

GENDER VIOLENCE AGAINST AFRO-COLOMBIAN WOMEN: MAKING THE PROMISE OF INTERNATIONAL HUMAN RIGHTS LAW REAL

Julie Goldscheid*

ABSTRACT

In the wake of the historic inclusion of racial and gender justice provisions in the 2016 peace accord with the Revolutionary Armed Forces of Colombia (“FARC”), gender violence in Colombia continues with devastating effect, and with a particularly harmful impact on Afro-descendant and Indigenous women and their communities. Colombia continues to experience violence, including sexual and gender-based violence and femicide, and the most vulnerable groups of women, particularly Afro-descendant, indigenous, rural, lesbian, bisexual and transgender women, and women with disabilities, disproportionately suffer serious violations without State protection or access to justice.

Advocates have sought to ensure that the State fulfills its promise to guarantee the rights of women who have been subjected to gender violence at the hands of militia, the State and of private actors. In particular, advocates have sought to raise awareness about the ways gender violence impacts Afro-descendant Colombian women and to ensure that State responses address their needs. This essay builds on those calls for action. It draws on a convening of members of Proceso de Comunidades Negras (“PCN”), and details the ways gender violence

* Julie Goldscheid, Professor of Law, CUNY Law School. I extend deep thanks to the members of Proceso de Comunidades Negras (“PCN”), for their fierce and inspiring work, and for sharing their time, insights and experiences with a group of CUNY Law School faculty who met with them in February 2019. I also thank Professor Lisa Davis, CUNY Law School’s Human Rights and Gender Justice Clinic, and MADRE, for their longstanding and ongoing work to end gender violence and for their commitment to addressing its impact on marginalized communities, and for facilitating the advocacy and meeting that formed the basis for this essay.

has particularly impacted Afro-descendant women and their communities. The essay reviews international human rights obligations requiring States to attend to the ways intersecting forms of discrimination impact survivors' experiences of violence and enumerates recommendations for reform.

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INTRODUCTION

In the wake of the historic inclusion of racial and gender justice provisions in the 2016 peace accord with the Revolutionary Armed Forces of Colombia (“FARC”), gender violence in Colombia continues with devastating effect, and with a particularly harmful impact on Afro-descendant and Indigenous women and their communities.¹ Colombia continues to experience violence, including sexual and gender-based violence and femicide, and the most vulnerable groups of women, particularly Afro-descendant, indigenous, rural, lesbian, bisexual and transgender women, and women with disabilities, disproportionately suffer serious violations without State protection or access to justice.²

Advocates have sought to ensure that the State fulfills its promise to guarantee the rights of women who have been subjected to gender violence at the hands of militia, the State and of private actors. In particular, advocates have sought to raise awareness about the ways gender violence³ impacts Afro-descendant Colombian women and to ensure that State responses address their needs. This essay builds on those calls for action. It draws on a convening of members of Proceso

1. See, e.g., Charo Mina Rojas, *Un Capítulo Étnico con un enfoque de género, mujer, familia y generación en el Acuerdo para una paz estable y duradera? Pero por qué siempre quieren ser diferentes?* (on file with author) (detailing the racist, patriarchal factors that have stalled the implementation of the Peace Agreement and have impeded equality for black-Afro-descendant women); Clemencia Carabalí, *El Territorio es la Via y la Vida no se venda . . . se Ama y se Difiende*, (on file with author) (same); Julia Eva Cogollo, *La Violencia Sexual en Mujeres Negras, mas alla que un Crimen de Guerra* (on file with author) (detailing the impact of the conflict on black women and men’s experiences of gender violence). See also *infra* Part 1 (detailing gender violence against Afro-descendant Colombian women).

2. See *infra* Part II.

3. This essay uses the term “gender violence” to encompass sexual violence committed in connection with as well as outside of the country’s armed conflict, as well as gender violence committed within intimate relationships. These forms of violence exist on a continuum, with overlap between them. Many of the studies cited here focus on sexual and other gender violence committed in connection with the armed struggle. However, reports detail that violence in intimate relationships continues as a persistent and insufficiently addressed problem. See, e.g., Frank Cardona, *More than 3000 Women Abused in Colombia so far in 2018*, COLOMBIA REP. (Mar. 8, 2018), <https://colombiareports.com/more-than-3000-women-abused-in-colombia-so-far-in-2018/> [<https://perma.cc/WYC3-CQV8>] (describing a study conducted by the Faculty of Law at the Free University finding that 3,014 women were abused by their partners or ex-partners in 2018).

de Comunidades Negras (“PCN”),⁴ in collaboration with representatives from MADRE,⁵ and CUNY Law School’s Human Rights and Gender Justice Clinic (“HRGJ”),⁶ in February 2019. It details the ways gender violence has particularly impacted Afro-descendant women and their communities, and situates those experiences within structural challenges facing the Colombian state. This essay reviews international human rights obligations requiring States to attend to the ways intersecting forms of discrimination impact survivors’ experiences of violence and enumerates recommendations for reform.

I. PREVALENT AND PERSISTENT GENDER VIOLENCE AGAINST AFRO-DESCENDANT COLOMBIAN WOMEN.

Although the political landscape in Colombia has changed following the 2016 Peace Accord with the FARC,⁷ inequality and gender violence persists, and Afro-descendant Colombian women are particularly affected.⁸ The Peace Accord included 100 provisions on

4. PCN is an Afro-Colombian collective of more than 120 grassroots organizations and individuals that seeks to combat discrimination and exclusion and to defend the rights of Afro-descendant people. See Press Release, MADRE, Afro-Colombian Organization, Proceso de Comunidades Negras, Wins Peacebuilding Prize (Oct. 26, 2018), <https://www.madre.org/press-publications/press-release/afro-colombian-organization-proceso-de-comunidades-negras-wins> [https://perma.cc/HNG7-MNV8].

5. MADRE is an international women’s human rights organization that works in partnership with community-based women’s organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights issues. See MADRE, <https://www.madre.org/> [https://perma.cc/S39D-C5R8] (last visited Feb. 16, 2020).

6. CUNY Law School’s Human Rights and Gender Justice (HRGJ) clinic advocates before international and regional human rights bodies and national and local court and legal institutions to combat gender discrimination and sexual violence, advance sexual and reproductive rights and economic and social rights and to promote women’s participation and empowerment. See *Human Rights & Gender Justice Clinic*, CUNY SCHOOL OF LAW, <https://www.law.cuny.edu/academics/clinics/hrgj/> [https://perma.cc/NWV9-3DK6] (last visited Feb. 16, 2020).

7. See, e.g., Nicholas Casey, *Colombia’s Congress Approves Peace Accord with FARC*, N.Y. TIMES (Nov. 30, 2016), <https://www.nytimes.com/2016/11/30/world/americas/colombia-farc-accord-juan-manuel-santos.html> (on file with the *Columbia Human Rights Law Review*) (detailing the history leading to the approval of the 2016 Peace Accord).

8. See generally Rojas, *supra* note 1 (analyzing racist and patriarchal factors that have stalled implementation of Peace Agreement); Cogollo, *supra* note 1 (describing impact of sexual violence committed as part of Colombia’s armed conflict); DR. VIRGINIA M. BOUVIER, UN WOMEN, GENDER AND THE ROLE OF

gender equality and women's human rights, several of which address conflict-related sexual violence, but research indicates that only four percent of those provisions had been implemented by mid-2018.⁹ As but one example of the work remaining to achieve peace and equality, Colombia's National Victims Unit has registered incidents of sexual violence reportedly committed as recently as 2018 by a dissident group of FARC and by a post-demobilization armed group.¹⁰ Notably, many survivors did not identify their ethnicity to the National Victims Unit, a fact that raises concerns both that staff charged with receiving reports were not sufficiently trained on the legacy of racism, and that many survivors continue to experience threats, stigmatization and shame.¹¹

Authorities ranging from the United States Department of Justice, to the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") Committee, to international human rights organizations have recognized the problem: the enduring violence frequently manifests in sexual violence, including rape and abuse of women and children by illegal armed groups, and violence against and forced displacement of Afro-Colombian and indigenous persons.¹² The most vulnerable groups of

WOMEN IN COLOMBIA'S PEACE PROCESS 7 (2016), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/women-colombia-peace-process-en.pdf> [<https://perma.cc/YCA6-CKZV>] (noting that "[i]ndigenous and Afro-Colombian women and girls are at particular risk for poverty, displacement, violations of their collective and individual rights, and sexual violence.").

9. U.N. Secretary General, *Conflict-related sexual violence: Rep. of the Secretary-General*, ¶ 40, U.N. Doc. S/2019/280 (Mar. 29, 2019), <https://undocs.org/en/S/2019/280> [<https://perma.cc/9Y6C-H45B>] [hereinafter Secretary-General Report on conflict-related sexual violence].

10. *Id.* ¶ 41.

11. Cogollo, *supra* note 1, at 13.

12. See, e.g., U.S. DEP'T OF JUSTICE, COLOMBIA 2018 HUMAN RIGHTS REPORT 25 (2018) <https://www.justice.gov/eoir/page/file/1148416/download> [<https://perma.cc/SR6B-FT8A>] [hereinafter U.S. DOJ Report] (noting that rape "remained a serious problem" in Colombia in 2018); Secretary General Report on conflict-related sexual violence, *supra* note 9, ¶¶ 4, 40-41 (expressing concern about persistence of sexual violence despite the overall reduction in violence associated with armed conflict); Committee on the Elimination of Discrimination against Women, Concluding Observations on the Ninth Periodic Report of Colombia, ¶¶ 9, 13, 25, U.N. Doc. CEDAW/C/COL/CO/9 (Mar. 14, 2019), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCOL%2fCO%2f9&Lang=en [<https://perma.cc/F89T-SUQ2>] [hereinafter CEDAW 2019 Concluding Observations] (registering the CEDAW Committee's concern that "the most vulnerable groups of women, in particular Colombian

women, particularly Afro-Colombian indigenous, rural, lesbian, bisexual and transgender women and women with disabilities, are at greatest risk. As one local leader explained, “[a] man is killed, but a woman is tortured and sexually abused before she is assassinated.”¹³

Reports document State failures to recognize that the dynamics of the armed conflict are still present, predominantly in Afro-descendant communities.¹⁴ Many Afro-Colombian and indigenous

women of African descent, indigenous, rural lesbian, bisexual, and transgender women and women with disabilities” continue to have their rights violated without State protection); PCN, MADRE & HRGJ CLINIC, VIOLATIONS OF AFRO-COLOMBIAN’S GENDER-BASED HUMAN RIGHTS: A REPORT FOR THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 11–13 (Mar. 2019), https://www.madre.org/sites/default/files/PDFs/Full%20CEDAW%20Colombia%20Final_Eng%20Revised.pdf [<https://perma.cc/D9WT-8LH2>] [hereinafter PCN, MADRE, HRGJ Report] (detailing the lack of convictions that have resulted from cases of conflict-related sexual abuse, especially as against Afro-Colombian women); HUMAN RIGHTS WATCH, RECYCLED VIOLENCE: ABUSES BY FARC DISSIDENT GROUPS IN TUMACO ON COLOMBIA’S PACIFIC COAST (2018), <https://www.hrw.org/report/2018/12/13/recycled-violence/abuses-farc-dissident-groups-tumaco-colombias-pacific-coast> [<https://perma.cc/SVJ5-FQJ8>] [hereinafter HRW, RECYCLED VIOLENCE] (detailing violence, including sexual violence, in Tumaco, a predominantly Afro-Colombian and indigenous area and citing a Constitutional Court decision deeming the violence “a grave humanitarian crisis”); INT’L HUMAN RIGHTS CLINIC LOYOLA LAW SCHOOL & CORPORACIÓN CASA DE LA MUJER, NGO PARALLEL REPORT ON COLOMBIA’S NINTH REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, ¶ 17 (July 23–27 2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COL/INT_CEDAW_ICO_COL_31355_E.pdf [<https://perma.cc/X7MC-W2N7>] (specifying that violence against vulnerable groups, including women and Afro-Colombians, is persistent). *See also* Doctors without Borders, *Colombia: Sexual Violence, Hidden Violence*, (Jan. 13, 2017), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/colombia-sexual-violence-hidden-violence> [<https://perma.cc/3735-AM2N>] (noting that sexual violence against women and girls is one of most frequently committed but largely underreported and unacknowledged crime in Colombia, and that for women and girls living where urban violence is common and in areas suffering from consequences of armed conflict, the risk of sexual assault is higher).

13. Oxfam, *Women defenders of land, environment, at risk in Colombia* (Oct. 15, 2019), <https://www.oxfamamerica.org/explore/stories/women-defenders-land-environment-risk-colombia/> [<https://perma.cc/FW2J-VZE4>] (citing statement of Jacqueline Romero, leader of the Colombian organization Fuerza de Mujeres Wayúu, regarding the danger against women leaders in particular).

14. Erika Guevara-Rosas, *The Colombian state must address the structural causes of violence*, AMNESTY INTERNATIONAL (May 29, 2018), <https://www.amnesty.org/en/latest/news/2018/05/el-estado-colombiano-debe-abordar-las-causas-estructurales-de-la-violencia/> [<https://perma.cc/29SV-H8BN>]. *See also infra* Part II (describing gender violence’s particular impact on Afro-descendant Colombian women).

communities where FARC formerly operated now face security challenges due to the strong presence of other illegal armed groups and criminal organizations.¹⁵ The United Nations Secretary General has expressed particular concern about the resulting violence and forced displacement in ethnic territories and in the countryside.¹⁶ Some reports suggest that violence has increased in the period following the signing of the Peace Accord.¹⁷ Experts attribute the increase to a lack of political will and inadequate funding, as well as to the rise of armed groups, particularly in areas where implementation of the peace process is slow.¹⁸ Some suggest that women leaders have been specifically targeted due to their engagement in Colombia's peace agreement.¹⁹

Afro-descendant Colombian women are particularly at risk of being subjected to gender violence. For example, as recently as 2018, Human Rights Watch found that armed groups, including groups that emerged from the FARC, were committing rape and other sexual abuses in the municipality of Tumaco, a predominantly Afro-Colombian and Indigenous region.²⁰ Colombia's Victims' Registry recorded the highest number of "crimes against sexual integrity" in Tumaco, noting that official statistics, though stark, likely vastly underrepresent the true scope of the problem, since many cases go unreported.²¹ Advocates confirm that Tumaco is one of the most complex and dangerous areas, with high levels of gender violence, including sexual violence against young women.²² Other

15. U.N. Secretary-General, *United Nations Verification Mission in Colombia: Rep. of Secretary-General*, ¶ 52, U.N. Doc. S/2018/1159 (Dec. 26, 2018), https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2018_1159.pdf [<https://perma.cc/Y5EE-FG3N>] [hereinafter 2018 U.N. Secretary-General Colombia Report].

16. *Id.* ¶¶ 60–61, 67–68, 94.

17. CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 9.

18. See PCN, MADRE, HRGJ Report, *supra* note 12, at 3; HRW, RECYCLED VIOLENCE, *supra* note 12 (noting that "flaws in the demobilization of FARC guerillas . . . helped prompt the formation of FARC dissident groups. . . . Pervasive drug trafficking has helped fuel their growth.").

19. See Oxfam, *supra* note 13.

20. HRW, RECYCLED VIOLENCE, *supra* note 12.

21. HUMAN RIGHTS WATCH, SUBMISSION BY HUMAN RIGHTS WATCH TO THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN ON COLOMBIA, 72ND SESS. (2019), https://www.hrw.org/sites/default/files/supporting_resources/colombia_submission_final.pdf [<https://perma.cc/2LJL-YP4Z>].

22. PCN participant comment at Joint PCN-CUNY HRGJC Meeting (Feb. 23–25, 2019) (notes on file with author) [hereinafter PCN Participant Comment].

predominantly Afro-descendant Colombian communities similarly continue to be rife with violence.²³

II. GENDER VIOLENCE'S PARTICULAR IMPACT ON BLACK AFRO-DESCENDANT COLOMBIAN WOMEN

The legacy of armed conflict and ongoing violence has longstanding and particular impacts on black Afro-descendant women, both individually and collectively.²⁴ The impact of gender violence combines with the systemic failures of the state to adequately respond politically, judicially, or economically, to compound its effects. The combination perpetuates systemic inequities and exacerbates the harms that black women face as a result of gender violence.

Historic and enduring dynamics intensify the harms of gender violence for Afro-descendant women. Gender violence in the context of the armed conflict and its aftermath compromises survivors' sense of identity in a number of ways. For example, the armed conflict and de-territorialization processes have curtailed cultural and traditional practices, including rituals and community gatherings, which would not only go to the heart of cultural identity and experience but would also historically offer ways to process experiences such as violence and related feelings of grief and loss.²⁵ The violence and its legacy have weakened the family relationships that connect people with ancestral territories and traditions.²⁶ The combination of homicides, forced disappearances, forced displacement, sexual violence, massacres and practices such as dismemberment and violent deaths generate fear and hopelessness, all of which constrain black women's sense of collective rights.²⁷ Sexual violence impacts black women's sexual and reproductive rights, physical health, psychological, and emotional and behavioral health.²⁸

23. See, e.g., Guevara-Rosas, *supra* note 14 (noting that “the dynamics of armed conflict,” including forced displacement and the killings of human rights defenders, still exist in many communities, including Chocó and Cauca, that are predominantly Afro-descendant Colombian).

24. Cogollo, *supra* note 1, at 13–14.

25. *Id.* at 14–17.

26. *Id.* at 15–16.

27. *Id.*

28. *Id.*; see also Deborah Zalesne, *Making Rights a Reality: Access to Health Care for Afro-Colombian Survivors of Conflict-Related Sexual Violence*, 51 COLUM. HUM. RTS. L. REV. 670 (Feb. 2020) (discussing the State's failure to meet its constitutional mandate to provide healthcare to Afro-Colombian women).

Forced displacement, which both results from and increases the risk of sexual violence, disproportionately impacts Afro-Colombians. One report found that Afro-Colombian and indigenous people comprised 70 percent of those displaced in the first half of 2017 alone.²⁹ The United States Department of Justice found that 45 percent of reported displacement events between January and October 2018 were of Afro-Colombian and indigenous people, and identified sexual violence by illegal armed groups as one of the factors driving displacement.³⁰

Stereotypes about black women compound the harm of violence and the challenges facing Afro-descendant Colombian women. The CEDAW Committee cited “deep-rooted” stereotypes and discrimination against indigenous women and Colombian women of African descent as an obstacle to equality.³¹ As part of black solidarity movements, black women organized women’s groups to address issues of particular concern to black women, such as gender-based inequality and the difficulty of challenging traditional gender roles.³² Activists have described the various and particular ways sexual violence impacts black women’s lives, for example, through stereotypes casting black women as “stupid,” as “witches,” or as hypersexual, all of which contribute to their loss of autonomy and sense of security and self-worth in the aftermath of sexual violence.³³

Gender violence against black women encompasses sexual violence by state actors and armed forces as well as intimate partner violence. Activists have reported that Afro-Colombian women are the most affected by sexual violence and the least helped.³⁴ For example, in the aftermath of sexual assault, women will not return to a particular location because they were raped there, and are left feeling unsafe in their own territory.³⁵ Many people will not acknowledge intimate partner violence, especially in the common circumstance where women, dependent on a male partner who earns the family’s

29. Minority Rights Group, *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement* (Dec. 14, 2017), <https://reliefweb.int/report/world/no-escape-discrimination-minorities-indigenous-peoples-and-crisis-displacement> [<https://perma.cc/4A3D-BRM3>].

30. U.S. DOJ Report, *supra* note 12, at 18–19.

31. CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 41.

32. *See generally* Kiran Asher, *Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands*, 130–54 (2009) (tracing development of Afro-Colombian women’s independent organizing).

33. PCN Participant Comment, *supra* note 22.

34. *Id.*

35. *Id.*

income, are controlled by that partner.³⁶ Survivors fear retaliation if they speak up about intimate partner violence.³⁷ Sexual violence accentuates past harms and traumas, compounding the harm for those from families or communities with a history of violence at the hands of the State or other armed actors.³⁸

Systemic failures compound the harms of gender violence. Those failures manifest in multiple sites of public engagement, including the judicial system, health care, and in opportunities for economic security. Violence is carried out with impunity, with Afro-Colombian victims and their survivors and their families suffering serious violations of their rights without access to State protection or to justice.³⁹ For example, in one incident in February 2017 several men reportedly raped a woman in public in Tumaco and no police came to her aid.⁴⁰ In another example, a nine-year old girl was left in the custody of her abusive father after her mother poisoned herself and died; similarly, the girl received no formal aid.⁴¹

Structures set up to address historic inequities fail to respond adequately to gender violence against Afro-Colombians. For instance, of all the cases brought to the special peace justice tribunal (“JEP”),⁴² none involved violence committed against Afro-descendant Colombian women until March of 2019.⁴³ That month, representatives from the

36. *Id.*

37. *Id.*

38. *Id.*

39. CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 9, 25.

40. See PCN, MADRE, HRGJ Report, *supra* note 12, at 12–13.

41. PCN Participant Comment, *supra* note 22.

42. The Special Jurisdiction for Peace (“JEP”) was set up as part of the landmark September 2015 agreement on transitional justice in Colombia. It is an extrajudicial court system designed to employ a restorative approach to trying ex-rebels and others for their crimes during the more than five decades of armed conflict. See Brian Harper & Holly K. Sonneland, *Explainer: Colombia’s Special Jurisdiction for Peace (JEP)*, AMERICAS SOCIETY/COUNCIL OF THE AMERICAS (Aug. 3, 2018), <https://www.as-coa.org/articles/explainer-colombias-special-jurisdiction-peace-jep> [<https://perma.cc/LQC7-GK5F>].

43. See Sebastián Forero Rueda, *La verdad de las mujeres en la Guerra, en manos de justicia transicional*, EL ESPECTADOR (Jun. 17, 2019), <https://www.elespectador.com/colombia2020/justicia/jep/la-verdad-de-las-mujeres-en-la-guerra-en-manos-de-justicia-transicional-articulo-866250> [<https://perma.cc/56JY-MYYK>] (reporting on testimony, including reports of sexual violence against Afro-descendant and indigenous women, presented to JEP); PBI Colombia, *Historic JEP Hearing in Cacarica* (Mar. 11, 2019), <https://pbicolombia.org/2019/03/11/historic-jep-hearing-in-cacarica/> [<https://perma.cc/V8K5-68NM>] (reporting that the first JEP hearing to be held in a rural region took place in March 2019). As of October 2018, 2,300 documented cases of conflict-related sexual and gender-based

Humanitarian Zone Nueva Esperanza in Cacarica (Bajo Atrato-Urabá-Chocoano), who are mostly Afro-Colombian, filed a brief and delivered oral testimony, but as of this writing, the JEP has not yet moved forward with the case.⁴⁴

Judicial systems do not effectively assist women seeking help in response to gender violence. Local advocates have expressed frustration with local law enforcement's lack of responsiveness to complaints of sexual and intimate partner violence.⁴⁵ At the same time that many advocates seek better, and more appropriate, responses from law enforcement, some worry about the risk of being targeted by police for their advocacy work.⁴⁶

The CEDAW Committee and others have noted favorably the government's efforts to increase responsiveness by strengthening the role of Family Commissioners, who have been authorized to issue remedies for intimate partner violence.⁴⁷ Experts have expressed concern, however, that the Family Commissioners are not sufficiently funded or staffed, that they report to the local municipalities, and that they are tasked with too many responsibilities.⁴⁸ Moreover, Colombia does not provide women the option of seeking a civil order of protection without running the risk of involving the criminal justice system, since Family Commissioners must send all cases of domestic violence to the prosecutor's office.⁴⁹ As a result, every request for a civil order of protection with a Family Commissioner could lead to a criminal

violence were brought to the JEP, though reports estimate that over 15,000 people were victims of conflict-related sexual and gender-based violence. PCN, MADRE, HRGJ Report, *supra* note 12, at 10. Given the lack of disaggregated data, it is difficult to quantify with certainty the particular impact on Afro-descendant Colombian communities.

44. See PBI Colombia, *supra* note 43.

45. PCN Participant Comment, *supra* note 22. See Babe Howell and Naree Sinthusek, *In the Crosshairs: Centering Local Responses to SGBV in Afro-Colombian Communities*, 4 HRLR ONLINE 268 (May 2020).

46. PCN Participant Comment, *supra* note 22.

47. See, e.g., CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 25 (commending the State for its efforts to strengthen the role of Family Commissioners); Freta Friedemann-Sánchez & Margaret Brieve, *General Background on Colombian Laws on Violence against Women, Orders of Protection, and Shelter*, at 2, 6 (2018), <https://www.ohchr.org/Documents/Issues/Women/SR/Shelters/FriedemannSanchezGrieve.pdf> [https://perma.cc/6Y9G-S4D9] (describing Family Commissioners as having an administrative role in the judicial system due to their ability to issue civil orders of protection).

48. See, e.g., CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 25 (noting the same).

49. Friedemann-Sánchez & Brieve, *supra* note 47, at 6.

prosecution. Even though the system is overwhelmed and the likelihood of a prosecutor commencing a criminal proceeding is “relatively remote,” it does happen.⁵⁰ Many women refuse to request a protective order because they do not want to risk their partner’s arrest and prosecution by transmitting information to a prosecutor.⁵¹ Like many survivors throughout the world, they want the violence to stop, but do not want the abuser punished or incarcerated.⁵²

The lack of culturally appropriate medical and psycho-social care also disproportionately impacts Afro-descendant Colombian women.⁵³ The United Nations Secretary-General found access to justice and health care for victims of sexual violence to be a continued challenge, particularly for women and LGBTI persons, and in rural areas, where many indigenous communities and ethnic minorities reside.⁵⁴ The CEDAW Committee similarly has critiqued the lack of appropriate medical and psycho-social care for survivors of gender violence.⁵⁵ Resources for survivors must be contextualized within the Afro-Colombian culture of healing and spirituality, and should cover indigenous as well as western healing practices.⁵⁶ To that end, advocates have expressed concern that the government does not provide health care for injuries resulting from sexual violence such as

50. *Id.*

51. Advocates for Human Rights & Humphrey School of Public Affairs, Submission to the Committee on the Elimination of Discrimination Against Women, *Relating to Access to Justice, Discriminatory Gender Stereotypes, and Violence Against Women*, ¶¶ 15, 16 (Jan. 28, 2019) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fCOL%2f33986&Lang=en [<https://perma.cc/2VY7-9EDJ>].

52. *See generally* LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* 5 (2018) (noting the fact that people subjected to abuse are often reluctant to turn to the legal system means that the increasing criminalization of intimate partner violence is not an effective policy solution).

53. *See, e.g.*, Ángela Moreno Bustos, Borrador de Artículo sobre Acceso a Servicios de Salud de las Sobrevivientes de Violencia Sexual y de Género en el Contexto del Conflicto Armado, (on file with author) (discussing access to health services of sexual and gender violence survivors in the context of the armed conflict). *See also* Zalesne, *supra* note 28, at 672 (discussing how weak standards for culturally appropriate care disproportionately affect Afro-Colombian women).

54. Secretary-General Report on conflict-related sexual violence, *supra* note 9, ¶ 42.

55. CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 25.

56. PCN Participant Comment, *supra* note 22; Bustos, *supra* note 52; Zalesne, *supra* note 29, at 680 (discussing the importance of indigenous healing practices in Afro-Colombian health).

scars, cut, female genital cutting, or strangulation.⁵⁷ Examples abound of women whose partners had inflicted injuries to their breasts or rectums, as well as burns, gunshot wounds, or lacerations, many of which were not covered by government-sponsored health care.⁵⁸

Economic policies also exacerbate the harms of gender violence, and have a particular impact on Afro-descendant Colombian women. Patterns of violence are fueled and intensified by the lack of adequate housing, economic vulnerability, and the inability to tend to basic needs.⁵⁹ These underlying sources of inequality must be addressed in order to reduce the risk of gender violence, and to increase Afro-descendant survivors' ability to cope in its wake.⁶⁰

III. INTERNATIONAL HUMAN RIGHTS LAW'S COMMAND TO ADDRESS INTERSECTIONAL HARMS

International human rights law requires States to address the ways that women experience discrimination on the basis of sex differently depending on differences in their identities and experiences. CEDAW, for example, holds States responsible for acts and omissions by state actors that constitute gender-based violence.⁶¹ In addition, States are responsible for acts and omissions by non-state actors that are attributable to the State.⁶² Moreover, States are obligated to take all appropriate measures to eliminate discrimination, including gender violence.⁶³ This obligation of "due diligence" requires States to take all appropriate measures to prevent, investigate, prosecute, punish, and provide reparation for acts or omissions by non-State actors that result in gender based violence.⁶⁴

57. PCN Participant Comment, *supra* note 22. *See also* Zalesne, *supra* note 29, at 685 (discussing particular harms faced by Afro-Colombian women).

58. PCN Participant Comment, *supra* note 22.

59. *Id.*

60. *See, e.g.*, Guevara-Rosas, *supra* note 14 (noting that the main victims of grave human rights violations in Colombia "continue to be Afro-descendant communities and Indigenous Peoples who have had their territories and resources taken from them.").

61. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 35, ¶¶ 22–23, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017) https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf [<https://perma.cc/9EZT-2Y2X>] [hereinafter CEDAW Gen. Rec. 35].

62. *Id.* ¶ 24(a).

63. *Id.* ¶ 24(b).

64. *Id.* ¶¶ 24–26.

States must recognize and prohibit intersecting forms of discrimination and their compounded negative impact on women through policies and programs designed to eliminate the effects of discrimination, including discriminatory violence.⁶⁵ This intersectional approach recognizes that factors such as ethnicity or race, indigenous or minority status, color, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, are “inextricably” linked to women’s experience of violence.⁶⁶ It requires States to focus on the needs of the most vulnerable groups of women, which, in Colombia, encompasses indigenous, rural, lesbian,

65. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28, ¶ 18, U.N. Doc. CEDAW/C/2010/47/GC.2 (Oct. 19, 2010), <https://www2.ohchr.org/english/bodies/cedaw/docs/cedaw-c-2010-47-gc2.pdf> [<https://perma.cc/NX5R-QFW2>] [hereinafter CEDAW Gen. Rec. 28].

66. See CEDAW Gen. Rec. 35, *supra* note 61, ¶ 12. The full list of factors also includes illiteracy, trafficking of women, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDS, deprivation of liberty, being in prostitution, geographical remoteness and stigmatization of women fighting for their rights, including human rights defenders. *Id.* See also CEDAW Gen. Rec. 28, *supra* note 65, ¶ 18 (“Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2.”). For a foundational discussion of intersectionality theory, see Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHICAGO L. FORUM 139 (1989); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241 (1991). For further discussion of intersectionality including the application of intersectionality to international human rights law, see LORENA SOSA, INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN: AT THE CENTRE OR THE MARGINS? (2017); SANDRA FREDMAN, DISCRIMINATION LAW (2011); Christine Chinkin & Marsha A. Freeman, *Introduction to THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* (Marsha A. Freeman et al. eds., 2013); Johanna E. Bond, “*International Intersectionality*”: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations, 52 EMORY L.J. 71 (2003); Jess Bullock & Annick Masselot, *Multiple Discrimination and Intersectional Disadvantages: Challenges and Opportunities in the European Union Legal Framework*, 19 COLUM. J. EUR. L. 57 (2012); Meghan Campbell, *CEDAW and Women’s Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination* (Oxford University, Working Paper Vol. 2, No. 3, 2016), <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/07/Working-Paper-Series-Vol-2-No-3.pdf> [<https://perma.cc/8VZ2-MMKD>].

bisexual and transgender women and women with disabilities.⁶⁷ As former Special Rapporteur Rashida Manjoo has argued, elimination of violence requires “holistic measures” that span interpersonal, structural, individual and institutional inequalities, and that, among other things, address social and/or economic hierarchies among women and between women and men.⁶⁸

Thus, recent enactments such as CEDAW General Recommendation 35 acknowledge the structural causes of gender-based violence, the pernicious effects of prejudices and gender stereotyping, and the adverse impact of current challenges such as environmental degradation, militarization, displacement and migration, as well as increased globalization of economic activities, and armed conflict.⁶⁹ These enactments underscore that trends such as reductions in public spending, and “austerity measures” allow for the pervasiveness of gender violence and lead to a culture of impunity.⁷⁰ States must recognize socially constructed identities, attributes and roles, as well as the impact of “political, economic, cultural, social, religious, ideological and environmental factors.”⁷¹ While common policy-based interventions focus on criminal justice reform, social and economic rights are closely linked with ending gender violence and

67. See, e.g., CEDAW 2019 Concluding Observations, *supra* note 12, ¶¶ 9, 13 (noting the particular risks faced by human rights defenders, especially those from vulnerable groups).

68. *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶¶ 12–108, U.N. Doc. A/HRC/17/26 (May 2, 2011), <https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf> [<https://perma.cc/HF34-SBXJ>]; see Lisa Crooms et al., *Intersectional and Multiple Forms of Discrimination in the Context of Violence Against Women* (Feb. 6, 2011), https://www.academia.edu/2351548/INTERSECTIONAL_AND_MULTIPLE_FORMS_OF_DISCRIMINATION_IN_THE_CONTEXT_OF_VIOLENCE_AGAINST_WOMEN [<https://perma.cc/WZ49-6RAF>]; Sarah E. Jewell, *Conceptualising Violence Against Women in the Work of the United Nations Special Rapporteur on Violence Against Women* (2011) (unpublished LLB thesis, Australian National University) <http://ssrn.com/abstract=2038113> [<https://perma.cc/W8EU-BC77>].

69. CEDAW Gen. Rec. 35, *supra* note 61, ¶ 14; see also Christine Chinkin, *CEDAW General Recommendation 35 on violence against women is a significant step forward* (Sept. 2017), <https://blogs.lse.ac.uk/wps/2017/09/06/cedaw-general-recommendation-35-on-violence-against-women-is-a-significant-step-forward/> [<https://perma.cc/4SFV-F63U>] (describing the contributions of General Recommendation 35, including giving voice to the structural causes of gender-based violence and recognizing that intersectionality necessitates different responses to gender-based violence).

70. CEDAW Gen. Rec. 35, *supra* note 61, ¶ 7.

71. CEDAW Gen. Rec. 28, *supra* note 65, ¶ 5.

with helping survivors respond in its aftermath.⁷² Economic opportunity, reparations, and structural reform designed to empower Afro-descendant Colombian women are needed to address the legacy of discrimination and violence.⁷³ In this vein, the CEDAW Committee has addressed intersectional discrimination in its communications evaluating complaints that States' responses to gender violence violated the Treaty's requirements.⁷⁴

CEDAW thus recognizes that States' "overarching obligation" to address the intersectional nature of gender violence is of "an immediate nature," and requires States to pursue "all appropriate means and without delay."⁷⁵ States are obligated to address the role of both state and non-state actors.⁷⁶ As but one means of complying with CEDAW's obligations, States must collect relevant sex-disaggregated data.⁷⁷ States must also develop responsive policies and programs in consultation with civil society organizations, including those that represent women who experience intersecting forms of discrimination, to ensure that the needs of the most vulnerable women are addressed.⁷⁸

IV. RECOMMENDATIONS FOR REFORM

Recommendations for reform that take into account the intersectional impact of gender violence span both practical and transformative responses. From a practical perspective, disaggregated data that tracks the prevalence and nature of gender violence, by sex, age, ethnicity, race, geographical location and disability would

72. See JACQUI TRUE, *THE POLITICAL ECONOMY OF VIOLENCE AGAINST WOMEN* 7–8, 17–35, (2012); Beth Goldblatt, *Violence Against Women and Social and Economic Rights: Deepening the Connections*, in *RESEARCH HANDBOOK ON FEMINIST ENGAGEMENT WITH INTERNATIONAL LAW*, 359–78 (Susan Harris Rimmer & Kate Ogg eds., 2019).

73. See, e.g., CEDAW 2019 Concluding Observations, *supra* note 12, ¶¶ 36, 39–42 (urging steps to advance women's economic equality and empowerment); Cogollo, *supra* note 1, at 14 (discussing the role of poverty in violence).

74. CEDAW Gen. Rec. 35, *supra* note 61, ¶ 12, n. 12 (citing CEDAW Committee decisions including *Jallow v. Bulgaria*, *S.V.P. v. Bulgaria*, *Kell v. Canada*, *A.S. v. Hungary*, *R. P. B. v. the Philippines*, and *M.W. v. Denmark*, among others, as well as inquiries concerning Mexico and Canada in 2005 and 2015, respectively).

75. CEDAW Gen. Rec. 35, *supra* note 61, ¶¶ 21.

76. *Id.* ¶¶ 22–26.

77. CEDAW 2019 Concluding Observations, *supra* note 12, ¶¶ 16(b), 52; CEDAW Gen. Rec. 35, *supra* note 61, ¶¶ 28, 49.

78. CEDAW Gen. Rec. 35, *supra* note 61, ¶ 48; PCN, MADRE, HRGJ Report, *supra* note 12, at 14.

facilitate implementation of progressive reforms.⁷⁹ Advocates recommend developing safety logs and registries to track incidents of gender violence, who the actors are, and how it affects the community.⁸⁰ They propose contextual analyses and self-protection systems, as well as community trainings on human rights and ethnic rights, to improve local responses and enhance community safety.⁸¹ The State should support psycho-social services and prevention efforts that are culturally appropriate and that value traditional and indigenous healing practices.⁸² It should adopt accessible reporting mechanisms and develop methodologies, in collaboration with Afro-descendant Colombian women victims of sexual violence, that take into account the additional discrimination they experience.⁸³ The State should provide effective reparation to survivors, including transformative reparations programs that prioritize survivors' agency and autonomy.⁸⁴ With respect to intimate partner violence, in response to concerns that many survivors do not want their partners arrested or incarcerated,⁸⁵ policies and programs should both improve criminal justice responses, and should offer alternatives that may be better suited to survivors' wishes.⁸⁶

To fully address the intersectional harms of gender violence, the State should adopt robust prevention programs that take into account the experiences of indigenous women and women of Afro-Colombian descent, rural women, women with disabilities and lesbian, bisexual and transgender women.⁸⁷ Afro-descendant Colombian

79. See *supra* note 77.

80. PCN Participant Comment, *supra* note 22.

81. *Id.*

82. *Id.*; Cogollo, *supra* note 1, at 21.

83. PCN, MADRE, HRGJ Report, *supra* note 12, at 14.

84. CEDAW 2019 Concluding Observations, *supra* note 12, ¶¶ 46, 47. See generally Bhabani Sonowal & Dipa Dube, *Reparative Approach towards Victims of Armed Conflict – Global Experiences and Lessons for India*, 6 BRICS L. J. 127 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3386518&dgcid=ejournal_html_email_women;:law;:human:rights:ejournal_abstractlink [https://perma.cc/LKH3-ATSE] (detailing a reparative approach to remedying human rights violations suffered by victims of armed conflict).

85. See *supra* notes 49–52 and accompanying text.

86. See, e.g., Cogollo, *supra* note 1, at 20–21 (recommending policies and programs that are tailored to survivors' experiences and priorities).

87. CEDAW 2019 Concluding Observations, *supra* note 12, ¶ 26(a); *accord* Report of the Secretary-General, United Nations Verification Mission in Colombia, S/2018/1159, 26 Dec. 2018, ¶¶ 63, 65, 67, <https://www.whatsinblue.org/2019/01/colombia-briefing-and-consultations-3.php> [https://perma.cc/C59N-L5UY] (underscoring importance of implementing the “Comprehensive Programme for the

advocates have stressed the importance of enhancing activities to strengthen and empower women, of raising visibility for issues such as intimate partner violence and violence by the State, and of involving men in discussions about the meaning of masculinity, as a way to advance autonomy, peace and equality.⁸⁸ They underscore the value of prevention efforts situated in local communities, as a way to create awareness of issues such as intimate partner and sexual violence, and to reduce the stigma and fear of repercussions that currently prevent survivors from sharing their experiences.⁸⁹ These efforts must address the problems at their roots, both by challenging assumptions about traditional gender roles and patriarchy and the legacy of race discrimination, and by advancing community-based understandings of what would help the healing process and restoration.⁹⁰ This includes work with men who are victims, and with those who commit harm, to ensure that damage is not repeated.⁹¹ Above all, advocates have stressed the importance of a shared commitment to transformation.⁹²

CONCLUSION

International human rights norms confirm the necessity of focusing on the experiences of those who are most marginalized in order to make the promise of human rights real. Black Afro-descendant Colombian women continue to suffer disproportionate violence in the aftermath of the 2016 historic peace agreement. Their experiences and recommendations should be centered in ongoing efforts to ensure full implementation of the peace process and the country's compliance with international human rights laws.

Security of Women Leaders and Human Rights Defenders," including training for women in territorial areas); *see also* Cogollo, *supra* note 1, at 20–21 (emphasizing importance of responses that recognize Afro-descendant women's experiences).

88. PCN Participant Comment, *supra* note 22.

89. *Id.*

90. *Id.*

91. *See* Cogollo, *supra* note 1, at 21 (recognizing that Black Women victims of sexual violence's demands include work with perpetrators to ensure that damage is not repeated).

92. PCN Participant Comment, *supra* note 22; *see* Cogollo, *supra* note 1, at 22 (discussing importance of transforming gender roles and redressing power imbalances in society).