to follow the guidelines laid out in these documents, including suggestions for how to speak to victims without re-victimizing them, special precautions for children, and explaining the results of exams to patients and the process for follow-up.

One social worker at a hospital in Bogotá explained to Human Rights Watch, “[t]here are Ministry of Health protocols, they are written, but in reality this is thrown out....”¹³² Health

¹²⁷ Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, La Mesa por la Vida y la Salud de las Mujeres, May 10, 2012.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Human Rights Watch interview with Paola A. Salgado Piedrahita, lawyer, La Mesa por la Vida y la Salud de las Mujeres, May 10, 2012.

¹³¹ Human Rights Watch interview with Juana C., Cartagena, April 25, 2012.

¹³² One such example from Medellín is a case where doctor tried to use speculum to exam a three-year-old victim of sexual violence. The child was in pain and the parents realized that something was amiss—only then were other health professionals, including a child psychologist, contacted and brought into treatment. Human Rights Watch interview with (name withheld), child psychologist, Medellín,

providers can inadvertently mistreat victims of gender-based violence when they fail to follow protocols. Advocates that work with victims told Human Rights Watch that, in their experience, it is rare for violations of protocols to be reported. Victims are often unaware that these protocols or guidelines have been violated. Only extreme failures to follow protocol ever come to light, because the mistreatment of the victim for lack of failing a protocol is so egregious that other government actors are notified or brought into the case to address the poor outcomes for patients.¹³³

Arbitrary Delays or Denial of Treatment

Victims of sexual violence need access to some forms of treatment within days of the attack to be effective, including post-exposure prophylaxis for HIV, and emergency contraception to prevent pregnancy. Unfortunately, victims and women's advocates said that health facilities sometimes moved too slowly for them to be effective.¹³⁴ Even for less time-bound services, some victims faced significant delays in accessing services that should be easily available.

The Colombian government has established integrated centers for assisting victims of intra-familial and sexual violence with justice, health, and social services. In Bogotá, for example, the CAIVAS includes a health clinic supported by the mayor's office. However, a Ministry of Health official said that even in these centers, health services are often delayed:

At CAIVAS [in Bogotá], an integrated center for care, you can see the INMLFC, the attorney general's office, the ICBF, but when you are sent to the healthcare provider, what happens? They say, "Come back tomorrow." Even if the 72 hours is running out. This happens in Bogotá sometimes. Imagine what happens in small hospitals.¹³⁵

March 5, 2012. The use of a speculum to exam a pre-pubescent child is contrary to domestic and international standards. See Ministry of Health, *Guide for the Attention of Abused Adults* (Bogotá, 2000)

http://www.dadiscartagena.gov.co/web/images/docs/saludpublica/saludsexual/guias-y-protocolos_vif_vs_y_vbg/guia_de_atencion_al_menor_maltratado_res_0412_de_2000.pdf (accessed July 27, 2012), p. 32. The guide states: a vaginal speculum should not be used. The World Health Organization advises that if the use of speculum is medically indicated, sedation or anaesthesia should be strongly considered.

¹³³ See, for example, Human Rights Watch interview with Dr. Consuela Zapata, CAIVAS, Medellín, March 5, 2012.

¹³⁴ See, for example, Human Rights Watch interview with Annika Marta Dalen and Diana Guzmán Rodríguez, DeJusticia, Bogotá, December 5, 2011; and Human Rights Watch interview with Cristina Villarreal, Executive Director, Fundación ESAR, Bogotá, December 7, 2011.

¹³⁵ Human Rights Watch interview with government official, specialist on the prevention of domestic and sexual violence, Bogotá, April 27, 2012.

A few victims described delays in being able to access gynecological care in hospitals or clinics after rape, as well as the failure to inform them about emergency contraception. Monica N., for example, went to a hospital immediately after she was raped in 2011 in Bogotá, but said she was only given an appointment with the gynecological specialist 10 days later. “Seeking medical attention for the [sexual] violence was difficult. Ten days later, I was finally able to get help,” she said.¹³⁶ By the time she did receive treatment, she had developed a fungal infection of the vagina from the rape. She said her doctors told her nothing about the possibility of taking emergency contraception to prevent unwanted pregnancy: “I didn’t receive emergency contraception.”¹³⁷ This was not Monica’s first sexual assault, and she has also accompanied other women to health services after rape. Monica reported that she had never seen emergency contraception provided.¹³⁸

Analia C., a 34-year-old human rights defender who works with displaced persons, has been raped five times, and told Human Rights Watch about delays in medical treatment after a rape in January 2012 in Bogotá. A lawyer at the national ombudsman’s office following Analia’s case said that the first hospital she visited sent her away because they were not equipped to provide post-rape services at that time, and that the next hospital gave her an appointment for 10 days later.¹³⁹ Some victims, if they had the resources, got faster care at private facilities. Ximena A. obtained timely services at a private hospital after being raped in 2009 in Bogotá, and explained why she avoided a public hospital: “If you go to a [public institution], it is horrible ... the process takes two to three months to get authorization for examination and treatment.”¹⁴⁰

The Ministry of Health official that specializes in gender-based violence told Human Rights Watch that while emergency contraception and post-exposure prophylaxis with anti-retroviral (ARV) medications to prevent HIV after rape are widely available, some providers are unaware of this. According to her, emergency contraception supplies should be available to health providers without much difficulty, even in more remote areas. “There are several accepted formulas that can easily be found in major cities and rural areas. The

¹³⁶ Human Rights Watch interview with Monica N., Bogotá, February 22, 2012.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Human Rights Watch interview with Catalina León Amaya, office of the Human Rights ombudsman, May 9, 2012. See also Human Rights Watch interview with Analia C., Cartagena, April 26, 2012.

¹⁴⁰ Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

problem is resources and knowledge,” she said. Regional or hospital administrators must know to keep supplies on hand, and doctors and victims need to know that emergency contraception exists as a treatment option. According to the official, accessing ARVs pose similar difficulties, with cost being an additional challenge.¹⁴¹ Both treatments should be available in post-exposure prophylaxis kits (PEP kits) provided by the Ministry of Health—under law to be administered without cost to the victim, but individual districts and hospitals are in charge of reordering and replenishing the supplies. As a result, “PEP kits are not available in all parts of the country ... many of the cases are not in the capitals, for those cases, there is no guarantee of quality services.”¹⁴² According to a Ministry of Health official, “this is particularly true where there is more conflict.”¹⁴³

The director of an organization that accompanies many displaced women seeking services in Cali confirmed with Human Rights Watch that it is difficult for victims to receive emergency contraception in some institutions. According to her, “health providers don’t know the laws—that emergency contraception should be available and free.”¹⁴⁴ When health providers do not know what medication should be available and free, it can lead to a denial of care to victims. Monica, as mentioned above, was not offered any emergency contraception. The doctor did prescribe antibiotics for a fungal infection and anti-retrovirals after her rape, but the hospital did not provide these free of charge. She could not afford both, and had to choose between treatments. She decided to buy medicine for the fungal infection, which was causing her immediate discomfort. This left her vulnerable to contracting HIV.¹⁴⁵

The child psychologist in Medellín believes that cost of medicine prevents displaced victims from receiving care. She said she was aware of victims who sought care at smaller health facilities where the staff had not been trained in gender-based violence, and were not aware that the treatment should be free. The psychologist said victims had paid up to US\$30 or more for treatment.¹⁴⁶ This is prohibitively expensive for many displaced women and girls, and some therefore forgo treatment.

¹⁴¹ Human Rights Watch interview with Esmeralda Ruiz, UNFPA, Bogotá, February 23, 2012.

¹⁴² Ibid.

¹⁴³ Human Rights Watch interview with government official, specialist on the prevention of domestic and sexual violence, Bogotá, April 27, 2012.

¹⁴⁴ Human Rights Watch interview with Maria Elena Unigarro Coral, Coordinator, Taller Abierto, Cali, May 7, 2012.

¹⁴⁵ Human Rights Watch interview with Monica N., Bogotá, February 22, 2012.

¹⁴⁶ Human Rights Watch interview with Dr. Consuelo Zapata, CAIVAS, Medellín, March 5, 2012.

Interviewees also told Human Rights Watch that supplies may not always be current, and so the medication is no longer effective. A director from an organization in Medellín that works with hundreds of victims of gender-based violence raised concerns with Human Rights Watch that some of the emergency contraception she has seen in hospital supplies are past their expiration date, and she believes that as a result some victims of sexual violence with whom she worked have become pregnant.¹⁴⁷

Some acts of violence leave injuries that require follow-up treatment not covered by free emergency care. Lupe M., 44, needs continual treatment to heal from an acid attack in 2011 in Cartagena. She does not have insurance, and told Human Rights Watch that she cannot afford the treatment and medication.¹⁴⁸ Due to the pain of the untreated wounds, and to fear of the perpetrator who is still at large, Lupe told Human Rights Watch, “I don’t leave my house now.”¹⁴⁹

Some victims said they faced delays in health treatment after rape due to ad hoc hospital requirements that strayed from the law and Ministry of Health guidelines. For example, to procure a legal abortion after rape, all that is legally required is a copy of a criminal complaint. This one requisite—filing a criminal complaint—can be a major obstacle to accessing legal abortion.¹⁵⁰ But in some cases, hospitals appear to have required more. For example, Elena L., a 35-year-old displaced woman, sought a legal abortion in Bogotá of a pregnancy resulting from rape. According to her advocates, she sought the procedure in a public hospital with a copy of her criminal complaint and was held all day for routine tests. Her advocates report that hospital officials then said they could not conduct the procedure for technical reasons, and that a copy of the complaint was not sufficient.¹⁵¹ The hospital contacted seven other public facilities on her behalf. Six refused to receive her and one required that there be a judicial ruling before providing the services, according to her

¹⁴⁷ Human Rights Watch interview with Dilia Rodriguez, Director, CERFAMI, Medellín, March 9, 2012.

¹⁴⁸ Human Rights Watch interview with Lupe M., Cartagena, February 28, 2012.

¹⁴⁹ Ibid.

¹⁵⁰ A 2011 study confirms that women meeting the legal criteria face serious obstacles getting a legal abortion. From 2006 to 2010, 657 legal abortions were performed; 27 percent of these met the legal criteria for the procedure due to rape or incest. Guttmacher Institute, *Unintended Pregnancy and Induced Abortion in Colombia: Causes and Consequences*, (June 2011), p. 25, available at <http://www.guttmacher.org/pubs/Unintended-Pregnancy-Colombia.pdf> (accessed June 12, 2012).

¹⁵¹ Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, La Mesa por la Vida y la Salud de las Mujeres, May 10, 2012.

advocates. She finally procured the abortion at one of the seven facilities after the direct intervention of the district health authority.¹⁵²

Conscientious objection by health providers or institutions—if handled incorrectly—may also lead to an arbitrary denial of health services for victims of gender-based violence. Health providers in Colombia have a legal right to decline to offer treatment such as emergency contraception and abortion services if it is incompatible with their own moral convictions, but there are strict limits for how this should be applied.¹⁵³ The Constitutional Court has ruled that only individuals and not an entire institution can invoke the right of conscientious objection.¹⁵⁴ A Ministry of Health decree requires that use of the objection must not create an obstacle or prevent a woman from realizing her sexual or reproductive rights.¹⁵⁵ If no other provider is available to perform the service, the state can revoke the right to object.¹⁵⁶

While none of the individual women interviewed by Human Rights Watch said that doctors had denied health services to them on the basis of conscientious objection, advocates who work with victims of gender-based violence said they have witnessed cases where conscientious objection was improperly handled, and resulted in delays or denial of treatment.¹⁵⁷ They said this was especially the case with emergency contraception and abortion services, both legal in Colombia. Advocates working with Rosa L., for example, explained that Rosa experienced an almost month-long delay in accessing legal abortion when one hospital improperly invoked institutional conscientious objection in 2010.¹⁵⁸ A sociologist who works with victims of gender-based violence in one of the largest women's health NGOs in Cali explained that conscientious objection is most problematic in rural

¹⁵² Ibid.

¹⁵³ For more information regarding conscientious objection under international human rights law, see University of Essex Human Rights Centre, "Conscientious Objection: Protecting Sexual and Reproductive Health Rights," undated, http://www.essex.ac.uk/human_rights_centre/research/rth/docs/Conscientious_objection_final.pdf (accessed July 16, 2012).

¹⁵⁴ See Constitutional Court of Colombia, Decision T-388/2009, p. 3.

¹⁵⁵ See Ministry of Health, Decree 4444 of 2006, Regulations for the provision of services for sexual and reproductive health, December 13, 2006, art. 5. This regulation has been suspended by a State Council's order finding that Congress, not the executive, should regulate the issue of abortion and health care services for women.

¹⁵⁶ See Constitutional Court of Colombia, Decision T-388/2009, pp. 3-4.

¹⁵⁷ None of the women who spoke to Human Rights Watch who had become pregnant from rape had sought legal abortions. Of the women or girls who did not receive emergency contraception, none had been told that it had been denied on the basis of conscientious objection.

¹⁵⁸ Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, La Mesa por la Vida y la Salud de las Mujeres, Bogotá, May 10, 2012.

areas because rural doctors do not always know they have to guarantee another provider will perform the services.¹⁵⁹ Another NGO representative who works with hundreds of women told Human Rights Watch that she was aware of some women and girls who were unable to access emergency contraception after rape due to improper handling of conscientious objection.¹⁶⁰

Failure to Ensure Victims Have Information about Healthcare Options

Most of the displaced women and girls whom Human Rights Watch interviewed never accessed health services after sexual or intra-familial violence; less than half of those interviewed even had enough information to try. Some said they did not know there were treatments that could prevent unwanted pregnancy or infection, and others said they did not know they had a right to such services for free. Health service providers also told Human Rights Watch that they believe victims' lack of information contributes to low rates of women reporting attacks and seeking services. According to a USAID/Profamilia study, only about a quarter of victims of gender-based violence surveyed reported their case to any authority, including health officials.¹⁶¹

A few victims and some human rights defenders who accompany them along the referral pathway told Human Rights Watch that they had no idea that some treatments after rape, such as emergency contraception and post-exposure prophylaxis for HIV, must happen within days of an attack. To maximize effectiveness of these post-rape treatments, survivors must get treatment within 72-120 hours of the incident.¹⁶²

Gloria L., for example, was raped in early 2012 in Medellín. She did not know there was emergency contraception and is now pregnant. She said,

I haven't told anyone because [the men who raped me] threatened me.

Three months ... I was waiting for my period and nothing happened ... I was

¹⁵⁹ Human Rights Watch interview with Valeria Eberle, advocate, Sí Mujer, Cali, May 9, 2012.

¹⁶⁰ Human Rights Watch interview with Maria Elena Unigarro Coral, Coordinator, Taller Abierto, Cali, May 7, 2012.

¹⁶¹ See USAID/Profamilia, *Encuesta en Zonas Marginadas 2011: Salud Sexual y Salud Reproductiva, Desplazamiento Forzado y Pobreza 2000-2011* (Bogotá, 2011), Anexo 9.10, p. 160.

¹⁶² For post-exposure prophylaxis related to sexually transmitted infections, the recommended time frame is 72 hours. See US Centers for Disease Control and Prevention, "Sexually Transmitted Diseases Guidelines, 2010: Sexual Assault and STDs," 2010, <http://www.cdc.gov/std/treatment/2010/sexual-assault.htm> (accessed August 10, 2012). Some emergency contraception may be administered as late as five days after rape; however, emergency contraception medications are most effective the sooner they are taken. See, for example, Planned Parenthood, "Emergency Contraception Q&A", undated, <http://www.plannedparenthood.org/health-topics/ask-dr-cullins/cullins-ec-5360.htm> (accessed August 10, 2012).

pregnant ... I don't know if the baby will be black or white or what, but my husband will know it's not his ... I didn't know there was medicine that could prevent pregnancy when [a rape] happens....¹⁶³

Mercedes D., a 44-year-old woman also displaced to Medellín, was also unaware that emergency contraception existed. She became pregnant after she was raped in late 2009.¹⁶⁴ No one informed Mercedes that medication existed to prevent unwanted pregnancy, even after her daughter became pregnant from a rape in 2004.¹⁶⁵

Displaced women human rights defenders play an important role accompanying women and girls in their communities along the referral pathway after gender-based violence. Several of these leaders have attended workshops and trainings organized by NGOs or international organizations regarding the rights of victims. Nevertheless, some grassroots human rights defenders told Human Rights Watch that they did not know the importance of seeking health services in the first 72 hours after sexual violence.¹⁶⁶ Ximena A. is another leader who has accompanied many displaced women in accessing government services, including at least 20 women seeking post-rape services. Yet, she was unaware of time-bound treatments that could prevent pregnancy or HIV infection. "I have a friend who contracted HIV after she was raped. Of 20 women I've worked with who were raped, four became pregnant," Ximena said.¹⁶⁷

A couple of healthcare workers expressed frustration to Human Rights Watch that more women did not seek care after violence, and felt it was not their role to raise awareness. One healthcare worker said there was a policy in place and the resources for treatment, but that was not sufficient to convince victims of gender-based violence to seek treatment, especially those from marginalized groups like the internally displaced.¹⁶⁸ She said

¹⁶³ Human Rights Watch interview with Gloria L., Medellín, May 2, 2012.

¹⁶⁴ Human Rights Watch interview with Mercedes D., Medellín, May 3, 2012.

¹⁶⁵ Ibid. Similarly, Juana C., a 23-year-old displaced woman living in Cartagena, was a minor in 2001 when she became pregnant after being raped by a neighbor who gave her family food and other economic support. Human Rights Watch interview with Juana C., Cartagena, April 25, 2012. Like Gloria and Mercedes, she did not know treatment existed that could have prevented the pregnancy.

¹⁶⁶ See, for example, Human Rights Watch interview with Andrea S., Cartagena, February 26, 2012.

¹⁶⁷ Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

¹⁶⁸ Human Rights Watch interview with Yovanna Torres Berrio, social worker for promotion and prevention, Clinica de Maternidad Rafael Calvo, Cartagena, April 26, 2012.

individual health facilities generally do not have the capacity to conduct outreach and public awareness campaigns.

The Colombian government does have an obligation to ensure that accurate health information is available to the public. There are many ways the government could organize such outreach, some of which would include health authorities. This report does not analyze the government's track record on public awareness efforts concerning health care after gender-based violence, but it is clear from testimonies of victims, advocates, and service providers that greater awareness is needed.

Referral Problems

The referral of victims of gender-based violence from the justice sector to health care providers, between health facilities, or to other services, is vital to ensuring victims are informed about services available to them and to addressing their needs in a timely manner. Referrals are all the more important for displaced victims, who may be unfamiliar with services and agencies in their new communities, and therefore, have less knowledge regarding which services exist.

Colombia's normative framework and "referral pathway" (described in Chapter I) offer clear guidance on how referrals are supposed to happen. Unfortunately, there are significant problems with ensuring that victims get the referrals they need. As a Ministry of Health gender-based violence specialist told Human Rights Watch, "the referral pathway is great when it works, but it only works 25 percent of the time".¹⁶⁹ Women interviewed by Human Rights Watch said that healthcare providers often did not provide them any referrals for further care or other available services after violence (for example, psycho-social support, justice, or protection programs), that law enforcement and justice officials sent them for medical forensic testing but made no referrals for health care, or that they were sent to multiple health facilities before receiving care.

Some government officials who work on gender-based violence attributed referral problems to a lack of commitment by institutions that should provide referrals. A representative of the Center for Integrated Care for Victims of Sexual Violence (Centro de Atención Integral a

¹⁶⁹ Human Rights Watch interview with government official, specialist on the prevention of domestic and sexual violence, Bogotá, April 27, 2012.

Victimas de Violence Sexual - CAIVAS) said that in agencies in her city, whether or not a referral happens depends on individuals—people willing to make phone calls or search out the right counterpart at other institutions.¹⁷⁰ The Ministry of Health official agreed, saying that if one committed person leaves an institution, “the pathway dies.”¹⁷¹

Law enforcement and the justice sector should play an important role in the referral pathways for intra-familial and sexual violence by ensuring that victims who file complaints receive referrals for medical attention, not just forensic testing. A gender advisor at the attorney general’s office confirmed that prosecutors are “obligated to call for medical care” if a victim is in need of it.¹⁷² Unfortunately, health officials and women’s rights advocates told Human Rights Watch that law and justice officials often fail to make these referrals. The Ministry of Health gender-based violence specialist complained that despite trainings, justice officials do not always refer victims for medical care:

We have conducted trainings with officials on this issue. If a victim comes to the prosecutor, [or] if she comes to the INMLCF—[you] take her immediately for health treatment. She has the right to medical attention, as much as to justice.... It doesn’t happen.¹⁷³

Viviana N., a displaced woman living in Cali, reported physical violence by her husband to the prosecutor in 2007 after suffering continued abuse for over four years. After filing her criminal complaint, she was provided no information about other referrals or what happened next, including information about health services: “There was no orientation. No route where I needed to go. No one said what happens at each step.”¹⁷⁴

Often, prosecutors will refer victims of gender-based violence to the National Institute for Legal Medicine and Forensic Sciences (INMLCF) for forensic exams, but this does not mean they will also receive medical treatment.

¹⁷⁰ Human Rights Watch interview with staff member of CAIVAS, Medellín, March 6, 2012.

¹⁷¹ Human Rights Watch interview with government official, specialist on the prevention of domestic and sexual violence, Bogotá, April 27, 2012.

¹⁷² Human Rights Watch interview with Aura Peñas, gender advisor, Attorney General’s Office, Bogotá, March 2, 2012.

¹⁷³ Human Rights Watch interview with government official, specialist on the prevention of domestic and sexual violence, Bogotá, April 27, 2012.

¹⁷⁴ Human Rights Watch interview with Viviana N., Cali, May 7, 2012.

Medical doctors at the INMLCF perform forensic exams, but do not provide health services.¹⁷⁵ INMLCF doctors create reports for prosecutors detailing the results of the forensic exam and may include suggested follow-up medical treatment. The internal referral pathway for the INMLCF instructs the examiner to explain to the victim her rights to medical care, including access to emergency contraception and abortion in the case of sexual violence.¹⁷⁶ The agency's technical guides on sexual crimes and intra-familial violence include forms for referring victims to health services.¹⁷⁷ But the women and girls interviewed who had received a forensic exam after filing a criminal complaint told Human Rights Watch they did not receive such forms at the conclusion of their exams, nor were they counseled about their rights.¹⁷⁸ Few were given a copy of their forensic report. Marta N., a grassroots leader who accompanied a rape victim to the INMLCF in Cartagena, said that "the institute did not talk to us about pregnancy or sexually transmitted infections."¹⁷⁹ Almost none of the women interviewed by Human Rights Watch who had undergone forensic testing at the INMLCF or had accompanied others for exams said they were given referrals for medical treatment. Andrea A., for example, brought her daughter to the INMLCF in Cartagena after she was raped in February 2011, but she said they told her nothing about where her daughter could be tested for pregnancy or sexually transmitted infections. "They didn't suggest that we go to other places for testing," she told Human Rights Watch.¹⁸⁰

The failure to make timely referrals for health care can cause pain, stress, and other hardship for victims, and when referrals for certain time-bound treatments are missed, it

¹⁷⁵ Reforms in recent years provide psycho-social support at the INMLCF, but women cannot access emergency contraception, anti-retrovirals, antibiotics, or any other time-sensitive post-violence care.

¹⁷⁶ Instituto Nacional de Medicina Legal y Ciencias Forenses y Fondo para el Logro de los ODM: Programa Integral Contra Violencias de Género, *Modelo de Atención a las Violencias Basadas en Género para Clínica Forense* (Bogotá, 2011), p. 91. The practice, however, is different according to location. In Medellín, the forensic clinic within the CAIVAS refers its patients to either a health facility, clinic, or hospital to complete necessary laboratory tests for the forensic exams. Once at the health facility, the victim may seek medical services. See Human Rights Watch interview with Dr. Zulima Mosquera, CAIVAS, Medellín, March 5, 2012. The municipality of Medellín staffs the clinic, on behalf of the INMLCF. All data is reported to the INMLCF.

¹⁷⁷ Instituto Nacional de Medicina Legal y Ciencias Forenses, "Reglamento Técnico para el Abordaje Integral en la Investigación del Delito Sexual (versión 3)," 2009; Instituto Nacional de Medicina Legal y Ciencias Forenses, "Reglamento Técnico para el Abordaje Forense Integral de Lesiones en Clínica Forense," 2010, p. 169; Instituto Nacional de Medicina Legal y Ciencias Forenses, "Reglamento Técnico para el Abordaje Integral de la Violencia de Pareja en Clínica Forense," 2011, p. 76.

¹⁷⁸ Of the 48 women and girls that Human Rights Watch interviewed who tried to access the justice sector, about 25 percent were referred to an INMLCF exam. None of those women received a medical referral or were informed about the importance of seeking medical treatment or their right to do so for free.

¹⁷⁹ Human Rights Watch interview with Marta N., Cartagena, February 28, 2012.

¹⁸⁰ Human Rights Watch interview with Andrea A., Cartagena February 28, 2012.

can result in unwanted pregnancies or HIV infection. Lupe M., a 44-year-old displaced woman, said an unknown attacker threw acid at her body, hitting her arms, in 2011. She went to a hospital where she received some emergency care, but was told she needed to have a different insurance card to receive treatment she needed at that hospital. She reported the attack to the police and prosecutor, who referred her to INMLCF. “I went to INMLCF [a day after the prosecutor’s office]. They didn’t give me any medicine,” she told Human Rights Watch.¹⁸¹ Lupe M. says that they also failed to tell her where to go for the follow-up medical care she needed. Not knowing where to go, Lupe says she did not get any further medical treatment, and ever since has suffered pain. “It feels like ants are always biting me,” she described.¹⁸² She bathes the wound in vinegar to try to ease the pain.¹⁸³

Officials at the INMLCF are careful to note that the INMLCF’s role is to perform a diagnostic exam that will lead to a successful prosecution.¹⁸⁴ But precisely because the INMLCF’s competency is not medical attention, it should make a concerted effort to ensure that victims are clear about how to obtain health care.

Human Rights Watch found that breakdowns in referrals also happen internally in the health system. For example, Rosa L., a 28-year-old displaced woman, was living in the city of Villavicencio in late 2009, after a previous forced displacement, when she was raped by a man with alleged ties to paramilitary groups.¹⁸⁵ According to a lawyer working with Rosa, on April 2010, she realized she was pregnant and told a nurse what had happened. Rosa’s lawyer then said the nurse referred her to a psychologist who should have sent her to a public hospital for free treatment, but instead sent her to a private clinic.¹⁸⁶ After delays in

¹⁸¹ Human Rights Watch interview with Lupe M., Cartagena, February 28, 2012.

¹⁸² *Ibid.*

¹⁸³ Acid attacks are on the rise in Colombia. Juan Forero, “Acid attacks in Colombia reflect rage,” *The Washington Post*, August 3, 2012, http://www.washingtonpost.com/world/the_americas/acid-attacks-rising-in-colombia/2012/08/03/e8c85528-c843-11e1-9634-odcc540e7171_story.html (accessed September 19, 2012). According to Acid Survivors Trust International, “[a]cid has a devastating effect on the human body, often permanently blinding the victim [if attacked in the face] and denying them the use of their hands. As a consequence, many everyday tasks such as working and even mothering are rendered extremely difficult if not impossible. Acid Violence rarely kills but causes severe physical, psychological and social scarring....” Acid Survivors Trust International, “Acid Violence,” <http://www.acidviolence.org/index.php/acid-violence/> (accessed September 19, 2012).

¹⁸⁴ Human Rights Watch interview with Dr. Pedro Emilio Morales Martinez, Sub-director of Forensic Services, Instituto Nacional de Medicina Legal y Ciencias Forenses, Bogotá, March 14, 2012.

¹⁸⁵ Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, La Mesa por la Vida y la Salud de las Mujeres, Bogotá, May 10, 2012.

¹⁸⁶ *Ibid.*

filing a criminal complaint with the prosecutor,¹⁸⁷ authorities referred her to a public health facility, where she hoped to undergo a legal abortion. But, according to Rosa's attorney, the facility would not accept her health insurance, and referred her to another public hospital. That hospital denied her treatment on the grounds of conscientious objection, and informally referred her to another facility on the other side of town.¹⁸⁸ She finally was provided the procedure a month after her initial consultation.¹⁸⁹

¹⁸⁷ When she first went to the CAIVAS, they would not accept her complaint because they felt too much time had passed since the rape, and it had occurred in a different part of the country. Only after intervention by an NGO did the government accept the criminal complaint. See Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, *La Mesa por la Vida y la Salud de las Mujeres*, May 10, 2012.

¹⁸⁸ Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, *La Mesa por la Vida y la Salud de las Mujeres*, Bogotá, May 10, 2012.

¹⁸⁹ *Ibid.*

IV. Obstacles to Justice after Gender-Based Violence

You can look for justice, but there isn't any when they threaten vengeance on your children.

— Ximena A., Bogotá, February 24, 2012

The Colombian government has made major strides in terms of the justice and law enforcement sector response to gender-based violence, including through the creation of specialized units for integrated care for victims of gender-based violence, known as CAVIF for victims of intra-familial violence and CAIVAS for victims of sexual violence.¹⁹⁰

Yet, Human Rights Watch identified a range of obstacles displaced women and girls continue to face when seeking justice after gender-based violence, including mistreatment by authorities, evidentiary challenges, poor referrals, women's economic barriers, and fear of reporting.

Human Rights Watch also saw how limited state resources created unique barriers for victims of gender-based violence. Justice officials described the paralyzing effect of their overwhelming workloads and insufficient resources to handle gender-based crimes. Overworked prosecutors exist throughout Colombia—assigned to all types of crimes. But for prosecutors of gender-based crimes, it is easy to de-prioritize cases—and victims—when they come with no physical evidence, in favor of cases where such strong evidence already exists. Physical evidence in gender-based crimes is often difficult to obtain, and for good reason, Colombia's laws permit cases to move forward without such evidence. Yet, both women and officials said many prosecutors set aside gender-based violence cases without such evidence. This leads to almost guaranteed impunity for these types of crimes, and to women and girls giving up on justice.

For most of the women with whom Human Rights Watch spoke who had filed a criminal complaint, the biggest problem encountered with the justice sector was that once they filed their complaint, they never heard back. They did not know if their cases had been

¹⁹⁰ CAVIF stands for the Center for Integrated Attention Against Intra-familial Violence (Centro de Atención Integral Contra La Violencia Intrafamiliar) and CAIVAS stands for Center for Integrated Attention to Victims of Sexual Violence (Centro de Atención Integral a Víctimas de Violencia Sexual).

archived or if investigations were proceeding. They did know, however, that the perpetrators went unpunished.

Mistreatment by Authorities

Mistreatment of victims by law enforcement and justice officials undermines measures introduced by the Colombian government through its laws and policies on gender-based violence. For some displaced women and girls, mistreatment constitutes a major barrier to justice. Victims and advocates recounted to Human Rights Watch instances of mistreatment by law enforcement and justice officials. One women's rights leader in Cartagena, a victim of violence herself, sees little progress in the treatment of victims by prosecutors:

Twelve years I have been accompanying women to the prosecutor's office. How the women are treated depends on the official. Some always ask the same questions—how were you dressed, how did you provoke the perpetrator. There is no support in those questions; no humanity.¹⁹¹

Ximena A. felt like she was not treated with dignity when she reported being raped in 2009. She told Human Rights Watch that she was asked “stupid” and “offensive” questions throughout her interview with the prosecutor in Bogotá. For example, she said, “I was raped by members of a paramilitary group, but [the prosecutor] kept asking if my husband hits me.”¹⁹² While the prosecutor may have been trying to screen for domestic violence in the home, Ximena claims he did not ask her questions about the actual perpetrators or the sexual violence. Instead, his questioning focused on her relationship with her husband. It made her feel uncomfortable and that the prosecutor did not believe her claim.

Several victims of gender-based violence told Human Rights Watch that law enforcement and justice officials blamed them for the abuse. Advocates who accompany women and victims themselves told Human Rights Watch that prosecutors sometimes asked humiliating questions about past sexual history and past partners. They also asked questions in some cases about what the victim was wearing and what she did to provoke the attacks. All these types of questions reflect an attitude that a primary element of gender-based violence is force, rather than a lack of consent.

¹⁹¹ Human Rights Watch interview with Luz Marlenis Hurtado Cordoba, Liga de Mujeres de Pozón, Cartagena, February 27, 2012.

¹⁹² Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

In one case of intra-familial violence, a prosecutor told Dolores G., a 38-year-old displaced woman living in Cartagena, that she was asking for the abuse. Dolores described to Human Rights Watch how her husband beat her for years, starting in 2003. She said that when he started threatening her son in 2003, she reported the abuse to a prosecutor, who blamed her. She explained:

My husband also maltreated my oldest son and called him bad, I told him to hit me instead. He did.... When I arrived to the prosecutor, he read my statement. He said, “You said ‘hit me,’ and he did. What do you want me to do?”¹⁹³

The physical abuse continued until she left him permanently in 2011. Her negative experience in 2003 stopped her from seeking subsequent help from the justice sector. During this time, she did not return to file additional criminal complaints.

Another woman said fear of mistreatment by government officials stopped her from following through on an attempt to report gender-based violence to prosecutors. Clara V. went to the prosecutor’s office to file a complaint about sexual violence, but did not go through with it. As she waited to be seen by a prosecutor she heard other people in the office talking about her and why she was there. She realized that the administrators who she had first approached in order to see a prosecutor must have disclosed why she was there, breaching her confidentiality. “I came to the prosecutor, but I didn’t denounce. I couldn’t face the public humiliation in front of everyone, with insults, and so I decided not to do it.”¹⁹⁴

Human Rights Watch received information from advocates about cases where justice officials chastised women for reporting intra-familial violence without having any visible injuries. In one recent case in Medellín, a woman arrived at a Justice House to report physical abuse from her husband. According to the advocates, the officials there told her that she couldn’t be suffering from intra-familial violence because she didn’t have any bruises.¹⁹⁵ When the woman sought support from a local women’s rights group, she pleaded, “Do I have to wait until he kills me before the government believes me?”

¹⁹³ Human Rights Watch interview with Dolores G., Cartagena, April 24, 2012.

¹⁹⁴ Human Rights Watch interview with Clara V., Bogotá, February 24, 2012.

¹⁹⁵ Human Rights Watch interview with Dilia Rodriguez, Director, CERFAMI, Medellín, March 9, 2012.

Advocates also reported that family commissioners, who handle many civil law aspects of the justice system's response to domestic violence, sometimes also blame victims. One women's rights leader who accompanies victims to file complaints explained, "If you do file a formal complaint about [it] at the family commissioners, they say, 'He hit you because you must have done something.'"¹⁹⁶ Miludes N., a 14-year-old girl displaced to Bogotá, also described mistreatment by officials at the family commissioner's office. Miludes reported to the office that an unknown assailant had threatened and groped her and followed her home in 2011. When she and her mother reported the case, Miludes felt that the officials were insensitive to her: talking over her, not listening to her, and being dismissive of the fear she felt after the incident. She told Human Rights Watch that the official there was disrespectful. "They treated us like we were less than them," she said. "It felt uncomfortable and bad."¹⁹⁷

Women also described to Human Rights Watch misconduct by criminal investigators. Andrea S., for example, was interviewed by investigators handling her friend Analia C.'s rape case in 2012. Andrea says that the investigators asked her questions about her friend's social behavior and drinking habits, and then posed a question regarding whether she believed her friend was sexually desirable enough to have been raped: "The investigators said to me, 'But she doesn't have that good of a body.' ... You have to be a model to be raped".¹⁹⁸

Andrea told Human Rights Watch that the same investigators also showed her a newspaper clipping of the victim and asked her how her friend could be smiling if she had been raped.¹⁹⁹ The investigators asked other friends and family similar questions and told them that Analia had been raped, breaching confidentiality.²⁰⁰ Some, including Analia's mother, learned about the rape this way, according to Andrea.

Human Rights Watch heard from some women's rights advocates and victims that forensic examiners sometimes ask inappropriate and abusive questions. In one case Human Rights Watch saw evidence of this on the forensic examination report for a rape victim in Bogotá in 2011. Included in the report were questions about the date of the victim's first sexual

¹⁹⁶ Human Rights Watch interview with Bertha L., member of the Mesa de Seguimiento de Auto 092, Cartagena, February 27, 2012.

¹⁹⁷ Human Rights Watch interview with Miludes N., Bogotá, February 24, 2012.

¹⁹⁸ Human Rights Watch interview with Andrea S., Cartagena, April 26, 2012.

¹⁹⁹ Ibid.

²⁰⁰ Human Rights Watch interview with Andrea S., Cartagena, April 24, 2012; see also Human Rights Watch interview with Dolores G., Cartagena, April 24, 2012.

experience, the number of partners she had had in her lifetime, and her last sexual encounter prior to the rape. These questions violate INMLCF protocol and are irrelevant to the investigation.²⁰¹ Nevertheless, the report, including the answers to these questions, is now evidence in her case that could be used in open court.

Dr. Pedro Emilio Morales Martinez, sub-director of Forensic Services at INMLCF, admits that not every examination is completed according to protocol, and identifies areas where the INMLCF could improve:

We can't deny that some [forensic doctors] don't complete the forms as they should. We do monitor quality of services, but it is difficult to review 100 percent of cases. We have things we need to address.... Particularly, we need to work with people who don't see these types of cases a lot.... Rural zones are particularly difficult.²⁰²

The attorney general's office has taken steps to address potential misbehavior by its employees: circulating a memorandum in December 2011 to all employees that addresses the need to change the mentality of employees in relation to crimes involving gender-based violence, establishing what is appropriate behavior toward victims, and urging respect for their privacy and dignity.²⁰³ The memo recognizes that employees' prejudices could generate inadequate service, and therefore impunity.²⁰⁴ It requires that employees take into account the particular circumstances of each victim; this would include whether they were displaced. While the effect of the memorandum on practice within the attorney general's office is still to be determined, an official working at the Center for Care of Victims in Medellín believes that

²⁰¹ Instituto Nacional de Medicina Legal y Ciencias Forenses, "Reglamento Técnico para el Abordaje Integral en la Investigación del Delito Sexual (versión 3)," 2009; Instituto Nacional de Medicina Legal y Ciencias Forenses, "Reglamento Técnico para el Abordaje Forense Integral de Lesiones en Clínica Forense," 2010; Instituto Nacional de Medicina Legal y Ciencias Forenses, "Reglamento Técnico para el Abordaje Integral de la Violencia de Pareja en Clínica Forense," 2011; Instituto Nacional de Medicina Legal y Ciencias Forenses y Fondo para el Logro de los ODM: Programa Integral Contra Violencias de Género, "Modelo de Atención a las Violencias Basadas en Género para Clínica Forense", 2011. The technical guides exist to ensure better quality of exams, and the INMLCF can monitor whether individual forensic doctors apply the protocols, and make changes to the guides if it becomes clear there is a pattern of errors.

²⁰² Human Rights Watch interview with Dr. Pedro Emilio Morales Martinez, sub-director of forensic services, Instituto Nacional de Medicina Legal y Ciencias Forenses, Bogotá, March 14, 2012.

²⁰³ See National Directorate of Prosecutors, Memorandum DNF No. 52, "Justice from a differential approach perspective," December 7, 2011. Copy on file with Human Rights Watch.

²⁰⁴ See National Directorate of Prosecutors, Memorandum DNF No. 52, "Justice from a differential approach perspective," December 7, 2011. Copy on file with Human Rights Watch.

the memorandum has had a positive effect on what justice officials say in an official capacity. However, she sees prejudices continuing in less visible ways:

In every sector—police, prosecutors, public ministries, judges—there are people who think that the woman is at fault. They think she was asking for it.... It isn't what is said officially, on the record, so it's hard to prove. It is in the hallways, in passing [that these prejudices come out]. We have to work on that part.²⁰⁵

Evidentiary Challenges

Several victims told Human Rights Watch that they believed prosecutors and investigators did not take their cases seriously if they lacked physical evidence of gender-based violence. Based on their interaction with justice officials, these women and girls believed prosecutors did not consider their testimony constituted sufficiently strong evidence.

Prosecutors confirmed to Human Rights Watch that they can pursue cases without physical evidence, and can rely on other admissible evidence such as witness testimony and other forms of evidence, beyond physical evidence.²⁰⁶ Prosecutors should not determine viability of cases solely by whether physical evidence exists. A gender advisor in the attorney general's office told Human Rights Watch that the type of evidence used is particular to each investigation and case: "There needs to be probative evidence, but that can be different in each case. For some, it may be the INMLCF report, for others the testimony of the victim may be strongest."²⁰⁷ The perception by victims that prosecutors will only proceed if provided with physical evidence, however, discourages victims from coming forward in instances where there is no physical evidence. Ximena, for example, told Human Rights Watch, "[The prosecutors] don't treat us with credibility ... when you go to them, you have to bring your own proof."²⁰⁸ For example, Socorro's 2009 rape case was archived because there was no physical evidence, and she did not know who her attackers were.²⁰⁹

²⁰⁵ Human Rights Watch interview with Liliana Soto, attorney, Center for Attention of Victims, Medellín, March 6, 2012.

²⁰⁶ Criminal Procedure Code of Colombia, Law 906/2004, arts. 376 and 383-403, general rules regarding testimonial proof.

²⁰⁷ Human Rights Watch interview with Aura Peñas, gender advisor, Attorney General's Office, Bogotá, March 2, 2012.

²⁰⁸ Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

²⁰⁹ Human Rights Watch interview with Socorro Y., Bogotá, February 24, 2012. See also, Human Rights Watch interview with Catalina León Amaya, office of the Human Rights ombudsman, May 9, 2012.

Several victims blamed the absence of physical evidence on the government, reporting that officials had delayed referrals for forensic exams so long in some cases that no physical proof remained. Dolores G. said that in 2003 after their displacement to Cartagena, her husband beat her severely leaving visible bruises on her face. Prosecutors referred her to the INMLCF for an exam, but she says she was turned away two times before being seen almost three weeks after sustaining the injuries. Little evidence remained. She said,

I had to go to IML to prove I had been hit. My face was red and it hurt me. On Monday I went to IML, but they didn't attend to me. They gave me a new appointment for 8 days later. When I went back, the doctor wasn't there, there was an emergency. I had another appointment to come back in five or six days. When I was examined, the doctor poked at my face. "There is nothing. You are here for nothing."... You can imagine; I will never go back.²¹⁰

Dolores remained in the abusive relationship for over six more years.

In 2009 Ximena A. was forced to conduct oral sex on multiple perpetrators in Bogotá at gunpoint.²¹¹ She did not delay in reporting the rape, but says that authorities scheduled her forensic exam several days after the attack. By then there was no semen or other fluids left in her mouth. Frustrated because she believes the prosecutor did not take her case seriously without this evidence, Ximena told Human Rights Watch,

Scientific evidence from the IML is the only proof the prosecutor believes to start an investigation. But the IML doesn't have all the means to tell the truth. If I was hit in the face, but they don't see blood or a bruise? What? Nothing happens. If there is no inflammation of the vagina? Same. What if he used a condom? Same. For me, it took so long to get to the IML, there was no proof left.²¹²

²¹⁰ Human Rights Watch interview with Dolores G., Cartagena, April 24, 2012.

²¹¹ Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

²¹² Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

Analia C., twice a victim of sexual violence in 2012, reported both crimes immediately. In January 2012, she and her advocates at the national ombudsman's office said she was not seen by INMLCF until 10 days after her latest rape.²¹³ No physical evidence remained.²¹⁴

A lawyer that represents displaced victims of gender-based violence in Cali and Buenaventura recounted a recent case she had covered of a girl victim of sexual violence. The girl was raped on a Friday; the police were called and the perpetrator was caught. The girl had bruises and bites on her body. Because it was a Friday, she did not receive an appointment to see the INMLCF until the following Monday; she tried to follow directions and not wash, but by Monday all of the proof had disappeared. "There was no semen. The vagina wasn't inflamed. There was no proof," the lawyer told Human Rights Watch. The case was closed. The delay in exam has caused other problems as well. The lawyer said the girl is receiving psycho-social support because she was severely affected by her treatment. "After this, she felt so dirty," the lawyer said. "She was really affected by having to wait to be seen ... she was re-victimized by the inefficiency of the referral pathways."²¹⁵

In other cases, the attack was carried out in a way that left no physical trace. Clara V. was a victim of sexual violence in 2004 and has received numerous threats of more sexual violence since then. She has reported these crimes. One of the cases was closed for lack of physical proof. She explained, "The case was closed ... there was a lack of proof, no witnesses, but how can you [the victim] have the names; how can you know everything ... This is the function of [the investigators]."²¹⁶ Without a thorough investigation, Clara believed the threats would continue. Indeed, Clara continues to receive threats, and in October 2012, an unknown man followed her home, but she was able to get inside before he could speak to her.

Isabel P. said a man in Medellín with ties to armed groups sexually assaulted, groped, manhandled, and threatened her in late 2011, but there was no penile penetration or

²¹³ Human Rights Watch interview with Analia C., Cartagena, April 26, 2012. The rape and forensic exam took place in Bogotá, although the interview took place in Cartagena.

²¹⁴ Ibid.

²¹⁵ Human Rights Watch interview with Milenu Sinisterra, lawyer, Taller Abierto, Cali, May 7, 2012.

²¹⁶ Human Rights Watch interview with Clara V., Bogotá, February 24, 2012.

ejaculation.²¹⁷ She said prosecutors and investigators never seemed to take her case seriously because of the absence of physical evidence.

Ximena A., who works with survivors of sexual violence, said she knows of several cases where perpetrators used condoms while raping their victims, leaving no evidence behind.²¹⁸ A physician who conducts forensic exams on victims of sexual violence in Medellín showed Human Rights Watch data from examinations conducted in the month prior to the interview; less than 10 percent of exams exposed physical evidence.²¹⁹

Suzanna M., a 31-year-old displaced woman living in Medellín, reported intra-familial violence to prosecutors in October 2011.²²⁰ She said her ex-husband—a police officer—stalked her and threatened physical harm to her and their children; she believes he played a role in the recent killing of her boyfriend. She did not have any injuries or other physical evidence, and without this, she believes her case is not being investigated. Suzanna says she has not been given any information regarding progress on the investigation into her case. She told Human Rights Watch, “Since the declaration, there has been a complete lack of information. Perhaps they don’t know how to give people information.”²²¹

Intra-familial Violence as a Private Offense during 2011 and 2012

A significant obstacle to the successful investigation and prosecution of the crime of intra-familial violence was created in 2011, with the passage of Law 1453/2011.²²² This law amended portions of the criminal procedure code, including the reclassification of “offenses that require complaint” (*delitos que requieren querrela*), meaning a victim must file a criminal complaint for a prosecution to begin, as opposed to *ex officio* offenses, which prosecutors can pursue without a complaint.²²³ For over a year, intra-familial

²¹⁷ Human Rights Watch interview with Isabel P., Medellín, March 9, 2012.

²¹⁸ Human Rights Watch interview with Ximena A., Bogotá, February 24, 2012.

²¹⁹ Human Rights Watch interview with Dr. Zulima Mosquera, CAIVAS, Medellín, March 5th, 2012.

²²⁰ Human Rights Watch interview with Suzanna M., Medellín, May 2, 2012.

²²¹ *Ibid.*

²²² Law 1453/2011, <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley145324062011.pdf> (accessed August 10, 2012), art. 108.

²²³ Traditionally, society and the law saw these crimes as private, and thus having little harmful impact on society; thus, the logic followed, it should be the victim and not the state that determines whether prosecution should proceed.

violence was considered an offense that requires complaint (unless the victim is a minor), though previously it was considered an *ex officio* crime.²²⁴

Fortunately, lawmakers fought this reform. In November 2011, Senator Alexandra Moreno introduced legislation, with support from the Congressional Women’s Caucus, to once again classify intra-familial violence as an *ex officio* offense. The bill passed and went into force in July 2012.²²⁵ The bill not only removes intra-familial violence from the list of private offenses, it also states an affirmative mandate that justice authorities will investigate *ex officio* every single case of violence against women where officials have knowledge of the commission of such crime.²²⁶

While it is certainly a positive step that third parties and justice officials can initiate cases, and maintain cases even when victims drop charges (out of fear or for other reasons), more than a year passed during which victims of intra-familial violence were left vulnerable to pressure and threats to drop their cases. Advocates told Human Rights Watch that this change was particularly detrimental to cases involving displaced women. Many of them are economically dependent on their abusers, fearful of authorities, and face continuing threats, all of which may prevent them from filing and maintaining criminal charges.²²⁷

If a victim dropped the case during the period of time Law 1453/2011 was in force for intra-familial violence, the prosecutor’s office dropped the case as well. One prosecutor told Human Rights Watch that he had seen cases where perpetrators of domestic violence had threatened victims to drop the complaints, or threatened their children to force their mothers to do so.²²⁸ Extra steps may need to be taken by the attorney general’s office to review archived cases of intra-familial violence for instances where victims remain in danger, and re-initiate cases. This is important because, as the prosecutor from Cartagena explained (while the law was still in force) “[intra-familial violence as a private crime] diminishes the

²²⁴ See Law 1453/2011, art. 108.

²²⁵ Law 1542/2012, <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley154205072012.pdf> (accessed September 19, 2012).

²²⁶ *Ibid.*, arts. 2-3.

²²⁷ See, for example, Human Rights Watch interview with Dilia Rodriguez, director, CERFAMI, Medellín, March 9, 2012.

²²⁸ Human Rights Watch interview with local CAVIF prosecutor, Cartagena, April 25, 2012. Dulcea’s case is an example of a victim being pressured by a perpetrator to drop her cases. See discussion of Dulcea A.’s case below. Human Rights Watch interview with Dulcea A., Medellín, May 2, 2012.

progress under Law 1257/2008. What's the difference between domestic violence and murder? Because that's [how this violence] can end ... if a woman drops her case..."²²⁹

Limited State Resources

A few government officials complained there are not enough resources for the successful investigation and prosecution of sexual or intra-familial violence crimes. There are simply too many cases and too few prosecutors, investigators, and forensic examiners. Others said their offices could not adequately support victims without investing in psychological support.

An official working at a CAIVAS told Human Rights Watch: "The problem is that justice is slow. There are lots of cases, and few officials and prosecutors. We are too few."²³⁰

In Cartagena, two prosecutors work on all the intra-familial violence cases. They have 4,000 cases between them. Each prosecutor has to conduct both the investigations and prepare the cases for court. One prosecutor working in the office lamented that at times "we are paralyzed" by the amount of work.²³¹ The CAVIF in Bogotá has about 1,600 cases of intra-familial violence reported each month, and 19 prosecutors working on the cases. Many of the cases are closed after couples reconcile, but prosecutors continue to carry high caseloads.²³² An employee at the CAIVAS in Bogotá gave Human Rights Watch an unofficial estimate that they currently have 11,000 open cases, and about 37 prosecutors covering those cases.²³³ The high case load prosecutors must carry reinforces the pressure for pursuing only cases where physical evidence exists.

INMLFC resources are also limited geographically. In 30 major cities, the INMLCF examination process for victims of sexual or intra-familial violence functions relatively well. But in the rural municipalities, students fulfilling their social service requirements often perform forensic medical examinations. Some have had little training specifically on gender-based violence. One representative of a UN agency that provides technical assistance to Colombia on women's rights and health told Human Rights Watch there is very little training on forensic medicine in schools and some doctors have not been

²²⁹ Human Rights Watch interview with local CAVIF prosecutor, Cartagena, April 25, 2012.

²³⁰ Human Rights Watch interview with Dr. Zulima Mosquera, CAIVAS, Medellín, March 5, 2012.

²³¹ Human Rights Watch interview with local CAVIF prosecutor, Cartagena, April 25, 2012.

²³² Human Rights Watch interview with Jeanethe Rodríguez Pérez, Coordinator, CAVIF, Bogotá, March 16, 2012.

²³³ Human Rights Watch interview with unnamed employee, CAIVAS, Bogotá, March 13, 2012.

exposed to the basic anatomy involved in such an exam. “This isn’t provided in university [curriculum] ... they don’t know what to look for.”²³⁴

Advocates and officials also told Human Rights Watch that there are not sufficient resources for psychological support for victims of gender-based violence when reporting cases. One official in the inspector general’s office in Medellín (which receives displaced victims) told Human Rights Watch that the lack of psychologists in her office was harmful to victims and difficult for other staff:

In offices where we have victims, we need psychologists. We need this. I am a lawyer, but I have to act like a psychologist [though I’m not trained in that]. The victims have to relive all [that has happened to them] to verify their claims when they come here.²³⁵

Poor Referrals

To maximize access to justice for displaced women who are victims of gender-based violence, officials in other sectors—including the health sector—must provide referrals. Health centers and hospitals that treat victims may be the only government institution they initially trust. Detection of abuse and referrals from health providers can play an important role in ensuring access to justice and protection for victims.

In the last chapter, we discussed how some displaced women and girls told Human Rights Watch that they sought medical care for injuries from domestic violence, but they did not reveal the abuse to the health provider. Several said their health provider did not ask about abuse, and the victims returned to the violence. One advocate explained, “For displaced women, in their situation, they have more difficulty accessing services. But they have other priorities other than accessing justice services for violence—they are under fear, pressure, and threats.”²³⁶ The failure to screen for gender-based violence means that these victims will not be referred to the justice sector, and that perpetrators will not be held accountable for their crimes.

²³⁴ Human Rights Watch interview with Esmeralda Ruiz, UNFPA, Bogotá, February 23, 2012.

²³⁵ Human Rights Watch interview with Claudia Patricia Vallejo, human rights coordinator, Office of the Inspector General, Medellín, March 6, 2012.

²³⁶ Human Rights Watch interview with Esmeralda Ruiz, UNFPA, Bogotá, February 23, 2012.

In light of this, it is vital that healthcare workers orient women and girls about their rights to judicial remedy and the process for seeking justice. Indeed, Colombia's "referral pathway" flow charts indicate that this is a key component of the response to gender-based violence.

However, health providers do not always provide this support. Sofia V., a displaced woman living in Bogotá, said she repeatedly sought medical treatment after her husband beat and injured her. A doctor finally asked her why she did not file a complaint against him. Sofia told him that she was married to a demon and worried about what would happen to her children if she reported it. The doctor did not probe further and did not provide information regarding her rights, nor any referral. Instead, Sofia returned to her husband to endure years of abuse. She finally left him in 2011, after one of his blows broke her nose.²³⁷

Elena L. also suffered years of abuse at the hands of her partner, a member of an irregular armed group. After three years of abuse, she sought medical treatment for a miscarriage. An advocate who worked with Elena explained, "Due to severe beating, the fetus died and she suffered a miscarriage. Despite the bruises and marks on her body, the hospital never inquired about what happened."²³⁸ The hospital did not provide Elena any referral to justice mechanisms. Elena returned and her husband continued to rape and beat her, resulting in an unintended pregnancy.

Some health professionals may fail to refer patients to the justice sector or to report cases themselves out of fear for their own safety. A women's health organization in Cali was asked by the government to teach the protocol for treating victims of sexual violence to health professionals in six municipalities in Valle de Cauca. The trainers found resistance among providers to following the protocols when the aggressors are armed actors. One trainer told us, "They don't want to file a formal complaint about anything—whether sexual violence or intra-familial violence—if the perpetrator is dangerous."²³⁹ According to her, some doctors will go so far as report any injuries sustained as originating from some other source, to avoid putting themselves in a position where they might have to provide

²³⁷ Human Rights Watch interview with Sofia V., Bogotá, February 24, 2012.

²³⁸ Summary of cases provided in Human Rights Watch interview with Beatriz Quintero, La Mesa por la Vida y la Salud de las Mujeres, May 10, 2012.

²³⁹ Human Rights Watch interview with Valeria Eberle, Sí Mujer, May 9, 2012.

testimony in an investigation or case.²⁴⁰ While she is not sure how widespread this problem is, she knows that it does happen in some cases, and that in those cases, women are not properly referred to the justice sector.

Costs of Seeking Justice

The Colombian government has taken some measures to limit the expense of pursuing justice after gender-based violence, yet the costs that remain can be prohibitive for poorer women and girls, including the displaced. Human Rights Watch found a consensus among advocates, officials, and victims that costs of transport for victims and witnesses—and in some cases costs of producing evidence—were a significant barrier to justice for gender crimes. As Paola E., a victim of intra-familial violence and mother to a child victim of sexual violence, put it, “it is very expensive to be a victim.”²⁴¹

In most cities and towns, victims of gender-based violence must pay for transportation to police stations, prosecutors’ offices, courts, and other justice institutions. Displaced women and girls often live far from city centers where many justice institutions are located, making their trips long and costly. Given the high poverty rates among displaced women, paying for public transport to these places can be difficult. Moreover, these women also face the additional economic constraints of taking time from their income-generating activities to make these trips. Many also have to pay for childcare when they are away, or additional transport costs to bring their children along.

Alejandra C., who struggled with the costs of seeking justice after her daughter was raped in May 2011, told Human Rights Watch, “The attorney general’s office is in [a different neighborhood than where I live]. It takes me more than an hour. It costs about 1,500 pesos (about \$.80) one-way in a minibus. But sometimes if the kids are coming home from school I have to be home earlier so I need a taxi. These are more expensive: 20,000 pesos (more than US\$10). I don’t go [to the attorney general’s office] if the kids are with me. If I do, I need money for food and water.”²⁴² Other women said they had to pay transport costs to give testimony or bring in witnesses to testify in their investigations.²⁴³

²⁴⁰ Ibid.

²⁴¹ Human Rights Watch interview with Paola, Medellín, March 9, 2012.

²⁴² Human Rights Watch interview with Alejandra C., Cartagena, February 28, 2012.

²⁴³ See, for example, Human Rights Watch interviews with Pilar A., Bogotá, February 25, 2012, Marta B., Medellín, May 3, 2012, and Maribel A., Medellín, May 2, 2012.

Uncoordinated referrals to other services can result in higher transportation costs for victims. The integrated service centers, CAIVAS and CAVIF, are designed to reduce the number of trips a victim has to make to receive services. But in most cities, victims still bear transport costs to these centers, and to other institutions such as forensic medical testing locations. One prosecutor told Human Rights Watch that some victims cannot afford to go to the INMLCF.²⁴⁴ Medellín is one exception, as the CAIVAS there has a vehicle for transporting victims. But this one vehicle is not enough to provide transport for all victims.²⁴⁵ In Cartagena, CAIVAS and CAVIF are located in the same building, but victims have to pay for transportation to the INMLCF facility.²⁴⁶

Some officials reach into their own pockets to help victims. For example, the CAIVAS in Medellín takes up collections of personal funds to pay victims' transportation costs when needed, and even to buy refreshments for victims who spend long hours at the center in the process of reporting.²⁴⁷

Victims also told Human Rights Watch that they struggled to afford costs related to providing evidence in their cases.²⁴⁸ Dolores G. said that she had to pay to have her testimony typed up before the prosecutor would accept her complaint in 2003:

When I finally decided to leave my husband ... I talked to a friend who said I could stay with her. She gave me money to go to the prosecutor's office. When I arrived, they said I couldn't file a complaint because there was nothing to write it on. I had to go to the corner and pay a stranger to type up what I was going to say to the prosecutor.²⁴⁹

One prominent women's rights defender whose organization has worked with hundreds of victims said that this problem remains commonplace:

²⁴⁴ Human Rights Watch interview with local CAVIF prosecutor, Cartagena, April 25, 2012. The CAIVAS and CAVIF location in Cartagena is designed to have a medical-legal clinic in-house, but it currently is not open.

²⁴⁵ Human Rights Watch interview with Dr. Zulima Mosquera, CAIVAS, Medellín, March 5, 2012.

²⁴⁶ Human Rights Watch interview with local CAVIF prosecutor, Cartagena, April 25, 2012.

²⁴⁷ Human Rights Watch interview with Dr. Amparo, CAIVAS, Medellín, March 5, 2012.

²⁴⁸ Human Rights Watch interview with Paola, Medellín, March 9, 2012. According to Paola, "[victims] have to go to the prosecutor, to go to the hearings with the judge, [and] to pay for photocopies."

²⁴⁹ Human Rights Watch interview with Dolores G., Cartagena, April 24, 2012.

The economic condition of the victim is important. [A victim often] doesn't have the economic means to follow the case, have a lawyer, introduce evidence and witnesses, or even experts. If you want the justice system to work, you have to do all that as the victim of the crime.²⁵⁰

Fear of Retaliation

Several displaced women and girls told Human Rights Watch that fear of retaliation by rapists or abusive husbands delayed or stopped them from reporting violence. One woman told Human Rights Watch that even after reporting she remains fearful and may drop her case.²⁵¹

Displaced women and girls have been forced from their homes by terrifying experiences, often from communities where armed groups exercise strong influence and social control. In such places—especially those with the presence of paramilitaries or their successor groups—the very authorities that received reports of crimes may have had links to the suspects.²⁵² Having lost trust of authorities, displaced women and girls may doubt the safety of filing a complaint, even in their new city or for crimes committed after their displacement.

Fear of retaliation is especially strong among women attacked by men they believe were affiliated with irregular armed groups, and among women living with abusive husbands. Socorro Y., a 40-year-old displaced woman, was raped in Bogotá in late 2009 by armed men she believes were connected to a paramilitary successor group. She says she chose not to file a formal complaint about the crime because the rapists threatened to kill her: “I didn’t denounce because of shame and fear and because they said they would kill me. I was thinking of my children.”²⁵³ Socorro believes that some irregular armed groups have connections to the police and that reporting violence would only increase her risk for more violence.

Paloma L. did call the police after armed men raped her in March 2012 outside of Medellín. She was afraid when the police arrived, and told them that it had been a mistake to call to report the rape. Paloma says that they agreed with her. “First they told me to go to the

²⁵⁰ Human Rights Watch interview with Olga Amparo, director of Casa de la Mujer, Bogotá, February 20, 2012.

²⁵¹ Human Rights Watch interview with Isabel P., Medellín, March 9, 2012.

²⁵² See Human Rights Watch, *Colombia – Breaking the Grip?: Obstacles to Justice for Paramilitary Mafias in Colombia*, January, 28, 2009, <http://www.hrw.org/reports/2009/01/28/breaking-grip>.

²⁵³ Human Rights Watch interview with Socorro Y., Bogotá, February 24, 2012.

prosecutors to file a declaration, and then they left. They didn't ask me any questions about who did it," she said.²⁵⁴ Reflecting on the reaction of the police officers, who offered her no assurances about her safety, she decided not to report the case to the prosecutor's office.

Gloria L., a woman who suffered a gang rape in 2012 by armed men that left her pregnant, also decided it was too risky to report the rape. She said,

The fear is immense. You can't imagine. I don't want to die. They kill people in such a horrible way. This is what's so worrying; they cut people up. More than 10 women were killed for denouncing their rapes. After that, they killed their children. That's what [the assailants] told me [after they raped me].²⁵⁵

Dulcea A., a 45-year-old displaced indigenous woman and a victim of domestic violence, struggled to have her case taken seriously and lived in fear after filing a complaint. She first filed a criminal complaint against her husband for physical abuse in 2005.²⁵⁶ She left him, but she told Human Rights Watch, he started carrying a gun, machetes, and even rocks, finding her and threatening her with these weapons. Every time he made a threat, she would file a complaint. "I filed complaint, after complaint, after complaint; a thousand times it feels like I have filed complaints," she told Human Rights Watch.²⁵⁷ Only after he broke down her door in December 2011 was there any action on her case; he was put in jail awaiting trial.²⁵⁸ Even though he is in jail for now, she is not convinced there will be justice in the end. His lawyer keeps calling her house telling her that she is evil for putting the father of her children in jail, and pressuring her to drop the charges.²⁵⁹ "For me, there was no real law," Dulcea told Human Rights Watch.²⁶⁰ She has not dropped the charges yet, but she is afraid. "He is a person that has killed people," she told Human Rights Watch. "He was part of an illegal armed group. The law doesn't know how bad he really is. For 16 years, I've lived through it.... 'Let him come home,' the lawyer says, but I will not."²⁶¹

²⁵⁴ Human Rights Watch interview with Paloma L., Medellín, May 2, 2012.

²⁵⁵ Human Rights Watch interview with Gloria L., Medellín, May 2, 2012.

²⁵⁶ Human Rights Watch interview with Dulcea A., Medellín, May 2, 2012.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

A few women who spoke with Human Rights Watch had suffered sexual violence almost a decade ago, but only came forward to file a formal complaint recently because of Law 1448/ 2011: the Victims and Land Restitution Law. For some of these women, the delay in coming forward may mean that the perpetrators will not be brought to justice in their cases. Ana E., for example, was raped by paramilitaries in 2001, and forcibly displaced. For years after, her husband physically abused her, blaming her for the rape; saying she must have asked for it.²⁶² Because of the abuse, and from fear of retaliation from the perpetrators, Ana waited 10 years to file a formal complaint about the crime. When she went to the attorney general's office in May 2011 to file a complaint about the crime, the prosecutor taking her statement congratulated her for coming forward. But she did not refer Ana to the INMLCF for forensic testing as too much time had passed. In January 2012 the prosecutor asked Ana for a list of witnesses. "I told her, 'I have the paramilitaries who raped me as witnesses, that's all I have,'" Ana told Human Rights Watch.²⁶³ But she does not know their names, only faces. Without witnesses, Ana believes her case is doomed. Although, this would be a difficult case to pursue even in optimal judicial systems, it discourages her that she overcame her fear, and there will be no result.

Domestic violence victims also said they feared retaliation by their husbands, both against themselves and their children, if they reported abuse. Marlise L., a victim of gender-based violence herself and a leader within her displaced community in Cartagena, told Human Rights Watch,

There is a lot of intra-familial violence where I live. There are programs, but people don't go because they are afraid. Fear is a huge obstacle to reporting.... Women accept that when they speak out, no one from outside will help and speaking out will make more instability for them.²⁶⁴

A 2011 study by Profamilia found that few victims of gender-based violence in Colombia report it to the authorities.²⁶⁵ While 45 percent of women surveyed who had experienced physical violence sought help from family or friends, many fewer reported the violence to

²⁶² Human Rights Watch interview with Ana E., Medellín, May 3, 2012.

²⁶³ Ibid.

²⁶⁴ Human Rights Watch interview with Marlise L., Cartagena, March 1, 2012.

²⁶⁵ See USAID/ProFamilia, *Encuesta en Zonas Marginadas 2011: Salud Sexual y Salud Reproductiva, Desplazamiento Forzado y Pobreza 2000-2011* (Bogotá, 2011), p. 69.

authorities. Among displaced women surveyed, only about one quarter reported violence to authorities.²⁶⁶ Displaced women were more likely than the general population to say that fear of more abuse and fear of separation stopped them from reporting.²⁶⁷

This fear of separation may include separation from their children, if the children are put in protective custody. Some of the displaced women and girls who spoke to Human Rights Watch reported having the Colombian Institute of Family Welfare (ICBF) relocate their children for a period of time after they reported cases of intra-familial or sexual violence. Although child protection measures—including temporary removal from parents if necessary—are important, the fear of losing their children to protective custody may lead some women to delay or not report acts of intra-familial violence.

Lucia M. says that she hid from her husband with her children for over 18 months in a municipal shelter in Medellín starting in 2010. When her eligibility for shelter ended, she had to move out of the housing. She says she was not able to provide good quality housing and did not have a steady job, so ICBF put her children in protective custody.²⁶⁸ Lucia does not know how she will get them back:

ICBF took all six of my children away because I don't have anywhere to live. I need to work before they can give me my children back. I need a large house, because they say there is not enough room in the house [I rent now].... I went from the country side to here. I don't know almost anything. How can I get a job? Without a job, I can't get my kids back. What am I going to do? I don't know....²⁶⁹

Lucia said that she wonders if she would have been better off not reporting the abuse.²⁷⁰

²⁶⁶ Ibid., Anexo 9.10, p. 160.

²⁶⁷ The study also found that higher numbers of displaced versus non-displaced women said they did not report due to lack of faith in the justice sector, negative experiences with denouncing, not knowing where to go, belief that the violence was not severe, and not wanting to harm the aggressor. See *ibid.*

²⁶⁸ Human Rights Watch interview with Lucia M., Medellín, May 2, 2012.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

V. Barriers to Assistance and Protection Measures

The most essential protection measure is the effective prosecution of crimes of sexual violence. If the criminal justice system does not work to identify, prosecute, and punish perpetrators of sexual violence, impunity will only ensure that sexual violence escalates and more and more women are abused and re-abused.

Nevertheless, in addition to a robust and rigorous criminal justice response, other measures of assistance and protection should be available to victims of sexual violence. The Colombian government has established important humanitarian assistance measures for displaced families, and has innovative protection measures for victims of gender-based violence and for human rights leaders. These programs offer essential—even lifesaving—support for the displaced, for victims of violence, and for individuals at risk of violence.

However, having gone to great lengths to create these programs, the government must ensure that they are effective and accessible. This section examines several flaws in the implementation of these programs, and how they are falling short in assisting and protecting some of the people they are meant to serve. The flaws examined here include challenges created by the registration system for humanitarian assistance when an abusive husband is the primary registrant, shortcomings of the protection measures envisioned by Law 1257/2008, and challenges women leaders face in the Ministry of Interior protection program.

Humanitarian Assistance for Displaced Persons

Colombia has an extensive network of social assistance programs for internally displaced people.²⁷¹ However, the programs do not adequately take into account how intra-familial

²⁷¹ See Law 387/1997, <http://www.alcaldiaBogotá.gov.co/sisjur/normas/Norma1.jsp?i=340> (accessed July 17, 2012), arts. 15-17. The law is partially regulated by Decree No. 2569/2000, published on December 19, 2000, establishing the registration of internally displaced persons in the Unified Registry of Displaced Populations. See Decree No. 2569, Department of Interior, December 19, 2000, <http://www.dnp.gov.co/LinkClick.aspx?fileticket=8oUl3VP8zz8%3D&tabid=1080> (accessed July 17, 2012). Articles 8, 11, 14, 16, 18, 21 and 26 of the Decree were declared partially invalid by a ruling adopted by the State Council (Consejo de Estado) on June 12, 2008. According to Law 387/1997, humanitarian emergency assistance can be received up to six months, but the Constitutional Court has ruled that humanitarian emergency assistance should be extended until the internally displaced is able to be self-sufficient. In the past, internally displaced persons who needed immediate assistance had to wait days without food, a place to sleep or other basic needs, until a decision was made, even though temporary measures for the internally displaced in extreme situations were legally recognized. See Human Rights Watch, *Colombia—Displaced and*

violence is a barrier to accessing assistance. As one woman’s rights advocate who has worked with hundreds of displaced women in Cartagena explained to Human Rights Watch, “some women are heads of household, but don’t receive any assistance ... their husband is listed as the head of household, but if he leaves the household, the aid [leaves] with him. This is a huge problem with intra-familial violence.”²⁷²

Displaced persons are entitled to immediate and emergency assistance for food, toiletries, kitchen utensils, supplies, medical or psychological care, emergency transportation, and temporary housing. The amount is determined by the size and composition of the household.²⁷³ Displaced persons are then entitled to longer-term economic and social stabilization measures and humanitarian transition assistance.²⁷⁴ The law also provides entitlements to healthcare and education.

Displaced families that report their displacement to a local office of the Public Ministry (which triggers immediate assistance) put all family members under the name of one primary registrant, which in effect is considered the “head of household.”²⁷⁵ According to a high-ranking official familiar with the registration process, the person who reports their family’s displacement chooses who is listed as the head of household.²⁷⁶ While either men or women can be the primary registrant, most women who were not already head of household at the time of displacement told Human Rights Watch that their families had the husbands listed as the main registrant, and the wife and children were “under” his name. The primary registrant controls and manages the family’s access to the benefits. For those who went on to suffer domestic violence, this bureaucratic designation—which was key to their basic livelihood—resulted in believing that had to choose between staying in abusive households with humanitarian assistance or leaving abuse but losing assistance. The Constitutional Court recognized this in Auto 092, stating that when women assume the head of household but are not recognized as such, it can impede their access to assistance.²⁷⁷

Discarded: The Plight of Internally Displaced Persons in Bogotá and Cartagena, Human Rights Watch vol. 17, no. 4(B), October 2005, <http://www.hrw.org/sites/default/files/reports/colombia1005.pdf>.

²⁷² Human Rights Watch interview with Antonia Gomez Fuentes, Red de Empoderamiento, Cartagena, Feb 29 2012.

²⁷³ Decree 2569/2000, art. 22.

²⁷⁴ See Law 387/1997; Decree 2569/2000, and Law 1448/2011, arts. 60-68.

²⁷⁵ Law 387/1997, art. 32.

²⁷⁶ Human Rights Watch interview with official from the Special Administrative Unit for the Integrated Attention and Reparation for Victims, Bogotá, September 3, 2012.

²⁷⁷ See Constitutional Court of Colombia, Auto 092, IV.B.1.4.7.

Dulcea A., a 45-year-old displaced indigenous woman, experienced this dilemma. She, her husband, and three children arrived in Medellín from Chocó in 2002, and registered with authorities in the name of her husband. They received humanitarian and housing assistance for six months.²⁷⁸ Dulcea said her husband had beaten her “a bit” prior to the displacement, but the abuse became worse after displacement, and then he raped her daughter. She left him, and in so doing, lost housing and other assistance, including food aid.²⁷⁹ “Now that I have left him, he received the house, and I have the three children,” she told Human Rights Watch. She did not know of any way to transfer the registration to her name, but a women’s rights organization that works with victims has recently helped her file a petition to change the registration. To this day, however, she says that she has no access to humanitarian assistance for the displaced. She struggles to feed and house her children, and survives by making and selling indigenous jewelry. She is teaching her children to do the same.

People like Dulcea can change their registration, including household composition, upon application and anytime, as well as through the renewal and review process that occurs every two years.²⁸⁰ But victims, officials and NGOs working with victims all said this process is not well known, and can be slow and onerous. It is particularly challenging for those who lack Spanish speaking skills, like Dulcea, or who have limited literacy. A representative of the inspector general’s office in Medellín—which receives victims and can inspect government services, including provision of benefits to the displaced by the Special Administrative Unit for the Integrated Care and Reparation for Victims (Victims’ Unit)—recognized registration procedures as a barrier to benefits for some women: “[A terrible situation] is when [an abusive] husband receives [benefits], the husband is listed as the head of the nuclear family. It was declared this way and it will stay this way if women don’t know their rights. They stay quiet.”²⁸¹

Several women told Human Rights Watch that they did attempt to change their registration with the government after leaving abusive husbands, but that the bureaucratic process was slow, or in some cases the agency never completed the change. Officials from the

²⁷⁸ Human Rights Watch interview with Dulcea A., Medellín, May 2, 2012.

²⁷⁹ Ibid.

²⁸⁰ Human Rights Watch interview with Amparo Salinas, advisor, Department of Social Prosperity, Bogotá, April 27, 2012.

²⁸¹ Human Rights Watch interview with Claudia Patricia Vallejo, human rights coordinator, Office of the Inspector General, Medellín, March 6, 2012.

special victims unit disagree that it is an onerous or lengthy process.²⁸² One of these officials claims that the process of changing the head of household on the registration should take between a day and a week, depending on geographic location.²⁸³ Lucia M.'s husband beat her after their displacement, and she left him. She says that she filed papers to change the family's registration with the Department for Social Prosperity through a local unit of care and orientation for the displaced (UAO) but was never notified that the change was effective. Lucia explains,

I went to UAO to change the name. I got a letter that it is all in process. No one at the number on the letter responds to me. I need to be the head of household. It needs to change, but until now, nothing.²⁸⁴

Protection Measures under Law 1257/2008

Protection measures for victims of gender-based violence are available under Law 1257/2008. Earlier laws initially established orders for protection specifically for victims of intra-familial violence,²⁸⁵ but Law 1257/2008 subsequently expanded the protection measures to apply to victims of violence perpetrated by non-family members.²⁸⁶ Victims can start the process of procuring orders for protection measures through several government offices, including certain municipal officers, family commissioners, courts, or prosecutors.²⁸⁷

However, while Colombia's legal framework for orders for protection is progressive, the system does not always operate effectively.

²⁸² Human Rights Watch interview with Amparo Salinas, advisor, Department of Social Prosperity, Bogotá, April 27, 2012; and Human Rights Watch interview with high ranking official, Special Administrative Unit for Assistance and Comprehensive Reparations for Victims, Bogotá, September 3, 2012.

²⁸³ Ibid.

²⁸⁴ Human Rights Watch interview with Lucia M., Medellín, May 2, 2012.

²⁸⁵ Law 294/1996 and Law 575/2000.

²⁸⁶ Law 1257/2008, art. 18.

²⁸⁷ The process is slightly different for the two. The competent authority to issue protective measures is the Family Commissioner of the jurisdiction where the events of violence took place. If there is no family commissioner, the competent authority will be the municipal civil judge of the municipality where the plaintiff resides or where the aggression was committed. The competent authority is the same for cases of domestic violence or violence outside the family sphere. If cases of violence outside the family sphere or domestic violence crimes are presented to the attorney general's office, the prosecutor or the victim could present a request before the guarantees control judge in order to be granted a protective measure, including a provisional protective measure established in article 17 or 18 of Law No. 1257. See Decree 4799/2011. In some jurisdictions, however, prosecutors choose to send victims to family commissioners to seek protective orders. Human Rights Watch interview with a family commissioner who agreed to speak under anonymity, May 4, 2012. When prosecutors do this, it can create a delay in the issuance of the order—up to fifteen days by one calculation. Ibid.

Human Rights Watch did not speak to any victims who encountered difficulties receiving protection for intra-familial violence under Law 1257/2008. However, government officials and women’s rights advocates say there continue to be obstacles to the law’s effective implementation. For example, one government official told Human Rights Watch that many victims are not instructed to deliver the protection order to the police precinct nearest her residence.²⁸⁸ Consequently, the official said, the police never receive notice of the protective order and therefore take no steps to protect victims from subsequent violence or threats.²⁸⁹

Law 1257/2008 and its subsequent Ministry of Justice regulation also make clear that when a victim files a criminal complaint in a case of intra-familial violence, a prosecutor can seek the protection order from a judge, without involving a family commissioner. However, in some jurisdictions prosecutors continue to send victims to family commissioners to seek protective orders, rather than request an order directly from the judge.²⁹⁰ When prosecutors do this, it can create a delay in the issuance of the order: up to fifteen days by one calculation.²⁹¹

Because protective measures for victims of violence outside the family sphere are new under Law 1257/2008, their track record is difficult to assess. The government only promulgated regulations for these measures at the end of 2011 and Human Rights Watch was unable to find victims or advocates with examples of protective orders under this mechanism. However, Human Rights Watch spoke with a few women who—since the promulgation of these regulations—said that they pleaded with prosecutors for protection and received none. This left them living in fear.

Isabel P. is married and has two small children. She told Human Rights Watch that after a man with alleged ties to drug traffickers and paramilitaries sexually assaulted her in 2011, she was afraid to report the attack: “If a narco or paramilitary likes a woman, you have to take the abuse,” she told Human Rights Watch.²⁹² But despite her fears, Isabel says she decided to lodge a formal complaint about the abuse in November 2011 and ask prosecutors for protection. She did not know about the measures under Law 1257/2008,

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Human Rights Watch interview with Isabel P., Medellín, March 9, 2012.

which include referring women and their children to safe places, police protection at a victim's home and workplace, and any other means necessary to fulfill the objectives of the law. According to Isabel, prosecutors did not help her with any measures such as offering regular police patrols around her house, a cellular phone with direct access to police or investigators, or even assistance in relocation. Instead of providing assistance, Isabel said, "[the prosecutors] told me we had to change houses."²⁹³ And, with no protection at her work place, Isabel said, "I had to leave my work."²⁹⁴ Isabel does not qualify for temporary safe-housing through the government, because her husband is not allowed in the safe houses.

Isabel, her children, and her husband left their home and stayed at friends' houses, changing homes every few days for four months. In late February 2012, just weeks before speaking with Human Rights Watch, Isabel says she received a call: "You are going to pay," the caller told her, and then hung up.²⁹⁵ Fearing it was her attacker, Isabel says that she reported the threat and again asked for protection, but that prosecutors did not offer to help her procure any protection under Law 1257. Isabel told Human Rights Watch that she was beginning to regret ever having reported the attack.²⁹⁶

Maria Claudia M.'s partner raped her 14-year-old daughter in 2011; he was not her daughter's father. She says that when she caught him, he pushed Maria Claudia against a wall with a machete to her throat and threatened her not to tell anyone. "Do anything, and I will kill you," he told her.²⁹⁷

According to Maria Claudia, he then fled and she immediately took her daughter to report the crime and receive medical treatment. She told Human Rights Watch that her daughter and son were both put in ICBF custody. The ICBF told her it was for treatment, not for protection. Her children were released back to her after a month, and Maria Claudia told Human Rights Watch no further protection measures were provided by any authority. Maria Claudia said that she was afraid for her and her children's safety: "It gives me fear that he is

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Human Rights Watch interview with Maria Claudia M., March 1, 2012.

free. He is an aggressive, dangerous man. He has links to paramilitaries.”²⁹⁸ Maria Claudia had made her concerns clear to the prosecutor in her daughter’s case, but says that the prosecutor did not inform her of any potential protection measures such as more secure locks for her home, access to government-provided housing for displaced people, a phone with direct access to police, or routine police patrols around her home. Two months after that interview, her partner threatened her and her children again. She still lacked protection.

Magdalena C. had a similar experience. A young mother displaced to Cartagena, she lives in constant fear after a neighbor raped her five-year-old daughter in 2011.²⁹⁹ Magdalena moved the family to a different neighborhood, but says that she did not receive any protection from the state. She did not receive any relocation assistance. Instead, her daughter was placed in ICBF protective custody, and the ICBF required Magdalena to have a house with a separate room for her daughter before her daughter could return home. She had to sell off all of her valuables to afford the relocation. The perpetrator remains free, and has followed them to their new neighborhood.³⁰⁰ Magdalena says that the prosecutor in the case did not inform her of potential protection measures, but that she wants some form of protection. “As the victim, we had to leave [our neighborhood] ... And he has found us.... No precautionary measures for either my daughter or me,” said Magdalena.³⁰¹

Protection for Human Rights Defenders

Since 1997, Colombia has had a specialized unit within the Ministry of Interior tasked with protecting human rights defenders, trade unionists, and other at-risk individuals pursuant to Law 418.³⁰² The program is the most advanced of its kind in the region. After years of problems and concerns by civil society and UN human rights agencies that human rights defenders remained at risk,³⁰³ this protection unit instituted sweeping reforms in 2011.³⁰⁴

²⁹⁸ Ibid.

²⁹⁹ Human Rights Watch interview with Magdalena C., Cartagena, March 1, 2012.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² See the Law 418/1997, creating the National Protection Program for Human Rights Defenders, http://www.dmsjuridica.com/CODIGOS/LEGISLACION/LEYES/Lo418_97.htm (accessed July 18, 2012). Colombia is one of the first countries in the world to create a program of this nature. Law 418/1997 was reformed in several occasions and article 81 was regulated by Decree No. 2816/2006, http://www.presidencia.gov.co/prensa_new/decretoslinea/2006/agosto/22/dec2816220806.pdf (accessed July 18, 2012). Decree 2816 was further reformed by Decree 1740/2010, <http://www.alcaldiaBogotá.gov.co/sisjur/normas/Norma1.jsp?i=39576> (accessed July 18, 2012).

³⁰³ The UN Special Rapporteur on Human Rights Defenders Margaret Sekaggya visited Colombia in 2009 to assess the situation of human rights defenders in the country. She concluded that patterns of harassment and persecution against

Currently, about 9,000 at-risk individuals receive some form of protection—ranging from cellular phones programmed with direct numbers to local police, to 24-hour bodyguards.³⁰⁵ Approximately 1,500 participants receive some form of protection via bodyguards.³⁰⁶ With the reforms, the agency now undertakes needs assessments that consider each potential beneficiary's profile, taking into account gender, ethnicity, and other factors.³⁰⁷

The impetus for creating this protection unit is the serious and pervasive threats—as well as acts of violence—which Colombian human rights defenders, community leaders, and other at-risk individuals face, often from irregular armed groups. Individuals working on women's rights across the country, and displaced community leaders, are among those targeted. The Inter-American Commission on Human Rights has granted precautionary measures to women human rights defenders in response to incidents of sexual violence, physical assaults, and death threats; however, in 2011, the commission raised concerns that Colombia had hitherto failed to implement these measures.³⁰⁸ Colombia's Constitutional Court recognized that displaced women leaders face targeted abuses in Auto 092/2008:

Displaced women who assume leadership in displaced population organizations, workers organizations, human rights promotion, or social and community leadership become exposed to multiple threats, pressure, and risks made by illegal armed groups that many times lead to their murder.”³⁰⁹

human right defenders and their families continued to exist in Colombia. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders on her visit to Colombia, Margaret Sekaggya, U.N. Doc. A/HRC/13/22/Add.3, March 4, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/116/15/PDF/G1011615.pdf?OpenElement> (accessed July 31, 2012), p. 26. See also Statement of the Special Rapporteur on the situation of human rights defenders as she concludes her visit to Colombia, September 18, 2009, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=111&LangID=E>, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=68&LangID=E> (accessed July 31, 2012). She also raised concerns about the persistent insecurity faced by different defenders (journalists, women defenders, indigenous and Afro-Colombian leaders, lawyers, young activists, among others) ³⁰³; their stigmatization by public officials and non-state actors; their arbitrary arrest and detention and judicial harassment; their illegal surveillance by intelligence services; and raids of non-governmental organizations' premises and theft of information.

³⁰⁴ See Decree 4065/2011, creating the National Protection Unit, http://www.secretariasenado.gov.co/senado/basedoc/decreto/2011/decreto_4065_2011.html (accessed July 18, 2012). See also Decree 4912/2011, regulating the prevention and protection program of the Ministry of the Interior and the newly created National Protection Unit, <http://www.alcaldiaBogotá.gov.co/sisjur/normas/Norma1.jsp?i=45248#53> (accessed July 18, 2012).

³⁰⁵ Human Rights Watch interview with Andrés Villamizar, director, National Protection Unit, Ministry of the Interior, Bogotá, March 2, 2012.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ IACHR, 2011 Annual Report, Chapter 4, <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp> (accessed September 19, 2012).

³⁰⁹ Constitutional Court of Colombia, Auto 092 of 2008, I.V.B.1.10.

Auto 092/2008 ordered government authorities to take measures to address this problem and protect displaced women leaders.

However, in 2012, Human Rights Watch documented a range of abuses committed against more than three dozen displaced women leaders living in nine different departments since the Court issued Auto 092/2008.³¹⁰ The abuses include threats, rape, forced displacement, and intimidation, and often appear to be directly related to the victims' leadership activities. Most of the dozens of women's rights defenders Human Rights Watch interviewed said they had received threatening phone calls, emails, or written death threats delivered to their homes and offices, or had been approached and threatened in person, sometimes by masked and armed thugs. About a half dozen leaders interviewed by Human Rights Watch said they had suffered sexual violence, with the perpetrators saying this was their punishment for working on human rights. Several said they were raped in 2011 or 2012. Displaced women leaders told Human Rights Watch that they had the impression that threats and attacks have escalated since 2008.

A survey of women leaders working on displacement issues conducted by the National Network of Women also found that many suffered threats or attempts against their physical integrity or lives. Sixty-three percent of the women surveyed said that they or a member of their family or community had been a victim of threats against their physical integrity or life; 19 percent had been victims of attempts against their physical integrity or life; and 11 percent were victims of sexual violence.³¹¹ Threats and violence against such leaders directly impact the rights of all displaced women and girls, as they have a chilling effect on their ability to defend women's human rights.

The Ministry of Interior's protection unit is currently providing potentially life-saving protection measures to many displaced women leaders. The unit has taken concrete steps to ensure a gender-sensitive approach to protection, going so far as to procure bullet-proof

³¹⁰ This includes interviews conducted in the course of Human Rights Watch research on other topics. The departments included in the research are: Antioquia, Bolívar, Cesar, Chocó, Córdoba, Cundinamarca, La Guajira, Sucre, and Valle del Cauca. The leaders interviewed by Human Rights Watch are mestizo, Afro-Colombian, and indigenous, and involved in diverse activities that include advocating for land restitution, orienting newly displaced persons to available services, and providing support to displaced women and girls who are victims of sexual violence related to the conflict.

³¹¹ National Network of Women (Red Nacional de Mujeres), "Informe de seguimiento al Auto 092 de 2008: prevención y atención de las violencias contra las mujeres," December 2010, p. 55.

vests that are ergonomic to the female form.³¹² The unit also reports that it is hiring more female bodyguards, particularly for women who have been victims of sexual violence.

Nevertheless, there continue to be shortcomings in the unit's protection measures for displaced women leaders. Some of the leaders with whom Human Rights Watch spoke reported that their protection measures were inadequate compared to their level of risk, or that they did not receive any protection measures at all.³¹³

One important concern raised by the leaders is that their close family members are not covered by protection measures assigned to them by the National Protection Unit, despite threats against them, including their children. The protection program is designed to protect the individual directly in the program. If a woman is assigned a bodyguard detail, for example, her children are only protected by the detail if they are with her. These leaders often travel extensively for their work. When they leave their homes, their families are often left exposed. This leaves many leaders feeling vulnerable, because in some cases, their children have been threatened or attacked.

Socorro Y., a human rights defender who was raped by alleged members of a paramilitary successor group in 2009 and has been under Ministry of Interior protection at different times over the last several years, said she is as concerned for her children's safety as she is for herself:

When they attacked me, they made it very clear that I needed to stay quiet, because if I didn't the same thing that happened to me would happen to my children—to my daughter more than anyone.... These groups know how to destroy us. They know what we care about. That we are mothers.³¹⁴

Socorro's protection measures, however, do not include her children.

³¹² Human Rights Watch interview with Andrés Villamizar, director, National Protection Unit, Ministry of the Interior, Bogotá, March 2, 2012.

³¹³ One example of inadequate measures was solely being provided a bullet proof vest and cellular phone. See, for example of inadequate measures or no measures at all, Human Rights Watch interviews with Angela R., Valledupar, July 5, 2012; Corina L., Apartadó, July 20, 2012; Analia C., Cartagena, April 24, 2012; Clara V., Bogotá, February 24, 2012 and October 11, 2012; Ximena A., Bogotá, February 24, 2012 and October 17, 2012.

³¹⁴ Human Rights Watch interview with Socorro Y., Bogotá, February 24, 2012.

On May 14, 2012, the Ministry of Interior adopted Resolution 0805—a protocol for incorporating a gender-perspective and women’s rights into its protection program.³¹⁵ The new protocol in theory extends this protection to a leader’s nuclear family, but in practice the protection appears to work the same as before. The unit claims to lack jurisdiction over protection of minors, and so it relies on the ICBF to provide protection. But the ICBF does not have programs designed to protect children of leaders from the types of threats they face. Therefore, the new protocol does not address the need to protect the children of a female leader when she is separated from them due to her leadership activities.

The protocol contains other provisions that make it the Ministry of Interior’s clearest commitment to protecting women leaders. It specifically incorporates Colombia’s international human rights obligations and seeks to address the Constitutional Court’s mandates provided in Auto 092/2008. It also calls for close consultation with women’s rights groups—providing that at least four permanent non-voting members of the Committee for Evaluation of Risk and Recommendation of Measures (CERREM) be women designated by the women’s movement in Colombia.³¹⁶ The protocol also encourages participation and collaboration with women petitioners and beneficiaries of the protection program.³¹⁷ Most importantly for the women and girls with whom Human Rights Watch spoke, the protocol outlines special, emergency steps for displaced women and girls—recognizing the constitutional presumption of their risk.

Holding accountable perpetrators of violence and threats against leaders is essential to ensuring their durable protection. The National Protection Unit’s protocol recognizes the importance of complementary measures to enhance the protection, including measures to guarantee access to justice. It is primarily the duty of the Attorney General’s Office to provide access to justice.

Women leaders of the displaced reported facing a range of obstacles when seeking justice for abuses, including justice authorities downplaying the nature of the threats against them, failing to contact them after they filed a criminal complaint, and in some cases,

³¹⁵ Ministry of the Interior, Resolution 0805, May 14, 2012. On file with Human Rights Watch.

³¹⁶ Ibid.

³¹⁷ Ibid.

refusing to accept a criminal complaint in the first place.³¹⁸ These obstacles contribute to widespread impunity for these crimes.

One example of the problems faced by leaders seeking justice is the case of Analia C., who was raped for a fourth time in February 2012, while under the protection of the National Protection Unit. According to three separate accounts of the case, in April 2012, several investigators from the attorney general's office working on her criminal case questioned her former bodyguards about her character, including who her partners were and her drinking habits. According to one of Analia's friends—who was interviewed by the investigators—the investigators told her that Analia's former bodyguards “didn't have a good impression of her.”³¹⁹ They also asked her friend specific personal questions related to Analia's social habits and personal relationships, based on what Analia believes is information from former bodyguards.³²⁰ The same investigators also questioned Analia's status as a leader, asking her friends, “why she needed protection” when “leaders older and more important don't have protection like her.”³²¹ The apparent misconduct eroded Analia's trust—and that of other human rights defenders who work with her—in the protection and justice systems overall.

³¹⁸ See for example, Human Rights Watch interview with Amelia D., Cartagena, March 1, 2012; Luz Marina P., Cali, May 7, 2012; Carmenza F., Bogotá, July 7, 2012; Luisa Fernanda P., Valledupar, July 6, 2012.

³¹⁹ Human Rights Watch interview with Andrea S., Cartagena, April 24, 2012.

³²⁰ Human Rights Watch interview with Analia C., Cartagena, April 24, 2012.

³²¹ Human Rights Watch interview with Andrea S., Cartagena, April 24, 2012.

VI. International Legal Obligations

Colombia is party to a number of international treaties addressing gender-based violence and discrimination, including the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará),³²² and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³²³ It is also party to other treaties that address the administration of justice,³²⁴ the right to health and other economic, social, and cultural rights,³²⁵ and the rights of children and adolescents.³²⁶ This chapter examines how Colombia's actions to address gender-based violence against displaced women and girls fall short of its obligations under these treaties.

Right to Freedom from Gender-Based Violence

Colombia has obligations to protect women and children from sexual and intra-familial violence, including by private actors.³²⁷ The CEDAW Committee, the UN expert body that monitors implementation of CEDAW, stated in General Recommendations 28³²⁸ and 19³²⁹ that

³²² Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”), adopted September 6, 1994, by the General Assembly of the OAS, entered into force May 3, 1995, ratified by Colombia on October 3, 1996. This convention is incorporated into Colombia's national law through Law 248 of 1995, Por medio de la cual se aprueba la Convención Internacional para prevenir, sancionar y erradicar la violencia contra la mujer, suscrita en la ciudad de Belem Do Para, Brasil, el 9 de junio de 1994.

³²³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, entered into force, September 3, 1981, ratified by Colombia on February 18, 1982. Colombia incorporated its obligations under CEDAW into domestic law, with Ley 51 of 1981, and is a party to the Optional Protocol of CEDAW, executed domestically by Law 984 of 2005.

³²⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 99 U.N.T.S. 3, entered into force January 3, 1976, ratified by Colombia October 29, 1969. See also American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./11.82 doc.6 rev. at 25 (1992).

³²⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 99 U.N.T.S. 171, entered into force March 23, 1976, ratified by Colombia October 29, 1969.

³²⁶ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Colombia January 28, 1991.

³²⁷ See, for example, UN Committee on the Elimination of Discrimination against Women, General Recommendation 28, On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/GC/28 (2010), paras. 19 and 34; see also UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (1994) (hereinafter General Recommendation 19), p. 84, para. 9.

³²⁸ UN Committee on the Elimination of Discrimination against Women, General Recommendation 28, On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/GC/28 (2010), paras. 19 and 34.

violence against women constitutes a form of discrimination and states have a due diligence obligation to prevent, investigate, prosecute, and punish acts of gender-based violence. In its General Recommendation 19, the CEDAW Committee stated, “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”³³⁰ A state’s consistent failure to do so when women are disproportionately the victims, amounts to unequal and discriminatory treatment and constitutes a violation of the state’s obligation to guarantee women equal protection of the law.³³¹ Colombia has similar obligations under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women to “apply due diligence to prevent, investigate, and impose penalties for violence against women.”³³²

The CEDAW Committee has identified key steps necessary to combat violence against women, among them: effective legal measures, including penal sanctions, civil remedies, and compensatory provisions; preventive measures, including public information and education programs to change attitudes about the roles and status of men and women; and protective measures, including shelters, counseling, rehabilitation, and support services.³³³

Human Rights protections against sexual violence also apply to persons under 18. The Convention on the Rights of the Child (CRC) states that children must be protected from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation—including sexual abuse—and ensure that victims of such acts receive legal and psycho-social redress.”³³⁴

Similarly, the UN General Assembly has urged governments to take specific law enforcement measures to combat domestic violence through its Resolution on Crime

³²⁹ UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 (1994) (hereinafter General Recommendation 19), p. 84, para. 9.

³³⁰ CEDAW Committee, General Recommendation 19, Violence against Women, U.N. Doc.A/47/38 (1992) para. 9.

³³¹ CEDAW, art. 15 and ICCPR, art. 26.

³³² Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”), adopted September 6, 1994, by the General Assembly of the OAS, entered into force May 3, 1995, ratified by Colombia on October 3, 1996 arts. 7(b), 9. See also Law 248 of 1995, Por medio de la cual se aprueba la Convención Internacional para prevenir, sancionar y erradicar la violencia contra la mujer, suscrita en la ciudad de Belem Do Para, Brasil, el 9 de Junio de 1994.

³³³ UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), p. 84, para. 24 (t).

³³⁴ CRC, art. 19.

Prevention and Criminal Justice Measures to Eliminate Violence against Women. The resolution, among other things, urges governments to enforce laws on violence against women, develop gender-sensitive investigation techniques, ensure that police procedures account for victim safety and prevent further violence, and empower police to respond promptly to violence against women.³³⁵

The state has heightened obligations to protect displaced persons from gender-based violence under the Guiding Principles on Internal Displacement.³³⁶

While Colombia has put in place a sophisticated normative framework for combating gender-based violence, implementation continues to be a problem. As the CEDAW Committee raised in its concluding comments of its most recent review of Colombia, effective monitoring mechanisms are needed in Colombia because its legislative, policy, and institutional framework “[were] not yet sufficient and that the prevailing situation puts women and girls at constant risk of becoming victims of all forms of violence.”³³⁷

The UN Committee on Economic, Social and Cultural Rights (CESCR) raised concerns in its 2010 review of Colombia. The committee stated that it was “deeply concerned at the large number of women and girls that continue to be raped and killed in the State party, and that violence against women and girls, in particular sexual violence, is perpetrated by illegal armed groups and army forces, despite the legislative and policy measures taken by the State party to combat violence against women.”³³⁸ The committee continued by stating that it was particularly concerned that the violence remains unpunished. It recommended the Colombian government effectively implement its programs to provide integral assistance to protect and rehabilitate victims, facilitate access of women to justice,

³³⁵ United Nations General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, U.N. Doc. A/RES/52/86, February 2, 1998.

³³⁶ UN Commission for Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, February 11, 1998, U.N. Doc. E/CN.4/1998/53/Add.2, art. 11.2.a.

³³⁷ See CEDAW, Concluding Comments: Colombia, (2007), CEDAW/C/Col/Co/6, paras 10-11. The Committee also found that displaced women and children “continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence.” See CEDAW, Concluding Comments: Colombia, (2007), CEDAW/C/Col/Co/6, paras 12-13. Accordingly, it called on the government to increase efforts to meet this population’s specific needs.

³³⁸ CESCR, Concluding Observations: Colombia, 2010, E/C.12/COL/CO/5, para. 15.

prosecute perpetrators of such crimes, and compensate victims.³³⁹ The committee highlighted its particular concern for women living in displacement.

The Human Rights Committee in its 2010 review also raised concerns about sexual violence and recommended that the Colombian government “increase the resources allocated to the physical and psychological recovery of women and girls who are victims of sexual violence and ensure that they do not suffer secondary victimization in gaining access to justice.”³⁴⁰ Likewise, the Committee on the Rights of the Child in 2010 raised its deep concerns “over reports indicating increasing numbers of children, especially girls, who are victims of sexual violence by illegal armed groups as well as by the armed forces” and urged Colombia “to undertake prompt and impartial investigations of such crimes.”³⁴¹

International actors have consistently raised concerns with the Colombian government that it is failing to protect women and girls from gender-based violence. Despite instituting considerable legal reform and programs for responding to violence, displaced women and girls face daily threats of violence in their homes and communities. This report documents areas where the government response to this violence falls short of international law requirements and leaves women and girls unprotected.

Right to Health

Article 12 of the International Covenant on Economic Social and Cultural Rights provides for the right of everyone to the enjoyment of “the highest attainable standard of physical and mental health,” and CEDAW requires that states eliminate discrimination against women with respect to health care.³⁴² States should also ensure access to health care is non-discriminatory access to health care, especially for vulnerable or marginalized groups.³⁴³ The right to health includes an obligation to protect women and girls from violence. Violations of the right to health include, “the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health

³³⁹ Ibid.

³⁴⁰ Human Rights Committee, Concluding Observations: Colombia, U.N. Doc. CCPR.C.COL.C. 6, August 4, 2010, para. 18.

³⁴¹ Committee on the Rights of the Child, Concluding Observations: Colombia, U.N. Doc. CRC/C/OPAC/COL/CO/1, June 11, 2010, paras. 34-35.

³⁴² ICESCR, art. 12(1) and CEDAW art. 12.

³⁴³ See, for example, Committee on Economic, Social and Cultural Rights (ESCR Committee), “General Comment 14, The right to the highest attainable standard of health,” U.N. Doc. E/C.12/2000/4 (2000), para. 43.

of others” and “the failure to protect women against violence or to prosecute perpetrators.”³⁴⁴ The UN special rapporteur on the right to health has said that rape and other forms of sexual violence represent a “serious [breach] of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health.”³⁴⁵

The right to health includes the right to access information concerning health. The Committee on Economic, Social and Cultural Rights has stated that “the realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information.”³⁴⁶ The particular needs of women in relation to access to health-related information have also been highlighted by the CEDAW Committee and the UN special rapporteur on the right to health, who has stated that a factor that makes women more vulnerable to ill health is lack of information.³⁴⁷ Many displaced women and girls lack the information necessary to seek health services after rape or other acts of violence and the government has not done enough to provide this information.

A primary component of ensuring the right to health is accountability, with the aim of correcting systemic failure to prevent future harm. The UN special rapporteur on the right to health has elaborated upon the meaning of accountability in the context of providing health care:

What it means is that there must be accessible, transparent and effective mechanisms of accountability in relation to health and human rights.... Accountability is also sometimes narrowly understood to mean blame and punishment, whereas it is more accurately regarded as a process to determine what is working (so it can be repeated) and what is not (so it can be adjusted).³⁴⁸

³⁴⁴ Committee on Economic, Social and Cultural Rights (ESCR Committee), “General Comment 14, The right to the highest attainable standard of health,” U.N. Doc. E/C.12/2000/4 (2000), para. 51.

³⁴⁵ Report of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, September 13, 2006, para. 25.

³⁴⁶ Committee on Economic, Social and Cultural Rights (ESCR Committee), “General Comment 14, The right to the highest attainable standard of health,” U.N. Doc. E/C.12/2000/4 (2000), para. 12(b).

³⁴⁷ UN Commission on Human Rights, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Report of Special Rapporteur Paul Hunt submitted in accordance with Commission resolution 2002/31”, E/CN.4/2003/58, February 13, 2003. And, Committee on the Elimination of Discrimination against Women, “General Recommendation No. 24: Women and Health”, 1999, U.N. Doc. A/54/38/Rev.3, para.18.

³⁴⁸ Special rapporteur on the right to health, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt,” January 17, 2007, A/HRC/4/28, para. 46.

Accountability to correct systemic failures in the referral pathway—such as lack of training and mistreatment by officials—cannot be achieved without regular monitoring of the health system and the underlying physical and socio-economic determinants of health that affect women’s health and ability to exercise their rights.³⁴⁹ In a country like Colombia, this should include special attention to women living in displacement, due to their vulnerable socio-economic conditions. States should develop “appropriate indicators to monitor progress made, and to highlight where policy adjustments may be needed.”³⁵⁰ Monitoring helps states parties develop a better understanding of the “problems and shortcomings encountered” in realizing rights, providing them with the “framework within which more appropriate policies can be devised.”³⁵¹

Right to Privacy and Bodily Integrity

International human rights law guarantees both a right to privacy and a right to bodily integrity which incorporate a right to sexual autonomy.³⁵² Sexual autonomy—the right to sexual self-determination—enshrines both the right to engage in wanted sexuality and the right to be free and protected from unwanted sexuality, from sexual abuse, and sexual violence. The right to sexual autonomy alongside the right to sexual and reproductive health has been the focus of a number of international declarations and conference documents that address States’ obligations in this area.³⁵³

³⁴⁹ Office of the High Commissioner for Human Rights, “Report of the Office of the High Commission for Human Rights on preventable maternal mortality and morbidity and human rights,” April 2010, A/HRC/14/39, para. 36.

³⁵⁰ Special rapporteur on the right to health, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” September 2006, A/61/338, para. 28 (e).

³⁵¹ Committee on Economic, Social, and Cultural Rights, “Reporting by States Parties,” General Comment 1, E/1989/22, 1989, para. 3.

³⁵² See articles 5, 7 and 11 of the American Convention on Human Rights, and articles 7 and 17 of the International Covenant on Civil and Political Rights.

³⁵³ At the U.N. International Conference on Population and Development held in October 1994 in Cairo, Egypt, and the U.N. Fourth World Conference on Women held in September 1995 in Beijing, China, governments explicitly endorsed women’s sexual autonomy. In the 1994 Cairo Programme of Action on Population and Development, delegates from governments around the world pledged to eliminate all practices that discriminate against women and to assist women to “establish and realize their rights, including those that relate to reproductive and sexual health.” In the 1995 Beijing Declaration and Platform for Action, delegates from governments around the world recognized that women’s human rights include their right to have control over and decide freely and responsibly on matters related to their sexuality free of coercion, discrimination and violence. See United Nations, *Programme of Action of the United Nations International Conference on Population and Development* (New York: United Nations Publications, 1994), A/CONF.171/13, 18 October 1994, para. 4.4(c) and United Nations, *Beijing Declaration and Platform for Action* (New York: United Nations Publications, 1995), A/CONF.177/20, 17 October 1995, para. 223.

Right to a Remedy

A victim also has the right to an effective remedy when rights have been violated.³⁵⁴ The ICCPR provides that governments must ensure that any person whose rights under the Covenant are violated “shall have an effective remedy,” and that any person claiming a remedy “shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State.”³⁵⁵ The American Convention on Human Rights includes the right to “simple and prompt recourse, or any other effective recourse.”³⁵⁶

The Human Rights Committee, which monitors implementation of the ICCPR, has stated that the duty to provide an effective remedy to victims of human rights violations, whether at the hands of public officials or private individuals, includes the obligation to “exercise due diligence to prevent, punish, investigate, or redress the harm caused by such acts.”³⁵⁷ The Committee emphasized that states must ensure “accessible and effective remedies” for human rights violations and to take into account “the special vulnerability of certain categories of person,” further noting that “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”³⁵⁸

As the Inter-American Court for Human Rights has stated in the case of *Raquel Martín de Mejía v. Peru*, the right to an effective judicial remedy should be understood as “the right of every individual to go to a tribunal when any of his rights have been violated (whether a right protected by the Convention [American Convention on Human Rights], the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial, and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.”³⁵⁹ Obstacles to justice discussed in this report demonstrate that some displaced women and girls lack access to an effective judicial remedy.

³⁵⁴ See ICCPR, art. 2. See also American Convention, art. 25.

³⁵⁵ ICCPR, art. 2.

³⁵⁶ American Convention, art. 25.1.

³⁵⁷ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 8.

³⁵⁸ *Ibid.*, para. 15.

³⁵⁹ IACHR, Report No. 5/96, Case 10.970, Merits, *Raquel Martín de Mejía* (Peru), March 1, 1996, p. 22.

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RIGHTS OUT OF REACH

Obstacles to Health, Justice, and Protection for Displaced Victims of Gender-Based Violence in Colombia

While Colombia has high rates of gender-based violence among the general population, available evidence strongly suggests that the prevalence of sexual and domestic violence is even higher among the four million Colombians displaced by five decades of civil war. Although the Colombian government has established ambitious laws, policies, and programs to help victims of gender-based violence, including the displaced, their implementation is inadequate.

Based on interviews with 80 displaced women and girls, nearly all of whom had been victims of rape or domestic violence, government officials and health care practitioners, service providers, and other civil society representatives who work with victims, *Rights Out of Reach* documents how victims of gender-based violence among internally displaced communities in four major cities face daunting obstacles in accessing healthcare, justice, and other services. Obstacles include mistreatment by hospital staff and justice officials, arbitrary delays and denials in the provision of medical care, and fear of retaliation. As a result, many victims do not receive the medical attention to which they are entitled, and perpetrators are rarely brought to justice.

In order to protect the human rights of displaced victims of gender-based violence, the Colombian government should establish better training programs for health and justice system employees; carry out public awareness campaigns to ensure that displaced women and girls are familiar with their rights and the services available to them; and pass current draft legislation on access to justice for victims of sexual violence.



A home in the rural area of Municipality San Carlos Antioquia abandoned by persons displaced by violence, with graffiti of a woman's body left by armed groups.

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