

Sexual violence in the Colombian armed conflict

Access to justice for women victims
of sexual violence



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ABSTRACT

Feminist academic scholarship has been highly concerned with the globally growing presence of internal armed conflict, since women and girls comprise the majority of civilian casualties and are the primary target of sexual violence committed in conflict and war. Despite the fact that the prevalence of sexual violence in conflict and war contexts has received major public attention, above all subsequent to the International Criminal Tribunal for the former Yugoslavia (1993) and Rwanda (1994), nor national neither international answers have been able to realize sufficient improvements concerning the immense impact on women and their marginalized realities in conflict and post-conflict scenarios. Particular focus has been directed towards the issue of impunity; feminist academic scholars strongly agree that the predominant response to sexual violence in conflict and war has been impunity and that guaranteeing access to justice for women victims of sexual violence has been neglected considerably.

Against this background, this Master thesis studied the specific country case example of Colombia: Colombia and its society have been experiencing one of the longest armed conflicts in the whole world for the past 52 years. The confrontation between various groups of armed actors has resulted in grave Human Rights violations and violations of the International Humanitarian Law; sexual violence crimes against women among other things. According to Casa de la Mujer's publication "First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001 - 2009" (2011), 489.687 women were victims of sexual violence within the years of 2001 to 2009. In 2008, Colombia's Constitutional Court passed the Order Auto 092 aiming at addressing the issue of impunity concerning access to justice for women victims of sexual violence. Almost eight years later, the Working Group monitoring compliance with the Order concluded that, regardless of the urgent priority that should have been given to the 183 cases of sexual violence included in the Confidential Annexes of the Auto, the level of impunity currently surpasses 97%.

The research purpose of this Master thesis was to find out why impunity has persisted despite the implementation of the Order Auto 092 of 2008 passed by Colombia's Constitutional Court. By means of a qualitative content analysis, the Monitoring Reports of the Working Group were analyzed with the objective to discover the underlying mechanisms of impunity. Based on the comprehension that Colombia's society is characterized by pervasive patriarchal structures, this analysis was carried out in form of a feminist gender analysis that strongly focuses on women's disadvantaged position in society and the structural violences against them.

Keywords: *Colombia, armed conflict, women, sexual violence, access to justice, impunity*

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LIST OF ABBREVIATIONS

AUC - Autodefensas Unidas de Colombia	43
BACRIM - Bandas Criminales	43
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	51
CODHES - Consultoría para los Derechos Humanos y el Desplazamiento/Consultancy for Human Rights and Displacement	17
FARC - Fuerzas Armadas Revolucionarias de Colombia	29
HDR - Human Development Report.....	39
IDMC - Internal Displacement Monitoring Centre.....	11
PAHO - Pan American Health Organization	39
PCS - Consejería en Proyectos	18
RUV - Registro Único de Víctimas	44

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1. Introduction

According to the most recent figures of the Armed Conflict Database (ACD) Index (2016), 42 active conflicts worldwide have caused 180.000 fatalities and the number of refugees has risen to 12.181.000 since 2013 (an increase of 2.8 million in three years). Feminist academic scholarship confirms the growing presence of armed conflict and highlights that these conflicts increasingly take place within national borders (Moser 2001, Moser & Clark 2001, Pankhurst 2003). Apart from the fact that armed conflict seems to have become more of an internal concern for countries, it is important to point out that, at the same time, civilians have become the majority of victims caused by this violence, mostly women and girls (Pankhurst 2003, Seifert 1996). As reported by feminist academic scholars, the observation that the majority of civilian casualties caused by armed conflict are women and girls is insofar crucial that they are “disproportionately affected by the making and fighting of wars” (Sjoberg & Via 2010: 6). Pankhurst (2003) explains further that “[w]ith the changes in the way war is normally fought, and the increasing predominance of civilians among the casualties, there is a continuing threat in the ways women experience suffering in distinct ways – not because of any intrinsic weakness, but because of their position in society” (Pankhurst 2003: 544). However, these developments do not only suggest that women make up the major part of civilian casualties, but also that 90% of all victims of sexual violence in conflict and war are female (Durbach & Chappell 2014). Sexual violence in conflict and war contexts has been primarily directed towards women; on the one hand, sexual violence against women is related to their position in society according to their gender and, on the other hand, women are usually associated with the protection of the family, community and the culture, which is why a sexual crime against them goes beyond the impact on them as the victim alone (Leiby 2009, Skjelsbæk 2001b). This knowledge has important implications for the use and impact of sexual violence in conflict and war situations on which I elaborate further in the following chapters of this Master thesis. Consequently, feminist academics in this field have stated that armed conflicts are realities which are profoundly marked by gender structures present in any society and these gender divisions tend to aggravate in the course of armed conflict (Farwell 2004, Milillo 2006, Villellas Ariño 2010). Thus, it is claimed that sexual violence (e.g. rape) is not based on an entirely sexual motivation but on the wish to preserve the power relations in place (Milillo 2006). Finally, Farwell (2004) remarks that these gendered power mechanisms are “ongoing sites of conflict [...] with no clear peace for women [,] whose security is threatened” (Farwell 2004: 194).

Although the cases of sexual violence in conflict and war contexts have been numerous and extensive on a global scale¹, historically, mainstream international politics haven chosen to suppress this reality, and consequently, those cases have hardly been brought to trial, nor have they been condemned in general (Farwell 2004, Lee Koo 2002). Instead, sexual violence in conflict and war situations has been described as “byproduct of wartime activity” (Farwell 2004: 389) and has been categorized as belonging to the “regrettable side effects” (Seifert 1996: 36) of conflict and war. There is a consensus in academic research that the ICTY (International Criminal Tribunals for the former Yugoslavia) and ICTR (International Criminal Tribunal for Rwanda) embody a significant change for the understanding and the approach towards sexual violence in conflict and war contexts, since, for the very first time, sexual violence was prosecuted within the respective trials (Skjelsbæk 2001a, b). Thus, Skjelsbæk states that “[a]fter the genocide in Rwanda in 1994 and the ethnic cleansing in the former Yugoslavia in 1992-95, the theme of sexual violence has been set on the international agenda. Mass rape of women in these two conflicts has generated open debates about the phenomenon. It seems that the taboo which has overshadowed rape and sexual violence for so long has now been changed” (Skjelsbæk 2001a: 211). For instance, the Akeseyu² Sentence of the ICTR established a much more amplified definition of sexual violence than the one that had been recognized before; a definition which has taken into account its systematic use and impact going beyond the individual victim (Farwell 2004, Villellas Ariño 2010). Furthermore, both the ICTY and the ICTR have laid the foundations for sexual violence in conflict and war contexts to be prosecuted within a legal framework comprising it being a crime against humanity, an act of genocide or a war crime (Farwell 2004). Moreover, it is important to consider the Rome Statute of 1998 that established the International Criminal Court (ICC) and abolished a former law allowing to look into the previous intimate and sexual lives of victims of sexual violence (Villellas Ariño 2010). Additionally, it defined what has to be understood as a *crime against humanity* (Ibid.).

¹ Based on the literature review for this Master thesis (without claiming to present the complete panorama), academic scholars have referred to the following conflicts, wars and countries featuring the occurrence of sexual violence: World War II, Bosnia, Angola, Democratic Republic of Congo, Eritrea, Liberia, Malawi, Mozambique, Rwanda, Sierra Leone, Somalia, Sudan, Uganda, Afghanistan, Iraq, Israel, Palestine, Myanmar, Sri Lanka, Cambodia, Korea, Vietnam, Argentina, Chile, Colombia, El Salvador, Guatemala, Peru, Uruguay (Farwell 2004, Milillo 2006, Skjelsbæk 2001b, Villellas Ariño 2010). Besides, Milillo (2006) mentions Brownmiller’s (1975) pioneering analysis documenting the history of sexual violence from the battles of Babylonia to the Second World War.

² Jean-Paul Akeseyu is a Rwandan village’s city manager who the ICTR sentenced for genocide because he had consciously agreed to the mass rape of a great number of Tutsi women in 1994 (Farwell 2004). Taking the Akeseyu Decision as an example, the ICTY later condemned three Bosnian Serb soldiers for similar atrocities (Ibid.).

Although the issue of sexual violence in conflict and war situations has become a major public concern, nor national neither international answers have been able to realize sufficient improvements concerning its immense impact on women and their marginalized realities in post-conflict situations (Durbach & Chappell 2014, Pankhurst 2003, Villellas Ariño 2010). Despite the important progress that has been achieved by the international community, above all by means of Resolution 1325³ adopted by the UN Security Council in 2000, the practical implementation of formal plans bears numerous challenges (Aroussi 2011, Puechguirbal 2010, Villellas Ariño 2010). In accordance with Lee Koo (2002) and Pankhurst (2010), the capability of women victims of sexual violence to make use of justice instruments depends on the responsibility of the state, taking into account the justice mechanism itself and the victims' awareness of their own rights. Feminist academic scholarship strongly agrees that the predominant response to sexual violence in conflict and war contexts has been impunity (Kelly 2010, Lee Koo 2002; Pankhurst 2003, 2010; PCS 2006). Lee Koo (2002) explains that

there has not been widespread international condemnation and prosecution of the war crimes committed against women's bodies, despite having the victims, the evidence and knowing the identity of the perpetrators, as well as the legal mechanisms to prosecute. And there are multifarious reasons for this. In the end, however, they can be reduced and related to the gendered nature of international politics [...] Generally, women face an international community that has historically preferred to consider rape outside the realm of the political (Lee Koo 2002: 530 f.).

Therefore, it is necessary to address the underlying structures on which justice mechanisms are built upon.

Against this background of a growing presence of internal armed conflict and the fact that women and girls comprise the majority of civilian casualties and are the primary target of sexual violence committed in conflict and war, the country case of Colombia offers an interesting example to take a closer look at. In the last 52 years, Colombia and its society have been experiencing one of the most enduring armed conflicts in the whole world (Casa de la Mujer 2011). The clash between different groups of armed actors has produced serious

³ Resolution 1325/2000 on "Women, Peace and Security" marks a groundbreaking step forward in terms of the inclusion of women into the prevention and resolution of conflicts, among other things (Puechguirbal 2010). Nevertheless, the Resolution has been criticized for its use of "language of victimization" that restricts the impact of its full potential (Puechguirbal 2010: 162). For further information on Resolution 1325/2000, consult Aroussi (2011) and Puechguirbal (2010). Additionally, Kelly (2010) provides a critical reading of the ICC.

Human Rights violations and violations of the International Humanitarian Law; sexual violence against women among other things (Casa de la Mujer 2011, Franco 2007, PCS 2006). According to Casa de la Mujer's⁴ publication "First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001 - 2009" (2011), between 2001 and 2009, 489.687 women were victims of sexual violence in the 407 municipalities of the Colombian territory in which armed actors were present. In other words, six women were sexually violated every hour in this period of time (Ibid.). Over the past years, the Colombian State has taken several government actions, in order to address the situation of women victims of sexual violence associated with the armed conflict. Moreover, the country has ratified international resolutions and treaties developed to focus on women's extremely vulnerable position in conflict and war contexts, and on the necessity to include their experiences into the process of peace negotiations.⁵ In 2008, the Colombian Constitutional Court passed a particularly important Order, the so-called *Auto 092*, which aimed at supporting and protecting the fundamental rights of displaced women⁶ and their extreme vulnerability concerning sexual violence (ABColumbia et al. 2013). The Order suggests an analysis of the magnitude of sexual violence and its causes, and thereby had the initial objective of tackling the almost complete impunity of this crime (Ibid.). Since the passing of the Order in 2008, the Working Group to Monitor Compliance with Constitutional Court *Auto 092* and *009* and Its Confidential Annexes⁷ has regularly monitored its implementation. According to the Working Group's most recent Monitoring Report (2016), "the cases of sexual violence associated with the armed conflict included by the Constitutional Court in the Confidential Annexes remain in *almost absolute impunity*" (The Working Group 2016: 13). Taking all of this into account, after several years of

⁴ Since 1982, Corporación Casa de la Mujer, a feminist organization based in Colombia, has dedicated itself to the promotion, protection and to the defense of women's Human Rights with the ultimate goal to provide them with the exercise of their full citizenship. Casa de la Mujer's work is highly recognized on a national as well as international level and the organization's theoretical and practical contribution and work is numerous (<http://www.casmujer.com/>).

⁵ A more detailed summary of the respective government actions is provided in the following chapters of this Master thesis.

⁶ Referring to the IDMC (Internal Displacement Monitoring Centre) (2016), an IDP (internally displaced person) is obligated to leave his/her place of origin, mostly in order to flee from the consequences of violent armed conflict. In Colombia, women comprise more than half of the percentage of IDPs (Alzate 2007). IDPs have to be distinguished from the number of refugees caused by armed conflict; the phenomenon of internal displacement is of considerable importance in the Colombian context and is addressed in the following chapters of this Master thesis.

⁷ Henceforth "The Working Group"; consult the "Methodology" chapter for a more detailed presentation of the monitoring body. In connection with the Order *Auto 092* the Order *Auto 009* was passed in 2015, stating the persistence of sexual violence in the contexts of armed conflict and forced displacement.

implementation, there is data suggesting a lack between the legal framework of the Order Auto 092 and its implementation in reality.

So why is the Colombian example an interesting case to investigate? On the one hand, the armed conflict is still ongoing and a possible post-conflict scenario is yet to be decided. This opens up the opportunity to contribute to the academic work on sexual violence in conflict and war contexts in the Latin American region (Leiby 2009). On the other hand, in accordance with Moser and Clark (2001), “the gendered nature of armed conflict and political violence – with such critical issues still not widely recognized except by feminist researchers and practitioners – has important implications for conflict and development assistance” (Moser & Clark 2001: 4). Feminist academic scholarship is very concerned about the fact that analyses of causes, costs and consequences of conflict and war usually have hardly featured a gender perspective (Leiby 2009, Moser 2001, Moser & Clark 2001). As a consequence, it is highly relevant to display the issue of impunity and subsequently, to uncover its underlying mechanisms. Thus, in this Master thesis, I wish to examine the access to justice for women victims of sexual violence associated with the Colombian armed conflict. In order to carry out this investigation, I chose to analyze the Order Auto 092 of 2008 – one of the most important justice mechanisms for women victims of sexual violence in Colombia – by answering my problem formulation

“Why has impunity persisted despite the Order Auto 092 of 2008 passed by Colombia’s Constitutional Court?”.

Over the last eight years since the Order was passed, the Working Group has identified and monitored certain defects and obstacles in terms of its implementation that have resulted in impunity; my analysis focuses on an overall evaluation of these and why they have persisted throughout the implementation period. The selection of the aspects I examine in my analysis are presented in the “Methodology” chapter.

The following chapters leading up to the analysis aim at providing significant considerations – methodological, theoretical, conceptual and contextual – in order to carry out a comprehensive examination of the chosen country case example. High importance is given to the “Contextualization” chapter, since sufficient and clear background information is essential for a successful and rich analysis of the Colombian country case example. The “Conclusion” summarizes the most important findings of this Master thesis and offers its readers a few interesting suggestions for further research.

2. Methodology

The following sub-chapters introduce the methodological considerations implemented in order to realize the research purpose of this Master thesis by means of presenting its research paradigm, design, analysis and possible limitations to this study.

2.1 Research paradigm

In terms of the research paradigm, I position my research within the paradigm of *Standpoint Feminism*. The discussion of and explanation for this choice are mainly based on the academic work of Lene Hansen (2010).

According to Hansen (2010), Feminist IR have assumed three distinct ontologies which have been further applied by connecting them to other three epistemological positions conforming to Sarah Harding’s division of feminist epistemologies. As a result, Hansen (2010) provides us with these three different Feminist IR perspectives (see Figure 1):

<i>Feminist IR perspective</i>	<i>State ontology</i>	<i>Gender ontology</i>	<i>Epistemology</i>	<i>Methodology</i>	<i>Familiar IR perspective</i>
<i>Rationalist</i>	Empirically open, state may be liberal and/or norm driven	Variable based on biological gender	Positivist – causal connections between state action and gender	Large-scale quantitative or causal qualitative analysis (comparative case-studies)	Quantitative Peace Research/Conflict Resolution Conventional Constructivism
<i>Standpoint</i>	Patriarchal	Biological gender mediated through social construction of femininity and masculinity	Experience – combines structure and individual/every day	Fieldwork, narrative analysis, interviews, hermeneutic, quantitative documentation	Critical Security Studies, Human Security, neo-Gramscian IPE
<i>Poststructuralist</i>	Patriarchal	Biological gender constituted in discourse	Discursive	Discourse analysis, texts and fieldwork, interviews	Poststructuralism

Figure 1 *Feminist IR perspectives: an overview (Hansen figure 2.2 2010: 25).*

Subsequent to careful consideration, I have chosen to adopt the research paradigm of Standpoint Feminism and perceive this selection as being the most correspondent to my research subject and objective. Nevertheless, this decision implies a certain discrepancy and limitation in terms of the choice of data that I built my analysis upon. The following paragraphs elaborate on the research paradigm of Standpoint Feminism, why I adopt this paradigm, and how I refute the apparent limitation that it had presented to me initially.

In terms of state ontology, Standpoint Feminism argues that the state is built upon patriarchal structures that reinforce as well as obscure women's subordination to men and draw from the historical division between the public and the private space; structures which are not taken into account by Rationalists (Hansen 2010). In order to carry out an analysis of Colombia as a country case example, this ontological perspective of patriarchy is crucial because the Colombian State and its society are characterized by exactly these patriarchal structures, which is further exemplified in the "Contextualization" chapter. The answer of Standpoint Feminism to reveal the patriarchal structures in place is to change the focus from the theoretical concept of the state to gender and to women's individual experiences (Ibid.). Moreover, particular interest should be directed towards especially vulnerable groups of women and their experiences; these tend to be marginalized from prominent global discourse (Ibid.). Aside from the patriarchal state ontology that Standpoint Feminists assume, patriarchy in general is repeatedly regarded and used as an operational concept throughout this Master thesis. Its theoretical implications are further elaborated on in the "Theories and concepts" chapter. In terms of its methodological implications for my research, patriarchal structures are perceived as featuring a general and pervasive gender inequality and, crucial for the country case example of Colombia, high levels of violence against women. Data indicating these structures is exemplified in the course of this work. Concerning gender ontology, Hansen (2010) explains that

[s]tandpoint feminism maintains women as a particular subject defined by physical bodies, yet understands the meaning that these bodies holds [sic.] to be constituted through socially powerful understandings of femininity and masculinity [...] Crucially though, standpoint feminists still maintain that there is a concrete living female subject that can be referred to and who should be at the centre of analysis (Hansen 2010: 22).

Thus, compared to Poststructuralism, Standpoint Feminists acknowledge that femininity and masculinity are formed within social discourse, however, an actual female subject exists and should embody the analytical focus (Hansen 2010). According to Hansen (2010), "[i]f 'women' are not a subject that can be referred to, but 'only' constituted in discourse, it becomes difficult if not impossible to speak of structural inequalities that women face" (Hansen 2010: 24). In my opinion, Standpoint Feminists' ontological understanding of gender very much coincides with Colombian society due to the fact that the feminist and social movement in the country relates to and identifies with an actual female subject which

is defined within social (patriarchal) discourse. As reported by PCS (2006), it is important to emphasize that one of the consequences of the country's armed conflict was the creation of spaces and organizations for women and the defense of their rights. Women have played and still play a central role in the defense of Human Rights (Ibid.). Additionally, in Standpoint Feminism, it is emphasized that gender is never understood as being static, but as a constantly evolving category (Ibid.). From an epistemological perspective, Standpoint Feminists aim at raising awareness for women's realities and their usually marginalized knowledge, since this opens up the opportunity to connect to their real life experiences (Ibid.). Finally, what does this research paradigm imply for its respective methodology? Standpoint Feminism applies various methodological tools; for instance, ethnography because there is a clear interest in subjective life experiences, fieldwork and interviews, but also quantitative methods and secondary sources (court transcripts, media coverage, parliamentary debates etc.) due to the focus on gender inequalities. On the other hand, Poststructuralists "deconstruct texts to show the complex relational constructions of identity that govern world politics [...] The difference between standpoint feminism and poststructuralism is thus not in terms of what kind of material is studied, *but whether it is used to uncover women's experiences or the constitution of 'women' in discourse*" (Hansen 2010: 24, *italics added*); and it is my research objective to reveal the experiences of women victims of sexual violence concerning their access to justice in Colombia.

As I have already pointed out when introducing my research paradigm, there appears to be a certain discrepancy and limitation in terms of the choice of data I built my analysis upon and Standpoint Feminism as my research paradigm. From the information on Standpoint Feminism which is outlined here, it becomes evident that this paradigm mainly focuses on giving voice to women's silenced experiences. Therefore, concerning methodological tools, a considerable amount of data is usually obtained by conducting fieldwork and interviews to record women's subjective life experiences. I am aware of the fact that, at first sight, it might seem as if this focus could not be reflected in the official Monitoring Reports of the Working Group, which is my main data source for the measurement of the persistence of impunity. Nevertheless, I argue, despite its official nature, the Working Group that has been monitoring the implementation of the Order Auto 092 of 2008 since eight years, consists of organizations of the social and feminist movement in Colombia and apart from legally representing women victims of sexual violence in court, the Working Group includes women's experiences in their Monitoring Reports (e.g. in form of

case studies). Thus, the Working Group gives voice to women's subjective life experiences and besides, the realities of particularly vulnerable groups of women (referring to Afrocolombian or Indigenous women, disabilities, age etc.) is given special focus to. For instance, Parpart and Thompson (2012) similarly argue that the reports of the UN and NGOs in general feature the accounts of peoples' experiences in conflict and war. Moreover, I would like to highlight that Standpoint Feminism does indeed concentrate on women's experiences but, at the same time, it makes use of different methodological tools, as is stated by Hansen (2010): "However, the concern with structural inequalities women face means that studies often included quantitative material as well as secondary sources such as court transcripts, media coverage (including interviews), parliamentary debates, commission reports and even fiction" (Hansen 2010: 22 f.). Consequently, I claim that the data available to me is definitely consistent with my research paradigm.

2.2 Research design

The research process for this Master thesis was carried out for a time period of approximately three months between February and April 2016. Apart from the consultation of the Aalborg University library and its database, a broad and systematic online research was realized. Besides, I have got access to significant data and information considering the Colombian country case example thanks to my internship organization Casa de la Mujer. As the researcher, I assumed the position of an outsider in terms of this investigation. In accordance with a deductive approach, the problem formulation was developed from an existing theory, which is why this research was undertaken within a closed system. Subsequently, the implementation of the existing theory was evaluated by means of hypothesis testing. Taking into account qualitative and quantitative methods, this research primarily followed qualitative methods; except from the fact that the brief analysis of the procedural status of the cases of sexual violence included in the Confidential Annexes of the Autos could be recognized as a quantitative component. The purpose followed for this Master thesis is of explanatory nature but could also offer possible generalizable accounts for other country case examples in the Latin American region, probably even for countries on a global scale, where sexual violence in the context of conflict and war has been experienced.

Reflections on sources

Both data and information from primary and secondary sources was acquired throughout the investigation; this facilitated the formation of a broad knowledge concerning the issue of

sexual violence in conflict and war contexts (mostly in terms of feminist academic scholarship), and the acquisition of considerate expertise in the specific country case example of Colombia (mainly through the publications of the Working Group and of national-based feminist, social and Human Rights organizations). The principal data for the measurement of the persistence of impunity despite the Order Auto 092 of 2008 passed by Colombia's Constitutional Court is based on the five Monitoring Reports of the Working Group that have been issued since the implementation of the Order.⁸ I consider these Monitoring Reports of the Working Group as a primary source. The Working Group was established due to the Constitutional Court's invitation granted to CODHES (Consultoría para los Derechos Humanos y el Desplazamiento/Consultancy for Human Rights and Displacement), which was asked to promote the accompaniment and orientation of victims of sexual violence during the investigation and prosecution processes of the respective crimes. Subsequently, the organizations which have been representing the cases of sexual violence included in the Confidential Annexes of Auto 092 of 2008 and organizations with expertise in the topic of sexual violence were called to participate as well. The following feminist and Human Rights organizations have been members of the Working Group: Alianza Iniciativa de Mujeres Colombianas por la Paz (Alliance Initiative of Colombian Women for Peace), Centro de Estudios de Derecho, Justicia y Sociedad (Center for Law Studies, Justice and Society), Colectivo de Abogados José Alvear Restrepo (José Alvear Restrepo Lawyer's Collective), Comisión Colombiana de Juristas (Colombian Commission of Jurists), CODHES, Casa de la Mujer, Corporación Sisma Mujer, Liga de Mujeres Desplazadas (League of Displaced Women), Mesa de Trabajo Mujer y Conflicto Armado (Women and Armed Conflict Working Group), Observatorio Género, Democracia y Derechos Humanos (Gender, Democracy and Human Rights Observatory), Organización Nacional Indígena de Colombia (National Indigenous Organization of Colombia) and Ruta Pacífica de las Mujeres (Women's Pacific Path). As an official observer, UN Women cooperates with the Working Group. Apart from the principal data for the measurement of impunity, the knowledge of the prevalence of sexual violence in the Colombian armed conflict is predominantly established by means of Casa de la Mujer's publication "First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001 - 2009" (2011). Likewise, I recognize this publication of Casa de la Mujer as a primary source. ABColombia et al. (2013)

⁸ The second Monitoring Report of the Working Group could not be obtained. According to Casa de la Mujer, it is probable that it does not exist and if it exists, it has not been officially published due to the lack of support and resources back then.

and PCS (Consejería en Proyectos) (2006) are the two main publications by feminist, social and Human Rights organizations referred to which specifically focus on Colombia, the armed conflict and sexual violence. The first one is a cooperation of ABColombia⁹, Corporación Sisma Mujer (a Colombian NGO) and USOC and addresses the topic of women and sexual violence in the armed conflict and the peace process. The second publication of PCS, an international organization, analyzes sexual violence against women in armed conflict in Latin America with a special focus on Colombia, Guatemala and Peru. These publications are categorized as secondary sources. The intention was to take a neutral and unbiased approach as much as this was possible in the context of this Master thesis. To a considerable extent, the information and data of the Working Group and of feminist, social and Human Rights organizations consulted for this Master thesis represent an understanding of society as being shaped and determined by pervasive patriarchal structures; a system that is highly criticized within the context of these sources. Nevertheless, it does not suggest an extremely subjective or exaggerated view and is consistent with the overall research opinion of feminist academic scholarship. Furthermore, referring to the presentation of the Working Group, their Monitoring Reports are an official mechanism realized and implemented subsequent to an inquiry of the Constitutional Court. The inclusion of the perspective of the Working Group and of feminist organizations working in Colombia is insofar valuable as it provides the opportunity to give direct voice to women victims of sexual violence in the country and the experiences they have to endure, since they work closely together with them. Besides, a high number of the women working for feminist organizations have been victims of sexual violence themselves (inside or outside of the armed conflict); in other words, this perspective represents a bottom-up approach initiated within civil society and is therefore extremely important. I would like to emphasize that the incorporation of this insight is, of course, aimed for by academic scholars or government institutions as well, however, I believe that it is more difficult to achieve in this case.

⁹ ABColombia is a group of recognized organizations of the United Kingdom and Ireland such as Oxfam.

Figure 2 graphically summarizes the building stones of the sources for this Master thesis which were introduced and presented in the previous paragraphs.

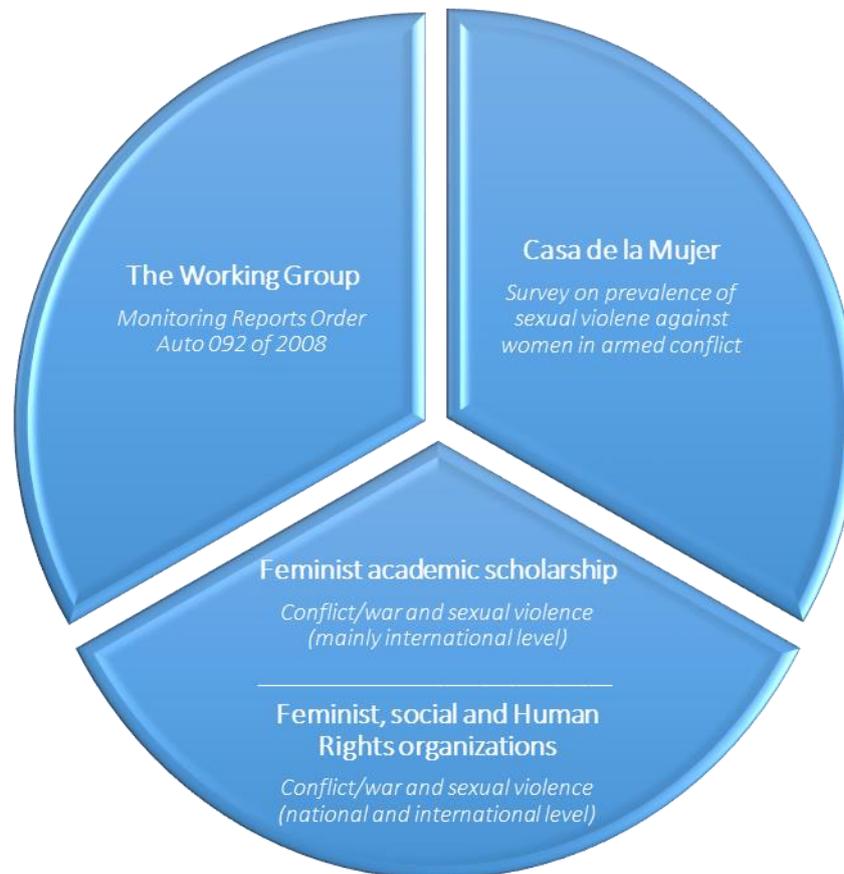


Figure 2 Sources overview: building stones.

Regarding feminist academic scholarship, a closer look at my secondary sources shows that information and data was retrieved from academic books, academic journals, online books, electronic journals and electronic newspaper articles. From the review of feminist academic literature, it can be concluded that analyses on sexual violence in the Colombian armed conflict and in conflict and war in the region generally are rather rare, maybe with the exceptions of Guatemala and Peru. In regards to Colombia, this could be due to the fact that the concept of gender and women's rights in particular have only been started to explore very recently on an academic level; i.e. the first study program on gender at the Universidad Nacional de Colombia (National University of Colombia) did not emerge before 1994. Finally, in view of analyzing a specific country case example, current statistics were acquired from the respective monitoring bodies and the most recent developments of the peace negotiations could be followed through electronic newspaper articles and the like.

Case studies

Since this Master thesis focuses on a concrete country case example, the research design necessarily needs to explain what a case study¹⁰ actually is and how it can contribute to a certain research process. In accordance with Flyvbjerg (2006), “[i]t is only because of the experience with cases that one can at all move from being a beginner to being an expert. If people were exclusively trained in context-independent knowledge and rules [...] they would remain at the beginner’s level in the learning process (Flyvbjerg 2006: 222). Furthermore, when conducting case studies, researchers are provided with the opportunity to develop their perception of reality and their research abilities in general. Finally, Flyvbjerg (2006) claims that Social Science has only been able to generate specific knowledge instead of general theory, which is particularly what case studies do. In his 2006 article “Five Misunderstandings about Case-Study Research”, he discusses and reformulates five common misunderstandings in terms of case studies. When applying Flyvbjerg’s observations to my country case example of Colombia, the two first misunderstandings and their revisions are particularly interesting to take into account (see Table 1).

	Misunderstanding	Revision
1.	General, theoretical (context-independent) knowledge is more valuable than concrete, practical (context-dependent) knowledge.	<i>Predictive theories and universals cannot be found in the study of human affairs. Concrete, context-dependent knowledge is, therefore, more valuable than the vain search for predictive theories and universals.</i>
2.	One cannot generalize on the basis of an individual case; therefore, the case study cannot contribute to scientific development.	<i>One can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods. But formal generalization is overvalued as a source of scientific development, whereas “the force of example” is underestimated.</i>

Table 1 The first two misunderstandings and their revision (based on Flyvbjerg 2006: 221, 224 & 228).

By analyzing why impunity has persisted despite the Order Auto 092 of 2008 passed by Colombia’s Constitutional Court, on the one hand, relevant context-dependent knowledge provides the researcher (in this case myself) with the opportunity to expand his knowledge and to develop his skills; on the other hand, the single country case example of Colombia could open up a space for creating generalizable accounts that might then possibly be applicable to similar country case examples.

¹⁰ Robert Stake is another important scholar for case study-research who could be consulted here. Unfortunately, I was not able to obtain his publications within the research period of this Master thesis. However, Flyvbjerg’s work is also based on findings of Stake and covers very important aspects of case study-research.

Apart from his evaluation of the five misunderstandings about case study research, Flyvbjerg (2006) outlines several strategies for the selection of cases (see Figure 3).

<i>Type of selection</i>	<i>Purpose</i>
A. Random selection	To avoid systematic biases in the sample. The sample's size is decisive for generalization
1. <i>Random sample</i>	To achieve a representative sample that allows for generalization for the entire population
2. <i>Stratified example</i>	To generalize for specially selected subgroups within the population
B. Information-oriented selection	To maximize the utility of information from small samples and single cases. Cases are selected on the basis of expectations about their information content.
1. <i>Extreme/deviant cases</i>	To obtain information on unusual cases, which can be especially problematic or especially good in a more closely defined sense.
2. <i>Maximum variation cases</i>	To obtain information about the significance of various circumstances for case process and outcome (e.g. three to four cases that are very different on one dimension: size, form of organization, location, budget).
3. <i>Critical cases</i>	To achieve information that permits logical deductions of the type, "If this is (not) valid for this case, then it applies to all (no) cases."
4. <i>Paradigmatic cases</i>	To develop a metaphor or establish a school for the domain that the case concerns.

Figure 3 Strategies for the selection of samples and cases (Flyvbjerg table 1 2006: 230).

Considering my choice, I see Colombia as being closest to the definition of a critical case that was chosen according to an information-oriented selection. I believe that my country case example has an extensive amount of information to offer which is, in my opinion, in the need of a more effective visualization, especially on a global scale. Notwithstanding, against the background of this Master thesis and due to its limited scope, the amount of data and information considered is not enough to formulate generalizable accounts that could then be applied to other examples, as is suggested by Flyvbjerg. Still, as is indicated before, valuable results of my country case example could be of high relevance for other cases. For instance, several sources confirm that post-conflict societies like Guatemala and Peru have had to face issues of impunity in relation to perpetrators of sexual violence (Franco 2007, Human Rights Watch 1992 and Leiby 2009). Guatemala and Peru are both examples of settled conflicts, nevertheless, war crimes and their impunity result in impactful consequences for these societies that are still present today and will continue to be so in the future. Hence, with being an ongoing conflict that has received extensive international media coverage, the awareness of sexual violence in conflict and war and the impunity related to it can be continued to address and maintain, above all with the soon awaited official end to the conflict and how

women victims of sexual violence and women generally will be treated in a post-conflict society after this issue has been prioritized on the international agenda for quite some time now. Furthermore, I consider my country case example of Colombia as being highly valuable for eliminating sexual violence against women in general, apart from the context of the armed conflict, because many countries in the region have faced an alarming increase of these crimes and the more this is made visible, the more attention for this problem can be raised globally.

Sample

Regarding the analytical purpose of this Master thesis, the selection of a specific data sample from the Monitoring Reports of the Working Group needs to be determined. Table 4 presents the five different Monitoring Reports and illustrates how their analytical structure has developed over the years since the first publication. It becomes evident that the Working Group has primarily focused on three analytical perspectives: access to justice, protection and healthcare (see Table 2).

<i>No. of Monitoring Report</i>	<i>Time of publication</i>	<i>Structural division of analysis</i>
1 st	January 2009	<ul style="list-style-type: none"> • Access to justice • Protection and security • Psychosocial support
3 rd	June 2010	<ul style="list-style-type: none"> • Right to justice: access and impunity • Lack of effective protection measures • Right to health from an inclusive perspective
4 th	May 2011	<ul style="list-style-type: none"> • Standards of guarantee and protection about sexual violence against women • Obstacles in terms of access to justice for women victims of sexual violence <ul style="list-style-type: none"> - Lack of guarantees to report and impunity - Obstacles directly related to justice system - Obstacles related to lack of protection measures and healthcare
5 th	September 2013	<ul style="list-style-type: none"> • Institutional problems that influence compliance with the Order Auto 092 of 2008 • Problems with access to justice in cases of sexual violence associated with the armed conflict • Problems with protection measures • Problems with health-related assistance
6 th	March 2016	<ul style="list-style-type: none"> • Obstacles to accessing justice • Obstacles in protection • Obstacles in relation to healthcare • Institutional obstacles

Table 2 The Monitoring Reports and their analytical structure: an overview.

The focus chosen for the analysis of my Master thesis is directed towards the access to justice for women victims of sexual violence; thus, my strategy of analysis concentrates on evaluating the defects and obstacles related to this issue. Since the 4th Monitoring Report, the focus on access to justice has been addressed from two different, though connected,

perspectives – the obstacles related to access to justice in general and the obstacles related to the institutional system. This is a very important specification which is also taken into account in my analysis. The 1st Monitoring Report of the Working Group departs from the orders determined in Auto 092 of 2008 and since the beginning of its implementation, additional shortcomings have been added regularly during the monitoring process. It is my overall analytical objective to address all of these and based on them, explain the persistence of impunity despite the implementation of the Order.

2.3 Research analysis

The fact that Standpoint Feminism strives for uncovering the gendered power relations in patriarchal societies in order to push women's experiences into the center of attention, asks for an analytical approach that is able to assume a gender perspective. Many of the analyses on armed conflicts which are currently elaborated, have not incorporated a gender perspective and therefore, they have not achieved to recognize how national as well as international power structures and the patterns of resource distribution depart from gender inequalities (Vilellas Ariño 2010). Thus, from an analytical point of view, I intend to carry out my research from the starting point of a *feminist gender analysis*, mainly based on the academic work of Cynthia Cockburn (2001, 2004, 2010). According to Cockburn (2004) "a gender perspective on the successive moments in the flux of peace and war is not an optional extra but a stark necessity. It reveals features of conflict and conflict resolution that have to be understood if we are to develop effective strategies for mitigating the effects of conflict and for restoring and maintaining peace" (Cockburn 2004: 24).¹¹ Here, I would like to emphasize that although there is not one true feminism but many distinct feminisms, feminist gender analysis agrees on the fact that the subjection of women in relation to men is a determining and prevalent characteristic which permeates all power relations within a society (Cockburn 2004, Sjoberg & Via 2010).

¹¹ For further reading, when looking at societies during armed conflict, Cockburn (2001, 2004) identifies four different phases these societies usually go through in the process – uneasy peace: before the onset of violence, war and political terror, processes of peace and post-conflict: the wounds that remain.

In the following quotation, Cockburn (2001) clarifies the particular strength of her approach:

Gender traditionalism [...] makes gender visible but leaves it unquestioned [...] Gender liberalism can combine in unfortunate ways with gender traditionalism to prevent gender from being seen as significant or explanatory. A feminist gender analysis, born of women's politicized experience of their subordination and oppression as a sex, is needed to transcend both conservative assumptions and well-meaning egalitarianism (Cockburn 2001: 14).¹²

Therefore, a feminist gender analysis then contributes, by means of empirical data, to the understanding of how the underlying mechanisms of gendered power relations work (Sjoberg & Via 2010).¹³

The feminist gender analysis as my research analysis is applied in form of a qualitative content analysis that is generally oriented towards the interpretation of documents; in the case of this Master thesis, the Monitoring Reports of the Working Group are the principal document sources (Bryman 2012).¹⁴ As stated in Bryman, “[t]his is probably the most prevalent approach to the qualitative analysis of documents. It comprises a searching-out of underlying themes in the materials being analysed” (Bryman 2012: 557). As opposed to Berelson, Krippendorff (2004) highlights the qualitative purpose of a content analysis; this corresponds to the idea of reading being a subjective action. Besides, Krippendorff (2004) adds that “[a]s a research technique, content analysis provides new insights, increases a researcher’s understanding of particular phenomena, or informs practical opinions” (Krippendorff 2004: 18).

According to Krippendorff’s (2004) content analysis model (see Figure 4), in the case of this Master thesis, access to justice for women victims of sexual violence associated with the armed conflict in Colombia represents the context of my research. It consists of the research question and the texts (Monitoring Reports), which are the main object of my investigation. By conducting a qualitative content analysis, the researcher operationalizes the

¹² For further methodological approaches, consult Kirby (2012) and Peterson (2010). Kirby (2012) discusses a “feminist mode of critical explanation” (Kirby 2012: 801 ff.) and Peterson (2010) addresses intersectionality and gender as both an empirical and an analytical category (Peterson 2010: 17 ff.).

¹³ For further developed approaches, Moser (2000) presents, based on Cockburn’s approach, an operational framework that effectively implements a gender perspective.

¹⁴ However, Krippendorff (2004) emphasizes that the method of content analysis can also be applied to works of art, images, maps, sounds, signs, symbols and even numerical records.

texts (inputs) and infers meanings (outputs) that are used in order to answer the research question.

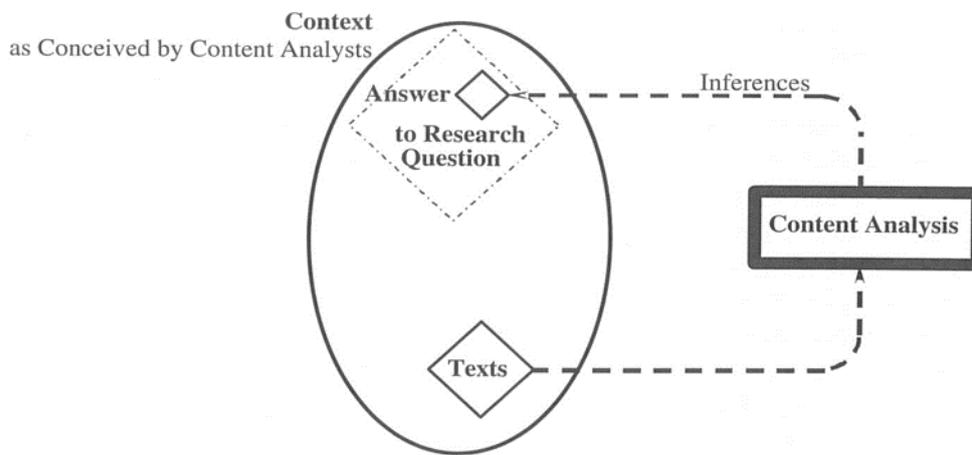


Figure 4 Content analysis: answering questions concerning a context of texts (Krippendorff figure 4.1 2004: 82).

Here, the research question is answered by means of testing hypotheses which are formulated based on the theoretical framework of this Master thesis. Thus, the meanings that are inferred from the Monitoring Reports have to be demonstrated in direct response to these and the overall research question (Neuendorf 2002). For these reasons and as a kind of database for the analysis, all the relevant data inputs were categorized according to the hypotheses' focus and, represented in form of tables, included into the Appendix of this work. Considering the aim to avoid biased findings and increase their validity, the researcher needs to be positioned outside of the investigated context.

For concluding purposes, Figure 5 graphically summarizes how the research process for this Master thesis was designed.

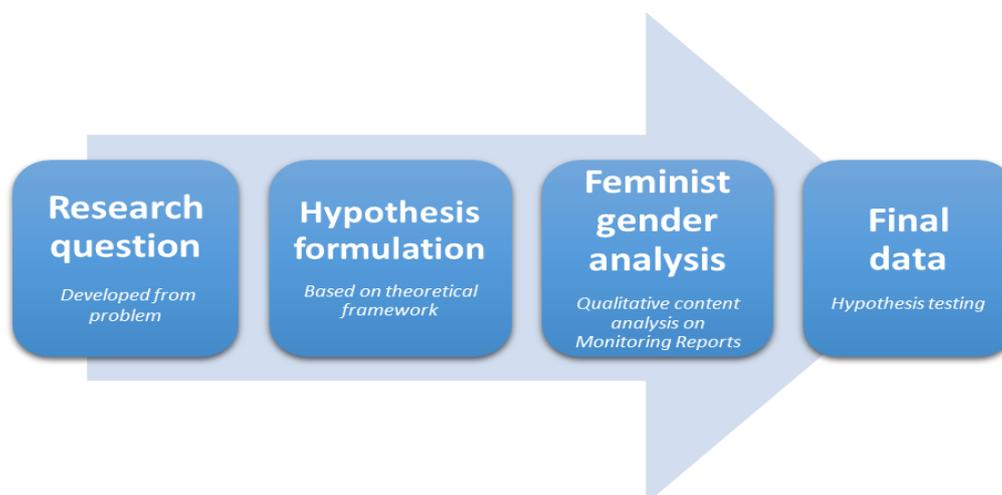


Figure 5 Research design: a structural overview.

2.4 Limitations

Conclusively, I would like to indicate possible limitations which could result from the methodological considerations I follow.

General limitations

Firstly, in terms of general limitations, Standpoint Feminism as my research paradigm has not remained without criticism. As stated in Hansen, “[s]tandpoint feminism has been attacked for assuming a single coherent female subject and diversity feminism that understands identity as informed not only by gender but by ethnicity, class and race was developed in response” (Hansen 2010: 23). Secondly, Villellas Ariño (2010) suggests that some authors have pointed out that adopting a gender perspective bears the danger to represent a generalized view of girls and women as victims and men as perpetrators. Therefore, when adopting the research paradigm of Standpoint Feminism and aiming at carrying out a feminist gender analysis, I do not intend to present gender as the only meaningful category, however, I wish to emphasize that a gender focus points out certain realities (in this case of women victims of sexual violence in Colombia) that are normally neglected or even silenced (Parpart & Thompson 2012). Furthermore, my approach neither aims at displaying women as sole victims without any agency or initiative. Naturally, due to the thematic focus of this Master thesis, women are mainly presented in the situation of being victims of sexual violence. However, as is confirmed by numerous sources, it has to be strongly emphasized that while the armed conflict and the sexual violence associated with it have victimized women extremely, at the same time, women have initiated processes of collective mobilization and empowerment (ABColumbia 2013, Moser & Mcilwaine 2001, PCS 2006, Villellas Ariño 2010). Thereupon, although the chosen focus and the limited scope of this Master thesis do not allow for a detailed presentation of this aspect, women are not victims of sexual violence *alone*. As has been mentioned before, one of the consequences of the armed conflict was the creation of spaces and organizations for women and the defense of their rights; because of their agency, significant progress has been achieved in Colombia.

Thirdly, in the light of a feminist gender analysis being implemented on the basis of a qualitative content analysis, analyzing the Monitoring Reports corresponds to a secondary analysis. This implies that, as the researcher, I am familiarized with the data only to a certain extent and I have no supervision over the quality of the data, nor over the methods used. Besides, considering official government and non-government publications, Bryman (2012)

argues that “[i]ssues of credibility and representativeness are likely to exercise the analyst of documents somewhat more. People who write documents are likely to have a particular point of view that they want to get across” (Bryman 2012: 551). Therefore, the analysis of a certain type of documents should be supported by other sources (Bryman 2012).

Sexual violence and data

Finally, in consideration of the research topic of my Master thesis, it is important to address the relation between sexual violence and the data available on its prevalence. As stated in Pankhurst (2010), “just as data about deaths caused by war are difficult to obtain and verify, and are often contested, so too are those on the incidence of rape and sexual violence” (Pankhurst 2010: 150). Leiby (2009) agrees with this observation and points out several contexts which could possibly explain a lack of data on the prevalence of sexual violence: the essential government services and infrastructure in place in countries experiencing conflict and war could be dysfunctional and therefore keep victims from reporting sexual violence crimes, and women victims of sexual violence might not report the crimes committed against them due to the social stigma of sexual violence and their fear of the perpetrators or people connected to them. Besides, both Leiby (2009) and Pankhurst (2010) argue that institutional actors responsible of guaranteeing access to justice might be biased towards women victims of sexual violence, which is why women could finally decide to not report or their charges might simply be ignored. Thus, Leiby explains that

[e]ven with concerted efforts, organizations often encounter difficulty in conceptualizing and creating reliable measures of sexual violence. Human rights abuses, in general, do not lend themselves well to objective quantification, particularly when victims suffer repeated or multiple forms of abuse. Currently, much of the field employs a “one victim equals one violation equals one perpetrator” approach to recording abuse (Leiby 2009: 451).

Consequently, it is not only important to mention the lack of data on the prevalence of sexual violence in conflict and war contexts, but also the various forms of sexual violence and its different perpetrators. Moreover, reflecting on the WHO’s 2005 publication “WHO Multi-Country Study on Women’s Health and Domestic Violence against Women, Boesten and Wilding (2015) indicate that there are fundamental problems with carrying out comparative studies of sexual violence. So far, the magnitude of sexual violence against women associated with Colombia’s armed conflict could not be captured in form of precise or representative

data sets (ABColumbia et al. 2013, Casa de la Mujer 2011). It is a crime which is associated with a high level of under-reporting and impunity due to a number of obstacles women have to face when deciding to denounce the crimes committed against them (ABColumbia et al. 2013). Nevertheless, according to ABColumbia et al. (2013), Casa de la Mujer's publication "First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001 - 2009" (2011) is the most complete study until now. For the purpose of this Master thesis and in order to avoid any unnecessary confusion, I henceforth refer to this study. I do not claim that the survey covers the complete reality of this crime, however, it is the most reliable and well-documented source. The study is descriptive and does not intend to find out the motives for which sexual violence against women is committed within the context of the conflict.

3. Theories and concepts

The following sub-chapters present the theoretical and conceptual framework of this Master thesis that has been composed for carrying out a feminist gender analysis. As a preparatory step before introducing the theoretical considerations, the two predominant concepts of armed conflict and sexual violence are explained, aiming at defining and understanding them in the context of my research.

3.1 Armed conflict

For the analysis of Colombia as a country case example, it is required to amplify one of the main concepts, which is mentioned throughout this Master thesis – armed conflict. As stated in Moser and Clark (2001), "conflict is broadly understood as the pursuit of incompatible goals by different people or groups [...] Thus armed conflict is a narrow category of the general term 'conflict', denoting conflicts where one or both sides resort to the use of force. Underlying all types of conflicts is the critical issue of power relations" (Moser & Clark 2001: 6). Applying the method of a feminist gender analysis to the concept of armed conflict, Villellas Ariño (2010) argues that firstly, the traditional vision of armed conflicts as neutral realities is dismantled. Thus, the fact that the outbreak of armed conflicts happens independently of the power structures in terms of gender that exist in a certain society is questioned (Ibid.). Secondly, from this perspective, the claims that intend to homogenize the consequences of armed conflicts is seriously doubted (Ibid.). Moreover, armed conflict could be connected to Mary Kaldor's concept "new wars", which is referred to by both Sjoberg and Via (2010) and Sylvester (2012). These new wars destabilize consolidated governments and

feature diverse groups of armed actors (Sylvester 2012). More importantly, “the nature of violence is a key indicator of the new war: all sides participate in the suppression of normal civility and operate effectively on the undersides of morality and cosmopolitanism” (Sylvester 2012: 488). These so-called *new wars* and Colombia’s armed conflict bear significant similarities, since the armed conflict features various groups of armed actors and the use of violence is widespread throughout different sectors of the society.

The armed conflict in Colombia has been ongoing since over 50 years by now. The Government entered into peace negotiations with FARC (Fuerzas Armadas Revolucionarias de Colombia) in 2012 and after a recent postponement of the date for signing an official peace agreement in March 2016, both parties accepted the terms for a bilateral ceasefire on 22nd June 2016 and President Santos announced the expected end to the peace talks by 20th July 2016 (BBC News 2016b,c; El Espectador 2016b). By the end of March 2016, the Government had informed that peace negotiations with the second biggest guerrilla group ELN were about to be initiated as well (BBC News 2016a). Nevertheless, as reported by BBC News (2016b) “those talks, which were due to start in Ecuador in May, have been put on hold over a disagreement over kidnappings, which the government wants the ELN to stop for good” (BBC News 2016a: para. 16). Thus, it is complicated to define with complete certainty in which kind of stage the conflict is right now; the State has passed official laws in order to repair victims of the conflict but the conflict has not come to an official end yet. In my opinion, and for the purpose of this Master thesis, I argue that although significant progress has been achieved towards reaching a final end to the conflict, Colombia and its society are still situated within the context of an armed conflict and one cannot speak of a post-conflict scenario, no less of peace.

3.2 Sexual violence

Another major concept which requires elaboration is the phenomenon of sexual violence. The prevalence of sexual violence in the Colombian armed conflict is confirmed by various sources (Casa de la Mujer 2011, Franco 2007, Milillo 2006, PCS 2006); therefore, a delineation of the concept is necessary in regard to the analysis of the country case example. So far, academic scholarship has not been able to agree on a common definition for the concept of *sexual violence*, nor has it been finally determined what can make sexual violence a *weapon of war* and if yes, in which way (Skjelsbæk 2001a). According to Skjelsbæk (2001a), “feminist scholarship has brought an understanding of rape and sexual violence as

instances of violence, dominance and control aimed at maintaining patriarchy and women's subordinate position within this social order" (Skjelsbæk 2001a: 212). In line with Skjelsbæk (2001a), Kirby (2012) argues that feminist academic scholars have defined sexual violence "as a form of social power characterized by the operations and dynamics of gender" (Kirby 2012: 800). First of all, it is particularly important to emphasize that sexual violence comprises multiple patterns apart from the act of rape¹⁵; forced marriage/prostitution, genital mutilation and forced nakedness to mention some examples (Skjelsbæk 2001a, b). Secondly, the occurrence of sexual violence implies that an act of violence takes place; in the past, in comparison to other expressions of violence in conflict and war contexts, sexual violence was not understood to be realized for strategic objectives, which is a perception that started to be questioned after the wars in Bosnia and Rwanda (Skjelsbæk 2001b). Thirdly, sexual violence is indeed an act of violence but at the same time it is a demonstration of power (Mackenzie 2010, Seifert 1996, Skjelsbæk 2001b). Skjelsbæk (2001b) illustrates that further by addressing the relationship between perpetrator and victim: "This masculinity/femininity relationship is further embedded in a heterosexual hegemonic power structure where masculinity is what gives power and femininity is void of power" (Skjelsbæk 2001b: 71). Concerning the term *weapon of war*, no clear or determining definition has been reached (Skjelsbæk 2001a). Mackenzie (2010) argues that "[a]ccounts of wartime rape as a tool of war often centre on the impact of the rape instead of describing rape as a side-effect of patriarchal society" (Mackenzie 2010: 208). And Kirby (2012) points out that a common agreement on the idea that sexual violence is a weapon of war might obscure the diversity of our individual experiences of it.¹⁶

Regarding the following analysis, I would like to underline Skjelsbæk (2001a, b) and Kirby's (2012) argument that sexual violence in conflict and war situations aims at maintaining the patriarchal power relations in place and argue that this statement reflects Colombia's current situation.¹⁷ Besides, sexual violence against women has an individual as well as a collective dimension – it is the victim itself as well as the victim's community which the perpetrator intends to impact – based on the pursuit of political goals and the gender relations present in the respective context (Villellas Ariño 2010). The multifaceted use of sexual violence in conflict and war situations is a major concern of discussion in the

¹⁵ Pankhurst (2010) provides a definition of rape in International Law.

¹⁶ Farwell (2004) explains the way the ICTY established a framework of how to investigate the strategic and deliberate use of rape as a weapon of war.

¹⁷ Gerecke (2010) focuses on certain explanations of sexual violence in conflict and war contexts, gender inequalities and identity among other things.

academic literature reviewed for this Master thesis.¹⁸ Nevertheless, due to the context of this work and its limited scope, I believe that it is adequate to forego a comprehensive analysis of the general use of sexual violence in conflict and war contexts, since the focus on the example of the Colombian country case is not to analyze the use of sexual violence associated with the armed conflict. This does not mean that I consider this aspect irrelevant – the use of sexual violence in the Colombian armed conflict is addressed in the “Contextualization” chapter – but a complete overview of the phenomenon cannot be provided against this background. However, in accordance with feminist academic scholarship, I consider it crucial to emphasize that there is no general experience of sexual violence and in order for policy actions to be effective, the complex nature of sexual violence, its victims and its perpetrators need to be taken into account completely (Boesten 2010, Leiby 2009, Moser 2001 and Pankhurst 2003). Correspondingly, I exclude a thorough presentation of the impact and consequences of sexual violence – they are devastating and versatile ranging from mental and physical health to social exclusion (Mackenzie 2010, Milillo 2006 and Villellas Ariño 2010) – again due to the analytical focus and limited scope of this Master thesis. Finally, when talking about victims of sexual violence, I limit myself to women victims of sexual violence. I would like to remark that this limitation is necessary for the purpose of this Master thesis and it has been clarified that women are the primary target of sexual violence in conflict and war contexts; still, I recognize that, without any doubt, there are cases of men victims of sexual violence as well (Skjelsbæk 2007).

Keeping in mind these two concepts of armed conflict and sexual violence, the next step is to move forward to the introduction of the relevant theories for realizing a feminist gender analysis. Subsequent to determining the disciplinary context my chosen theoretical framework can be assigned to, I elaborate on the two main theories used in order to explain why impunity has persisted despite the implementation of the Order Auto 092 of 2008 passed by Colombia’s Constitutional Court – the *continuum of violence* and *gendered institutions*. As it becomes evident in the respective sub-chapters, the continuum of violence and gendered institutions are originally defined as concepts; however, in the context of my research, they are understood as complete theoretical tools and applied accordingly in the analysis.

¹⁸ Several of the feminist academic scholars refer back to Ruth Seifert (1994, 1996); for example Cockburn (2004) and Skjelsbæk (2001b). Kirby (2012) suggests various approaches that have been taken towards the topic and highlights the work of Pankhurst (2010). Other works that have been consulted are Farwell (2004) and Milillo (2006). Wood (2010) discusses the variation of sexual violence and claims that it is not always present in all conflict and war contexts; an approach to the topic that is overlooked in her opinion.

Laura J. Shepherd (2010) explains that “[t]heory is often represented, especially by those who see it as a tool, as ‘objective’ and ‘value-free’. A ‘theory’ is supposed to explain and predict things about the world and it is supposed to be ‘scientific’” (Shepherd 2010: 4). However, she claims that “we can see theory as practice [...] ‘Theorising’ in this context, means that the way we think about the world is constitutive of that world” (Ibid.). As a consequence, if we decide to adopt a gender perspective, we can start to understand the importance of thinking about the world in terms of gender (Shepherd 2010). Thus, Feminist IR opens up the possibility to theorize IR from a gender perspective.

3.3 Feminist IR

This Master thesis is situated within the disciplinary context of Feminist IR. The presence of feminist analysis is fairly new in IR theory (Blanchard 2003).¹⁹ Feminist academic scholars agree on the fact that mainstream IR theories such as Realism and Neorealism have not included women’s concerns or their insecure position in different societies due to their foundations on patriarchal structures (Blanchard 2003, Cockburn 2010, Lee Koo 2002).²⁰ According to Lee Koo (2002), “there is a consensus in international politics founded upon particular ways of knowing, and what can be legitimately known and discussed. Implicated in this consensus are the dominated discourses of international relations theory and gendered actors, structures and agents of international politics” (Lee Koo 2002: 534). Here, in order to give an example, one could think of the lack of data on and documentation of sexual violence in conflict and war contexts. Feminist theory has played a crucial role in questioning this subordination of the female experience, since on the one hand, it has acknowledged the socially constructed gender relations our societies are built upon and, on the other hand, feminist scholars have recognized the many identities of women and their various experiences (Lee Koo 2002). The International Community is highly involved in the current process of peace negotiations in Colombia and the troubling situation of women victims of sexual violence associated with the armed conflict has been a frequent matter of discussion; therefore, the international legal framework that the Colombian State has committed to is presented in the “Contextualization” chapter.

¹⁹ For further reading, Parpart and Thompson (2012) illustrate the development of Feminist IR in their article.

²⁰ Consult Sylvester (2012) for a more detailed overview concerning mainstream IR theories.

As a sub-field within the broader discipline of IR, Security Studies have also been in the center of attention of Feminist IR scholarship (Hansen 2000, Parpart & Thompson 2012).²¹ Hansen (2000a) argues that

[g]endered security problems have [...] been recognized by governments to the extent that they followed the national logic [...] Yet it remains crucial to emphasize that the discourse of 'national security' might silence women's security problems when 'women's problems' conflict with the securities of the national community. Thus, feminist studies must examine constructions of the relationship between gender and nation not to make them correspond, but in order to analyse how the political structures of patriarchy and state sovereignty condition the way gender security can be taught (Hansen 2000: 58 f.).

These considerations of a gender perspective on Security Studies are insofar relevant for my problem formulation that in connection with the country case example of Colombia, one could claim that the access to justice for women victims of sexual violence as a security problem differ from the security interest of the Colombian State due to underlying patriarchal structures.

3.4 Continuum of violence

The *continuum of violence* is a concept which was initially defined by Liz Kelly in 1988. In her book *Surviving Sexual Violence* she states the following: My use of the concept of a continuum is based on two of its meanings in the *Oxford English Dictionary*: first, 'a basic common character that underlies many different events'; and, second, 'a continuous series of elements or events that pass into one another and which cannot be readily distinguished'" (Kelly 1988: 3 of chapter 4). Consequently, she argues that the concept of a continuum of violence against women describes that different forms of violence cannot be understood as individually isolated incidents, even though she alerts to not undermine the gravity of every type of violence by perceiving them in form of a hierarchical order (Kelly 1988). Based on Kelly's definition of the continuum of violence, Cockburn (2004, 2010) and other feminist academic scholars have applied this theory to the comprehension of the relation between conflict and war and sexual violence against women, and have emphasized the high importance of understanding and recognizing the continuum of violence that is maintained

²¹ For further reading, Parpart and Thompson (2012) provide an overview in terms of the development of Security Studies.

not only throughout conflict and war contexts but also during peace times (Boesten 2010, Villellas Ariño 2010).

In order to being able to grasp how extensive and systematic the impact of this continuum of violence is, the patriarchal system it is held up and reproduced by has to be considered. Taking into account and working with the concept of patriarchy, there are several facts about the category of gender which should be borne in mind: First of all, apart from the predominant gender division (masculine/feminine), gender has to be perceived as a power relation that affects and influences other power dimensions (Cockburn 2004). Secondly, Cockburn (2004) points out that the gender division between men and women is “*normally* represented as natural, rooted in biology, and confirmed in history” (Cockburn 2004: 27). Therefore, gender is perceived as something so usual that it is not fundamentally questioned (Cockburn 2004). This gender system is commonly referred to as *patriarchy* and implies the masculine domination of both the private and the public space (Cockburn 2010).²² Concerning the perseverance of patriarchy, Cockburn (2010) explains that “[s]ocial structures and their institutions are adaptively reproduced from one generation to the next in the main by cultural means – most importantly in the case of patriarchy by cultural shaping, in continually changing circumstances, of hegemonic masculinity in a form adequate to power, and particularly to the deployment of coercive power” (Cockburn 2010: 108). Cockburn’s definition of patriarchy might evoke a rather deterministic comprehension of the concept. Thus, I would like to call attention to the fact that societies and their structures are never static and the awareness of patriarchy and the issues resulting from this system have received growing attention.

Referring to the specific country case example of Colombia, the fact that women are victims of sexual violence both within the context of the armed conflict and outside of it, is a crucial reality that has to be taken into account. For instance, according to a recent newspaper article of El Espectador (2016a), there are four femicides²³ per day in Colombia. In accordance with the understanding of a continuum of violence against women, Boesten and Wilding (2015) claim that “[m]uch of women’s experiences during and following periods of extensive violence are informed by pre-existing, peacetime, inequalities. The specific

²² For further reading, Sylvester (2012) and Villellas Ariño (2010) discuss how patriarchal structures take control over the feminine body.

²³ According to UN Women, “[f]emicide is a crime involving the violent and deliberate killing of a woman, but many States do not specifically define such a crime in their criminal codes. As a result, statistics are hard to come by” (UN Women 2013: 4).

gendered harms suffered by women, such as sexual violence and exploitation, are grounded in understandings of gendered roles in society and the perceived links between reproduction and community” (Boesten & Wilding 2015: 75). In Colombia, these inequalities and gendered roles result from the country’s pervasive patriarchal structures that are based on the deeply rooted subordination of women in relation to men. Therefore, substantial peace for women requires not only the elimination of violence during conflict and peace but also the prevention of structures which fuel the continuum of violence against women (Kelly 2000). These structures that constantly reproduce and maintain unequal societies range from institutional and economic structures to structures that are defined by people’s standards and ideals (Boesten & Wilding 2015). Thus, in Colombia, patriarchal structures do not merely limit themselves to the relation between women and men, but they determine the society and its mechanisms as a whole establishing dominating power relations in politics and institutions. Additionally, militarism and/or militarization have to be included into an understanding of societies that are characterized by these structures. As stated in Sjoberg and Via (2010), “[m]ilitarism is the extension of war-related, war-preparatory, and war-based meanings and activities outside of the “war proper” and into social and political life more generally [...] Feminists have pointed out that this militarism that pervades global politics is not gender neutral” (Sjoberg & Via 2010: 7 f.). In accordance with Sjoberg and Via (2010), Farwell (2004) claims that numerous feminists focus on the phenomenon of *militarization*: “A militarizing society calls on patriarchal values and mechanisms of domination and control, heightening hierarchical relations between men and women and equating constructions of masculinity with violence” (Farwell 2004: 394). Moreover, in turn, the values of a patriarchal society are reproduced by the phenomena of militarism and militarization (Cockburn 2010).²⁴ As becomes evident in the “Contextualization” chapter, these dynamics are certainly reflected in Colombia’s reality of armed conflict; e.g., a relation has been established between the presence of armed actors and the prevalence of sexual violence.

As a consequence, according to Boesten (2010), addressing the continuum of violence against women “forces us to examine the underpinning norms, values and institutional structures that normalize certain violences and exceptionalize others” (Boesten 2010: 113). This implies that it is pointless to differentiate between individual phases of peace and war or

²⁴ One of the leading scholars adopting this approach and who is frequently referred to by other feminist writers, is Cynthia Enloe (Lee Koo 2002, Mackenzie 2010, Puechguirbal 2010).

pre- and post- because this very flux is characterized by a continuum of violence that pervades the complete system of power relations (Cockburn 2004). Finally, Cockburn (2004) states that “the continuum of violence runs through the social, the economic, and the political, with gender relations penetrating all these forms of relations, including economic power” (Cockburn 2004: 43).

3.5 Gendered institutions

Regarding my country case example of Colombia, I have already addressed the presence of pervasive patriarchal structures in its society in general. At this point, it is necessary to narrow down the focus a little bit and elaborate on how patriarchy specifically influences institutional bodies. Researchers working in the field of feminist academic scholarship have been concerned with the fact that institutions in charge of justice mechanisms and responsible for their rightful and effective implementation in conflict and/or post-conflict societies are characterized by a clear gender bias (Boesten & Wilding 2015, Ní Aoláin 2009²⁵, Pankhurst 2003). These *gendered institutions* quietly reproduce the already existing gender inequalities and thereby allow the persistence of impunity in cases of sexual violence. In other words, [b]y allowing everyday forms of violence to continue, it legitimises this violence, isolates those who experience violence and, in doing so, reinforces and reproduces the structures in which such violences are embedded” (Boesten & Wilding 2015: 76). When referring to the issue of gendered institutions, Pankhurst (2003) uses the term “masculine institutions” (Pankhurst 2003: 167). Moreover, she explains that naturally, men rule in this kind of institutions and women hardly have the opportunity to assume leading positions (Pankhurst 2003). These underlying structures of justice mechanisms are highly important to bear in mind for the analysis of the Monitoring Reports.

3.6 Transformative gender justice

Against this background, and with the objective to concentrate on the issue of impunity, I would like to point out to the concept of “transformative gender justice” as a justice mechanism that has been considerably discussed by feminist academic scholarship (Boesten & Wilding 2015).²⁶ In line with Boesten and Wilding (2015), “[u]sing the term of ‘transformative justice’ indicates a need for justice mechanisms to address the structures and

²⁵ Ní Aoláin (2009) directs special focus towards institutions operating on the international level.

²⁶ Transformative justice is usually debated alongside other justice concepts. For further clarifications, Boesten and Wilding (2015) include restorative and transitional justice, and Gready and Robins (2014) give special emphasis on the similarities and differences of transitional and transformative justice.

institutionalised inequalities that allow violence against women to persist” (Boesten & Wilding 2015: 77). Thus, this justice mechanism calls for a change of focus towards bottom-up interventions that incorporate and encourage the participation of victims themselves (Boesten & Wilding 2015). The predominant comprehension that is recognized and incorporated by transformative gender justice is the fact that “[r]ape in war, weapon or not, is a product of the inequalities, stereotypes and prejudices that lie at the heart of the continuum of violence against women” (Boesten & Wilding 2015: 78). Consequently, this justice mechanism provides the opportunity to uncover the responsibilities of governments and its institutions in maintaining and reproducing structural violences against women, since it sheds light on their biased nature (Boesten & Wilding 2015).

Sjoberg and Via (2010) argue that women face a world which continues to be structured by masculine perspectives and necessities; this is an important observation, since these very structures pervade national and international authorities while women are only incorporated for official purposes. In line with Sjoberg and Via (2010), Boesten and Wilding (2015) claim that the current mechanisms to eliminate these structures might have achieved partial improvements and reparations but they have by far not been transformative to the necessary extent. Therefore, they conclude that “the further inclusion of women in the design and implementation of peacemaking and transitional justice processes and mechanisms is essential for an agenda of more bottom-up inclusion [...] Feminist social transformation is necessary to break the cycles of gender based violence and inequality” (Boesten & Wilding 2015: 77).

3.7 Hypotheses

The theories and concepts presented in this chapter all have the common objective to design a theoretical and conceptual framework which is able to provide a fundamental groundwork for a *feminist gender analysis*. This analysis aims at exposing the presence of a *continuum of violence* and *gendered institutions* that feature gendered power relations which have a fundamental and predominant impact on women victims of sexual violence in Colombia.

Against this background, the following two hypotheses were evolved and formulated (see Table 3):

HYPOTHESIS 1 (H1)	<i>Impunity has persisted despite the Order Auto 092 of 2008 passed by Colombia’s Constitutional Court due to the presence of a pervasive continuum of violence against women in the country’s society.</i>
HYPOTHESIS 2 (H2)	<i>Impunity has persisted despite the Order Auto 092 of 2008 passed by Colombia’s Constitutional Court due to the mechanisms of gendered institutions, which are in charge of guaranteeing access to justice for women victims of sexual violence.</i>

Table 3 Introducing hypotheses.

Figure 6 graphically summarizes the process of hypothesis generation and the subsequent “Contextualization” chapter lays the final foundations before engaging into the analysis.

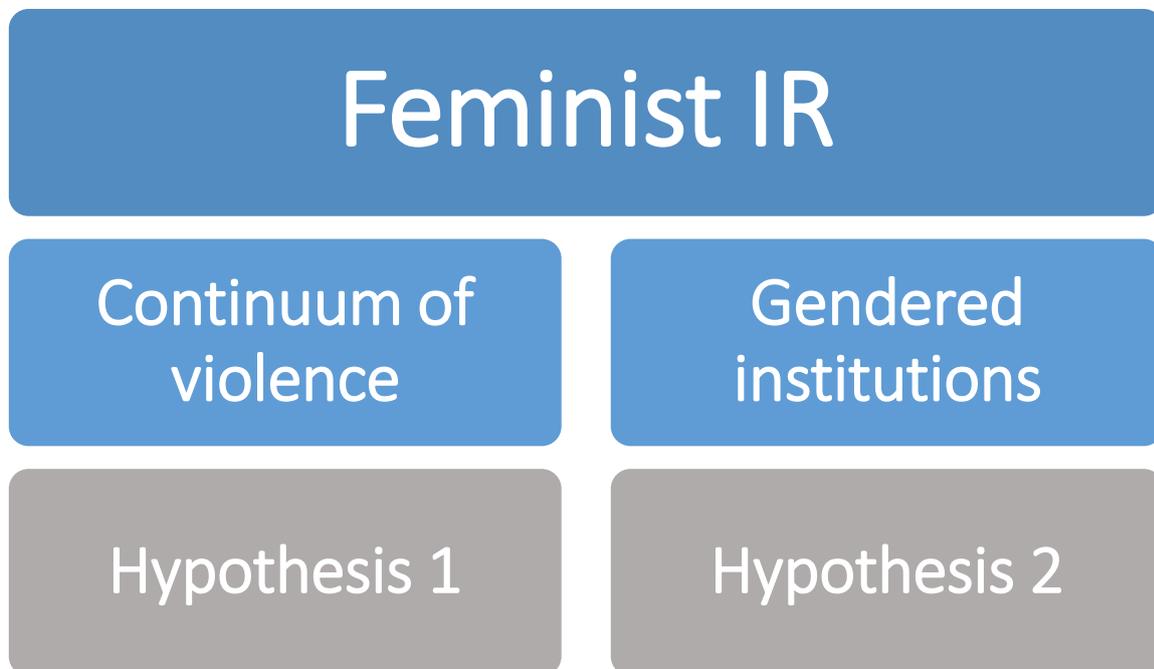


Figure 6 Process of hypothesis generation: an overview.

4. Contextualization

As reported by the latest regional HDR (Human Development Report) for Latin America (2013), despite considerable progress in terms of poverty and inequality reduction, economic growth and financial stability, and more democratic and social governments, there has been a threatening increase of violence in the region over the last decade. The Report states that “the region carries a heavy burden of violence, registering more than 100,000 homicides per year. Most countries in the region have homicide rates which are much higher than for other regions and which are considered to be at epidemic levels by the World Health organization” (UNDP 2013: III). Colombia is one of these countries with a homicide rate of 30.8 per 100.000 people, according to the data of the most recent HDR (2015); this is the tenth highest homicide rate globally (UNODC 2014). Moreover, the number of femicides has augmented in various countries in Latin America (UNDP 2013). Apart from these extremely high levels of homicide, the increasing presence of violence in the region also concerns gender-based and sexual violence (UNDP 2013). According to the regional Report (2013), “[o]n a typical day in Latin America, 460 people suffer the consequences of sexual violence, most of them women” (UNDP 2013: V). In the case of Colombia, the prevalence of violence against women has already been established in the previous chapters. In order to give another example, 39.7% of the Colombian women have ever experienced physical or sexual partner violence (Bott et al. 2012).²⁷ An additional factor observed by UNDP (2013), which makes this reality even more dangerous for Latin America’s society, is the fact that “[c]ountries in the region show large deficits in capacities concerning justice and security, which are reflected in alarming

²⁷ This figure is taken from a comparative study of PAHO (Pan American Health Organization) for Latin America and the Caribbean. The data analyzed of Colombia is from 2005 and refers to women who have officially reported the violence against them.



COLOMBIA: COUNTRY PROFILE

Geographical location: South America (Latin America and the Caribbean)

Population: **48.9 million** (50.8% female); Afrocolombian **10.62%**, Indigenous **3.43%**; **24% of total** living in rural areas

GNI per capita (2011 PPP\$): **12.040,20**

GDP per capita (2011 PPP\$): **12.025,40;**

581.10 billion in total

HDI: **0.72 (rank 97)**

- Upper middle income country -

People living in poverty/extreme poverty:

28.2%/7.9%

Homicide rate (per 100.000 people): **30.8**

GGI (Gender Gap Index) (0.00 – inequality, 1.00 – equality): **0.725 (rank 45)**

Estimated GNI per capita (2011 PPP\$):

9.785,20 female // 14.371,70 male

Female employment/unemployment rate:

42.6%/13.3% (10.1% total)

Share of seats in parliament (women):

20.9%

Female heads of households: **35.07%**

Physical/sexual partner violence against women ever experienced: **39.7%**



(Data according to DANE 2005, 2015; IDB 2014, UNDP 2015, World Bank 2016 and World Economic Forum 2015).

levels of impunity, the crises in their prison systems and the feeling of mistrust citizens harbor regarding the institutions of justice and the police” (UNDP 2013: V). For instance, the regional Report (2013) affirms that women victims of sexual violence hardly present their charges to the respective authorities. This lack of institutional accountability is an issue that, without any doubt, also applies to the Colombian country case example. PCS (2006) states that, considering the situation of women victims of sexual violence, the fear and the insecurity to report the crimes, the sensation of impunity and the belief that the proper legal conditions for their cases do not exist is common in Colombia.

Taking all of this into account, the following sub-chapters address Colombia’s patriarchal society and how it influences women’s lives. The topic of the armed conflict and the sexual violence against women associated with it are introduced. Subsequently, Colombia’s legal framework implemented to prosecute this crime is presented and the particular Orders Auto 092 of 2008 and Auto 009 of 2015 are discussed with the objective to provide the necessary background knowledge before engaging into the analysis.

4.1 Women’s violent realities

According to PAHO’s 2012 comparative study on violence against women in Latin America and the Caribbean, Colombia presents the third highest percentage of physical or sexual partner violence ever experienced by women (Bott et al. 2012).

Figure 7 illustrates statistical data on the prevalence of violence against women in Colombia within the months of January and February 2015.²⁸



Figure 7 Violence against women in Colombia, Jan - Feb 2015: a statistical overview (based on Centro de Referencia Nacional sobre Violencia 2015).

A concerning observation to make but at the same time an extremely relevant one to acknowledge is the fact that the perpetrators associated with these different kinds of violent crimes committed against women were mainly men who belonged to the circle of people that were closest to the victims; e.g. family members, partners or ex-partners and friends (Centro de Referencia Nacional sobre Violencia 2015).

²⁸ This Figure is based on a special publication of the Centro de Referencia Nacional sobre Violencia that was issued due to alarming numbers of cases of violence against women. In Colombia, statistics on violence are usually provided by the Instituto de Medicina Legal and their publication “Forensis”, and by the National Police.

Moreover, a shocking number of 126 homicides of women was registered for this sole period of time; Valle del Cauca, Bogotá and Antioquia are the three departments which had the most elevated numbers in this context (Ibid., see Figure 8).²⁹

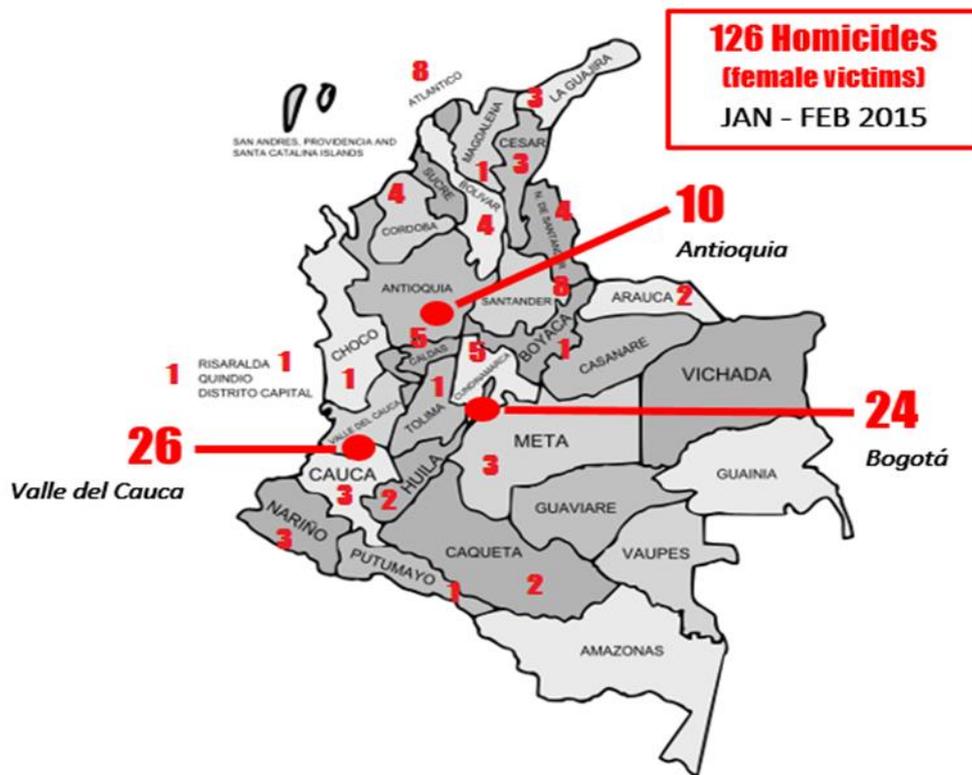


Figure 8 Homicides (female victims) in Colombia, Jan - Feb 2015: a country overview (based on Centro de Referencia Nacional sobre Violencia 2015).

Taking all these figures into account, the prevalence of violence against women in Colombia, throughout all spheres of life, is deeply rooted in the country’s patriarchal society. The Constitutional Court’s ruling C-410 of 1994 is an example for the official recognition of these patriarchal structures, in which it is stated that there had been progress on a legal level in terms of equality for women, but only a slow acknowledgement of it in reality. Thus, the sentence concludes that culture does not advance at the same velocity as the law. Another example to demonstrate the awareness of Colombia’s patriarchal society is the Constitutional Court’s ruling C-804 of 2006 that refers to the sentence of 1994 and elaborates on women’s role in society and on their rights; for instance, the economic exclusion of women and their sexual and reproductive rights.

²⁹ The category of “femicide” is not mentioned yet, since the law recognizing it had not been passed before July 2015 (El Espectador 2015).

Finally, the predominant intention behind this sub-chapter is to demonstrate that, in fact, experiencing violence is an everyday, pervasive reality for women in Colombia, not an isolated one that can simply be linked to the armed conflict. This is an essential acknowledgement to make in order to design and realize an effective response for eradicating the root causes of violence against women.

4.2 Armed conflict and sexual violence

Colombian armed conflict

The presence of armed conflict in Colombia and the occurrence of sexual violence in this context is widely recognized (Franco 2007, Milillo 2006, PCS 2006). Colombia's armed conflict emerged subsequent to a period of conflictual confrontation between the Liberal and the Conservative national party often referred to as "La Violencia" (The Violence), which affected the country's rural population to a high extent (Alzate 2007, Meertens & Zambrano 2010). Furthermore, Meertens and Zambrano (2010) point out that "[a]lthough land was not at the center of the conflict, many properties were abandoned and land holdings became concentrated in the hands of a few, particularly in regions with high crop productivity, such as the central coffee- and sugar-cane growing areas" (Meertens & Zambrano 2010: 192). The coalition government denominated as "Frente Nacional" (National Front) that was formed as a response to this violent period failed to acknowledge the whole political spectrum of Colombia; this encouraged the rise of the guerrilla groups FARC and ELN (Alzate 2007, Meertens & Zambrano 2010, PCS 2006). The beginning of drug trafficking in the 1970s and the increasing violence by both drug traffickers and the guerrilla groups in the 1980s augmented the anger of landowners towards the State due to its deficient protection system (Alzate 2007, Meertens & Zambrano 2010). As a consequence, these landowners and also drug traffickers established self-defense bodies – paramilitary groups – which unified into the AUC (Autodefensas Unidas de Colombia) in the 1990s (Alzate 2007, Meertens & Zambrano 2010, PCS 2006). From 2003 to 2006, AUC were demobilized, however, paramilitary groups continue to exist and operate in Colombia (ABColumbia et al. 2013). Whereas many national and international organizations perceive these groups as a continuance of AUC, the Colombian government refers to them as BACRIM (Bandas Criminales), criminal gangs, and thereby it negatively impacts the situation of their victims, since the victims cannot be considered as victims of the armed conflict anymore (Ibid.). Besides, Amnesty International and the UN have officially acknowledged a historic link between paramilitary groups and the State security forces (Meertens & Zambrano 2010, PCS 2006). Generally, FARC, ELN and

the paramilitaries can be perceived as the major groups of armed actors operating in Colombia's armed conflict. In regards to their numbers of fighters, estimated figures have been immensely contradictory and there is a general under-reporting concerning their presence; this only proves the fact that, despite decades of armed conflict, the Government has not been able to fully grasp the dimensions opening up behind their opponents.³⁰

In August 2012, the Colombian State and FARC officially initiated peace negotiations after having agreed on a six-point agenda taking into account agricultural politics, development, political participation, drug trafficking, justice and the rights of the victims, the end of the conflict, the implementation and the verification of it (ABColumbia et al. 2013). As has been mentioned before, the final end to the peace talks between the two parties is expected to be signed by 20th July 2016 after the agreement on a bilateral ceasefire was reached on 22nd June 2016. However, as reported by El Espectador (2016b), a critical topic which has remained unsolved is the question of how FARC will be granted direct political participation, and there are contradictory opinions on how the peace agreement should be officially passed and applied (BBC News 2016c). Whereas the Government calls for a popular vote, FARC opts for a constitutional convention (Ibid.). Moreover, the Government was supposed to also take up peace negotiations with ELN but they have been on hold since their announcement by the end of March 2016 due to a disagreement over kidnappings by the guerrilla group.

The armed conflict in Colombia has had a massive impact on the country's population. So far, among other crimes committed, RUV (Registro Único de Víctimas)³¹ (2016) has registered 972.298 homicides (direct: 265.708, indirect: 706.590), 31.954 kidnappings and 162.631 forcibly disappeared people (direct: 46.013, indirect: 116.618) for over five decades of armed conflict. Internal displacement is one of the main characteristics of the conflict. Referring to Alzate (2007), "[i]n Colombia, thousands of people are forced to flee their hometowns every year. Most leave rural areas and seek refuge in the slums of urban setting as internally displaced persons (IDPs)" (Alzate 2007: 134). The IDMC (2016) estimates a total of 6.270.000 IDPs displaced by the conflict including the year 2015.

³⁰ In order to give an example, the State assumes a number of 8000 armed FARC fighters apart from their unarmed supporters.

³¹ The RUV is a database for the victims of the armed conflict. The RUV is implemented by the Red Nacional de Información (RNI), the informational network of the Unidad para las Víctimas to monitor and register the developments within this context.

The immense inequalities, the poverty and the competition for the control of the country's natural resources, above all the land, are widely recognized as the profound causes of Colombia's armed conflict (ABColumbia et al. 2013). Despite the fact that the causes and motivations for violence have evolved in the course of time, Meertens and Zambrano (2010) emphasize land as one of the main reasons. The country's GINI coefficient (0.88) shows that it has one of the highest degrees of concentration of land in the whole world (Pulido 2015). Nevertheless, Meertens and Zambrano (2010) explain that the guerrilla group's prior interest in social justice, e.g. by means of land redistribution, developed into the objective of violently acquiring territory in order to expand their power structures and coca cultivation for financing their war³²; interests which have been shared by paramilitary groups and the local elites they support as well. Correspondingly, these have also been the principal incentives for why the armed conflict has continued until now (Casa de la Mujer 2011). Meertens and Zambrano (2010) argue that

[b]oth guerrilla and paramilitary groups benefit from illicit crop growing, drug trafficking, protection tax levying and, particularly in the case of the guerrillas, kidnapping. For 20 years, the two sides engaged in bloody dispute over people, land, territory and resources. They rarely engaged in open confrontations, instead they mostly attacked the civilian population [...] The distinction between combatants and noncombatants became blurred, the number of displaced persons increased and both guerrillas and the paramilitary committed an endless chain of international humanitarian law and human rights violations (Meertens & Zambrano 2010: 193).

³² Besides, Alzate (2007) and Meertens and Zambrano (2010) mention the trade with weapons and ABColumbia et al. (2013) perceive a relation between sexual violence and economic interests, considering a correlation between the illegal extraction of natural resources, the incidence of sexual violence and military activity.

Table 4 illustrates the historical development of Colombia's armed conflict based on a collection of different sources.

WHEN?	WHAT?
1948 - 1953: La Violencia (The Violence)	<ul style="list-style-type: none"> - 1948: Jorge Eliécer Gaitán, leader of liberals, assassinated - Conflictual confrontation of Liberals and Conservatives
1958 - 1974	<ul style="list-style-type: none"> - Coalition government of National Front formed - Alternative political perspectives not acknowledged
1960s	<ul style="list-style-type: none"> - Guerrilla groups formed as a consequence (<u>FARC</u> and <u>ELN</u>)
1970s	<ul style="list-style-type: none"> - Development of drug trafficking subsequent to decade of poverty and corruption
1980s	<ul style="list-style-type: none"> - Violence increasing considerably due to guerrillas and drug trafficking - Growing anger of landowners because of deficient state protection - Landowners and drug traffickers established self-defense bodies – <u>paramilitary groups</u>
1990s	<ul style="list-style-type: none"> - Several self-defense bodies unified into the <u>AUC</u>
2003 - 2006	<ul style="list-style-type: none"> - Process of demobilization of <u>AUC</u> - Nevertheless, <u>paramilitary groups</u> continue to exist; referred to as <u>BACRIM</u> by <u>Colombian government</u>
August 2012	<ul style="list-style-type: none"> - Official announcement of beginning of peace negotiations between <u>Colombian government</u> and <u>FARC</u>
30th March 2016	<ul style="list-style-type: none"> - <u>Government and ELN</u> to initiate peace talks; on hold so far due to disagreement over kidnappings by guerrilla group
June 2016	<ul style="list-style-type: none"> - <u>21st June: President Santos</u> announces expected official peace deal with <u>FARC guerrilla</u> by 20th July 2016 - <u>22nd June: Government and FARC</u> reach agreement on bilateral ceasefire

Table 4 Historical development of Colombia's armed conflict: a timeline (based on ABColombia et al. 2013, Alzate 2007, BBC News 2016a,b,c; El Espectador 2016b, Meertens & Zambrano 2010, PCS 2006).

Sexual violence associated with the armed conflict

As reported by Casa de la Mujer (2011), “[s]exual violence constitutes a [sic.] habitual and frequent practice in the context of the armed conflict and therefore can be described as being “generalized” according to international humanitarian law” (Casa de la Mujer 2011: 7). Their study states that from 2001 to 2009 the rate of sexual violence was at 17.58%; this percentage corresponds to 489.687 women victims of sexual violence in a period of ten years, 54.410 per year, 149 per day and a total of six every hour (Casa de la Mujer 2011).

Figure 9 illustrates the different forms of sexual violence documented throughout the period of the survey and the respective numbers of victims registered.

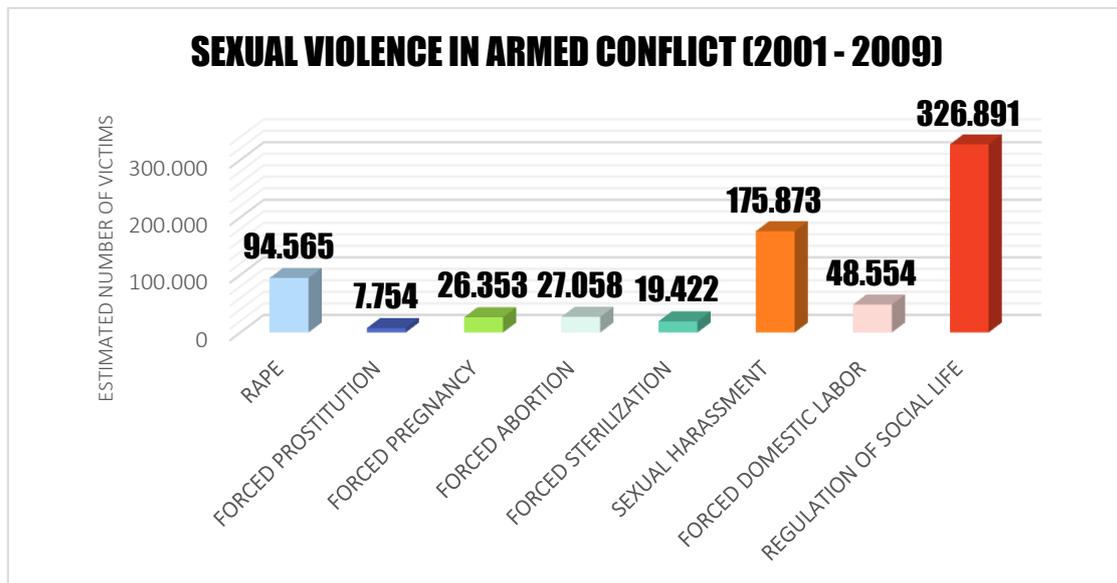


Figure 9 Different forms of sexual violence in Colombia's armed conflict (2001 - 2009): a statistical overview (based on Casa de la Mujer 2011).

Based on other sources, forced recruitment of girls and young women, genital mutilation, torture, assassination of unborn babies, violation in presence of family members and group violation could be added to the long list of atrocities committed throughout the armed conflict (ABColumbia et al. 2013, Meertens & Zambrano 2010, PCS 2006). Against this background of different forms of sexual violence, Casa de la Mujer (2011) presents the following interesting and crucial finding:

Before being asked about the different types of sexual violence 4 of every 10 victims didn't recognize themselves as victims of sexual violence. This indicates a prioritization within the different types of sexual violence of which certain types are "normalized and naturalized" (**regulation of the social life, forced domestic labor, sexual harassment and forced sterilization**), while others are openly recognized as sexual violence (**rape and forced prostitution**) (Casa de la Mujer 2011: 8).

In other words, 17.58% of the women living in the 407 municipalities that were selected for the survey have suffered sexual violence but 6.52% alone were actually aware of actively being victims (Casa de la Mujer 2011).

The perpetrators responsible for sexual violence against women identified by Casa de la Mujer's study (2011) are family members, unknown persons, illegal armed actors,

members of armed forces and unknown actors. In order to give another example, based on the most recent Monitoring Report by the Working Group (2016), Figure 10 illustrates the groups of perpetrators for the sexual violence cases included in the Confidential Annexes of the Orders Auto 092 of 2008 and Auto 009 of 2015.

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

Figure 10 Sexual violence cases Auto 092 and 009: overview of groups of perpetrators (The Working Group table 3 2016: 17).

Casa de la Mujer’s study (2011) was able to establish a correlation between the presence of armed actors and elevated numbers of sexual violence and victims’ motivations for taking the decision to not report the crimes (Ibid.). For instance, “64.26% of women consider that the presence of armed actors in the municipalities increase sexual violence in public spaces, while 49.28% consider that the presence of armed actors increases sexual violence in private environments” (Casa de la Mujer 2011: 8). Furthermore, “73.93% of the women from the 407 municipalities, meaning 2.059.001 women, consider that the presence of armed actors constitutes an obstacle for reporting cases of sexual violence in the municipalities” (Casa de la Mujer 2011: 28). Finally, Casa de la Mujer (2011) found that 82.15% of the total number of women victims of sexual violence did decide to not denounce, whereas 17.73% took the opposite decision. Moreover, “80.84% of the victims that didn’t report the abuses believe that the presence of the armed actors is an obstacle that limits the possibility of denouncing the abuses” (Casa de la Mujer 2011: 28). In order to provide a short overview, Figure 11 illustrates the most common reasons why women victims of sexual violence have not reported the crimes committed against them.

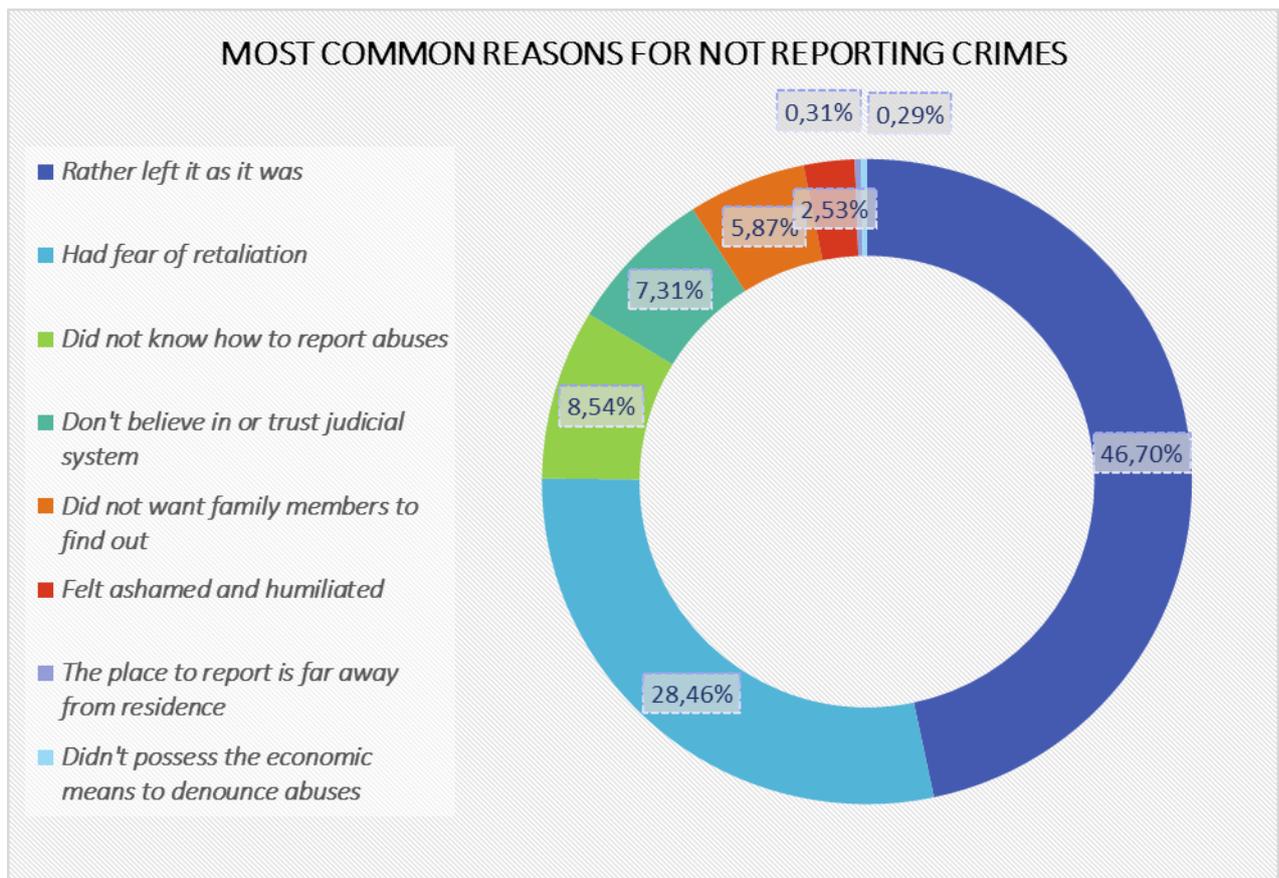


Figure 11 Most common reasons for women victims of sexual violence to not report crimes committed against them: a statistical overview (based on Casa de la Mujer 2011).

The publication of ABColombia et al. (2013) claims that although sexual violence is perpetrated by all armed actors, state and non-state, the impact of the participation in these crimes of the State Security Forces has a particularly destructive effect, since they form the body in charge of the protection of civil society. When sexual violence is committed by them, the population is left without any authority it can relate to for effectively accessing the country's justice mechanism (Ibid.). Finally, Casa de la Mujer (2011) draws the conclusion that the under-reporting of sexual violence as a crime, the presence of armed actors, as well as women's lack of awareness of their own rights all contribute to the high level of impunity associated with this crime and to its naturalization and reproduction.

As has been indicated before, Casa de la Mujer conducted a descriptive research which did not have the objective to single out the reasons that motivate the acts of sexual violence against women. Without going into any further detail, I would like to reaffirm the social and cultural context of this crime and the fact that sexual violence maintains and reinforces the patriarchal system in place (ABColombia et al. 2013). Thus, in the context of the armed conflict, sexual violence can be a weapon of intimidation, punishment and

discipline, humiliation and terror against the victims and the social sphere they belong to (PCS 2006).³³ Apart from the patriarchal system based on gender domination and discrimination, other factors such as social, political and economic marginalization need to be taken into account (ABColumbia et al. 2013). For Afrocolombian and Indigenous women, these factors combine with historical attitudes related to slavery and racism (Ibid.).³⁴ Thus, to analyze the situation of women victims of sexual violence associated with the armed conflict is a very broad focus. Referring to the theoretical and conceptual considerations of this Master thesis, the experiences of sexual violence and its victims can never represent a generalizable account. In spite of the decision to discuss the reality of women victims of sexual violence in general, the experiences of specific groups of victims is referred to in the remaining chapters as well. In Colombia, among the groups of women mainly in danger of suffering sexual violence in the context of the armed conflict, are Afrocolombian and Indigenous women, displaced women, and rural women as well as women living in the outskirts of towns and cities (PCS 2006). Many of these women have been forced to emigrate from their places of origin and are therefore extremely vulnerable (Ibid.).

4.3 Sexual violence against women – Colombia's legal framework

The Colombian State has ratified the principal treaties of Human Rights, International Humanitarian Law and of International Criminal Law, and thereby has compromised its determination to the protection of women concerning sexual violence (Mesa de Seguimiento 2011). The ratification of these treaties is part of the country's Constitution and therefore, all the responsibilities connected to them are to be fulfilled obligatorily by public officials (Ibid.). Table 5 illustrates a selection of the most important national and international legislations composing Colombia's legal framework for sexual violence against women. Since there is a limited page range for this Master thesis which has to be respected, this tabular summary makes it possible to introduce some of the most relevant legislations for this context. A complete review of the respective laws etc. would exceed the scope of my research, as special focus has to be directed towards the Orders Auto 092 of 2008 and Auto 009 of 2015.

³³ For further reading, the publication of ABColumbia et al. (2013) presents different modus operandi of sexual violence in Colombia's armed conflict.

³⁴ For further information, the publication of ABColumbia et al. (2013) addresses the realities of different groups of victims.

SEXUAL VIOLENCE AGAINST WOMEN – COLOMBIA’S LEGAL FRAMEWORK	
NATIONAL	INTERNATIONAL
<p>Law 975 of 2005, Law of Justice and Peace (“Ley de Justicia y Paz”)</p> <ul style="list-style-type: none"> - Special measures for protection, security, private life and intimacy of victims and witnesses 	<p>CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), UNSC (Universal System)</p> <ul style="list-style-type: none"> - Adopted 1979, entered into force 1981 - Ratified by Colombia in 1982 - Usually defined as international “Bill of Rights” for women - Determines how discrimination against women has to be understood and establishes framework for eradicating this issue
<p>Auto 092 of 2008</p>	<p>Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará), OAS (Organization of American States) (Inter-American Human Rights System)</p> <ul style="list-style-type: none"> - Adopted 1994, entered into force 1995 - Ratified by Colombia in 1996 - Establishes right for every woman to life without violence, in public as well as private space
<p>Law 1257 of 2008, Law of Gender Equality (“Ley de Igualdad de Género”)</p> <ul style="list-style-type: none"> - Establishes concrete norms for awareness, prevention and sanction of forms of violence and discrimination against women - Progress for protection of women against sexual violence but no focus on armed conflict or displacement 	<p>Resolution 1325 of 2000, UNSC (Universal System)</p> <ul style="list-style-type: none"> - Repeatedly claims women’s important role in peace processes and calls for their increased participation and overall adoption of gender perspective - Particular measures have to be implemented in order to protect women and girls from violence in these contexts
<p>Law 1448 of 2011, Law of Victims and Land Restitution (“Ley de Víctimas y Restitución de Tierras”)</p> <ul style="list-style-type: none"> - Support, reparation and restitution for victims of forced displacement - Priority for women, especially for heads of households etc. 	<p>International Criminal Court Statute/Rome Statute (ICC), UN (International Criminal Law)</p> <ul style="list-style-type: none"> - Adopted 1998, entered into force 2002 - Ratified by Colombia in 2002, implemented by Law 1719 in 2014 - Sexual violence considered as war crime and crime against humanity
<p>Law 1719 of 2014</p> <ul style="list-style-type: none"> - Complements Law 1448 of 2011 - Defines sexual violence crimes in context of armed conflict according to International Law - Adopts measures to guarantee right to access to justice for women victims of sexual violence associated with armed conflict giving priority to their special needs 	<p>Resolution 1820 of 2008, UNSC (Universal System)</p> <ul style="list-style-type: none"> - Civil population is primary victim of armed conflicts and women and girls are especially affected by sexual violence; can be used as weapon of war and reoccur even after end to conflict - This type of violence cannot be answered with amnesty during peace processes
<p>Auto 009 of 2015</p>	
<p>Law 1761 of 2015 (“Ley Rosa Elvira Cely”)</p> <ul style="list-style-type: none"> - Characterized femicide as autonomous crime - Violences against women should be investigated and sanctioned taking into account motivations of gender and discrimination 	

Table 5 Colombia’s legal framework concerning sexual violence against women: an overview of the most important national and international legislations (based on ABColombia et al. 2013, Mesa de Seguimiento 2011, Villellas Ariño 2010).³⁵

³⁵ For a more detailed overview, consult the first chapter of the Monitoring Report of 2011.

By having ratified the CEDAW, the Inter-American Convention on Human Rights and Belém do Pará, the standard of due diligence in terms of the prevention, investigation, sanction and reparation of violations of Human Rights in general and cases of sexual violence against women in particular, is a mandatory requirement for the Colombian State (Mesa de Seguimiento 2011). Moreover, the UN affirms that additional efforts of Colombia's judicial system to address impunity in the cases of sexual violence associated with the armed conflict are required (ABColumbia et al. 2013).

Against this background, in the Order Auto 092 of 2008, Colombia's Constitutional Court affirmed that "sexual violence *in the context of the Colombian armed conflict*, caused either by the actions of armed groups or as a result of forced displacement, is a *common, widespread, systematic and invisible practice*" (Working Group 2013: 9). As a consequence, the Order determined several measures aiming at addressing the issue of impunity and the obstacles related to it, which are described in the Auto (The Working Group 2016). These measures should be prioritized within the context of the State's responsibilities and implemented immediately, since the Colombian women have been facing and still face the impact of the armed conflict and the sexual violence associated with it (Ibid.). In the Order Auto 009 of 2015, after seven years of monitoring the implementation of the Order Auto 092 of 2008, the Constitutional Court affirmed "a continuation of incidents and risks constituting sexual violence against women in the context of the armed conflict and forced displacement" (Constitutional Court in The Working Group, 2016: 7).

5. Analysis

5.1 Impunity – Procedural status of cases of sexual violence included in the Confidential Annexes of the Autos

A preliminary step before engaging into the further analytical stages of this Master thesis is to establish and demonstrate that impunity has persisted despite the implementation of the Order Auto 092 of 2008 by Colombia's Constitutional Court. Therefore, by means of the Monitoring Reports by the Working Group, I aim to evaluate the available data on the sexual violence cases included in the Confidential Annexes of the Autos. Even though great emphasis lies on the figures illustrating the procedural status for the cases in this sub-chapter, attention is called to certain issues that can be directly related to and are reflected in the remaining parts of the "Analysis" chapter.

In the Order Auto 092 of 2008, Colombia's Constitutional Court identified 183 cases of alleged sexual violence crimes, which were committed in the context of the country's armed conflict (Mesa de Seguimiento 2011). These cases demonstrated factual, recurring, consistent and coherent accounts in relation to the perpetrated abuses (Ibid.). Subsequently, the Constitutional Court remitted the 183 identified cases to the Prosecutor General's Office³⁶, ordering "to adopt, in a timely fashion, necessary measures to accelerate legal procedures and open investigations in cases that have not yet been investigated" (Working Group 2013: 9). Furthermore, the Constitutional Court required that "the Inspector General's Office³⁷ guarantee a *particularly strict oversight* of these investigations and prosecutions" (Working Group 2013: 9). These demands towards the highest justice authorities in Colombia embody the predominant orders of the Auto and thus have been the monitoring focus of the Working Group, and the respective starting points for their Reports.

Taking into account the five Monitoring Reports that have been issued since the implementation of the Order Auto 092 of 2008, the data on the cases of sexual violence included in the Confidential Annexes of the Autos has been analyzed according to differently structured systems over the years. On the one hand, cases have been reassigned to other institutions, which has created room for confusion of institutional responsibilities and for the monitoring process of the cases generally. On the other hand, the Working Group has discovered that some of the cases have been registered and categorized falsely or there has been a lack of information on the procedural status of certain cases. Besides, the Confidential Annexes of the Order Auto 009 of 2015 added new cases to the discussion. Thus, a comparative analysis of the data available to me is only possible to a limited extent and I set out to connect and relate as much of the collected information as possible.

In the 1st Monitoring Report (2009), the Working Group provided an analysis of the procedural status of the cases of sexual violence included in the Confidential Annexes of the Auto 092 of 2008 through focusing on a sample of 25 cases that have been legally represented by organizations forming part of this monitoring body. The Report found that, after the implementation of the Auto, 2 convictions, 1 acquittal, 1 arraignment and 2 preliminary investigations could be registered. Although the Prosecutor General's Office stated to reassign 66 cases (of the 183 cases included in the Confidential Annexes of the

³⁶ "Prosecutor General's Office" is the official translation for the Spanish term "Fiscalía General de la Nación" used in Colombia.

³⁷ "Inspector General's Office" is the official translation for the Spanish term "Procuraduría General de la Nación" used in Colombia.

Auto), of which some have been represented by the Working Group, to the Human Rights Unit³⁸, the Working Group affirmed that they had not been informed about this decision, neither about which cases were selected. Consequently, out of 25 cases in total, no more than 2 convictions and 3 cases that seemed to be proceeding could be put to record. Besides, these 25 cases of sexual violence were reported within a period from 1994 to 2008; this is a fact that extremely concerned the Working Group, since there was close to no progress in such a long period and almost no perpetrators identified, even though 60% of the cases had been reported immediately or within one year after the occurrence.

In the 3rd Monitoring Report (2010), the Working Group focused on a sample of 40 cases that have been legally represented by organizations forming part of this monitoring body. The cases had been reported over the time period from 1994 to 2009 and 23 of them were included in the Confidential Annexes of the Auto. Table 6 illustrates the overall procedural status of all the 40 cases accompanied by the Working Group.

	PROCEDURAL STATUS
TOTAL OF 40 CASES	<ul style="list-style-type: none"> - 50% (20 cases) in preliminary investigation - 7.5% (3 cases) inactive due to termination of investigation - 7.5% (3 cases) preclusion of investigation - 2.5% (1 case) in arraignment - 5% (2 cases) on trail - 12.5% (5 cases) convictions - 2.5% (1 case) sentence pending - 7.5% (3 cases) have not been prosecuted due to ongoing armed conflict and social stigma of sexual violence - 5% (2 cases) victims have no information on procedural status

Table 6 Procedural status of 40 cases represented by Working Group in 3rd Monitoring Report (based on Corporación Casa de la Mujer et al. 2010).

Out of the total of 40 cases, the Working Group could only register 5 convictions and 4 cases which more or less advanced in the legal process (1 case in arraignment, 2 cases on trial and 1 case for which sentence is pending). Other five cases had not been prosecuted yet (3) or the victims had no information on their procedural status (2). When only taking into account the 23 cases included in the Confidential Annexes, it is striking that all of the convicted perpetrators (5 convictions) were civilians and people close to the victims (e.g. stepfather, father, neighbor etc.).

³⁸ “Human Rights Unit” is the official translation for the Spanish term “Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario” used in Colombia.

According to the 4th Monitoring Report (2011), the Working Group’s analysis on the procedural status of the cases of sexual violence included in the Confidential Annexes of the Order Auto 092 of 2008 showed a discouraging panorama of impunity considering the investigation of sexual violence crimes and the sanctioning of their perpetrators. Moreover, the Working Group argued that the figures presented by the Prosecutor General’s Office suggested serious deficiencies concerning the clarity and the presentation of the information. For instance, the Prosecutor General’s Office reported three different figures for cases of sexual violence included in the Confidential Annexes of the Auto for the years 2008 (183 cases), 2009 (177) and 2010 (191). In terms of the alleged perpetrators, first of all, it was not clear whether they had considered the groups perpetrators belong to or the individual perpetrator; and secondly, the Auto registered a number of 191 perpetrators, whereas a number of 201 was stated in 2010. As reported by the Working Group, the Prosecutor General’s Office, at this point, had decided to reassign 82 (43%) of the cases to the Human Rights Unit and 109 (57%) to the sectional units of the Prosecutor General’s Office³⁹. Nevertheless, in order to get a general overview of the procedural status, Table 7 illustrates the progress for the total of 191 cases.

	PROCEDURAL STATUS
TOTAL OF 191 CASES	<ul style="list-style-type: none"> - 73.3% (140 cases) in investigation stage with no perpetrator linked to crime - 8.4% (16 cases) in investigation stage with perpetrator linked to crimes - 8.9% (17 cases) on trial - 2.1% (4 cases) convictions - 7.3% (14) terminated without sentence (inactive due to termination of investigation or investigation precluded)

Table 7 Procedural status of sexual violence cases included in Confidential Annexes of Order Auto 092 of 2008 according to 4th Monitoring Report (based on Mesa de Seguimiento 2011).

Of a total of 191 cases, the Working Group could register 4 convictions alone. Referring to the cases that were investigated with perpetrators linked to the crimes and the cases on trial, it can be concluded that not even 20% of the 191 cases presented an advanced stage of prosecution. Moreover, it seems alarming that more than half of the total number of cases were investigated with no perpetrator officially linked to the crimes. The Working Group was highly concerned about this development and feared that the possibility to preclude a case in an early stage could be misused as a way to close cases faster without having implemented all

³⁹ “Sectional Units of the Prosecutor General’s Office” is the official translation for the Spanish term “Direcciones Seccionales de Fiscalías” used in Colombia.

the options available to the authorities in charge. For instance, for two precluded cases that were accompanied by the Working Group, it was argued that there was a lack of collaboration on the side of the victims because they did not want to amplify their declarations. Another important aspect that was pointed out by the Working Group is the fact that in relation to the groups of perpetrators, the assignment of the cases to these different categories bears the danger to neglect women’s situation of displacement and therefore consider them as victims of the armed conflict. For example, the Prosecutor General’s Office defined three cases as “family violence” despite the fact that they correspond to three displaced girls who were sexually abused by their father and stepfather.

The 5th Monitoring Report focuses on an analysis that specifically addresses the data which was provided on cases of sexual violence included in the Confidential Annexes of the Order Auto 092 of 2008 concluding with a conviction for the perpetrator. Table 8 illustrates the 18 convictions, which were registered by the Prosecutor General’s Office based on the work of its sectional units and the Human Rights Unit.

Sectional units of Prosecutor General’s Office	Human Rights Unit
- 11 CONVICTIONS -	- 7 CONVICTIONS -
<ul style="list-style-type: none"> - Only 4 appear in registers under category of sentence or enforcement of penalties, remaining 7 not registered in database - 2 of 4 convictions were for murder as opposed to criminal offences related to sexual violence - Other 2 cases indicated as processed in Quibdo but abuses occurred in Tolima and Arauca 	<ul style="list-style-type: none"> - 9 conviction registered - Only 5 of these 9 issued in sexual violence cases - Remaining 4 cases involved the crimes of murder, extortive kidnapping and forced displacement, unclear whether they refer to convictions

Table 8 Status of convictions of sexual violence cases included in Confidential Annexes of Order Auto 092 of 2008 according to 5th Monitoring Report (based on Working Group 2013).

Out of 18 convictions, the Working Group could verify only five convictions and additionally, just 3 of these 5 convictions were included in the Confidential Annexes of the Auto. Thus, “it is possible to conclude that *almost total impunity* continues to be a reality” (Working Group 2013: 44).

In regards to the 6th Monitoring Report, apart from the cases covered by the Confidential Annexes of the Order Auto 092 of 2008, the Working Group has started to observe the developments for the cases included in the Confidential Annexes of the Order Auto 009 of 2015. Naturally, it has to be borne in mind that as Auto 092 was passed almost eight years ago and Auto 009 only very recently, one cannot expect the progress for the latter to be at the same level.

Table 9 illustrates how the procedural status for the 634 events of sexual violence (corresponding to 627 reported cases and 768 victims) of Auto 092 and 009 was evaluated.

	AUTO 092 AND 099 (634 TOTAL)	AUTO 092 (178 TOTAL)	AUTO 009 (456 TOTAL)
PROCEDURAL STATUS	<ul style="list-style-type: none"> - 14 convictions for sexual violence - Perpetrators: 6 civilians, 8 armed actors - 2.2% of total of 634 events and 7.8% of 178 events corresponding to Auto 092 - Besides: 7 convictions for other crimes than sexual violence (perpetrators: 2 guerrilla fighters, 5 paramilitaries), 2 acquittals in favor of State Security Forces) AND 4 convictions without information on sexual violence (perpetrators: 1 civilian, 4 related to criminal gangs) 	<ul style="list-style-type: none"> - 47.7% not in investigation stage (41% archived due to terminated investigation, 6.7% precluded) - 23.1% (41 events) in preliminary investigation/investigation stage - 11.2% (20 events) in arraignment - 1.7% (3 events) on trial 	<ul style="list-style-type: none"> - After 6 months, Prosecutor General's Office stopped reporting on procedural status of 71.7% (327 events) - 1.5% (7 events) archived - 21.3% (97 events) in preliminary investigation/investigation stage - Responsibility to investigate neglected for 73.2% of events

Table 9 Procedural status of sexual violence cases of Order Auto 092 of 2008 and Auto 009 of 2015 according to 6th Monitoring Report (based on The Working Group 2016).

These figures are taken from the most recent Monitoring Report of the Working Group and therefore show the current status for the sexual violence cases included in the Confidential Annexes of the Autos. 14 convictions for sexual violence alone could be registered for both Autos, which correspond to 7.8% of the total of 178 events for Auto 092 that was passed eight years ago. Moreover, almost 50% of these 178 events are not being investigated. Considering Auto 009, after only 6 months, the Prosecutor General's Office stopped reporting on the procedural status of 71.7% of the events. Consequently, as stated by the Working Group (2016), "[m]ore than seven years since *Auto 092* was issued, the cases of sexual violence associated with the armed conflict included by the Constitutional Court in the Confidential Annexes remain in *almost absolute impunity*. Despite strategies promoted by the Prosecutor General's Office, there has been no change in the situation" (The Working Group 2016: 13).

Finally, Table 10 provides a more detailed illustration of the sexual violence cases included in the Confidential Annexes of the Orders Auto 092 of 2008 and Auto 009 of 2015, taking into account two different patterns of sexual violence and an intersectional focus considering the specific realities of particularly vulnerable groups of women.

	Sexual violence carried out in massacres	Sexual violence carried out in military operatives	Intersectional focus
PROCEDURAL STATUS	<ul style="list-style-type: none"> - 12 cases in total - 16.7% (2) in preliminary investigation/investigation stage - 25% (3) in arraignment - 33.3% (4) archived due to dismissal of investigation - 16.7% (2) do not report procedural status - 8.3% (1) not included in databases 	<ul style="list-style-type: none"> - 20 cases in total - 35% (7) in preliminary investigation/investigation stage - 15% (3) in arraignment - 45% (9) archived – 35% (7) dismissal due to lack of evidence, 10% (2) due to preclusion - 5% (1) no information reported 	<ul style="list-style-type: none"> - 69 incidents against Afrocolombian women, 63.8% of cases with no procedural status reported - 28 incidents against Indigenous women, 35.7% archived due to lack of evidence - Percentage of archived and precluded cases in incidents against girls much higher than those of adult women (21.2%/13.1%) - 7 cases in which victims had some type of disability when incident occurred, only 1 guilty verdict - 2 processes for cases in which women were victims because of their sexual orientation both archived

Table 10 Procedural status of total of sexual violence cases included in Confidential Annexes of Autos for patterns of sexual violence and intersectional focus according to 6th Monitoring Report (based on The Working Group 2016).

The procedural status of these cases is highly concerning: more than 50% of the sexual violence cases that occurred during massacres are not being investigated or information on their status is non-existent. Furthermore, almost half of the sexual violence cases in military operatives are currently archived, of which 6 cases were reported to have been perpetrated by State Security Forces. According to the Working Group (2016), 5 of these cases were archived without having registered the reasons behind these decisions. Moreover, giving an example for the intersectional focus, more than 50% of the sexual violence crimes committed against Afrocolombian women have no procedural status reported for them. As a result, although these cases feature characteristics for which they should be granted a prioritized prosecution, they have mainly remained in impunity. This conclusion generally applies to the analysis in terms of the procedural status of the cases of sexual violence included in the Confidential Annexes of the Autos. Therefore, it emphasizes again that impunity has persisted despite the implementation of the Order Auto 092 of 2008 passed by Colombia's Constitutional Court.

5.2 Access to justice – The experiences of women victims of sexual violence

This sub-chapter focuses on the experiences of women victims of sexual violence in relation to their access to justice. Based on the analysis of all five Monitoring Reports by the Working Group that have been published since the implementation of the Order Auto 092 of 2008, it can be argued that women victims of sexual violence generally experience certain types of obstacles that remain persistent and reoccurring throughout their realities.

To begin with, women victims of sexual violence experience a prevailing feeling of shame and guilt, be it towards their family members, partners or even towards the whole community they identify themselves with. This fear of being stigmatized for what has happened to them draws from constant discriminatory patterns that are caused by the gender stereotypes of Colombia's patriarchal society, as is presented in the previous chapters of this Master thesis. Consequently, if women victims of sexual violence decide to report the crime committed against them, they usually have to face the risk of being revictimized. This is one of the major explanations for the fact that sexual violence is a crime defined by under-reporting. Besides, many women are not aware of what a sexual abuse actually implies, and there is a general lack of knowledge on their own rights they have and are allowed to demand to be guaranteed by the State. The lack of economic means is another obstacle that became evident during the analysis of the Monitoring Reports. Here, this lack has to be understood in the context of the transportation costs that have to be covered in order to get to the respective authorities to report the crime, and in the context of healthcare coverage and legal representation. This obstacle is again rooted in women's disadvantaged position in society and especially victims of sexual violence living in rural areas are affected by it.

The State it required to address and take into account these obstacles, which are continuously experienced by women victims of sexual violence. As reported by the Working Group (2016), “[i]n Auto 009, the Constitutional Court established that the nonobservance of a responsibility to act with due diligence in the investigation of sexual violence associated with the armed conflict perpetuates the violations of victims [sic.] rights, in as much as inaction or deficient actions on this matter send a message of tolerance regarding violence against women and reinforces discriminatory patterns” (The Working Group 2016: 11). This observation by the Working Group is a concern that has been affirmed repeatedly in their Monitoring Reports. For this reason, the following sub-chapter analyzes the institutional

response that could be observed, in order to address the issue of impunity in cases of sexual violence against women associated with the armed conflict.

5.3 Access to justice – The institutional response

The following sections present the analytical results of the review of the five Monitoring Reports by the Working Group that have been published since the implementation of the Order Auto 092 of 2008, addressing the institutional response of Colombia's justice authorities in terms of access to justice for women victims of sexual violence.

Continuous discriminatory patterns

As has become evident during the analysis, the institutional response of Colombia's justice authorities has been characterized by continuous discriminatory patterns and a restricted understanding of the issue of sexual violence in relation to the armed conflict. The fact that women victims of sexual violence have a general lack of trust towards the authorities and a strong fear of revictimization in relation to the justice system has been emphasized in all the Reports. Public officials have treated women victims of sexual violence with extreme suspicion. For instance, Casa de la Mujer documented a case, which the victim herself described in the following way: "That this did not seem to have been a rape. That no one would believe me. I felt judged. Besides, he told me that with this kind of charge, it was more probable that I would be prosecuted" (Corporación Casa de la Mujer et al. 2010: 17; personal translation). According to the 3rd Monitoring Report of the Working Group (2010), in 40 cases on which the monitoring body had exclusive information, discriminatory incidents with public officials occurred in 30 of them (75%) and none of these actions had any disciplinary consequences. Apart from the social imaginaries that naturalize violences against women, public officials have blamed the victims themselves for having experienced sexual violence due to the way they were dressed or the fact that they wanted to prostitute themselves. Besides, among other examples, there is evidence that women victims of sexual violence were denied medical attention because they were not covered by an insurance.

Process of prosecution

The continuous discriminatory patterns governing justice authorities influence the access to justice for women victims of sexual violence at all stages. One important example describes the common situation that when a woman presents her charge, its acceptance is conditioned by the victim's ability to define her aggressor/s. Neglecting the massive physical and psychological impact of sexual violence, public officials have used possible lacks of

information against the victims or they have required extended testimonies or unnecessary psychological evaluations. As reported by a victim of one of the sexual violence cases included in the Confidential Annexes of Auto 092 of 2008, “justice in Colombia does not serve for anything because they believe more in the ones who did that than in us women who are the victims. They never prosecute them, but they investigate what we tell them” (Mesa de Seguimiento 2011: 45; personal translation). Furthermore, whereas all evidence acquired outside of a trial is insufficient, there is an excessive demand for proof by testimony and physical evidence. This implicates a disproportionate burden on women victims of sexual violence, not least because the implementation of measures to guarantee legal accompaniment have been lacking.⁴⁰ As stated in the most recent Monitoring Report of the Working Group (2016), several programs for legal accompaniment exist but the coordination between them is deficient, and other approaches are still being designed or have not been properly executed yet. Besides, the participation of victims in the investigation stage is limited to simply requesting information or providing evidence; for example, they are not even allowed to copy the documents related to the procedural status of their cases. Two more examples can be added in order to exemplify how the absence of a gender perspective has a highly negative impact on the access to justice for women victims of sexual violence. In 2012, the Decree No. 0001 established a priority policy in the context of sexual violence cases according to certain characteristics these have to fulfill. Thus, cases that cannot be investigated or prosecuted with priority, often due to a lack of sufficient information, are processed neglecting the context they were perpetrated in. In addition, the Statutory Law of 2013 determined orders concerning the investigation, prosecution, and trial of members of the Armed Forces within the context of International Humanitarian Law. Despite the fact that sexual violence can never be prosecuted in military courts, this law authorizes the Armed Forces to the collection of evidence and to acting as a kind of judicial police in these cases. In their 5th Monitoring Report, the Working Group described the regulations as “policies that cast doubt on victims’ guarantees to justice” (Working Group 2013: 53).

Reparations

The analysis of the institutional response concerning reparations for women victims of sexual violence showed that there has been no significant progress, but merely compensation payments. More importantly, victims and their families should have the possibility to receive

⁴⁰ Against this background, measures related to protection and healthcare could be addressed as well but due to the limited scope of this Master thesis, these aspects could not be taken into account for the analytical focus.

medical or psychological support among other things. Sisma Mujer legally represented the case of a disabled girl that concluded with a compensation payment, however, two years after the sentence was determined, the victim had not received the reparation payment yet. In the 5th Monitoring Report, the Working Group (2013) concluded that it had no information on the design of measures guaranteeing reparations for the victims of the sexual violence cases included in the Confidential Annexes of the Order Auto 092 of 2008, nor on a general mechanism for comprehensive reparations, except from Law 975 of 2005. Three years after that, according to the latest Monitoring Report, the Working Group states that complications to design and implement a comprehensive reparation mechanism for women victims of sexual violence have persisted.

Overall institutional strategy

The analysis of the Monitoring Reports demonstrates that the overall institutional strategy for addressing the issue of impunity in terms of access to justice for women victims of sexual violence has mainly been considered as insufficient and dysfunctional. On the one hand, there is a lack of clear and transparent processes to act in response to the reporting of sexual violence crimes and, on the other hand, consistent and operational methods for investigating these crimes have not been realized to a necessary extent. For example, a methodology to adequately identify the occurrence of sexual violence in a situational context of a massacre, in which other crimes might be in the foreground, has been lacking. Numerous measures have been brought on the way, but they have not been applied in a form of an integrated system, nor have they prioritized the deeply rooted discriminatory patterns against women. Furthermore, it has been very problematic to achieve progress with the implemented regulations, since basic components such as established aims, a temporal schedule, an adequate budget, consistent monitoring variables etc. are non-existent. As a result, the institutional presence has been described as removed and powerless. This institutional shortcoming is responsible for the fact that women have a persistent lack of knowledge on their actual rights. Consequently, according to the most recent publication of the Working Group, “[i]n *Auto* 009, the Constitutional Court found that the victims were kept without information on their rights and procedures, and that victims were forced to undertake “long institutional pilgrimages” where in many occasions their needs were not responded to. This in itself constitutes re-victimization” (Constitutional Court in the Working Group, 2016: 44).

In order to give a specific example of an essential aspect that has been addressed within the context of an overall institutional strategy, I would like to discuss the design and

implementation of training programs for public officials. The objective behind these training programs should be to provide justice authorities, who are in charge of the investigation and prosecution of sexual violence crimes, with the necessary knowledge and tools to carry out their responsibilities taking into account all the implications resulting from this type of crime. In other words, public officials should be aware of the international standards for sexual violence crimes and able to adopt a gender perspective; for instance, they have to be aware of the continuous discriminatory patterns against women and the systematic forms of sexual violence in the armed conflict. Regarding the analytical results of the Monitoring Reports, it can be concluded that, although a system for these training programs has been designed and implemented, the results have been insufficient due to the fact that a possible progress could not be monitored and, as reported by the Working Group, the system's characteristics do not correspond to the requirements issued by the Constitutional Court. For exemplifying purposes, anticipating the example of an official register on sexual violence cases, public officials in charge of creating this kind of database might simply lack the necessary knowledge on sexual violence for including all the important information that is needed.

In order to implement an operational and effective strategy for addressing the issue of impunity in terms of access to justice for women victims of sexual violence, a constant and flawless communication and informational exchange between the different justice authorities in charge has to be an essential component. Throughout their Monitoring Reports, the Working Group has referred to obstacles to effective dialogue and intra- and inter-institutional coordination problems; special concern has been demonstrated because of a deficient communication between the Prosecutor and the Inspector General's Office. Considering the analysis of the data provided by the Working Group, the three following shortcomings could be detected: Firstly, there seems to be indeed a lack of a constant and flawless communication and informational exchange on the intra- and inter-institutional level. Secondly, the institutional dialogue heavily depends on the participation of specific staff and therefore, it stagnates repeatedly, since public officials have often been replaced or employed for other positions. Finally, the lack of a functioning institutional communication channel could be related to the fact that there is no comprehensive and integrated informational database on sexual violence cases, on the base of which such a communication channel could be established. This issue is further elaborated on in the following sections. Besides, the Working Group mentioned that the staff assigned to the platforms for institutional communication needs to have decision-making powers for changes to be

implemented. However, this observation was just pointed out for a single case and no generalizable accounts could be generated for this analysis.

Register

As is pointed out before, since the implementation of the Order Auto 092 of 2008, the Working Group has been concerned with the fact that there is a lack of data on sexual violence associated with the armed conflict. It was the objective to design and implement a unified database, reliable and consistent, which provides information on all the investigations on sexual violence crimes. Consequently, as elaborated in the 5th Monitoring Report (2013), apart from the procedural status of the cases, the register should incorporate the patterns of sexual violence, the situational contexts, the alleged perpetrators, information on the victims and the protection and healthcare measures they have received etc., if the implementation of the Auto should be monitored adequately. The Working Group is aware of the existence of different registers, as is shown when taking a look at the strategies of the Prosecutor and the Inspector General's Office, notwithstanding, their structures are not assimilated and the application of different indicators complicates the possibility of cooperation. As a result, the Working Group (2016) concludes that "the State still lacks the data on sexual violence in the armed conflict that would allow it to design and implement attention, prevention and reparation policies" (The Working Group 2016: 67).

Lack of intersectional approach

Regarding the situation of access to justice for particularly vulnerable groups of women, the aim to apply an intersectional focus to reduce the disproportionate impact of sexual violence on them has mainly failed. From the analysis of the Monitoring Reports, it could be detected that the collection of evidence in the sexual violence cases has not been adapted according to the victims' vulnerabilities. For instance, there has been a shortage of interpreters or staff in general being able to assist Indigenous women with reporting their cases or acquiring information on their procedural status. In addition to that, victims with cognitive or mental incapacities were subjected to the usual process or evidence collection. As a consequence, in a case represented by the Colectivo de Abogados José Alvear Restrepo in which an underage, disabled girl of the Wiwa population was tried to rape by State Security Forces, the testimony of the victim and her family could not be collected due to exactly these practices implemented by the justice authorities. Therefore, only recently, Auto 009 emphasized this issue yet another time: "In *Auto* 009 the Constitutional Court indicated that when there are diverse vulnerabilities derived from ethnic origin, age, disability, sexual orientation or gender

identity, the State must increase its efforts as these conditions increase the risk of facing sexual violence” (The Working Group 2016: 39 f.).

Figure 12 graphically summarizes the categories by means of which the analytical results are demonstrated.

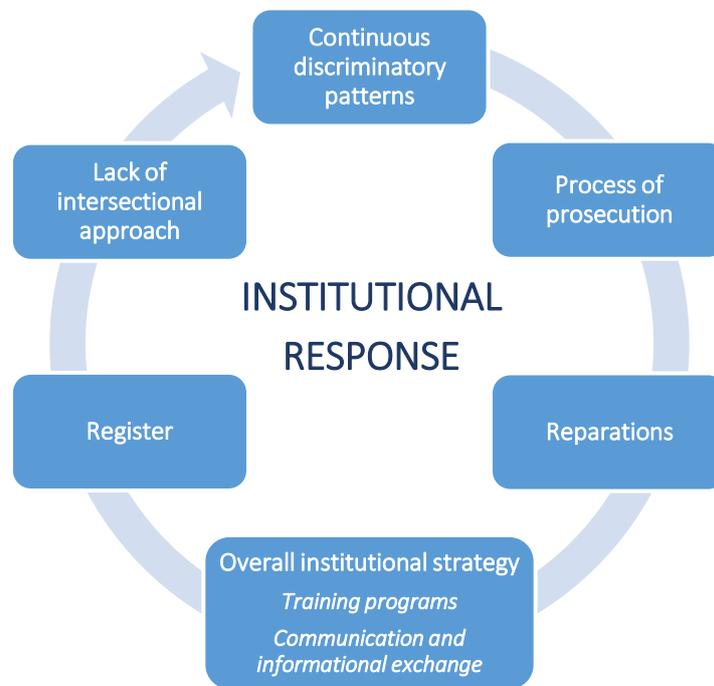


Figure 12 Institutional response regarding access to justice: categorical overview of analytical results

The following two sections complete the presentation of the analytical results of this Master thesis by discussing specifically how the Prosecutor General’s Office as well as the Inspector General’s Office have responded to the issue of impunity in terms of access to justice for women victims of sexual violence. The results presented previously also belong to their spheres of responsibility but as major regulations were issued to them in the Order Auto 092 of 2008 by Colombia’s Constitutional Court, the Monitoring Reports were analyzed according to observations that could directly be related to the two institutions.

Analyzing the strategy implemented by the Prosecutor General’s Office

Arguing from a perspective based on the analysis of the Monitoring Reports, the Prosecutor General’s Office has applied measures giving special priority to the sexual violence cases included in the Confidential Annexes of the Order Auto 092 of 2008. Despite this, it cannot be retraced how these policies were designed (e.g. in case of an intersectional focus considering particularly vulnerable groups of women) and it has become evident that they remain insufficient because they do not take into account the complete dimension of sexual

violence as a crime, its perpetrators and the situational contexts in which it occurs. For instance, one of the latest actions taken by the Prosecutor General's Office is the hosting of sessions in which women victims of sexual violence are invited to participate and report their charges. What needs to be questioned here is, whether these sessions can provide an adequate environment and basis considering the gravity of this crime (e.g. how much time can be dedicated to each victim?). The Working Group does not have any knowledge on how the Prosecutor General's Office will proceed with these cases and it has found that the register, which was issued after the sessions, already presents inconsistencies. Apart from the strong critique, a positive development that could be detected is the fact that compared to the Inspector General's Office, the Prosecutor General's Office has advanced towards an improved communication and coordination on an inter-institutional level.

Within the overall strategy implemented by the Prosecutor General's Office, specific focus needs to be dedicated to the following highly important responsibilities of the institution. In terms of the documentation of sexual violence associated with the armed conflict, instead of one comprehensive and operational register, there are two types of databases used within this institution. In the past seven years, the Working Group was provided with six different reports (e.g. in terms of structure) on the compliance with Auto 092. Besides, a space for dialogue between the Working Group and the Prosecutor General's Office could only be initiated by 2011 (almost three years after Auto 092 was passed) and it has been interrupted ever since a new Prosecutor General was assigned. In addition, whenever the Working Group has issued its right of petition, the responses have not included sufficient information on the matters. All these aspects generate a lack of cooperation and trust between this institution, the Working Group and the victims represented by it.

Likewise, it would have been the responsibility of the Prosecutor General's Office to assure an obligatory participation of public officials in the training programs. Yet, the latest monitoring results indicate that the last training program took place in 2011. Moreover, against the background of the usual methods applied to acquire testimonial and physical evidence, disregarding the possibility to exhaust other forms of evidence collection (e.g. circumstantial evidence, anthropological data such as information on gender roles, the increase of birth rates etc.), the Prosecutor General's Office has failed to protect women victims of sexual violence from a risk of revictimization by exactly these procedures. In spite of the issuing of Memorandum 0117 of 2008 that advocates for a distinct methodological approach to investigate sexual violence cases and avoids an excessive attention on methods

such as proof by testimony, the majority of the institution’s staff is not aware of its existence and therefore, it has not been implemented either.

Finally, reconsidering the analysis of the procedural status of the sexual violence cases included in the Confidential Annexes of the Autos, many cases have been precluded, investigations have been dismissed or trials have concluded with acquittals. In 2012, the Prosecutor General’s Office had stated that it would revise these cases and apply all the investigative tools possible to detect the perpetrators and to address this issue of impunity. This claim was proven wrong by the Working Group in their 5th Monitoring Report and, according to the 6th Monitoring Report, “there is no clear strategy for the review of the decisions to archive cases or to advance in an accelerated manner in the investigation of these incidents. Although the Working Group has been informed on the creation of a Subcommittee to promote these cases [...] there is no transparency regarding how it will respond to these incidents, or on what timeline” (The Working Group 2016: 16). Figure 12 illustrates aspects, which cause the fact that many of the cases remain in impunity; they have been developed by the Working Group.

PRACTICES THAT INFLUENCE IMPUNITY
<ul style="list-style-type: none"> - <i>Abdicating obligation to investigate generalized situations</i> - <i>Abdicating obligation to investigate sexual violence in cases where there is ruling for other crimes</i> - <i>Abdicating obligation to investigate sexual violence in cases that are misplaced</i> - <i>Decisions to archive cases: dismissal due to lack of evidence and preclusion without information on grounds for decision</i> - <i>Seemingly contradictory decisions to archive cases despite obligation to investigate</i> - <i>Seemingly contradictory decisions preclude investigation despite obligation to investigate</i>

Figure 13 Practices that influence impunity developed by the Working Group (based on The Working Group 2016).

For instance, the Constitutional Court presented 16 cases of generalized situations of sexual violence, of which most of them were denounced by international organizations, to the Prosecutor General’s Office. The institution archived all the cases because it perceived the information on them to not be factual, which indicates its clear incapability to comprehend the dimensions of sexual violence associated with the armed conflict. Similarly, the Prosecutor General’s Office has not applied the Constitutional Presumption of Connection properly that was established in the Order Auto 009 of 2015.⁴¹ Furthermore, 2 cases for which the investigations should have been opened again, as they had been “misplaced”, no considerable actions have been taken. In one of these cases, about 20 Indigenous women

⁴¹ Constitutional Presumption of Connection means that each sexual violence crime associated with the armed conflict has to be investigated in terms of a connection between the two unless it can be proven otherwise.

were raped by State Security Forces (an incident that was reported to the institution 7 years ago). Moreover, 6 cases were precluded without the identification of the perpetrators, nor have all investigative tools been exhausted. Taking into account one of these cases, soldiers of the army raped two girls but the physical examination of the military division could not prove the violation. In accordance with the Working Group, it can be concluded that the actions of the Prosecutor General's Office depend on the group of perpetrators linked to the crime; e.g. compared to other groups of perpetrators, the cases in which State Security Forces directly participated are mainly archived or precluded. Besides, for the revision of the cases, the Prosecutor General's Office has reassigned them to its sectional units based on a territorial distribution according to where the crimes occurred. This is highly concerning, since the victims (and public officials) might still be at risk because of the armed actors' presence and additionally, this encourages the under-reporting of sexual violence.

Analyzing the strategy implemented by the Inspector General's Office

Considering the analysis of the strategy implemented by the Inspector General's Office, a non-compliance with the order of a strict oversight of the procedural status regarding the sexual violence cases could be identified. As reported by the Working Group, no strategy for legal actions nor monitoring tools for observing a possible progress have been designed or implemented. According to the latest Monitoring Report of the Working Group, the Inspector General's Office has claimed the existence of a database for gathering relevant information and evaluating the progress of the cases, however, the monitoring body has insufficient knowledge on that. Besides, another database that was forwarded to them lacks crucial data categories and features data that is inconsistent with the reports of the Prosecutor General's Office. Thus, in terms of the cases included in the Confidential Annexes of the Autos, the interventions of the Inspector General's Office have not surpassed the mere inquiry for information, rather than to initiate accelerated processes for the progress of the cases. Furthermore, a space for inter-institutional communication and coordination lacks completely, whereas a space of regular dialogue with the Working Group was established; nevertheless, the fact that different public officials have been regularly reassigned to this space has reduced a productive cooperation between the institution and the monitoring body. Consequently, the Working Group has a general lack of knowledge on the actions taken by the Inspector General's Office, which, simultaneously, denies the victims' active participation in the process, since many are legally represented by organizations forming part of this monitoring body. Finally, it is very concerning that, at several points throughout the

Monitoring Reports, the Working Group has discussed the reluctance of the Inspector General's Office to initiate disciplinary actions against State Security Forces who have been directly involved in committing sexual violence crimes, nor did the institution show support for introducing investigations.

5.4 Hypothesis validation

As a final step for realizing the analytical purpose of this Master thesis, it is necessary to establish a direct connection between the results collected during the analysis and the hypotheses introduced in the "Theories and concepts" chapter, in order to find out whether these can be confirmed as valid for my research or not.

According to H1, *impunity has persisted despite the Order Auto 092 of 2008 passed by Colombia's Constitutional Court due to the presence of a pervasive continuum of violence against women in the country's society*. The continuum of violence implies that women's experiences in conflict/war (in the context of this Master thesis the specific experience of sexual violence in Colombia's armed conflict) are deeply rooted in prior gender inequalities and women's disadvantaged position in society. These structures that constantly reproduce and maintain the continuum of violence pervade all spheres of society. In accordance with this understanding of the continuum of violence, the analysis has shown that women victims of sexual violence generally experience certain types of obstacles that remain persistent and reoccurring throughout their realities. The fear of being stigmatized by their family, partners or friends (and ultimately by the justice authorities) prevents them from reporting the crimes committed against them and marginalizes them within their communities. Moreover, because of the fact that the continuum of violence perpetuates and naturalizes violences against women, women have a general lack of knowledge on what sexual violence actually implies and on their rights as citizens, which have to be guaranteed by the State. All these obstacles related to the continuum of violence against women victims of sexual violence revictimize them and consequently, their access to justice cannot be guaranteed and the crimes committed against them remain in impunity. Therefore, **H1 is confirmed as valid** for my research.

Access to justice for women victims of sexual violence (and the prevention of this crime) can only be achieved, if the pervasive continuum of violence against women in Colombia is seriously acknowledged and addressed. Since the patriarchal structures of Colombia's society hold up and fuel this continuum, it is the responsibility of the State and its institutions to direct all their efforts towards implementing policies in order to break the

reproductive cycle of these structures. However, focusing on the continuum of violence encourages to analyze the underlying mechanisms of governments and their institutions that maintain and reproduce structural violences against women. Based on these considerations, the second hypothesis was formulated.

According to H2, *impunity has persisted despite the Order Auto 092 of 2008 passed by Colombia's Constitutional Court due to the mechanisms of gendered institutions, which are in charge of guaranteeing access to justice for women victims of sexual violence.* Gendered institutions are institutions (in the context of this Master thesis this applies to the justice authorities in charge of guaranteeing access to justice for women victims of sexual violence) that are characterized by a clear gender bias. These gendered institutions quietly reproduce the already existing gender inequalities and thereby allow the persistence of impunity in cases of sexual violence. In accordance with the implications of gendered institutions, the analysis has shown that the institutional response by Colombia's justice authorities in terms of access to justice for women victims of sexual violence has been characterized by continuous discriminatory patterns and a restricted understanding of the issue of sexual violence in relation to the armed conflict. Inconsistent with the regulations determined in the Order Auto 092 of 2008 passed by Colombia's Constitutional Court, these justice authorities have revictimized the victims instead of guaranteeing them their right to access to justice. Relating these continuous discriminatory patterns to the prosecution process itself, numerous examples have illustrated how the justice authorities have failed to adopt a gender perspective and have revictimized women victims of sexual violence instead; for instance, in terms of evidence collection, the participation of the victims during the process of prosecution, the priority policy of Decree No. 0001 of 2012 and the Statutory Law of 2013.

Furthermore, the overall institutional response of Colombia's justice authorities has not responded to the intrinsic rights and needs of women victims of sexual violence associated with the armed conflict. Their acceptance of the continuum of violence legitimizes it, marginalizes the victims and, at the same time, the underlying structures of the continuum of violence are maintained and reproduced. Consequently, there is a lack of clear and transparent processes to act in response to the reporting of sexual violence crimes and a consistent and operational investigation method has not been realized. Several examples have proved these findings throughout the analysis: measures to guarantee legal accompaniment have been lacking, there is no general mechanism for comprehensive reparations (but compensation payments instead), a system for training programs that corresponds to the

orders in the Autos is non-existent, a complete and reliable database on sexual violence has not been developed, the application of an intersectional focus to reduce the disproportionate impact of sexual violence on particularly vulnerable groups of women has mainly failed and the communication with the Working Group (and the victims represented by it) has been neglected. Moreover, focusing on the Prosecutor General's Office and the Inspector General's Office specifically, their latest actions seem to be more than contradicting to the regulations demanded by the Constitutional Court in the Autos. The performance of the Prosecutor General's Office considering the precluded cases and dismissed investigations is very concerning, as well as how the Inspector General's Office has proceeded in the cases in which State Security Forces were directly involved as perpetrators of sexual violence.

Consequently, based on the analytical results, it has become evident that Colombia's justice authorities, which are in charge of guaranteeing access to justice for women victims of sexual violence, can be defined as gendered institutions because their mechanisms operate on the basis of the structures of the continuum of violence against women. Therefore, **H2 is also confirmed as valid** for my research. In fact, I argue that both hypotheses are strongly connected to and mutually influence each other.

6. Conclusion

6.1 Answering to the problem formulation

Taking into account the globally growing presence of internal armed conflict and the fact that women and girls comprise the majority of civilian casualties and are the primary target of sexual violence in conflict and war, this Master thesis set out to examine the specific country case example of Colombia in terms of access to justice for women victims of sexual violence associated with the country's armed conflict. It was the research purpose of my study to answer the problem formulation

“Why has impunity persisted despite the Order Auto 092 of 2008 passed by Colombia's Constitutional Court?”.

According to the research design, the problem formulation is answered by hypothesis testing.

Thus, based on the results acquired throughout the analysis, I conclude that impunity has persisted despite the Order Auto 092 passed by Colombia's Constitutional Court ...

- A. ... *due to the presence of a pervasive continuum of violence against women in the country's society and ...*
- B. ... *due to mechanisms of gendered institutions, which are in charge of guaranteeing access to justice for women victims of sexual violence.*

Although the two hypotheses were formulated separately from each other, on the basis of the two respective theories, I perceive a strong link and a reciprocal impact between them. Since the continuum of violence against women is present in all spheres of society, naturally, it influences the actions of Colombia's justice authorities. Consequently, by legitimizing and reproducing the continuum of violence against women, gendered institutions normalize violences against women and send a message of tolerance for this kind of violence to the society.

Against this background, considering all the analytical results collected from the Monitoring Reports of the Working Group, I believe that the crucial obstacle that has to be addressed for guaranteeing access to justice for women victims of sexual violence is the **system of training programs for public officials**. To a considerable extent, revictimizing aspects that victims have to face and obstacles that render the institutional response ineffective would be reduced because the ultimate lack of understanding and acknowledging pre-existing discriminatory patterns against women and gender inequalities, and the neglecting of dynamics of sexual violence in armed conflict is the root cause to impunity. It cannot be denied that certain measures for complying with the orders determined in the Autos have been implemented, nonetheless, the knowledge on the situation of access to justice for women victims of sexual violence needs to be transformed into actual institutional responsibilities (Meertens & Zambrano 2010). On 11th July 2016, the Supreme Court of Justice elected Néstor Humberto Martínez as the new Prosecutor General of the Nation (Semana 2016). In one of the first hearings with the other candidates, Martínez was asked which kind of policy he was thinking to implement in order to eliminate and prevent femicides and family violence in Colombia, whereupon he responded that this perception had to be revised because we had seen family violence being criminalized, although these violent incidents are simply occasional and destroy the family unit (Restrepo Jiménez 2016). The actions taken by the Prosecutor General's Office are of extreme importance for women victims of sexual violence and it is questionable how the orders determined in the Autos can

be implemented in the future with a leadership representing this attitude towards violence against women.

6.2 Considerations for further research

In consideration of suggestions for further research, two aspects should be kept in mind. On the one hand, the armed conflict currently is in a critical stage, since the peace negotiations with FARC seem to be coming to an end soon and the beginning of peace talks with ELN were announced. For this reason, it is now essential to observe the developments for these processes, especially how the peace agreements will be implemented and how the post-conflict society will respond to them. Moreover, and as a relevant perspective for the focus of this Master thesis, the next investigative step would be to examine how women have been and will be included in the peace process and post-conflict scenarios, and how the issue of sexual violence associated with the armed conflict has been dealt with and will be dealt with within the same contexts. In line with Puechguirbal (2010), “if women’s experiences of war are not documented nor fed into peace settlements, the post-conflict society will look like the society in time of peace and perpetuate discriminations against women. Therefore, women’s new responsibilities, opportunities and gains won’t be translated into a new power that could challenge traditionally defined gender roles” (Puechguirbal 2010: 170). Consequently, it would be interesting to answer to questions such as, if the peace agreement with FARC will respond to the implications of transformative gender justice, or how sexual violence crimes will be prosecuted or victims be repaired etc.?

On the other hand, as pointed out in the “Methodology” chapter, academic literature focusing on sexual violence in Colombia’s armed conflict is rather rare. The structures of the conflict itself, its origins, causes and developments have been researched extensively, which in Colombia is referred to as “violentología”. A focus on gender and women’s rights has only recently received attention. As a consequence, I believe that, in the future, a considerable body of literature and research on this topic will develop, above all taking into account that there is a foreseeable end to the armed conflict now. An evolving feminist academic scholarship in terms of sexual violence associated with Colombia’s armed conflict would not only allow for knowledge generation in the country itself, but it would also allow for the production of comparative literature and studies in the Latin American region.

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8. Appendixes

8.1 Appendix A – Continuum of violence

APPENDIX A	1 st MONITORING REPORT	3 rd MONITORING REPORT	4 th MONITORING REPORT	5 th MONITORING REPORT	6 th MONITORING REPORT ¹
CONTINUUM OF VIOLENCE	<p>Women victims of sexual violence have expressed, towards organizations of Working Group, the reasons for which they did not report crimes committed against them</p> <ul style="list-style-type: none"> → Fear of being stigmatized → Fear of retaliation → Wanting to avoid victimization by authorities → Lack of knowledge on what crimes actually imply → No trust in authorities etc. 	<p>Lack of guarantees to report sexual violence</p> <ul style="list-style-type: none"> - Women fear for their security (presence of armed actors) - They feel shame/guilt (towards family, partner, community etc.) - Psychological impact of crimes is extreme - Lack of knowledge on their rights (in case of Indigenous women, this could be extended to problems because of lack of language skills) - No trust in justice system - Lack of economic means <ul style="list-style-type: none"> → Violences against women generally naturalized → All factors that should be addressed by State 	<p>Problems with access to justice²:</p> <ul style="list-style-type: none"> - Lack of guarantees for victims who make complaints and lack of respect for victims* → Transferring individuals from one agency to another without fair treatment* → Lack of information* → Lack of care* → Conditioning acceptance of complaint on victim's ability to define their aggressor/s* → Denial of medical attention due to absence of healthcare coverage* → Women unaware of their rights → Cases of sexual violence perpetrated against Indigenous women tend to be discussed publicly and presented as community issues which violates their rights to intimacy and privacy* <ul style="list-style-type: none"> - Lack of clarity in methods to respond to complaints and conduct investigations*. - general practices in all relevant institutions that can provide care for victims of sexual violence as well as specific guidelines for criminal investigation non-existent - Continued patterns of discrimination and re-victimization*; patterns of discrimination (gender stereotypes) have not been overcome - Lack of measures by which to guarantee legal accompaniment*; → Complex justice system as additional obstacle for women victims when seeking justice and lack of protection <ul style="list-style-type: none"> - Lack of measures for reparation in criminal procedures*; sends message of acceptance and state tolerance regarding sexual violence in general 	<p>Obstacles to accessing justice*</p> <p>"In Auto 009, the Constitutional Court established that the nonobservance of a responsibility to act with due diligence in the investigation of sexual violence associated with the armed conflict perpetuates the violations of victims [sic] rights, in as much as inaction or deficient actions on this matter send a message of tolerance regarding violence against women and reinforces discriminatory patterns. For this reason, ensuring justice in itself is a prevention strategy for gender violence and, specifically, sexual violence, which continues to be unacknowledged by the State in these cases." (The Working Group 2016: 11)*</p> <ul style="list-style-type: none"> - Lack of guarantees to file complaints: ongoing obstacles → Women's distrust in State → Shame → Lack of knowledge regarding procedures → Weak or absent institutions* → Influence of gender stereotypes → Presence of armed actors* → Difficulty for women to exercise their rights etc. → Mass-sessions have created hopes that were not fulfilled afterwards* 	

¹ 6th Monitoring Report is first one to monitor compliance with Order Auto 002 of 2008 as well as Order Auto 009 of 2015.

² Generally indicates 'new' observations that Working Group has been adding to the information contained in the Monitoring Reports, according to my personal investigation of its publications.

8.2 Appendix B – Gendered institutions

APPENDIX B	GENDERED INSTITUTIONS	
	Prosecutor General's Office	Inspector General's Office
<p>1ST MONITORING REPORT</p>	<ul style="list-style-type: none"> - Of 183 cases of sexual violence included in Confidential Annexes of Auto 092, adequate information provided on 6 cases alone - 9th July 2008, strategy presented in Resolution No. 0266 according to orders determined in Auto: elaborate register for victims of sexual violence, authorize territorial jurisdiction to sectional units of Prosecutor General's Office for revising taken decisions and evaluating possibility to investigate precluded cases AND assign cases which had not been investigated yet according to territories (locations where crimes had occurred) → Prosecutor General's Office's claim to only have information on 6 cases of 183 is troubling, as Working Group represents and has information 26 already; no detailed knowledge on phenomenon of sexual violence and therefore adoption of adequate measures hindered → No implementation of protection measures or psychosocial accompaniment for victims of 183 cases → Register was created with help of information by Working Group but organizations of monitoring body were not incorporated in process → Corporation of feminist, social and Human Rights organizations not guaranteed as required in Auto; simultaneously, exclusion of victims and lack of relation of trust between institutions and victims (considered of high importance in this context) → No budget increase for these measures and therefore implementation by staff which had already been employed before; sectional units of Prosecutor General's Office with little or no education for investigating sexual violence AND Human Rights Unit with oversaturated workload; consequently, no exclusive dedication could be given to measures, although Human Rights Unit would be entity trained to work in this context → Carrying out investigations in territories where crimes were committed and where armed actors continue having power put women (as well as public officials) at risk and encourages underreporting → Working Group not informed about reinvestigation of precluded cases → Identification of regional patterns of sexual violence or verification of their systemic use not taken into account - Additionally, space for regular dialogue between Working Group and Prosecutor General's Office, which was supposed to be established subsequent to right of petition of organizations, not realized - Reassigning of cases to Human Rights Unit, subsequent to right of petition of Working Group, problematic because firstly, organizations are not aware of which cases exactly were reassigned and secondly, prosecutors in charge cannot dedicate necessary time to cases due to excessive workload 	<ul style="list-style-type: none"> - Elaboration of Protocol for Inspector General's Office for the "Prevention, Protection and Promotion of the Rights of Women Victims of Sexual Violence in the Context of the Armed Conflict in Colombia" Interventions of Public Ministry redirected to municipal representatives³ → Protocol more directed towards prevention than intervention → Redirection of intervention of Public Ministry meant that adequate rights of victims were not protected due to fact that necessary amount of time could not be dedicated to this responsibility because of other workload and they are not trained enough for taking care of sexual violence crimes - Budget was not increased for guaranteeing implementation of orders determined in Auto - General lack of knowledge on strategies of Inspector General's Office which denies active participation of victims and Working Group as their representative

^{3,4} "Municipal representatives" is the official translation for the Spanish term "Personero/a" used in Colombia. The "Personero/a" is a department of the Public Ministry that controls municipalities and decentralized institutions.

MONITORING REPORT

<ul style="list-style-type: none"> - Working Group issued right of petition aiming at the collection of sufficient information for elaboration of Monitoring Report but no satisfying response was returned⁴⁴ - Space of regular dialogue still not realized - As response to right of petition issued by National Indigenous Organization of Colombia, Prosecutor General's Office informed being aware of 6 cases of sexual violence against indigenous women included in Confidential Annexes of Auto-1 in inquiry stage, 5 in preliminary investigation –despite disproportionate impact of crimes on indigenous women, no acceleration of procedural process as ordered by Auto* - Subgroup of three prosecutors was supposed to be in charge of investigations of sexual violence; according to Monitoring report, only one prosecutor and position was reassigned at least twice until this point in time* - Still concern because of cases being territorially reassigned to sectional units of Prosecutor General's Office - Still concern due to fact that identification of regional patterns of sexual violence or verification of their systemic use not taken into account 	<ul style="list-style-type: none"> - Space of regular dialogue between Inspector General's Office and Working Group, which was proposed by the latter, not realized - Working Group not informed about any measures taken in order to fulfill requirements of Auto concerning oversight of procedural status of sexual violence cases*
<p><u>Persistence of obstacles stated in Order Auto-092 of 2008</u></p> <ul style="list-style-type: none"> - Lack of care system for women victims of sexual violence corresponding to international standards: <ul style="list-style-type: none"> ➔ According to Working Group, of 40 cases organizations have information on, discriminatory incidents with public officials in 75% of them (30 cases) ➔ Formation processes for public officials working with sexual violence cases were insufficient ➔ Cases in which public officials discriminated victims of sexual violence were not prosecuted ➔ In the same context, highly important differential focus taking into account Afrocolombian and indigenous women not existent ➔ Casa de la Mujer documented a case in which public official of Inspector General's Office was in charge of reporting of Crime: "that this did not look like a rape. That no one would believe me. I felt judged, besides, he told me that with this kind of reporting, it was more probable that I would be judged" (Corporación Casa de la Mujer 2010: 17) - Undervaluation of perpetrated crimes by authorities in charge of their report and investigation: continuity of social imaginaries that naturalize violence against women - Official underreporting: lack of adequate methodology to identify existence of cases of sexual violence in judicial investigations (e.g. massacres) <p><u>Additional obstacles identified by Working Group</u></p> <ul style="list-style-type: none"> - System of Criminal Justice: <ul style="list-style-type: none"> ➔ Participation of victims in investigation stage is limited to request/provide evidence and ask for information, e.g. no allowance to copy documents related to their procedural status ➔ In order to initiate formal process, victim's presence and statement in oral trial necessarily required; all evidence acquired or collected outside of trial insufficient - Law 975 of 2005: despite obligation by law, majority of paramilitaries did not confess sexual violence crimes; although certain amount of perpetrators did confess (2009), there was no single conviction until 2010 - Reparations: <ul style="list-style-type: none"> ➔ No significant progress in terms of repairing victims; if yes, merely compensation payments ➔ Case of disabled girl represented by Sisima Mujer concluded with compensation payment which had not been paid until this point in time ➔ Program of Administrative Reparation (Decreed 1290 of 2008) excludes victims whose perpetrators were State Agents; State Security Forces were determined as being major group of alleged perpetrators of sexual violence 	

⁴⁴ Generally indicates 'new' observations that Working Group has been adding to the information contained in the Monitoring Reports, according to my personal investigation of its publications.

4TH
MONITORING
REPORT

- Inconsistent information on investigation processes of cases of sexual violence and lack of typification of crimes as sexual violence abuses*
- Prosecutor General's Office responsible for guaranteeing adequate investigative tools in order to collect evidence (e.g. circumstantial evidence, anthropological data such as data on gender roles, increase of birth rate etc.)*
- Memorandum 0117, "Sexual Violence in the Context of the Armed Conflict": established specific measures to avoid revictimization (e.g. proof by testimony); not known nor applied by all investigators and prosecutors
- Various workshops in terms of gender but no obligatory program of formation processes for public officials (e.g. international standards of sexual violence crimes, gender perspective in context of investigations, recollection and analysis of evidence etc.)
- Effective measures that allow for guaranteeing access to justice for women and girls in vulnerable conditions have not been developed (e.g. staff with adequate language skills)

Obstacles directly related to justice system

- Lack of efficient and reliable register of cases of sexual violence in armed conflict*:
 - No unified database, reliable and consistent; that provides information on all investigations on sexual violence crimes related to armed conflict (only data on investigations of sectional units of Prosecutor General's Office)
- Excessive attention on proof by testimony and physical evidence by public officials in charge of carrying out investigations:
 - Origin: lack of normative knowledge or cultural stereotypes
 - Implicates disproportionate burden on women victims of sexual violence who have to face absence of secure conditions or psychosocial accompaniment, fear of revictimization and other obstacles considering access to justice
 - Despite lack of evidence and therefore possible complications for investigative process, prosecutors obligated to apply every method possible apart from aforementioned
- Discriminatory patterns and gender stereotypes embodied by justice administrators:
 - Victims face suspicion by public officials, they are not believed by them and require unnecessary proof/tests
 - Public officials blame victims themselves for sexual violence experienced due to way they dressed or because they wanted to prostitute themselves
 - Against background of mistrust in victims, cases in which victims cannot remember every single detail of crime is used against them to ask for extended testimonies or unnecessary psychological evaluations
 - "Justice in Colombia does not serve for anything because they believe more in the ones who did that than us women who are the victims. They never prosecute them, but they investigate what we tell them" (Mesa de Seguimiento 2011: 45)
- Lack of effective reparations for victims of sexual violence:
 - Judges have been limiting themselves to economic compensations; victims and their families should have possibility to receive medical or psychological support e.g.
 - Program of Administrative Reparation has only accepted small number of applications, many rejected due to apparent lack of evidence or lack of knowledge of victims on how to obtain reparations

	<p>Lack of differential focus concerning populations in vulnerable conditions:</p> <ul style="list-style-type: none"> → 46 cases of sexual violence included in Auto correspond to women and girls in vulnerable conditions → Lack of interpreters for indigenous women in order to report and acquire information on their cases → Collection of evidence not designed according to vulnerabilities → Victims with cognitive or mental incapacities were subjected to 'normal' processes of evidence collection → In a case represented by Colectivo de Abogados José Alvear Restrepo, attempt of rape of underage girl belonging to Wiwa population by State Security Force, testimony of victims and her family could not be collected 	
<p>5TH MONITORING REPORT</p>	<p>Memorandum 0117 of 2008, differential research methodology for cases of sexual violence in context of armed conflict incorporating psychosocial approach; has not been socialized properly, nor is entirety of institution aware of its existence</p> <p>Resolution 0266 of 2008, register of victims elaborated in which 183 cases discussed in Confidential Annexes are recorded and categories for improvement of information developed; confusing data, no distinction between cases of Auto 092 and others, imprecise variables, no indication for progress or stagnation of cases</p> <ul style="list-style-type: none"> → Register designed in Excel but no single file gathering all relevant information together → Prosecutor General's Office developed other informational systems → Only informational overview but no qualitative analysis possible <p>Units of Prosecutor General's Office operate differently according to their specialty and without coordination with other units; affects right to equality and no evidence of clear strategy to identify patterns and systematic nature of sexual violence*</p> <ul style="list-style-type: none"> → Resolution No. 3788 of 2009, working group to analyze and formulate investigative and assistance strategies with regards to victims of gender-based violence; 2 meetings in 4 years <p>Availability of data on vulnerable groups being victims of sexual violence in armed conflict but unclear, whether data has encouraged implementation to assist progress in these cases; e.g. whether specifically trained interpreters have been hired to assist cases of indigenous women</p> <ul style="list-style-type: none"> → In case of indigenous women, forensic examinations are not only limited to direct evidence, but also ultimately define victims' access to justice <p>Dialogue between Prosecutor General's Office and Working Group finally established by 2011 and certain progress made over meeting period, stagnation subsequent to appointing of new Prosecutor General</p> <p>2012: Prosecutor General's Office claimed to have deployed all possible investigative actions to identify authors and overcome impunity in all cases ending in preclusion of investigation, acquittal or termination of investigation proved wrong*</p> <p>Common practice of pursuing physical and testimonial evidence provided by victim without examining other sources; e.g. sexual violence against disabled and displaced Afrocolombian girl, Prosecutor General's Office considered victims testimony as essential evidence in investigation</p> <p>Failure to identify and understand sexual violence events that have to be perceived in context of armed conflict*</p> <p>Training programs have not followed coherent, strategic, continuous or large-scale strategy, so that development of legal procedures can really be impacted (last one carried out in 2011)</p> <ul style="list-style-type: none"> → Should be obligatory → Professional and experienced staff in the matter should be hired 	<p>Lacks formal system by means of which to record information regarding its performance in response to request that it exercise oversight in processes discussed in Confidential Annexes*</p> <ul style="list-style-type: none"> → Excel database developed but no information on procedural advancement <p>Existence of specific strategy to comply with Auto remains uncertain*:</p> <ul style="list-style-type: none"> → Interventions in criminal procedures have not been sufficient to accelerate pace of procedures → Many of procedures pertinent to cases included in Confidential Annexes limited to request for information opposed to procedural or qualitative involvement (favorable balance for 2012 was submitted to Constitutional Court in 2013) → Evaluation and monitoring of public policies with lack of depth in certain areas and lack of recommendations, effectiveness of certain indicators etc. <p>Dialogue with Working Group established but continuity of agenda could not always be maintained due to exchange of government officials</p>

<p>Directive No. 0001 of 2012, priority policy, non-prioritized cases (due to lack of information) will be investigated in isolation from context they occurred in, this does not correspond to complexity of sexual violence as crime*</p> <p>Statutory Law 2013, established regulations regarding the investigation, prosecution, and trial of members of Armed Forces within Framework of International Humanitarian Law: has to be guaranteed that, under no circumstances, sexual violence can be tried in military courts; moreover, "Protocol for the Armed Forces on Sexual Violence with an Emphasis on Sexual Violence on the Occasion of the Armed Conflict" equipped Armed Forces with authority to gather evidence, record testimony and assume role of judicial police in these cases*</p>	<p><u>Institutional problems*</u></p> <ul style="list-style-type: none"> - Partial and disjointed normative response*: <ul style="list-style-type: none"> ➔ Extensive implementation of regulations but no strategy to streamline various policies; in other words, mere introduction of policies insufficient for addressing systematic discrimination against women in context of armed conflict ➔ Policy generally lacks defined objectives, timelines for implementation, adequate budgets and clear indicators that allow progress to be monitored ➔ Effective remedy for victims of sexual violence is immediate, not long-term, requisite for compliance - Lack of adequate and reliable register: <ul style="list-style-type: none"> ➔ Judicial authorities have not installed official, clear and reliable register; should allow for quantitative and qualitative analyses, research as to advances in all processes, their mobility and dynamics, research tool that can identify patterns of behavior, suspects and describe general context in which crime occurs, information regarding healthcare and protection agencies etc. ➔ Those responsible with lack of understanding or only restricted access ➔ Particular context in which sexual violence occurs is not taken into account and therefore, evaluation of progress of cases included in Confidential Annexes of Auto not implemented ➔ Lack of integration between registers, use of different variables; fail to document care provided for victims and do not contain catalogue of sexual violence elaborated by Constitutional Court; should identify acts committed against women before being murdered, reflect situation at local and national levels, disaggregate data according to gender etc., so that adequate reparation is provided and re-victimization avoided - Problems of coordination between institutional platforms for dialogue: no fluid channel of communication has been established between Prosecutor and Inspector General's Office* <ul style="list-style-type: none"> - Lack of inter-sectorial approaches: <ul style="list-style-type: none"> ➔ Failure to adopt differential approach or specific measures in order to more aptly address differences arising from ethnic and racial identities, age, sexual orientation and disability - Obstacles to effective dialogue* <ul style="list-style-type: none"> ➔ Dialogue is not continuous and largely depends on individuals ➔ Profiles participating in dialogue need to have all legal authority possible in order to enforce changes ➔ Access to clear, reliable and complete information is not provided ➔ No fluid channel of communication within agency as a whole
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<p><u>Problems with access to justice</u></p> <ul style="list-style-type: none"> - Lack of investigative strategies to overcome impunity* - Lack of clarity in methods to respond to complaints and conduct investigations* - Narrow interpretation of sexual violence in armed conflict* - Continued patterns of discrimination and re-victimization - Problematic aspects of training programs - Lack of measures by which to guarantee legal accompaniment* - Lack of measures for reparation in criminal procedures: <p>→ No knowledge of efforts, aside from procedure set forth in Law 975 of 2005, to guarantee comprehensive reparations</p> <p>→ No knowledge of mechanisms to be applied for cases of sexual violence in Confidential Annexes</p> <ul style="list-style-type: none"> - Policies that cast doubt on victims' guarantees to justice* 	<p>Has shown no interest in investigating disciplinary actions in relation to incidents which involve State Agents*</p> <p>Despite statement that information document exists to collect information and monitor cases, Working Group does not have detailed information on that and other existent database it was provided with shows serious deficiencies in information collection and distinct data from Prosecutor General's Office</p> <p>Discouraging information on side of Inspector General's Office, since no internal coordination space seems to exist</p> <p><u>Observations on strategy of Inspector General's Office</u></p> <ul style="list-style-type: none"> - Actions do not correspond to Constitutional Court's requirements to indicate methodology, human resources or compliance indicators for monitoring process of cases - Inspector General's Office does nowhere outline legal strategy or mechanisms to monitor and evaluate its work, or indicators in relation to sexual and reproductive rights - Monitoring indicators proposed in 2012 have not been implemented in manner that allow for periodic monitoring of compliance with recommendations* - Issued regulations and projects on criminal procedures but no information on what kind of impact they had* - Apparently, designated agents were assigned to each case of Confidential Annexes of Auto 092 but only information on 77 cases of which many did not progress at all; no agencies in any of the cases of Auto 009* - Regarding disciplinary procedures, no sanctions against State Agents directly linked to perpetrating sexual violence in any of Autos, nor that Inspector General's Office has provided help to establish investigations
<p>6TH MONITORING REPORT</p>	<ul style="list-style-type: none"> - Sessions to receive declarations and complaints of women: Does that provide appropriate framework for women victims of sexual violence to present their cases (time etc.); no knowledge on how cases will proceed, whether there will be accompaniment etc.* → According to Working Group, i.e., database that should be provided after these sessions incomplete - Response of Prosecutor General's Office varies according to perpetrator, percentage of archived and precluded cases benefiting State Security Forces and their joint operations with paramilitary groups greater than that of others, whereas percentage of active cases in stage of investigation or inquiry implicate guerrilla groups and criminal gangs greater than those involving other groups* - In case of civilian perpetrators, Prosecutor General's Office with continuous reluctance to identify sexual violence crimes as having occurred in context of armed conflict, e.g. because of prior forced displacement - Constitutional Court submitted at least 16 cases of generalized situations of sexual violence to Prosecutor General's Office, majority of which were reported by international organizations – cases were archived because information on them was considered abstract; lack of understanding dynamics behind sexual violence in armed conflict - Several rulings for incidents other than sexual violence were not explained or they just stopped investigating sexual violence crimes without possibility of reviewing cases; some of these cases included State Security Forces as alleged perpetrators - Prosecutor General's Office has not initiated proceedings for 2 cases that should be investigated due to them being "misplaced", 1 of the cases describes a rape of at least 20 indigenous women by State Security Forces; the Office was informed of these cases 7 years ago - In at least 35 cases that were dismissed or precluded due to lack of information, Prosecutor General's Office has not explained grounds used to make these decisions; in majority of cases, decisions were taken without participation of victims, maybe victims were not even identified - 10 archived cases resulting from dismissal due to lack of evidence which do not clearly demonstrate that incidents had been adequately investigated in terms of not exhausting all possibilities available; e.g. in one case, Prosecutor General's Office said victim was not interested in continuing investigation but strategies to protect and psychosocially accompany victim were not implemented - Prosecutor General's Office precluded 6 cases without having identified alleged perpetrators and all investigative possibilities available were not exhausted; e.g. in the case of two girls raped by army members the medical-legal evaluation of battalion could not confirm rapes

<ul style="list-style-type: none"> - Prosecutor General's Office claimed to establish thematic working groups but unclear how they will implement differential focus* - i.e., various offices within Prosecutor General's Office have information on cases but victims do not have knowledge on procedures and are therefore lost in system* - Prosecutor General's Office has not adequately implemented constitutional presumption of connection, above all in terms of its obligation to reviewing closed cases included in Confidential Annexes of Auto 092* - Still no unified system with reliable and up-to-date information on investigations which hinders general procedures and is obstacle for victims and their representatives ➔ Two different information registration efforts within one entity ➔ No consistency and lack of information; e.g. considering Auto 092, in last 7 years, Working Group has received 6 different reports (structure etc.) by Prosecutor General's Office or Constitutional Court - Prosecutor General's Office taking steps to achieve greater coordination between its national offices <p><u>Observations on strategy of Prosecutor General's Office</u></p> <ul style="list-style-type: none"> - Strategy to prioritize policy in relation to cases included in Confidential Annexes implemented but unclear how recommendations in Autos have impacted the design of these; insufficient because they do not refer to dynamics of sexual violence, actors or regions ➔ E.g. when having revised cases of Confidential Annexes of Auto 092, 31 cases characterized as emblematic or exemplary situations but 14 of them archived, 3 precluded and 1 not guilty ➔ Cases committed by State Security Forces, criminal gangs or civilians against displaced women have remained in offices where they have been investigated until now, many times in territories where crimes were committed ➔ Generation of hierarchy in response to sexual violence committed by armed actors compared to State Security Forces, criminal gangs or civilians 	
<p><u>Obstacles to accessing justice</u></p> <ul style="list-style-type: none"> - Persistence of impunity: <ul style="list-style-type: none"> ➔ No clear strategy for review of decisions to archive cases or to advance in accelerated manner in investigation of these incidents; Working Group has been informed on creation of Subcommittee to promote these cases but no transparency on this process so far ➔ Investigating cases according to territories where crimes were committed still bears extreme danger; recommendation of employing public prosecutors - Practices that influence impunity: <ul style="list-style-type: none"> ➔ Abdicating obligation to investigate generalized situations ➔ Abdicating obligation to investigate sexual violence in cases where there is ruling for other crimes ➔ Abdicating obligation to investigate sexual violence in cases that are misplaced ➔ Decision to archive cases; dismissal due to lack of evidence and preclusion without information on ground for decisions ➔ Seemingly contradictory decisions to archive cases despite obligation to investigate ➔ Seemingly contradictory decision to preclude investigation despite obligation to investigate; resolution to preclude investigation implies to identify alleged perpetrator - Absence of intersectional approaches; according to Auto 009, State must increase efforts in case of diverse vulnerabilities such as ethnic origin, age, disability, sexual orientation or gender identity 	

- Lack of clear procedures (rutas); according to Auto 009, victims kept without information on their rights and procedures and forced to undertake long bureaucratic inquiries that, in many occasions, do not respond to their needs – revictimization
- Confusing justice system with no clear instructions for victims on how to achieve access to justice
- Application of constitutional presumption of connection: each incident of sexual violence associated with armed conflict must be analyzed by Prosecutor General's Office based on presumption of connection and unless it is rebutted, investigations must go forward based on presumption (Auto 009)
- Legal accompaniment: coordination problems of programs and many approaches still being designed or not properly executed yet
- Reparations: ongoing difficulties considering guaranteeing women victims' right to comprehensive reparation

Institutional obstacles

- Problems with information registries: still lack of data on sexual violence in armed conflict that would allow to design and implement attention, prevention and reparation policies
- Intra- and inter-institutional coordination problems:
- Internal coordination: Prosecutor General's Office and Inspector General's Office
- Training system problems: training programs have been designed and implemented but there is no measurement of real impact of workshops and documents promoting criminal procedures; moreover, programs do not respond to Constitutional Court's indications