

IN THE CROSSHAIRS: CENTERING LOCAL RESPONSES TO SGBV IN AFRO-COLOMBIAN COMMUNITIES

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ABSTRACT

The demobilization of the Fuerzas Armadas Revolucionarias de Colombia (“FARC”) since November 2016 has created a power vacuum, as multiple forces vie for areas previously controlled by FARC. This has resulted in new vulnerabilities in many majority Afro-Colombian areas of Colombia to SGBV at the hands of paramilitaries, guerillas, narco-traffickers, state actors, and mining and agricultural interests. Access to justice for survivors of SGBV, conflict-related or otherwise, is a major challenge. Report after report and statement after statement demonstrate that justice and security in the post-conflict peace process are illusory. In order to address these shortcomings, human rights advocates must support the work of Afro-Colombian women’s groups and the Proceso de Comunidades Negras (“PCN”) to ensure access to justice which centers the victims, avoids revictimization, addresses stigma, and fosters community mobilization.

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INTRODUCTION

On June 19, 2019, the Executive Directors of UN Women and Justice Rapid Response issued a statement recognizing “local accountability efforts that integrate gender-inclusive and victim-centered strategies” to support access to justice.¹ They pledged to center victims in this effort to obtain justice.² Centering and supporting local responses to sexual and gender-based violence (“SGBV”) has special urgency in Colombia because of the complexity of implementing the Peace Agreement and the particular history and culture of Afro-Colombians. The demobilization of the Fuerzas Armadas Revolucionarias de Colombia (“FARC”) since November 2016 has created a power vacuum, as multiple forces vie for areas previously controlled by FARC.³ This has resulted in new vulnerabilities in many majority Afro-Colombian areas of Colombia to SGBV at the hands of paramilitaries, guerillas, narco-traffickers, state actors, and mining and agricultural interests. Access to justice for survivors of SGBV, conflict-related or otherwise, is a major challenge. Report after report and statement after statement demonstrate that justice and security in the post-conflict peace process⁴ are illusory.⁵ In order to address

1. Phuzile Mlambo-Ngcuka & Nina Suomalainen, Statement: Placing victims at the centre of investigations spurs justice for survivors of sexual violence in conflict, UN WOMEN (June 19, 2019), <http://www.unwomen.org/en/news/stories/2019/6/statement-joint-international-day-for-the-elimination-of-sexual-violence-in-conflict> [<https://perma.cc/P8FZ-H3DA>].

2. *Id.*

3. For a brief discussion of the failures that create this vacuum, see Nicholas Casey, *Colombia's Peace Deal Promised a New Era, So Why Are These Rebels Rearming?*, N.Y. TIMES (May 17, 2019), <https://www.nytimes.com/2019/05/17/world/americas/colombia-farc-peace-deal.html> (on file with the *Columbia Human Rights Law Review*).

4. By post-conflict peace process, we refer to the period beginning with the signing of the Nov. 24, 2016 Peace Agreement that provides for the demilitarization of FARC. As this essay makes clear, conflict persists among other actors in Colombia and peace has not yet been achieved in many areas.

5. See, e.g., Women's International League for Freedom, Implementing the Women, Peace and Security Agenda for Sustainable Peace in Colombia: Shadow Report Submission to CEDAW Committee, 72nd Session, (Feb. 2019), https://www.wilpf.org/wp-content/uploads/2019/04/COLOMBIA_WILPF_report_CEDAW_JAN2019.pdf [<https://perma.cc/KU93-CLTLs>] (noting the increase in post-conflict violence against women and advocating for the development of a robust regulatory framework); Monitoring Group for the Implementation of CEDAW in Colombia, Women and Peace in Colombia: In Search of Full Rights, Shadow Report (Jan. 2019), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fCOL%2f33792&Lang=en [<https://perma.cc/86NT-VWF5>] (recounting the continuing human rights violations

these shortcomings, human rights advocates must support the work of Afro-Colombian women's groups and the Proceso de Comunidades Negras ("PCN") to ensure access to justice which centers the victims,⁶ avoids revictimization, addresses stigma, and fosters community mobilization.

This essay is informed by a three-day conference, the "Afro-Colombian Community Initiative for Sustainable and Inclusive Peace conference" with PCN and Afro-Colombian women organizers.⁷ These movements are not new,⁸ but they are facing great threats in their advocacy for Afro-Colombian communities in the implementation of the Peace Agreement.⁹ The particular focus of this essay is on access to

experienced by women in Colombia in the period before and after the Final Peace Agreement); *Submission to CEDAW, Relating to Access to Justice, Discriminatory Gender Stereotypes, and Violence Against Women*, ADVOCATES FOR HUM. RTS. & THE HUMPHREY SCHOOL OF PUB. AFFAIRS, UNIV. MINN. (Jan. 28, 2019), https://www.theadvocatesforhumanrights.org/uploads/colombia_ahr_umn_submission_january_2019_final_2.pdf [<https://perma.cc/C5Y3-ASEK>] [hereinafter *Advocates for Human Rights CEDAW Submission*] (chronicling the ways in which Colombia has failed "to uphold its obligations protect women from violence under the Convention on the Elimination of all forms of Discrimination against Women"); INT'L HUM. RTS. CLINIC LOYOLA L. SCHOOL, LOS ANGELES & 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 (July 2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COL/INT_CEDAW_ICO_COL_31355_E.pdf [<https://perma.cc/6ZVX-BD6N>] (same); *Submission by Human Rights Watch to the Committee on the Elimination of All Forms of Discrimination against Women on Colombia, 72nd session*, HUMAN RIGHTS WATCH (2019), https://www.hrw.org/sites/default/files/supporting_resources/colombia_submission_final.pdf [<https://perma.cc/34HM-X5YY>] (same).

6. We discuss "centering the victim" and "centering the efforts of the victims" as opposed to "victim-centered" to connote that the victim is not merely the focus but that the victim is the central actor with agency to most effectively aid other victims.

7. The "Afro-Colombian Community Initiative for Sustainable and Inclusive Peace Conference" took place in Cali, Colombia and in Buenos Aires, Norte de Cauca, Colombia, from February 23 to 25 in 2019. It was co-sponsored by Madre, PCN, and the Human Rights and Gender Justice Clinic of CUNY School of Law.

8. For an excellent history of the PCN movement and Afro-Colombian communities, see KIRAN ASHER, *BLACK AND GREEN: AFRO-COLOMBIANS, DEVELOPMENT AND NATURE IN THE PACIFIC LOWLANDS* (2009).

9. See KROC INST. FOR INT'L PEACE STUDIES, *STATE OF IMPLEMENTATION OF THE COLOMBIA PEACE ACCORD: REPORT 2*, 15, 57 (2018) https://kroc.nd.edu/assets/317532/180830_english_policy_report_2.pdf [<https://perma.cc/68XD-2RXM>] (noting increased threats to the safety of Afro-Colombian communities in the form of homicides of human rights and community leaders, and the lack of

justice for victims of SGBV, but this focus should not be taken out of context. The struggle for access to justice by Afro-Colombian victims of SGBV is part of the greater struggle to safeguard these communities, their culture, their health, their advocates, organizers and organizations, and their territories.¹⁰ The essay is one of several that examines the multiple facets of the threats to Afro-Colombian communities in post-conflict Colombia.¹¹

Part I of this essay briefly outlines the complexity of the context in which SGBV takes place in Afro-Colombian communities. Part II discusses general barriers to access to justice for victims of SGBV in Afro-Colombian communities. Part III highlights the work of the Asociación de Mujeres Afrodescendientes del Norte del Cauca (“ASOM”) as a model for centering victim responses to SGBV. Part IV briefly examines the human rights literature on good practices for responding to SGBV as it relates to centering victims. Finally, this essay recommends supporting and protecting responses to SGBV like the work of ASOM that centers the efforts of victims, specifically Afro-Colombian women.¹² Importantly, access to justice means not merely

“substantive advances in protecting human rights defenders in the territories from threats and attacks”) [hereinafter KROC INST. REPORT].

10. The Peace Agreement itself identifies the need to support these communities, their culture, and their territories:

Men and women in the small-scale farmer, indigenous, black, Afro-descendent, *raizal* and *palenquero* communities, and other ethnic communities across Colombia’s territories are contributing to the structural transformation of the countryside and in particular to the closing of the agricultural frontier, in favour of a sustainable socio-environmental planning. To that end, it is necessary to recognise and to support the Peasant Enterprise Zones (*Zonas de Reserva Campesina*) and cooperative groups within society.

Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, 11 (Nov. 24, 2016), <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [https://perma.cc/8LYP-X8DK].

11. This essay is informed by a three-day conference with PCN and Afro-Colombian women organizers. See *supra* note 7. For more information, see 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); Julie Goldscheid, *Gender Violence Against Afro-Colombian Women: Making the Promise of International Human Rights Law Real*, 4 HRLR ONLINE 249 (May 2020); and Rebecca Bratspies, *‘Territory is Everything’: Afro-Colombian Communities, Human Rights, and Illegal Land Grabs*, 4 HRLR ONLINE 290 (May 2020).

12. Though SGBV is not confined to women, the majority of victims and leaders regarding access to justice for SGBV are women so this essay often refers

access to a tribunal, but access to responses and resources that reflect the actual needs of the victims of SGBV and their communities, while simultaneously holding the state to its obligations under national and international conventions.

I. CONTEXT AND VULNERABILITIES OF AFRO-COLOMBIAN COMMUNITIES

For hundreds of years, both during and after slavery, Afro-Colombian communities have existed in isolated and neglected regions along the Pacific littoral.¹³ Upon manumission, freed slaves joined isolated communities of escaped or freed slaves along the Pacific coast.¹⁴ Isolation has allowed a distinct culture and varied forms of economic organization to flourish.¹⁵ This isolation, a distinctive culture, and anti-black discrimination have all worked together to limit the inclusion of Afro-Colombians in every aspect of Colombian politics and society.¹⁶

to victims as women. Both ASOM and the conference group included men who share the goal of centering Afro-Colombian victims in addressing SGBV.

13. Transitory Article 55 of the 1991 constitution referred to these lands as *tierras baldias* (empty lands) and required adoption of a law recognizing “the collective property rights of the black communities that . . . inhabited the empty lands (*tierras baldias*) in the rural riparian zones of the Pacific coast, in accordance with their traditional production practices [and establishing] mechanisms for the protection of the cultural identity and rights of these communities.” Asher, *supra* note 8, at 2.

14. Asher, *supra* note 8, at 34.

After manumission in 1851, blacks scattered along the length and breadth of the Pacific region, often joining existing *palenques*—settlements established by escaped or freed slaves (*cimarrones*). As black communities expanded and spread in the Pacific (and some other areas) Afro-Colombians developed a distinct set of cultural-symbolic beliefs and material practices, combining elements from their African past with new features developed in their present circumstances. The anthropologists Nina de Friedemann and Jaime Arocha (1984, 1986, 1995) stress that Afro-Colombians chose to isolate themselves from mainstream society as much as an act of resistance and independence as to escape racial discrimination and persecution.

Id.

15. *Id.*

16. For a discussion of the intersectional and structural vulnerabilities of Afro-Colombian women, see generally Julie Goldscheid, *Gender Violence Against Afro-Colombian Women: Making the Promise of International Law Real*, 4 HRLR ONLINE 249 (Apr. 2020).

During the past fifty years, many of the remote and isolated areas occupied by Afro-Colombian communities (the Pacific littoral and Choco region) were dominated by the FARC. These areas had little state presence. Other guerilla groups, paramilitaries, and non-governmental forces (particularly mining and agricultural interests) also vied for non-FARC dominated areas. With the November 2016 signing of the Peace Agreement, the FARC demobilized, but the state failed to fill this new void. That failure to regain military and social control of demobilized FARC areas as required by the Peace Agreements sparked new clashes between these guerilla and paramilitary groups that disproportionately harmed indigenous and Afro-Colombian communities.¹⁷

Victims of SGBV in Afro-Colombian communities fall into multiple categories. There are victims of conflict-related SGBV from the era before the Peace Agreement was signed in November 2016, and there are victims of post-Peace Agreement SGBV by forces vying for power in the absence of FARC, including paramilitaries, narco-traffickers, state actors, and commercial mining and agricultural interests. There are also, as everywhere, victims of SGBV perpetrated by intimate partners and family members. Because of the conflict and the power vacuum left by FARC's demilitarization, vulnerability to conflict-related SGBV, post-Peace Agreement SGBV, and intimate partner SGBV is high.¹⁸ At the February 2019 conference with Afro-Colombian women organizers and PCN, discussions constantly returned to the need for self-defense and community action to safeguard victims of SGBV and the groups and leaders who work with these victims. Assaults on women and children are used as a means of asserting territorial dominance. Women who spoke at the conference reported bodies left in rivers and assaults in parks. They had to avoid laundry, fishing, and public spaces. Unsafe public spaces also constrain women from fleeing abusive domestic relations. Additionally, SGBV is

17. AMNESTY INT'L, *THE YEARS OF SOLITUDE CONTINUE: COLOMBIA: THE PEACE AGREEMENT AND THE GUARANTEES OF NON-REPETITION IN CHOCÓ* 11–19 (2017), https://www.amnesty.org/download/Documents/AMR2374252017_ENGLISH.PDF [<https://perma.cc/UTE6-G6XC>] [hereinafter AMNESTY INT'L, *THE YEARS OF SOLITUDE*].

18. See Kimberley Brown, *For many women in Colombia, peace never arrived*, AL JAZEERA (May 9, 2019), <https://www.aljazeera.com/indepth/features/women-colombia-peace-arrived-190509194227891.html> [<https://perma.cc/3W3H-6H3H>] (chronicling the use of violence against women as a war strategy by paramilitary groups in Colombia, and finding that post-conflict, “20,000 women were sexually assaulted in the country in 2017 alone” including over 140 women who were killed by their partner or former partner).

not limited to sexual assaults and rapes. Paramilitaries, mining and agricultural interests, guerilla groups, and narco-traffickers also force Afro-Colombian women to perform gendered labor, including cooking and laundry.

Although the FARC demobilization and the peace process were the product of long negotiations and much hope, women in areas that had previously been under FARC control faced new vulnerabilities. If anything, the post-conflict context for Afro-Colombian women and communities is even more turbulent than the decades before FARC demobilized.¹⁹

Though SGBV was used on all sides of the conflict, the SGBV most commonly associated with FARC was prevention of pregnancy.²⁰ Female FARC combatants were forced to use contraception and to terminate pregnancies. Meanwhile, paramilitaries, narco-traffickers, other guerilla groups, agricultural interests and mining interests used and continue to use SGBV as part of a broader strategy to dominate territory. SGBV among these actors included sexual assault, forced labor, and displacement. When FARC demobilized, state actors not only failed to fill the vacuum, but, as reported by conference participants who document SGBV, state actors themselves committed SGBV against women in these areas of transition.²¹ In addition, state contracts and policies contribute to the displacement of Afro-Colombian communities in the Pacific littoral.²² Examples of harmful state policies include aerial spraying of coca fields and support for

19. See *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process*, ABCOLOMBIA, SISMA MUJER, & U.S. OFFICE ON COLOMBIA (Nov. 2013), https://reliefweb.int/sites/reliefweb.int/files/resources/ABColumbia_Conflict_related_sexual_violence_report.pdf [<https://perma.cc/C746-WXAV>] [hereinafter ABColombia, *Women*]; HUMAN RIGHTS WATCH, RECYCLED VIOLENCE: ABUSES BY FARC DISSIDENT GROUPS IN TUMACO ON COLOMBIA'S PACIFIC COAST (Dec. 18, 2018) <https://www.hrw.org/report/2018/12/13/recycled-violence/abuses-farc-dissident-groups-tumaco-colombias-pacific-coast> [<https://perma.cc/FW4T-NE9B>] [hereinafter HRW, *Recycled Violence*] (reporting that after an initial decrease in violence, armed groups, including those named FARC dissenter groups in the report, were responsible for an increase in murders, sexual assaults, disappearances, and other violence); AMNESTY INT'L, THE YEARS OF SOLITUDE, *supra* note 17, at 19.

20. See ABColombia, *Women*, *supra* note 19, at 1; cf. HRW, *Recycled Violence*, *supra* note 19.

21. See ABColombia, *Women*, *supra* note 19, at 1 (noting that “the State Security Force’s involvement in sexual violence has a particularly devastating effect”).

22. See Asher, *supra* note 8, at 154–89, (discussing state-level development policy and displacement).

“development” in the form of mono-culture and large-scale extractive mining.²³

In addition to conflict-related and post-conflict SGBV, Afro-Colombians are also subject to SGBV in the context of domestic relationships, a risk that tends to increase when demobilized combatants return to families.²⁴ Responses to SGBV are complicated by gender-correlated economic dependence and state and municipal indifference to this form of violence.

For both conflict-related and non-conflict-related contexts, Afro-Colombian women have little to no access to justice for SGBV. The infrastructure for reporting is underdeveloped, lacks assurances of safety, and re-victimizes survivors.

II. BARRIERS TO ACCESS TO JUSTICE FOR AFRO-COLOMBIAN VICTIMS OF SGBV

Although the laws protecting women from sexual and gender-based violence ostensibly guarantee access to justice, health care, psycho-social treatment, reparations, and non-repetition, these guarantees are, more often than not, illusory.²⁵ As Amnesty International concluded in a report on conflict-related sexual violence, “[i]mpunity for human rights abuses . . . is a defining feature of Colombia’s armed conflict.”²⁶ The implementation of the Peace Agreement has yet to change this.²⁷ In theory, Law 1257 guarantees robust support for victims and Law 294 imposes high penalties for

23. See generally Bratspies, *supra* note 11.

24. Advocates for Human Rights CEDAW Submission, *supra* note 5, at 1 ¶ 3.

25. Greta Friedemann-Sánchez & Margaret Grieve, *General Background on Colombian Laws on Violence against Women, Order of Protection and Shelters*, 13 ¶ 47 (Jan. 2017) (noting that “[c]ontrary to Law 1257, the Ministry of Health steadfastly refuses to provide mandated services for at-risk women consisting of housing (shelter), support for a woman and her children, their transportation costs, medical care, and psychological and psychiatric care.”).

26. AMNESTY INT’L, COLOMBIA: HIDDEN FROM JUSTICE: IMPUNITY FOR CONFLICT-RELATED SEXUAL VIOLENCE, A FOLLOW-UP REPORT 10 (Oct. 2012), <https://www.amnesty.org/download/Documents/20000/amr230312012en.pdf> [<https://perma.cc/C4UB-86PA>] [hereinafter AMNESTY INT’L, HIDDEN FROM JUSTICE].

27. See KROC INST. REPORT, *supra* note 9, at 14 (indicating that despite progress in some areas that the vast majority of stipulations relating to justice, reparations, and non-repetition had either not been initiated or were minimally initiated).

SGBV whether conflict-related or not.²⁸ However, there is an enormous gulf between theory and practice. The gap between theory and practice seems to reflect the indifference of the many actors who are potentially involved in investigating and prosecuting SGBV.

For non-domestic-violence cases of SGBV, the primary responsibility for addressing SGBV rests with the Attorney General. The Attorney General's office routinely fails to investigate or prosecute complaints of SGBV.²⁹ In many instances, municipal prosecutors and law enforcement allow cases to languish.³⁰ Local officials' failure to act may have many causes including: fear of repercussion from combatants, infiltration or control by paramilitary groups, or discriminatory notions that can result in victim-blaming.³¹ Where members of the military commit sexual assaults, the Attorney General may defer to the military. However, the military justice system has a "shameful history of closing [conflict-related sexual crimes] without holding those responsible to account."³²

The system for responding to SGBV in the intra-familial context can lead to failure to collect and preserve evidence and inaction by prosecutors who have ultimate responsibility for these cases as well. In the domestic violence context, Law 1257 is undercut by Law 575, which transferred the authority to issue same-day orders of protection from judges to Family Commissioners ("FCs").³³ These same-day

28. Friedemann-Sánchez & Grieve, *supra* note 25, 7–8.

29. AMNESTY INT'L, HIDDEN FROM JUSTICE, *supra* note 26, at 25 (noting that although the Attorney General has primary responsibility for prosecuting cases involving SGBV and the Constitutional Court ordered the Attorney General to investigate and prosecute 183 specific cases in 2008 Judicial Decision 092 (Auto 092), several years later only 5 cases had been prosecuted and another 140 remained under investigation).

30. *Id.* at 25, 29 (noting that regional prosecutors and not the specialized unit in Bogotá were investigating cases of SGBV and that requests by survivors to refer prosecutions to special units in Bogotá were ignored).

31. *See id.* at 20–30 (discussing accounts of the threats, indifference, non-prosecution and challenges faced by individuals who report SGBV). *See also* Jean Friedman Rudovsky & Debora Silva, *The Invisible Army of Women: Fighting Sexual Violence in Colombia*, Int'l Women's Media Foundation (Oct. 24, 2016), <https://www.iwmf.org/reporting/the-invisible-army-of-women-fighting-sexual-violence-in-colombia/> [<https://perma.cc/8ENY-XUQ6>] (describing the cultural barriers and revictimization faced by survivors of SGBV).

32. AMNESTY INT'L, HIDDEN FROM JUSTICE, *supra* note 26, at 10.

33. Advocates for Human Rights CEDAW submission, *supra* note 5, at 7–8 (explaining that "[t]he institutional design of FCs is deeply flawed" and that, *inter alia*, there are not enough FCs, they are subject to local municipal control and

orders of protection are not an option provided to prosecutors, who report delays lasting weeks to obtain standard orders of protection.³⁴ The Family Court's mission, however, is not prosecution of SGBV but protection of children and families. Nor are FCs provided resources to handle these cases.³⁵ Instead, FCs issue orders of protection and are required to refer cases to prosecutors. Because the temporary order of protection can be issued without substantial evidence or investigation, and the FCs do not have responsibility for ultimate prosecution, this initial step means that cases are not necessarily investigated promptly.³⁶ Thus, prosecutors receive complaints that may lack substantiation. The requirement that FCs refer all protective order cases to prosecutors also means that a referral does not reflect the complainant's decision to pursue prosecution.³⁷ Another barrier to access to justice through prosecution is that Law 294 imposes long mandatory prison sentences for domestic violence, which may not always be the outcome that is best suited to the victim's needs.

Because these systems may be unresponsive or unsafe, complaints of SGBV, including in domestic cases, are sometimes taken to an Ombudsperson's Office.³⁸ The Ombudsperson's Office registered 361 cases of conflict-related sexual violence between January and October of 2017.³⁹

clientelism, they are not subject to judicial oversight, and their primary responsibilities relate to child welfare).

34. *Id.* at 5 ¶¶ 11–12.

35. *Id.* at 7–9.

36. *Id.* at 5

37. *Id.* at 5–6, ¶¶ 15–17 (explaining why the automatic referral of orders of protection to prosecutors is contrary to best practices).

38. Jean Friedman Rudovsky & Débora Silva, *The Invisible Army of Women Fighting Sexual Violence in Colombia*, INT'L WOMEN'S MEDIA FOUNDATION (Oct. 24, 2016), <https://www.iwmf.org/reporting/the-invisible-army-of-women-fighting-sexual-violence-in-colombia/> [<https://perma.cc/6P7J-9J3B>] (focusing on work of Afro-Colombian woman in Buenaventura on the eve of the Peace Agreement and describing the Ombudsman's Office as “the most highly regarded of government spaces because it is not closely linked to cartels, and when it comes to crimes against women, they treat women decently).

39. PROCESO DE COMUNIDADES NEGRAS (PCN), MADRE, CUNY LAW SCHOOL HUMAN RIGHTS AND GENDER JUSTICE CLINIC (HRGJ), VIOLATIONS OF AFRO-COLOMBIAN'S GENDER-BASED HUMAN RIGHTS: A REPORT FOR THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 12 (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].

The Peace Process also establishes the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz—“JEP”), which received a series of reports including 900 testimonies from indigenous and Afro-descendant in June of 2019.⁴⁰ Proposed modifications to the JEP “risked jeopardizing its credibility and authority” and “threaten to diminish its ability to address the needs of survivors of SGBV” including assurances of confidentiality. It is too early to know how the new JEP will respond to these complaints, and whether truth, reparations, and guarantees of non-repetition will be achieved via that body.

Given the complexity of this landscape, it is not surprising that during the course of our multi-day conference, in break-out groups and large sessions, the inability to access justice for victims of SGBV in Afro-Colombian communities was a constant theme. Women described inadequacies from Tumaco, near the Ecuadorian border, to the Port of Buenaventura, and in the rural and riverine areas in between.

Formally, victims of conflict-related violence are entitled to have their claims documented and to obtain reparations, counseling, education, and support under Law 1257. For intimate partner and familial SGBV, police and prosecutors rarely prosecuted cases and were generally unresponsive to victims’ needs.⁴¹ In each and every discussion about access to justice, Afro-Colombian women described responses that stigmatized, revictimized, and exposed victims of SGBV

40. See Sebastián Forero Rueda, *La verdad de las mujeres en la guerra, en manos de justicia transicional*, EL ESPECTADOR (June 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/N7EP-LBQW>] (reporting that five reports including over 900 “testimonies” of violence against indigenous and Afro-Colombian victims of SGBV were delivered to the JEP Peace Tribunal and Truth Commission (Jurisdicción Especial de la Paz & la Comisión de la Verdad) in June of 2019).

41. See Greta Friedemann-Sanchez & Margaret Grieve, *General Background on Colombian Laws on Violence against Women, Order of Protection and Shelters*, Huber H. Humphrey School of Public Affairs, University of Minnesota, (January 2017) (describing the disjointed responses to violence against women in Colombia which is, in part, the result of a system that in which only family courts can provide same day orders of protection); *Violation of Afro-Colombians’ Gender-Based Human Rights: A Report for the United Nations Committee on the Elimination of Discrimination against Women*, 5-10, *Proceso de Comunidades Negras, Madre, Human Rights and Gender Justice Clinic*, CUNY School of Law, Washington Office on Latin America, *El Movimiento de Mujeres Negras, Afrocolombianas, Raizales y Palenqueras en sus Identidades Diversas*, 72nd Session, 12 (Feb-March 2019) (reporting that the Attorney General obtained indictments in only 17 per cent of cases of sexual violence and convictions in only 5 percent).

to danger. Victims were often ignored; at other times shamed, endangered, or harassed.⁴² Victims were sent running from place to place with no regard to their medical needs,⁴³ well-being, or safety.

SGBV is under-reported everywhere, but particularly so by Afro-Colombian women in the Pacific littoral.⁴⁴ The women of PCN and other Afro-Colombian women's groups work to document and encourage reporting of SGBV. Training must challenge taboos on reporting SGBV and fear of revictimization and retraumatization. Despite these obstacles, or perhaps because of them, Afro-Colombian organizers, particularly women, are mobilizing to document incidents of SGBV, to support survivors, and to facilitate access to justice, reparations, and safety. A concerted effort to document and report on incidents of SGBV has been successful in documenting SGBV,⁴⁵ but conference participants were quick to note that the victims of SGBV were often retraumatized, revictimized, and exposed to danger. Moreover, the Afro-Colombian advocates who assisted with documentation and reporting were also subject to vicarious trauma and victimization. Nonetheless, documentation, workshops, and trainings within communities are making progress in empowering victims to overcome taboos for reporting SGBV. Advocates have also emphasized the importance of educating youth and men about SGBV.

The women (and men) at the conference reflected on the many barriers and disincentives to reporting. One participant noted early gains during the peace process but an eventual setback with the new government, leaving victims, those who accompany victims, and leaders for Afro-Colombian rights vulnerable. The battle for access to justice is crucial, she said, "but first, we don't want to be killed; we

42. See, e.g., AMNESTY INT'L, HIDDEN FROM JUSTICE, *supra* note 26, at 20, 28–30 (recounting refusals to investigate or even accept complaints, forced displacement, threats and stalking of victims and reporters of SGBV).

43. See *id.* at 20 (recounting refusal of the medical examiner to conduct a post-rape exam because of the absence of accompaniment); see also Deborah Zalesne, *Making Rights a Reality: Access to Healthcare for Afro-Colombian Survivors of Conflict-Related Sexual Violence*, 51 COLUMBIA HUM. RTS. L. REV. 670, 692–93 (2020) (describing the obstacles to obtaining medical treatment for victims of sexual violence).

44. See ABColombia, *Women*, *supra* note 19, at 7.

45. See Rueda, *supra* note 40 (reporting that five reports including over 900 "testimonies" of violence against indigenous and Afro-Colombian victims of SGBV were delivered to the JEP Peace Tribunal and Truth Commission (Jurisdicción Especial de la Paz & la Comisión de la Verdad) in June of 2019).

don't want to be displaced."⁴⁶ Reporting SGBV, particularly SGBV by paramilitaries, mining interests, and agricultural interests, makes Afro-Colombian leaders targets of violence, false imprisonment, and defamation. Participants noted that assassinations were less common than during the conflict because assassinations are bad for investment strategies.⁴⁷ Leaders of the women's movement were nevertheless subject to "symbolic assassination"⁴⁸—framed as narco-traffickers, incarcerated, and prosecuted. Some participants referred to these prosecutions as the "kidnapping of our leaders."⁴⁹ Another participant noted that the imprisonment of leaders of the Afro-Colombian women's movement has a particular intersectional impact: "The treatment of black girls says, 'Do not speak. Keep quiet. Be still; it's dangerous.' . . . This is the message given to black girls."⁵⁰

One participant and leader talked about the vulnerabilities and attacks leaders faced:

We have to fight more. You expose yourself again and again. Renounce my dignity, make myself vulnerable. Half of the PCN has been displaced. I never signed up for services because I didn't want to give up dignity.⁵¹

This leader went on to describe the dynamic of a local group of women developing a process of accompaniment that helped her to regain her dignity. This article discusses such an effort in the next section.

Much of the organizing focused on how to protect groups and leaders most likely to be targeted for violence or prosecution. One participant noted that organizers and leaders had two options with which to defend themselves: hide, or do the opposite and seek "complete visibility."⁵² She noted that a recent book highlighting the work of Afro-Colombian women organizers provided some protection by raising the

46. *Address at the Afro-Colombian Community Initiative for Sustainable and Inclusive Peace Conference* (Feb. 23–25, 2019) (transcript on file with the authors) [hereinafter *Peace Conference Address*]. All phrases in quotation marks were translated by interpreters from Spanish to English.

47. See J.M. Kirby, *Facing Wrongful Detention and Threats, Afro-Colombian Women Call for Justice*, MADRE (Mar. 21 2019), <https://www.madre.org/press-publications/article/facing-wrongful-detention-and-threats-afro-colombian-women-call-justice> [<https://perma.cc/B7GP-DTGY>] (detailing the detention and prosecution of two Afro-Colombian women human rights leaders jailed on false charges).

48. *Peace Conference Address*, *supra* note 46.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

profiles of leaders that might otherwise be targeted for violence or false prosecution.⁵³ The groups also have early warning systems, and have sought legal assistance to represent leaders who are targeted for prosecution or displacement.⁵⁴ When asked, participants identified the state as the primary source of threats. Threats were most common in situations involving economic interests (at the Buenaventura ports, or Tumaco mono-culture, on interior mining and territorial conflicts). Because Law 70 provides collective rights to Afro-Colombians for ancestral lands,⁵⁵ SGBV and persecution of reporters and documenters of SGBV are tools of displacement that open the way to extractive large-scale economic exploitation.⁵⁶

Despite the organizing work of the PCN, women's groups, and others, the power vacuum in the Pacific littoral has escalated conflict between remaining guerilla groups, paramilitaries, and particularly between paramilitaries associated with extractive economic development (mass mining or mass mono-culture), narco-traffickers, and communities with territorial claims that conflict with private economic interests.⁵⁷ Participants reported that mining and agricultural interests subjected women to forced labor and forced sex. After initial hope, displacement of Afro-Colombians has continued. Participants highlighted the challenge of responding to SGBV for those who are displaced and relocated while respecting culture, traditional and beliefs. The organizers and leaders emphasized the traditional *palenque* construct (fortified communities for run-away and freed slaves) as a culturally adaptive organizational approach to racial, economic, and ancestral experiences of Afro-Colombian communities in the Pacific coastal region. The participants linked the need for effective responses with their ancestral and cultural rights. One participant expressed a need for a plan written autonomously by Afro-Colombian women, not for them, but by them. The plan would emphasize collective rights of Afro-Colombians, and their right to exercise self-justice in a "space that we construct for ourselves."⁵⁸

53. PCN & MADRE, NO CHOICE BUT TO RESIST: WOMEN LEADERS OF THE BLACK COMMUNITIES PROCESS (2019), <https://www.madre.org/sites/default/files/PDFs/No%20Choice%20But%20to%20Resist.pdf> [<https://perma.cc/6CYS-BUUC>].

54. See PCN, MADRE, HRGJ REPORT, *supra* note 39; Casey, *supra* note 3.

55. For a discussion of Law 70, see Asher, *supra* note 8, at 47–56.

56. ABColombia, *Women*, *supra* note 20, at 1, 9.

57. *Id.* See also Bratspies, *supra* note 23 (discussing the escalation of illegal land-grabbing in Afro-Colombian territories in the post-conflict period).

58. Peace Conference Address, *supra* note 48.

To further complicate matters, Afro-Colombian populations in the Pacific coastal area face very different local conditions. In the more populous urban centers, Tumaco and Buenaventura, NGOs were often non-responsive⁵⁹ to Afro-Colombian women because they failed to appreciate the intersectional realities of Afro-Colombian women from the Pacific littoral region. According to one participant, the women at the NGOs in more urban or municipal areas were often “mestiza elites who had no idea about context, even if their skin color was similar to the Afro-Colombian locals.”⁶⁰

III. ASOM BUENOS AIRES, NORTE DEL CAUCA: A MODEL FOR VICTIM-CENTERED RESPONSES

On the third day, the conference attendees went to Buenos Aires in the Norte del Cauca, to meet with ASOM, an organization of Afro-Colombian women in Buenos Aires, Norte del Cauca. In a newly constructed space, the Afro-Colombian women (and men) of ASOM described the work that ASOM volunteers are doing to support access to justice in the Norte del Cauca region.⁶¹ With an emphasis on centering local victims and their needs, ASOM is run by and for Afro-Colombian women affected by SGBV violence. Given the multiple sources of SGBV, the role of SGBV in broader movements to control territories, and attitudes toward domestic violence, it is hard to imagine that any outsider could as effectively reach the individuals ASOM assists, gain their trust, or navigate systems to achieve access to justice. Yet even with the women of ASOM accompanying victims of SGBV, access to justice can be elusive, especially access to justice with reparations and assurance of non-repetition.

ASOM⁶² is an organization of 290 Afro-Colombians, 99 percent of whom are women, and many of whom have been victims of SGBV,

59. See, e.g., AMNESTY INT’L, HIDDEN FROM JUSTICE, *supra* note 26, at 20 (detailing how victims of rape and sexual assault were provided an attorneys phone number by the NGO but not accompanied to the Attorney General, who did not preserve clothing from the attack, or the National Institute of Legal Medicine and Forensic Sciences which refused to conduct a forensic examination because the victim was unaccompanied).

60. Peace Conference Address, *supra* note 46.

61. The work related to SGBV is one part of the work of ASOM. The group addresses a broad range of issues confronting Afro-Colombian women including, critical territorial, and economic issues and supports victims of displacement.

62. Peace Conference Address, *supra* note 46. For more on ASOM, see *Quienes Somos*, ASOM BUENOS AIRES, <https://asombuenosaires.weebly.com/quienes-somos.html> [<https://perma.cc/HU6K-QUCS>].

particularly conflict-related SGBV.⁶³ ASOM covers the 10 municipalities that make up Norte del Cauca, an area that is heavily affected by the armed conflict. ASOM-trained volunteers accompany victims of SGBV at every step of the process to seek access to justice. Some victims seek out ASOM from the beginning; others encounter indifference in law enforcement, medical, or prosecutorial responses, and only then learn of ASOM's work. ASOM volunteers conduct regular trainings and workshops throughout Norte del Cauca. They also reach out to victims they identify during community gatherings. ASOM volunteers, called documenters, visit communities repeatedly to take reports of SGBV perpetrated by paramilitaries, government forces, guerrillas, and family members. They document economic violence, obstetrical violence, and forced labor and prostitution. These documenters are often the conduits through which victims come into contact with ASOM resources. The documenters and ASOM advocates defer to the victim's decisions about whether to pursue a formal legal process. ASOM accompanies victims to the police, to the hospital, to Family Commissioners or Prosecutors, and throughout the legal process if the victim chooses to pursue legal remedies.

This presence of trained local advocates is critical. These advocates share culture with the victim. They have experienced similar victimization, both by perpetrators of SGBV and by the systems to which reports must be made. As in the reports from Afro-Colombian women from communities throughout the Pacific coastal area, the experience of reporting SGBV locally was repeatedly described as one that subjected victims to revictimization, to trauma, to stigmatization, and to danger. In Norte del Cauca, the story is no different. As one participant put it, "In cases of violence of any kind but especially sexual violence, the victim who goes through the process of reporting is revictimized."

One form of revictimization flows from indifference to complainants. The women of ASOM report that family courts and police are not interested in complaints relating to familial violence. Attempts to report to police, hospitals, or prosecutors often result in dead ends. The process is not explained to victims and there is no follow-up. If a victim goes to the hospital, she is not then referred to police or to the prosecutor's office; conversely, if she goes to the police or to the prosecutor's office, she is not sent to the hospital to preserve evidence. One explanation for this indifference seemed to be that the police, prosecutors, and doctors expected victims to drop their cases.

63. Peace Conference Address, *supra* note 46.

The advocates explained that this expectation was based, in part, on stereotypical views of Afro-Colombian complainants, many of who also have low socio-economic status, come from remote rural areas, or are financially dependent on perpetrators. This expectation created a self-fulfilling prophecy; why take a complaint, preserve evidence, begin or pursue a case if the victim will not follow through?

Revictimization also occurs when a victim's safety is compromised. The identities of those filing complaints may be disclosed to the broader communities, stigmatizing and endangering women. Victims feel blamed rather than supported. The result is an unwillingness to disclose SGBV and local pressure to drop cases. Even when prosecutions begin, victims often are not informed if cases move forward or are resolved. In one example, a serious criminal case was filed and the perpetrator initially incarcerated.⁶⁴ The victim was not informed when the perpetrator was released and had to flee, leaving her children with relatives. ASOM helped this woman to relocate, find work and regain her children, but the municipal legal system did not.

In addition to contributing to revictimization, the municipal justice system is not equipped to offer the type of reparation, counseling, and support that victims of familial SGBV need.⁶⁵ For the most part, the legal process will result in the incarceration of the perpetrator if the justice system is responsive and a case is successfully pursued to completion. Where families are dependent on the perpetrator for economic sustenance, this result can be devastating.⁶⁶

Nonetheless, ASOM accompanies women throughout the municipal reporting process, helping these women to decide whether or not to pursue access to justice through the legal process, and protecting them from vulnerability by accompanying them at every stage. The ASOM women noted that without ASOM, the victim must appear in court with no protection, whereas their perpetrators will be accompanied by attorneys. ASOM volunteers are able to reduce vulnerability and provide some level of respect for victims at each step of the process.

64. *Id.*

65. Advocates for Human Rights CEDAW Submission, *supra* note 5, 13 ¶ 48.

66. It is worth noting that many aspects of these shortcomings are common in many jurisdictions. Domestic violence complainants are often not informed of resolutions of cases in the United States nor of available resolutions and supports like those described for victims of SGBV whose cases are approved for reparations, counseling, job placement, and education.

Community efforts by ASOM and documenters to encourage new attitudes regarding familial violence and to develop self-defense mechanisms and solidarity in confronting post-conflict violence complement ASOM's work in supporting particular victims of SGBV. In Buenos Aires itself, the ASOM women pointed to an area by a bridge leading into town. Paramilitaries hung bodies there that polluted the river, using fear and intimidation to force displacement. It is difficult to imagine that outsiders, no matter how well-meaning, could provide a more appropriate response than the local, victim-led, Afro-Colombian center addressing the range of needs and pressures that the Afro-Colombian communities face. Human rights advocates acknowledge the importance of victim voices, local knowledge, and intersectionality. The work of ASOM demonstrates the importance of supporting local victim-led civil society organizations with resources to maintain and expand into trusted supporters of local communities, particularly where communities are relatively isolated, have unique cultural and ancestral attributes, have experienced conflict-based violence, and are subject to discrimination from those who do not share their backgrounds and experiences.

IV. GOOD PRACTICES & HUMAN RIGHTS STANDARDS

The importance of involving hyper-local community organizations versed in the knowledge of the specific challenges facing a specific population cannot be overstated. These groups have the knowledge required to interact effectively with members of the community. They understand intersectionality. According to the ICRC Commentary on Common Article 3 of the Geneva Conventions:

Humane treatment is context specific and has to be considered in the concrete circumstances of each case, taking into account both objective and subjective elements, such as the environment, the physical and mental conditions of the person, as well as his or her age, social, cultural, religious or political background and past experiences . . . with a growing acknowledgement that women, men, girls and boys are affected by conflict in different ways.⁶⁷

67. Int'l Comm. of the Red Cross [ICRC], *ICRC Commentary to Common Article 3 of the Geneva Conventions* (2016), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC> [<https://perma.cc/8RRU-59EV>].

The Inter-American Commission on Human Rights⁶⁸ and the Convention of Belém do Pará⁶⁹ have recognized the importance of intersectionality in the Americas.

The Overseas Development Institute's Humanitarian Practice Network evaluates the more successful practices (good practices) for addressing SGBV in post-conflict settings.⁷⁰ They conclude that community involvement⁷¹ is critical to successful efforts to prevent SGBV through awareness and education initiatives, improved response to gender-based violence by increasing accessibility to services and destigmatizing the use of those services, and expanding and improving legal help and the assistance of law enforcement. Cultural sensitivity and the utilization of local expertise are necessary components of effective implementation of best practices. Group counseling that brings victims together, as ASOM does, is identified as an effective practice to address trauma and increase well-being even years after abuse.⁷²

As the conference participants discussed, and the ASOM women demonstrated, local victim-led organization in planning and implementation is critical to access to justice but not sufficient. However, local victim-led efforts cannot provide access to justice and reparations if the state has not created the supports for justice and channels for participation and planning. As the Second Hemispheric Report on the Implementation of the Convention of the Belém do Pará states, “to ensure civil society, organized communities and social movements’ participation in the different stages of” plans to prevent violence against women, it is essential to “[i]nstitutionalize the participation of civil society, organized communities and social

68. Inter-American Comm'n on Human Rights, *Legal Standards: Gender Equality and Women's Rights* 22, 140 (2015), <https://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf> [<https://perma.cc/V7PT-FG6G>].

69. ORG. OF AMERICAN STATES, SECOND HEMISPHERIC REPORT ON THE IMPLEMENTATION OF THE BELÉM DO PARÁ CONVENTION 56, 99 (Apr. 2012), <https://www.oas.org/en/mesecvi/docs/mesecvi-segundoinformehemisferico-en.pdf> [<https://perma.cc/QHB5-TH2K>] [hereinafter SECOND HEMISPHERIC REPORT].

70. Rebecca Holmes & Dharini Bhuvanendra, *Preventing and Responding to Gender Violence in Humanitarian Crises*, HUMANITARIAN PRACTICE NETWORK (2014), https://assets.publishing.service.gov.uk/media/57a089b2ed915d3cfd0003a8/GBV_in_emergencies_NP_77_web.pdf [<https://perma.cc/F4CT-EA2Y>].

71. *Id.* at 10.

72. *Id.* at 11–12.

movements.”⁷³ Without institutionalizing local involvement in broader planning, local community organizations implement specific targeted activities, but often have little to no say in the design or execution of larger scale plans which might have a greater impact.⁷⁴ In order to support community involvement, the state would ideally provide financial support for community organizations to help victims navigate the system and fully fund the justice system as well.⁷⁵ Moreover, the Belém do Pará Convention recommends improving access by increasing the number of entities taking complaints, and ensuring that the entities that hear complaints are accessible both in terms of location and in terms of culture.⁷⁶ It is important to note that local, rural, victim-led organizations must be supported. All too often, civil society organizations are located in urban centers near universities or bar associations and have little rural presence.⁷⁷

Colombia’s Law 1257 of 2008 guarantees women the right to live free of violence, including SGBV. The law provides for free state counseling, legal and technical assistance. However, these services have not been provided⁷⁸ and Afro-Colombian organizers have not been consulted on Law 1257’s implementation.⁷⁹

CONCLUSION

The work of local victim-led groups like ASOM in outreach, counseling, documenting, and accompanying victims of SGBV in their struggle for access to justice provides a critical model for addressing SGBV in Afro-Colombian communities. This essay argues that

73. See SECOND HEMISPHERIC REPORT, *supra* note 69, at 99 (discussing Committee of Experts recommendations to strengthen the nation’s plan in implementing articles 1, 2, 7, and 8(c) and (d) of the Belém do Pará Convention).

74. *Id.* at 56.

75. *Id.*

76. *Id.* at 61.

77. *Id.*

78. Friedemann-Sánchez & Grieve, *supra* note 25, at 7–13 (noting that “[c]ontrary to Law 1257, the Ministry of Health steadfastly refuses to provide mandated services for at-risk women consisting of housing (shelter), support for a woman and her children, their transportation costs, medical care, and psychological and psychiatric care.”).

79. PCN, MADRE, HRGJ REPORT, *supra* note 39, at 13 (discussing the failure to implement law 1257 of 2008 and the failure to consult Afro-descendant authorities and women’s organizations “in order to implement effective security measures and support establishment of local community self-protection mechanisms, as required under the [Peace] Accord”).

centering victim voices and supporting victim-led organizations is critical to a successful effort to ensure access to justice for Afro-Colombian victims of SGBV, whether conflict-related or familial. The complexities of the context, the relative isolation and vulnerabilities of these victims and their communities, and the intersectionalities and history of Afro-Colombians all support this suggestion. Conventions to eliminate violence against women, and review of good practices in responding to SGBV in areas of conflict support this focus as well.

Additionally, local, victim-led organizations do not necessarily, or even generally, have all the resources and expertise needed to support their work for victims of SGBV. Discussions among these advocates often turned to issues of trauma for victims and advocates. Local victim-led organizations can be supported by providing experts and counseling on trauma, as well as access to medical treatment for injuries sustained by both victims and advocates.

The state must also meet its obligations to respond to SGBV. The state must consult with local groups and make access to justice confidential, secure, and prompt. Robust local and victim-led supports can help victims' access and assist in navigating the justice system, but they cannot be a substitute for an accessible justice system built in consultation with affected communities. Moreover, these organizations and communities must be provided security from victimization and displacement in order to do their work effectively. Centering victims' voices is not a substitute for developing access to justice in line with the requirements of CEDAW, the Belém do Pará Convention, and the IACHR. Nonetheless, the work of local victim-led organizations is critical to making access to justice a reality.