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# **Justice without discrimination for Afro-descendant, Indigenous, and disabled survivors of sexual violence in Colombia**

## About Equality Now

Equality Now is a worldwide human rights organisation dedicated to securing the legal and systemic change needed to end discrimination against all women and girls, everywhere in the world. Since its inception in 1992, it has played a role in reforming 120 discriminatory laws globally, positively impacting the lives of hundreds of millions of women and girls, their communities and nations, both now and for generations to come.

Working with partners at national, regional and global levels, Equality Now draws on deep legal expertise and a diverse range of social, political and cultural perspectives to continue to lead the way in steering, shaping and driving the change needed to achieve enduring gender equality, to the benefit of all.

For more information about Equality Now, visit [www.equalitynow.org](http://www.equalitynow.org).

## Acknowledgements

This report is an Equality Now publication. It was made possible through the work of drafting, analysis, and writing performed by Bárbara Jiménez Santiago, Leandra V. Becerra Copete, and Mónica Bayá Camargo, with editorial review by Jacqui Hunt and Ana Elena Obando. We are also grateful to the Equality Now communications team for their work on the report's production, including editing by Tamara Rusansky.

We especially acknowledge the invaluable contributions of Camila Mosquera, Bibiana Etayo, and Valeria Cabrera, who shared their insights regarding the lived realities of Afro-descendant, Indigenous, and disabled populations. Our thanks also go to the Colectivo Justicia Racial and Corporación Poliformas for their collaboration.

Design: Peter Wilbourne

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# 1. Global and regional contexts of sexual violence

Gender-based violence (GBV) constitutes a violation of women's human rights and is rooted in various factors, such as social norms surrounding masculinity and the historical imposition of gender roles.<sup>1</sup> Sexual violence is one of its most serious and persistent manifestations. According to the World Health Organization (WHO) and UN Women, one in three women globally has been subjected to physical or sexual violence in her lifetime, the majority from a very young age.<sup>2</sup>

These same bodies estimate that 736 million women have experienced this form of violence at the hands of partners or other individuals, and one in four girls and young women aged 15 to 24 will have faced violence before reaching the age of 25.<sup>3</sup>

Despite global efforts, the phenomenon has shown no significant reduction in the past decade. In particular, during humanitarian crises such as natural disasters, armed conflicts, pandemics, economic crises, and forced displacement, many women, girls, and adolescents face heightened risks, exacerbating GBV.

In the Americas, the prevalence of sexual violence is higher than the global average. While it is estimated that 31% of women globally have experienced physical and/or sexual violence, in the Americas this figure rises to 33%.<sup>4</sup>

**While sexual violence is a form of harm anyone can suffer, women, girls, and adolescents of African descent, Indigenous heritage, or living with disabilities experience it disproportionately and face additional barriers in accessing justice.**

This overrepresentation is not accidental: it reflects structural inequalities based on gender, race, and ableism, as well as socio-economic exclusion, which together highlight the intersectional nature of this form of violence.



**The region most affected by sexual violence: 33% of women in the Americas have experienced it.**

## 2. About this report

This report is part of an initiative covering several countries in the Americas. It includes an analysis of laws, procedures, and practices related to access to justice for girls, adolescents, and women who are survivors of sexual violence. The report assesses compatibility with international human rights standards and evaluates Colombia's heightened duty of due diligence to prevent, investigate, punish, and redress sexual violence, as well as its fulfilment of that duty.

Three core approaches were applied in the development of this report: a **gender-based perspective** that recognises the historical inequalities that women face throughout their lifetimes arising from the imposition of social roles; an **ethno-racial lens** that emphasises the specific circumstances of Indigenous and Afro-descendant communities within an anti-racist framework; and a **disability-focused approach** grounded in the social model of disability. The latter interprets disability not as a condition but as the result of physical, social, and cultural barriers, thus advocating for an anti-ableist perspective.

These approaches are applied through an **intersectional lens**, which enables a comprehensive understanding of social inequalities. Intersectionality reveals how diverse identity factors, such as sex, gender, race, class, and disability, interact to shape experiences of access to justice. This perspective prevents the treatment of survivors as a homogeneous group and highlights the multiple, overlapping forms of discrimination and oppression they may face.

Specifically, this report examines the **Colombian State's obligations regarding heightened due diligence** in cases of sexual violence committed against Afro-descendant, Indigenous, and disabled girls, adolescents, and women. It reviews the barriers and progress encountered by survivors from the moment they report the offence to the justice system.

The analysis draws on both primary and secondary sources, including document reviews, in-depth interviews, and data collection. In addition, legal proceedings in the form of representative court rulings were analysed to identify systemic gaps. These findings underpin concrete recommendations to Colombian public institutions and traditional Indigenous authorities. The report is also intended as a resource for civil society organisations engaged in monitoring and advocacy.

This report does not provide an in-depth examination of the deficiencies in the implementation of protocols and procedures by executive branch bodies, nor does it address institutions within the health and education sectors or other social entities tasked with protection, assistance, and reporting duties related to sexual violence.

Moreover, the report does not specifically address barriers to justice faced by other marginalised and historically excluded populations. Nevertheless, their realities must be considered in public policy development and in the design of investigative and prosecutorial protocols.



### 3. Sexual violence in Colombia: gender, intersectionality, and contexts of heightened vulnerability

Being a girl, adolescent, or woman who is Indigenous, Afro-descendant, or lives with a disability significantly increases the risk of experiencing sexual violence, particularly for those living in poverty, rural areas, or contexts of social exclusion. Structural discrimination and stereotypes imposed upon their bodies function as barriers to accessing justice.

The prevalence of sexual violence in Colombia is alarming. According to the 2015 National Demographic and Health Survey, sexual violence ranked as the fourth most-reported crime: 7.6% of women reported being victims of sexual violence by their [current] partner, 19.3% identified the perpetrator as a former partner, 14.3% as a relative, 14% as an acquaintance, 11.6% as an ex-boyfriend, 5.7% as a stepfather, and 5.4% as the father.<sup>5</sup>

Adolescents are particularly vulnerable and represent the majority of sexual violence victims. The Integrated Social Protection Information System (SISPRO) reported 36,986 cases of sexual violence in Colombia in 2024. The highest number of reports came from adolescents aged 12 to 17, accounting for 39.77%, or 14,710 cases. Of these, 986 involved Indigenous persons, 765 from Afro-Colombian communities, 16 were from the Raizal people, 46 from the Rom community, and 8 from the Palenquero people.<sup>6</sup> The Amazonas department reported the highest rate, with 145 per 100,000 inhabitants, followed by Bogotá, the San Andrés, Providencia, and Santa Catalina archipelago, and Risaralda.<sup>7</sup> The National Institute of Legal Medicine and Forensic Sciences (INMLCF) confirmed this trend, reporting 19,192 cases of sexual abuse against children and adolescents in the first four months of 2024, an average of 53 cases per day.<sup>8</sup>

According to Colombia's Ombudsman's Office<sup>9</sup> in its 2023 report *Sexual Violence against Children and Adolescents in Colombia: An Analysis of the State's Response*, 3,283 children and adolescents were legally represented as victims of sexual offences. Of these, 49.2% involved sexual acts with children under the age of 14; 36.4% involved carnal access with children under 14; 9.7% involved violent carnal access; and 4.6% were violent sexual acts.<sup>10</sup>

As for persons with disabilities, the 2022 Large Integrated Household Survey estimates that 2,551,137 people in Colombia have disabilities, 51.4% of whom are women. In 2023, the Ministry of Equality warned that women with disabilities face a fourfold risk of experiencing sexual violence.<sup>11</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR) also reported cases of forced sterilisation of girls and young women with disabilities in 2017.<sup>12</sup>

According to INMLCF, 793 cases of violence against people with disabilities were reported in 2022, with 53.6% (425) involving sexual violence against women.<sup>13</sup> Despite these numbers, official records continue to underestimate the problem. That same year, the National Public Health Surveillance System (SIVIGILA) recorded 703 cases of violence against women with disabilities, while the Attorney General's Office registered only 77 sexual offences and 121 cases of sexual exploitation between 2018 and 2023.<sup>14</sup>

With regard to Indigenous and Afro-descendant women, the Colombian Institute of Family Welfare (ICBF)<sup>15</sup> reported 19,766 active Administrative Processes for the Restoration of Rights<sup>16</sup> as a result of sexual violence as of 31 December 2024.<sup>17</sup> Of these, 17,654 involved girls. Among them, 525 identified as Indigenous, 410 did not self-identify with any ethnic group, and 202 belonged to Afro-Colombian, Raizal, or Palenquero communities. These figures highlight the urgent need for a differential and intersectional approach in the State's response to sexual violence.

Beyond the numbers, it is crucial to understand how this form of violence affects certain populations differently, employing an intersectional lens.

**Afro-descendant girls, adolescents, and women, including those identifying as Black, Afro-Colombian, Raizal, and Palenquera,** face specific forms of sexual violence influenced by racist stereotypes and structural conditions of poverty, exclusion, and exploitation. These realities are rooted in the legacy of colonialism, the transatlantic slave trade, and enduring racist structures.

**Indigenous girls, adolescents, and women** in Colombia face multidimensional exclusion: limited access to education, low political participation, and heightened vulnerability to poverty, armed conflict, and sexual violence. Indigenous organisations such as *Organización Nacional Indígena de Colombia* [National Indigenous Organization of Colombia] (ONIC) and various human rights bodies<sup>18</sup> have denounced the statistical invisibility of Indigenous women, which hinders understanding of the multiple forms of discrimination they face at the intersection of gender and ethnicity.

**Girls, adolescents, and women with disabilities** are often infantilised and rendered invisible by an ableist system that discriminates against and underestimates them. This limits their autonomy and decision-making capacity.

This overview of sexual violence in Colombia would be incomplete without reference to certain high-risk contexts, such as armed conflict and migration.

Sexual violence has been systematically used as a weapon of war against Afro-descendant, Indigenous, small farmer, and disabled women within Colombia's armed conflicts. According to data submitted to the Special Jurisdiction for Peace (JEP) by *La Comadre*, part of *Asociación Nacional de Afrocolombianos Desplazados* [National Association of Displaced Afro-Colombians] (AFRODES),<sup>19</sup> 109 such cases were documented between 1991 and 2021. These cases revealed patterns of racialised and sexual violence and called for justice and comprehensive reparation, recognising the multiple layers of discrimination involved. Vigía Afro documented 703 cases of GBV between 2018 and 2024, 46% of which involved unidentified assailants.<sup>20</sup>

Internal and cross-border armed conflicts are also major drivers of internal and international displacement. In Colombia, sexual violence perpetrated by organised criminal groups against girls, adolescents, and women in migration contexts poses an especially serious threat. UN Women has recognised that refugee, migrant, and internally displaced women with disabilities experience significantly heightened risks of violence and abuse.<sup>21</sup> In 2023, Médecins Sans Frontières (MSF) provided care to 676 survivors in the Darién Gap, with women, girls, and adolescents being the principal victims.<sup>22</sup>

## 4. International standards applicable in cases of sexual violence

Human rights standards<sup>23</sup> consist of **a set of norms, principles, and criteria adopted internationally** that establish a minimum threshold of protection to guarantee the dignity and fundamental rights of all people. These standards aim to ensure that States fulfil their obligations to respect, protect, guarantee, and promote human rights.

Treaties are one of the primary sources of standards in the universal and Inter-American Human Rights Protection Systems. Colombia has ratified a number of these key normative instruments that guide policies to guarantee the rights of women and girls, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>24</sup> Convention on the Rights of the Child, and Inter-American Convention on the Prevention,<sup>25</sup> Punishment, and Eradication of Violence against Women (Belém do Pará),<sup>26</sup> as well as the interpretations of these treaties by competent bodies. Other instruments, such as the International Labour Organization (ILO) Convention 169 (1989), or Indigenous and Tribal Peoples Convention; 1993 Declaration on the Elimination of Violence against Women; 1995 Beijing Declaration and Platform for Action; 2006 Convention on the Rights of Persons with Disabilities; and 1999 Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, urge States to pay special attention to discrimination based on race and disability, and to prevent and eliminate all forms of violence against women.

In 2021, Equality Now published ***Failure to Protect: How Discriminatory Laws and Practices on Sexual Violence Harm Women, Girls and Adolescents in the Americas***, which exposed how legal frameworks in the region contain discriminatory and stereotype-based provisions, twinned with institutionalised practices within justice systems that restrict survivors' access to justice.

In 2022, a historic event took place in the region: **the Inter-American Court of Human Rights (I/A Court**

**H.R.) issued its ruling in the Case of Angulo Losada v. Bolivia,**<sup>27</sup> co-litigated by Equality Now. The Court agreed with international human rights bodies in holding that criminal laws on sexual violence must place **consent** at their centre. That is, for rape to be established, there is no requirement to prove threat, force, or physical violence, but rather, any credible evidence showing that the victim did not consent to the sexual act suffices. The judgment also mandates the elimination of the diminished and discriminatory offence of '*estupro*' (rape of an adolescent girl by seduction or deception, typically carrying a lesser penalty), reclassifying it as rape.

The I/A Court H.R. also reaffirmed the essential elements of the standard of heightened due diligence and the duty, set forth under the Belém do Pará Convention, to prevent, punish, and eradicate sexual violence using gendered, intersectional, and child-centred approaches. The Court cautioned against re-victimising practices, which it classified as institutional violence that may amount to cruel, inhuman, or degrading treatment.

It is vitally important that criminal laws be revised to comply with these international human rights standards. Equally, justice systems must be transformed so as to ensure that the implementation of laws and institutional practices conforms to these standards, especially those relating to heightened due diligence in the care, protection, investigation, prosecution, and reparation of victims.

In terms of access to justice, international human rights standards require States to act with heightened due diligence in cases of sexual violence, particularly when the victims are girls, adolescents, and women. This obligation entails not only the prevention, investigation, prosecution, and adequate reparation of such acts, but also ensuring that all actions within the justice system adopt a **victim-centred approach**.<sup>28</sup>



**Article 93<sup>29</sup> of the Colombian Constitution, together with rulings by the Constitutional Court, particularly the definition of its ‘*bloque de constitucionalidad*’ [‘constitutional block’] doctrine<sup>30</sup>, recognise international standards as binding national law that must be observed at all levels of the justice system.**

The alignment of national legislation, policies, and practices with international human rights instruments and standards developed by protection bodies is a fundamental duty of the State. This includes the obligation to modify, adapt, and interpret national laws and practices in line with those standards, through the exercise of conventionality control.<sup>31</sup> All State institutions, especially the justice system, are required to apply these standards. Their non-application constitutes a new form of violence: institutional violence.<sup>32</sup>

The following section will examine the main instruments of Colombia’s legal framework, as well as institutional procedures and practices, to determine whether they incorporate, respect, and comply with international standards. For this purpose, certain particularly relevant standards for victims and survivors of sexual violence, drawn from treaties, case law, and recommendations, have been prioritised and summarised before being compared with national norms.

For a more detailed description of **international standards, human rights mechanisms’ recommendations, and good practices**, see **Annex 1**.



Credit: José Castaño, Ministerio de Justicia de Colombia

## 5. Colombia's compliance with international standards on sexual violence

### 5.1 Advances and barriers in laws and judicial procedures

#### ■ Legislation on sexual violence crimes

In 2021, the Equality Now study *Failure to Protect* concluded that **Colombia is one of the few countries in Latin America and the Caribbean that has a comprehensive legal framework defining the crime of rape based on the absence of consent** and additionally considers the possible coercive circumstances in which the crime is committed. These circumstances have been developed in the jurisprudence of the Supreme Court, allowing for the identification of cases in which consent is either absent or vitiated.<sup>33</sup>

The report also highlighted that, with regard to crimes committed against **girls, boys, and adolescents**, the law establishes that individuals under 14 years of age cannot legally consent to sexual relations. It considers aggravating circumstances, does not include the crime of '*estupro*,' recognises incest, and establishes that these crimes are not subject to a statute of limitations.<sup>34</sup> All of this complies with the majority of international standards, which require the adaptation and interpretation of legal norms in accordance with those standards.

The I/A Court H.R. and other international mechanisms have emphasised that laws on sexual violence must include a **broad definition of coercive circumstances**, recognising that consent cannot be inferred when there are threats, abuse of power, coercive environments, or other forms of pressure.<sup>35</sup> In Colombia, these standards were incorporated into the **Criminal Code** in 2014 through **Law 1719**, which expanded the notion of violence beyond the use of physical force.<sup>36</sup>

In turn, the Supreme Court's Ruling SP 3574-2022<sup>37</sup> reinterpreted the element of violence in the crime of forcible carnal access. Beyond what the Criminal Code establishes, the Court emphasised that what matters in assessing sexual violence offences is the absence of free consent from the victim, not necessarily the use of physical violence or active resistance. It defines violence as any form of physical or psychological coercion that limits the victim's ability to oppose the act. The Court also clarified that the victim is not required to engage in acts of defence or resistance, and that the aggressor's conduct alone is sufficient to constitute the offence.<sup>38</sup> Furthermore, the Court stressed that the absence of physical injuries on the victim does not negate the existence of sexual violence.<sup>39</sup>

**In 2024, the Constitutional Court of Colombia's Ruling SU-360 of 2024 adopted the standard established by the Inter-American Court of Human Rights and stated that the lack of consent is an essential element for the classification of such offences. It also declared that judges have a duty to ensure the legal classification of the criminal act is accurate, protect the rights of minors, and apply a gender-based perspective in the process.**<sup>40</sup>

Despite these significant advances, normative gaps persist regarding consensual sexual relations between adolescents. Although the law prohibits all sexual relations with individuals under the age of 14,<sup>41</sup> it does not clearly regulate the distinction between non-coercive, consensual relationships between peers aged 14-18 and relationships in which there exists an imbalance of power or exploitative dynamics. This ambiguity creates a risk of criminalising adolescents, as the law does not guarantee an approach that considers the evolving capacities of adolescents over the age of 14, the age legally recognised as capable of consenting to sexual relations.



## ■ Coordination between Ordinary Jurisdiction and Special Indigenous Jurisdiction

Since 1991, Article 246 of the Political Constitution of Colombia has recognised the *Jurisdicción Especial Indígena* [Special Indigenous Jurisdiction], which enables Indigenous authorities to exercise judicial functions within their territories in accordance with their own norms and procedures, as long as they do not contradict the Constitution or laws of the Republic. Additionally, the law must define the coordination mechanisms between this jurisdiction and the national judicial system.

According to the 2008 population and housing census and data from ONIC, there are 115 Indigenous Peoples in Colombia and more than 600 ‘*resguardos*’ [indigenous reserves],<sup>42</sup> each with distinct worldviews and practices for administering justice. These multiple forms of understanding and applying justice coexist alongside a recognition on the part of Indigenous Peoples themselves of the persistence of gender-based violence within their territories.<sup>43</sup> At the same time, many communities have expressed their interest in strengthening mechanisms that ensure access to justice for Indigenous girls, adolescents, and women.

Since 2012, the *Comisión Nacional de Coordinación del Sistema Judicial Nacional y la Jurisdicción Especial Indígena* [National Commission for Coordination between the National Judicial System and Special Indigenous Jurisdiction] (COCOIN) was created as a space for dialogue and consensus-building between The Ordinary jurisdiction and Special Indigenous Jurisdiction. It was established by the Superior Council of the Judiciary through Agreement PSAA12-9614 and later modified by PSAA13-9816. Each year, the Commission produces an action plan to promote specific and differentiated measures, policies, and programmes for Indigenous Peoples with regard to access to justice and strengthening of their legal systems, in accordance with their customs and traditions.

Indigenous Peoples are undergoing a process of transformation, including deep reflections on changes in behaviour and recognition of the right of girls and women to live free from violence.<sup>44</sup> To that end, Indigenous organisations have called for support and reinforcement of self-governance systems, as their communities are often far removed from the ordinary judicial system.



**Despite these important advances, within the reserves, there is still a lack of clarity and knowledge about the pathways to accessing Indigenous justice mechanisms in cases of sexual violence against women, girls, and adolescents. Similarly, collaboration procedures with the Ordinary Jurisdiction are not always regulated, which limits possibilities for accessing justice. This is due in part to fear of stigmatisation and potential violation of cultural and traditional practices used to address disharmony caused by violence or aggression committed by members of the same community.**

As a result, there is a lack of clear data on the prevalence of sexual violence in Indigenous territories and the number of cases and resulting sanctions. This lack of information hinders progress on institutional strengthening efforts for the prevention, attention, punishment, and comprehensive reparation of sexual violence cases.

## ■ Participation, protection, and non-revictimisation of victims/survivors in judicial proceedings

The Code of Criminal Procedure<sup>45</sup> recognises the following special provisions for the protection and participation of victims of sexual violence, in line with international human rights standards:

- ◆ It allows for the early testimony of victims, regardless of their age and at the judge's discretion, to prevent revictimisation and ensure their safety and emotional well-being.
- ◆ Victims have the right to intervene directly or through their lawyer in the judicial process, including in cases of sexual offences, with special protection mechanisms where necessary.
- ◆ The law guarantees the confidentiality and protection of the victim's identity, particularly in sexual offence cases, and restricts public access to proceedings in which the victim's case is discussed.
- ◆ In sexual offence trials, the judge must avoid stigmatising or asking irrelevant questions about the victim's private or past life.
- ◆ The victim may request to be heard at different stages of the proceedings, and their participation must be carried out in ways that avoid revictimisation.

The Office of the Attorney General [Fiscalía General de la Nación] is responsible for ensuring the protection of victims, jurors, witnesses, and other participants in criminal proceedings.<sup>46</sup> Although victims may participate autonomously, directly, and independently in the process, either complementing the prosecution's case or presenting an alternative hypothesis, including proposing and collecting evidence<sup>47</sup>, in practice, their participation depends on representation by professionals from the Public Defender's Office or the ability to hire private legal counsel and logistical, financial, emotional, and psychosocial resources that enable them to remain engaged from the initial complaint through to sentencing.

As regards access to information, the explanations of pathways to justice and communication of procedural acts are rarely clear, accessible, simple, culturally appropriate, or easy to understand for all victims/survivors. The excessive use of legal jargon alienates victims from the justice system, preventing them from fully understanding the proceedings. In this regard, the Constitutional Court has stated that judgments must be clear, and it has issued strong messages by drafting sections of rulings specifically directed at child victims, wherein it summarises the measures adopted and explains the process to children and adolescents in accessible language.<sup>48</sup>

In Colombia, there is no true intersectional or intercultural vision in the administration of justice. Specific barriers persist that disproportionately affect Afro-descendant, Indigenous, and disabled girls, adolescents, and women. These barriers reinforce structural inequalities and severely limit the right of these communities to dignified, timely, and culturally appropriate attention, both in the judicial system and health sector.

In 2021, Equality Now emphasised that “the persistence of social stereotypes about women and the societal tolerance of violence against women and girls, including in the judicial and law enforcement sectors, have also hindered the effective implementation of laws against sexual violence. Barriers to accessing justice are even more severe when a woman or girl belongs to a disadvantaged or marginalised group, including those defined by race, ethnicity, disability, sexual orientation, gender identity, or age.”<sup>49</sup> This continues to hold true in Colombia today, despite the improvements that have been made.

### ■ Gender-sensitive, intersectoral, and victim-centred investigation

Through Resolution 1774 of 14 June 2016, the Office of the Attorney General adopted the Sexual Violence Investigation Protocol, which includes measures for its implementation and evaluation. It is considered one of the most advanced protocols of its kind in the region. The Protocol establishes the need to apply gendered, differential, and intersectional perspectives from the moment a complaint is received, taking into account the characteristics of the victims and factors such as age, ethnic affiliation, disability, and sexual orientation, which must be considered in order to assess the possible causes of the offence and ensure adequate care is provided. The Protocol also introduces high evidentiary standards, such as the prohibition of using the victim's personal history to question their credibility.<sup>50</sup>

This Protocol is framed around the rights of victims/survivors of sexual violence to a life free from violence; truth and justice; effective access to legal remedies; information; respect and protection of their privacy and dignity; equality and non-discrimination; treatment that ensures no revictimising; autonomy and free consent; participation in criminal proceedings; legal advice and technical assistance; personal security and protection; and immediate, free, specialised, and comprehensive care.

It also recognises that assessments of consent and other elements essential to the legal characterisation of the offence are susceptible to social prejudices rooted in discrimination against women and/or certain social groups. The Protocol notes that such biases can lead investigators and prosecutors to disbelieve the victim's account; dismiss the criminal nature of certain acts; or justify the actions of the perpetrator.<sup>51</sup>

### ■ Specialised investigation units and guidelines to avoid unnecessary and repeated testimony

Another important measure was adopted by the Office of the Attorney General through Resolution 00268 of 25 June 2024, which created the *Unidad Especial de Investigación de Delitos Priorizados Cometidos Contra Niños, Niñas y Adolescentes* [Special Investigation Unit for Prioritised Crimes Committed Against Children and Adolescents] (UENNA), a measure taken in compliance with Law 2205 of 2022. The UENNA requires resources to enable its effectiveness in prioritising the investigation and prosecution of those allegedly responsible for crimes that are highly prevalent among children and adolescents, particularly sexual violence.

As regards the collection of testimony from child and adolescent victims of sexual violence, the **Code on Childhood and Adolescence** establishes the requirements that must be met for children and adolescents to be summoned as witnesses or victims in criminal proceedings, including protection from being confronted by the aggressor; the presence of caregivers; and the use of technological means for giving testimony. These safeguards aim to ensure the protection of children and adolescents. To that end, the use of the Gesell Chamber<sup>52</sup> is considered an appropriate method for conducting interviews.<sup>53</sup>

In sexual violence cases, the Constitutional Court of Colombia has clarified that the testimony of children and adolescents is not prohibited, but rather conditional, and strict criteria must be met to prevent revictimisation.<sup>54</sup>

Even when the Office of the Attorney General has technical guidelines for forensic interviews, including the *Technical Guide for Forensic Interviews with Child and Adolescent Victims of Sexual Violence*, these procedures do not always guarantee the participation of girls and adolescents who are victims/survivors of sexual violence. In fact, failures in implementation have been observed that may amount to a denial of justice, particularly when prosecutors oppose collecting testimony from children and adolescents on the grounds of avoiding revictimisation. The Constitutional Court has issued strong warnings to the Attorney General's Office, urging it to carry out all necessary actions to ensure that children and adolescents who are victims of sexual violence can express their views with support from qualified professionals. The Court has also stressed the use of evidence produced prior to a trial (*'prueba anticipada'*) to prevent the loss or alteration of key evidence.<sup>55</sup>



### ■ Territorial coverage and infrastructure

As previously mentioned, the administration of justice in Colombia suffers from infrastructure limitations that prevent it from ensuring nationwide coverage. As a result, the testimonies of victims of sexual violence are not always collected in compliance with judicial standards, thereby jeopardising their evidentiary value.

The right to access to justice is restricted, given that, as recognised by the CEDAW Committee since 2019, there is cause for concern that any limited capacity of the judiciary, manifested for example in the absence of State institutions in rural areas, leads to impunity, particularly in GBV cases, with sexual violence being especially affected.<sup>56</sup>

Colombia's geography, the armed conflict, and weak State presence hinder access to justice, particularly in rural and peripheral areas where many Afro-descendant, Indigenous, and disabled girls, adolescents, and women live in situations of socioeconomic vulnerability. In these contexts, reporting mechanisms are often not activated due to fear of reprisals from armed actors, who may themselves be the aggressors, or the fact that such actors, in exerting territorial control, have imposed their own forms of "justice".

Additionally, State institutions are either absent or dysfunctional. Even where police stations exist in these areas, victims/survivors who approach '*comisarias de familia*' [family welfare agencies] or courthouses frequently encounter staff without training in differential, gender-based, or intersectional approaches. This leads to frustration, revictimisation and, in many cases, a decision to abandon the pursuit of justice altogether.



## ■ Evaluation of evidence for investigation

Evidence in Colombian criminal proceedings<sup>57</sup> is governed by the adversarial criminal justice system, which permits a variety of types of evidence, including testimonies, expert reports, documentary evidence, and material physical evidence. This system requires that evidence comply with the criteria of legality, relevance, authenticity, and admissibility. Additionally, evidence must be presented and assessed according to the principle of free judicial evaluation in order to reach a level of conviction beyond a reasonable doubt.

The burden of proof lies primarily with the Office of the Attorney General, which must ensure that legally relevant facts are technically substantiated and sufficiently evidenced, with particular attention given to respecting fundamental rights during the collection and presentation of evidence.<sup>58</sup> However, the current system lacks a differential and gender-sensitive approach and does not adequately address the complexities involved in handling evidence in cases of sexual violence against girls, adolescents, and women. There is also a lack of guidelines to prevent the use of harmful stereotypes; ensure the best interests of the child; and apply a victim/survivor-centred approach. In the absence of such guidance, prosecutorial and judicial practices risk reproducing biases, which in turn perpetuate impunity and revictimisation in sexual violence cases.

## ■ Dignified treatment and non-revictimisation

Judicial personnel have a legal duty to apply a gender-based perspective as a way to prevent violence against women. This is crucial to ensure that authorities responsible for providing primary assistance to victims/survivors of violence, such as family welfare agencies, do not engage in institutional violence through acts or omissions that cause psychological harm to women.<sup>59</sup>

The Judicial Council and Constitutional Court have promoted guidelines and training aimed at ensuring that judges incorporate a gender-based perspective when issuing rulings. These efforts seek to prevent secondary victimisation and send a clear anti-impunity message.

Additionally, progress has been made in recognising that the language used in judicial rulings can itself be victimising. One notable case involved a victim of sexual violence who was labelled a “liar” and “pathological liar” by judges of the Republic.<sup>60</sup> This incident highlighted the existence of stereotypes held by justice system personnel, stereotypes that can lead to unjust rulings and denial of justice.

## ■ Recognition of ethnic identity and equal treatment

**Although Colombia's legal framework prohibits discrimination and criminalises racism, in practice, Afro-descendant, Indigenous, and disabled girls, adolescents, and women face stereotypes related to their ethnic-racial identity and disability, such as being hypersexual, provoking sexual violence, being incapable of resisting, and being unaffected by such violence. These prejudices give rise to racist and discriminatory conduct within the justice system, particularly in how victims' accounts are received. In many cases, distrust by justice system personnel appears almost automatically.**

During the investigation and documentation of sexual violence cases, Afro-descendant girls, adolescents, and women face multiple obstacles stemming from a lack of recognition of their ethnic-racial identity in the design and implementation of public policies and the absence of legal provisions acknowledging the particular vulnerabilities faced by women of Afro-Colombian, Raizal, and Palenquero communities. **“Afro” legislation does not develop specific legal provisions for the prevention, care, investigation, punishment, eradication, and reparation of sexual violence.**

Denouncing an alleged perpetrator to law enforcement can become a hostile and revictimising moment, as it is common for judicial officials to demand physical evidence of an assault. Care protocols are built around a homogeneous, white-mestizo logic, leading to disbelief when there is no “bruise” or “red” mark, signs typically expected on white skin. This leads to inadequate and revictimising practices or, in some cases, failure to provide appropriate care. For example, it has been documented that medical personnel use racial stereotypes to minimise the physical or emotional pain experienced by Black girls, by assuming that “they are stronger” or “can endure more”, which delays or distorts both treatment and evidence collection.

Furthermore, in marginalised urban contexts and remote rural areas, where a significant portion of the Afro-descendant population resides, institutional services are often limited or nonexistent. Barriers to access are not only geographical, but also symbolic: victims often feel unrecognised and unprotected by a system that has historically excluded them.

Afro-descendant girls, adolescents, and women experience differential treatment even more so than their non-Afro counterparts in institutional environments such as schools, health centres, and police stations, where they are frequently questioned, delegitimised, or even blamed for the violence they have suffered. This, in turn, discourages reporting and reinforces silence.

In many cases, gender stereotypes and structural racism lead to a denial of adolescence in communities of Afro-descendants, Indigenous Peoples, and disabled girls. Beliefs persist that **the bodies of Black girls mature very early, leading to their hypersexualisation**, linked to belief about their promiscuity, and treatment as adult women before their time, thereby denying them the right to fully experience childhood and adolescence.

In certain Indigenous communities, sexual violence is normalised when **girls aged 14 or younger begin relationships, usually with peers, but sometimes even with adult men**. This normalisation not only obscures the criminal nature of such acts but also undermines a vital stage in the development of autonomy and decision-making capacity.

**“Afro” legislation does not develop specific legal provisions for the prevention, care, investigation, punishment, eradication, and reparation of sexual violence.**

Afro-descendant adolescent girls and women living in urban peripheral zones are often associated with violent or criminalised environments, which fosters stigmatisation and distrust by authorities. This perception leads the authorities to not only not view them as victims of GBV (such as sexual violence), but rather they are blamed for or the gravity of the incidents or such incidents are minimised, being instead attributed to their environment or presumed ties to organised crime or the settling of scores.



## ■ Representation and references in institutions

The majority of professionals in the health, justice, and social protection sectors are not members of Afro-descendant communities, nor have they received training from an ethnic-racial perspective. This significantly limits institutional capacity to build trust-based relationships with Afro-descendant victims throughout the stages of investigation, including forensic medical and psychological examinations, pre-trial interviews, and judicial hearings. This barrier is particularly relevant for Afro-descendant victims, as the Black population in Colombia does not have legally recognised structures for community justice, unlike Indigenous Peoples, who are supported by a legal framework that acknowledges their systems of self-governance.

For Raizal and Palenquero girls, adolescents, and women, the lack of representation is also reflected in the absence of interpretation into their native languages in justice institutions outside their territories. This situation affects every stage of the judicial process.

## ■ Native language, access to interpreters, and use of clear language

When Indigenous girls, adolescents, and women access the ordinary justice system, native-language interpreters are often unavailable in most institutions. Even when interpreters are brought in, there are no established protocols governing their role in judicial and rights-restoration processes. This situation constitutes a violation of the principle of due process and significantly compromises the victims' right to access and understand information, as well as their right to express themselves and be heard on equal terms.

Law 1381 of 2010 establishes that in judicial contexts, individuals who speak native languages have the right to use their own language during legal proceedings. Moreover, the Ministry of the Interior and Justice is obligated to coordinate with territorial entities and the authorities of ethnic peoples to implement the necessary measures to uphold this right.<sup>61</sup> However, in practice, the burden of overcoming the language barrier is often placed on the victim rather than the institution, which is the party responsible for providing and designing mechanisms to ensure the involvement of interpreters where required. The lack of clear and culturally appropriate language results in Indigenous girls, adolescents, and women being excluded from full participation in all parts of the judicial process; denied proper consideration of their testimony; and left uninformed during the conduct of forensic medical examinations.

## ■ Recognition of the legal capacity of women with disabilities

Girls, adolescents, and women with disabilities often face contexts in which their needs are ignored, due to stereotypes that deny their capacity to make decisions about their own lives and futures. This mindset limits their rights to autonomy, independence, and dignity. Although the elimination of the legal concept of interdiction in 2019<sup>62</sup> represented a major step forward, the denial of autonomy for persons with disabilities still persists in daily practice and in the judicial system. This highlights the urgent need to transform not only the law, but also the attitudes and procedures that continue to reproduce exclusion.

In this sense, it is evident that Colombia continues to exhibit significant gaps in recognising the ability of women with disabilities to make decisions, and the rights that such recognition entails. Thus, when a woman with a disability seeks to report an incident of sexual violence, if she is not accompanied by a visibly non-disabled person, she may not even be received by officials. However, if she is accompanied, officials frequently fail to address her directly, speaking instead only to the companion. Moreover, **girls, adolescents, and women with disabilities are consistently infantilised.** This prejudice denies them their agency, autonomy, and affective and sexual development. They are instead treated as perpetual minors, with no recognition of their evolution.

This situation continues throughout the entire judicial process, including a lack of timely and clear information about the procedures to be carried out and unclear communication about the nature of forensic examinations and evidence collection.

It has additionally been documented that when aggressors themselves have disabilities, the legal system often responds by declaring them not criminally responsible or imposing lighter penalties on them due to their condition. This can lead to further victimisation, as it may expose the victim to retaliation or leave them unprotected.

### ■ Procedural adjustments and accessible support for women and girls with disabilities

Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) highlights the obligation of States to guarantee that persons with disabilities can make decisions by exercising their legal capacity. For women with disabilities to fully enjoy this right, it is essential to ensure the availability of procedural adjustments and accessible support. The Convention defines reasonable accommodations as individualised measures designed to eliminate specific barriers, and states that failing to provide such accommodations may itself constitute a form of discrimination.<sup>63</sup> In addition, it states that support entails mechanisms that enable persons to exercise their rights and make decisions freely, without others deciding for them.<sup>64</sup>

In 2019, the Ministry of Justice created a Protocol for Inclusive Attention in Access to Justice for Persons with Disabilities, which sets out criteria for the delivery of inclusive services. Nevertheless, this protocol is not fully applied in justice system institutions.

There are documented cases in Colombia where the absence of direct testimony from a victim due to disability and displacement led to the closure of investigations. This reveals a lack of mechanisms to address sexual violence cases with a disability-inclusive approach.<sup>65</sup> In such cases, the burden of proof often falls entirely on the victims, which not only perpetuates impunity but also discourages them from coming forward, particularly in contexts where trust in institutions is lacking.

The lack of reasonable accommodations and support prevents girls, adolescents, and women with disabilities from accessing justice. In places where justice institutions exist, their facilities are often inaccessible, lacking ramps, non-slip flooring, tactile paving, adapted toilets, and general infrastructure for persons with various disabilities.

The absence of psychosocial and legal measures and adaptive communication tools, such as signage, sign language interpreters, and accessible written materials, means that victims are often not fully informed throughout the legal process.

The lack of training for judicial staff results in failure to identify the need for procedural modifications or adjustments based on the needs of girls, adolescents, and women with disabilities who are victims of sexual violence.

The barriers described above reflect structural deficiencies in the judicial process, which may constitute a denial of justice.

### ■ Access to information for persons with disabilities

The 2017 regulation issued by the Ministry of Health guarantees that persons with disabilities have access to adequate and sufficient information regarding their sexual and reproductive rights, employing a differential approach. This regulation includes definitions and frameworks relating to differential approaches, a gender-based perspective, and a life-course approach. Likewise, it incorporates an all-level human rights-based perspective that recognises persons with disabilities as rights-holders. It emphasises the importance of equality, dignity, freedom, and autonomy. Accordingly, generating support, accommodations, and safeguards becomes essential to the effective enjoyment of rights.



## ■ Procedures and reparations for victims/ survivors in the context of the armed conflict

The signing of the Final Peace Agreement (FPA) between the Colombian government and FARC-EP represented a significant step forward in terms of including gender-based considerations and recognising GBV as both a structural cause and consequence of the armed conflict. The Gender Subcommittee defined eight thematic lines, including equal access to land ownership; guarantees of economic and social rights for women and LGBTIQ+ individuals; political participation; and access to truth, justice, and reparations.

Point 5 of the FPA, focused on victims, created the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition, now known as the Comprehensive System for Peace. Its Special Jurisdiction for Peace (JEP) imposes restorative sanctions. The Truth Commission, in its report *“My Body is the Truth”*, highlighted the use of violence against women as a method of territorial control and documented the victimisation of girls and adolescents.

In September 2023, Macro Case 11 was opened to investigate sexual and reproductive violence in the conflict. This case identified 35,178 victims, the vast majority of whom are women (89%), with a significant number of victims under the age of 18 (35%). Although data were collected on ethnic minority victims, it was also noted that

78% of cases lack ethnic identification, which impedes the **application of appropriate differential approaches** in both investigation and reparation. Law 1719 of 2014 seeks to ensure access to justice for victims of sexual violence, especially those affected by the armed conflict. The law amends the Criminal Code to include aggravating factors; incorporates the category of “protected person” in relation to sexual crimes in conflict contexts; and establishes the rights of victims throughout the process of investigation and trial. These rights include access to information; the receipt of care through differential approaches; protection from confrontation with the aggressor; and prohibition of repetitive testing, all of which are aligned with international human rights standards.

Assessing the context in which the acts occurred becomes part of the investigation, which makes sense, given the law’s focus on incidents that transpired within the context of the armed conflict. However, the law does not sufficiently specify the differential approaches that should be applied by the entities responsible for investigation. This is particularly concerning, given the high levels of victimisation among Afro-descendant girls, adolescents, and women; Indigenous communities; and women with disabilities in conflict settings. The level of specialisation in investigating sexual violence cases should also extend to acts committed outside the formal framework of armed conflict, which still persists in various forms across Colombia.

Credit: Carolina Jaramillo/iStock



## 5.2 Advances and challenges in prevention and comprehensive care

### ■ Prevention

The Constitutional Court of Colombia established that the State has the obligation to combat violence through prevention, protection, and guaranteeing access to justice. To that end, it is necessary to implement a gender-based perspective in all judicial proceedings, including specific guidelines for assessing evidence, such as viewing victim testimony as being particularly important, analysing the complete context of the situation, and avoiding the use of negative stereotypes and other forms of discrimination.<sup>66</sup>

In a more specific development, Law 1146 of 2007 establishes provisions for preventing sexual violence and providing comprehensive attention for boys, girls, and adolescents who have been sexually abused. This law recognises the asymmetry of power that exists between the victim and assailant, and likewise the conditions of inequality, use of force, and forms of coercion commonly wielded against girls and adolescents. It also confers responsibilities on institutions in the health, protection, and education sectors.

While it establishes the duty of institutions to report abuse and creates an inter-institutional coordination agency, it tends to homogenise children and adolescents by not including all of the entities and institutions that should adopt preventive measures in particular cases,<sup>67</sup> such as Indigenous Peoples' and Afro-descendants' own governments and organisations representing individuals with disabilities. This in turn limits the law's effectiveness; therefore, it should be updated in line with the standard for preventing sexual violence, which includes the adoption of appropriate and relevant measures, spanning the gamut from administrative to cultural.<sup>68</sup>

Law 1257 of 2008, in turn, is aimed at preventing, attending to, sanctioning, and eradicating violence against women, including sexual violence. To that end, it provides protection for women who are victims of sexual violence and seeks to guarantee access to justice and the right to reparation. It furthermore urges State institutions to undertake actions to strengthen public policies with an eye to preventing sexual violence, especially against women and girls.

This law has represented a valuable tool employed by civil society organisations that advocate for the right of girls, adolescents, and women to live a life free from violence. It requires other legal mechanisms to establish its regulations and implementation, such as the creation of interinstitutional and intersectoral mechanisms that address violence against women.

It is noteworthy that with regard to governing principles such as non-discrimination, while ethnicity is identified as a factor of inequality, no distinction is made amongst the country's various ethnic communities and peoples, and women with disabilities are left out altogether. The foregoing fails to recognise the particularities of these populations, and this in turn is reflected in discriminatory, decontextualised practices in the law's implementation.

**“It is necessary to implement a gender-based perspective in all judicial proceedings, including specific guidelines for assessing evidence, such as viewing victim testimony as being particularly important, analysing the complete context of the situation, and avoiding the use of negative stereotypes and other forms of discrimination.”**

In its Ninth Report to the CEDAW Committee, Colombia failed to clearly identify the difficulties it confronts in its attempts to guarantee a life free from violence. This coincides with the evaluation of the law's implementation, which reveals that no information exists on the efficacy of the prevention measures adopted by public policies, specifically in the education sector.<sup>69</sup>

## ■ Comprehensive care

Recognising the widespread prevalence of sexual violence throughout the country, the Office of the Attorney General has implemented a model that aims to guarantee access to justice in cases of sexual violence: *Centros de Atención e Investigación Integral a las Víctimas de Delitos Sexuales* [Centres for Comprehensive Attention to and Investigation of the Cases of Victims of Sexual Crimes] (CAIVAS).<sup>70</sup> These centres are supposed to provide psychological, social, legal, medical-legal, and investigative assistance. While their objective is to speed up the procedures for attending to and receiving reports of abuse, the CAIVAS are not present throughout the country, nor do they employ a differentiated focus, which creates barriers to accessibility and limits their efficacy.

Article 19 of Law 1257 of 2008 establishes care protocols to which female victims of violence have a right, for which regulations have been established by Decrees 4796 of 2011<sup>71</sup> and 2734 of 2012.<sup>72</sup> These decrees define the procedures set forth by the General Social Security System, aimed at implementing mechanisms for guaranteeing effective access to health and immediate protection measures.

These measures are of great importance, given that the health sector performs an essential role in providing immediate attention and reestablishing the rights of victims of sexual violence. Hospitals, health centres and Health Provision Institutions (IPS) are responsible for providing emergency medical and psychosocial attention, as well as filing the corresponding complaints before competent authorities.<sup>73</sup>

To that end, in 2012, the Ministry of Health issued the Protocol and Model for Comprehensive Healthcare for Victims of Sexual Violence, which provides directives for medical, psychological, and legal attention for victims, with special attention given to girls and adolescents. Likewise, it provides guidelines to ensure the IPS's guarantee of timely attention and an appropriate assessment and management of evidence in sexual violence cases. While this Protocol's framework for action makes reference to ethnic peoples and communities, it does not provide specific language regarding the

intersections addressed in this report, thereby ignoring the recommendations made by international mechanisms regarding Afro-descendant and Indigenous Peoples and individuals with disabilities.

Nor was the absence of specific measures for Indigenous Peoples in the aforementioned Protocol corrected by Decree 480 of 2025, which establishes and implements the *Sistema Indígena de Salud Propia e Intercultural* [Indigenous Peoples' Own Cross-Cultural Healthcare System] (SISPI) as a State health policy for the Indigenous Peoples of Colombia. Although it represents an important victory by including measures that run the gamut from financing to recognition of Indigenous knowledge and health and wellbeing practices, the decree omits guidelines related to attending to gender-based violence, in particular sexual violence.

**“The health sector performs an essential role in providing immediate attention and reestablishing the rights of victims of sexual violence.”**

As a result, while the application of the Protocol and Model for Comprehensive Healthcare for Victims of Sexual Violence is obligatory for all healthcare-providing institutions, additional efforts are still needed to guide its implementation within the framework of the Indigenous Healthcare System, thereby promoting more appropriate comprehensive attention for Indigenous girls, adolescents, and women who are victims of sexual violence.

It is concerning that measures aimed at accessing justice are presented in a general manner and have not been developed, nor have regulations been established for them, through other legal instruments. This generates loopholes with regard to concrete actions in the area of institutional strengthening and intersectoral coordination for guaranteeing that victims, after receiving health-related attention, can also receive cost-free, immediate, and specialised guidance, legal counsel, and technical legal assistance.



## 6. Lucero's case: when justice fails an Afro-descendant adolescent with a disability

Lucero is an Afro-descendant woman with a cognitive disability who grew up in a family marked by poverty, violence, and exclusion. During her adolescence, she was the victim of two sexual assaults: one was committed by a close relative, while the other occurred at a later point.

She lacked the tools to understand what had happened to her and had no close support networks. When an aunt found out what had transpired, she reported it to the Family Welfare Agency. But nothing happened. No protection measures were triggered. No institution was investigated. No one asked how she was feeling. Two months later, Lucero gave birth to her second daughter, the result of the sexual assault.

**“Her story starkly shows how the justice system, rather than supporting those who need it most, can become another source of violence. It also exposes the barriers faced by Black girls, adolescents, and women with disabilities and those living in poverty when they try to access justice.”**

She felt alone. Confused. Afraid. When she showed signs of rejecting the newborn, instead of receiving emotional support or care, she was institutionalised in a psychiatric hospital and separated from her daughter. A relative handed the baby over to another person, with whom contact was later lost.

While hospitalised, Lucero was given a contraceptive implant without her consent, a decision imposed on her body as if it did not belong to her, as if she had no right to decide whether or not she wanted to have more children.

Even so, Lucero wanted to search for her daughter. With the help of a trusted lawyer, she reported the events to the Public Prosecutor's Office. Her aunt also filed a *'tutela'* [constitutional claim of custody] to demand the return of her child.

The institutions failed her once again. The Prosecutor's Office, Family Welfare Agency, and health centres denied any responsibility to act, claiming it did not lie within their realms of competence. No one acknowledged that Lucero was an Afro-descendant adolescent with a disability and a victim of displacement and multiple forms of violence. They ignored her story, her context, and her pain, and failed to act with the urgency the situation required.

When the '*tutela*' was finally reviewed, the judge declared it to be inadmissible, as by that point the child had already been returned. But the damage was done. The violence, the negligence, and the discrimination had all left deep scars on Lucero.

Sometime later, the Constitutional Court of Colombia examined the case. What it found was not an isolated incident but rather a **pattern of structural and institutional violence that repeats itself for many individuals like Lucero**. The Court determined that the State had rendered her invisible: she did not appear in records as a victim of armed conflict, a person with a disability, or survivor of GBV. The actions taken by institutions that were supposed to protect her were characterised by racism, ableism, and neglect.

The judgment ordered a full review of the proceedings from the Family Welfare Agency, adequate information to be given to Lucero about her rights, the provision of psychosocial and legal support, and the adaptation of institutional protocols with gendered, disability, and intersectional approaches, so as to ensure that cases like hers would not be repeated. These measures remain pending. Even so, Lucero had already faced the consequences of State abandonment on her own. She was treated as someone incapable of feeling, deciding, or parenting. She was referred to as "that skinny Black girl", and judged through the lens of stereotypes that denied her humanity and her right to be heard. She was separated from her daughter, decisions were imposed on her, and her rights were denied.

Her story starkly shows how the justice system, rather than supporting those who need it most, can become another source of violence. It also exposes the barriers faced by Black girls, adolescents, and women with disabilities and those living in poverty when they try to access justice.

Lucero is not the only one. There are many women like her: unseen, unheard, unprotected. Women who suffer from all forms of violence at once. Telling her story is a form of resistance to being forgotten, and a demand for deep transformations so that no one else has to go through what she has.

*\*This story was written especially for this report, based on the facts documented in ruling T-410/21 of the Constitutional Court of Colombia.*



## 7. Recommendations

### To the Executive Branch:

- ◆ **Review all existing legal provisions, protocols, and guidelines relating to the prevention, care, and eradication of sexual violence, and ensure the incorporation of a gender-based, ethnic-racial, human rights, and disability approach from an intersectional, anti-racist, and anti-ableist perspective**, in line with international human rights standards. In particular, we recommend reviewing the Protocol for Sexual Investigation and the procedural rules for the UENNA of the Office of the Attorney General, in light of international standards.
- ◆ **Develop regulatory and procedural frameworks under Law 1257 of 2008** regarding relevant protection measures for girls, adolescents, and women who are victims/survivors of sexual violence. Likewise, advance the development of care actions aimed at guaranteeing access to justice.
- ◆ **Accelerate efforts to comply with the recommendations of international human rights mechanisms, particularly those issued by the CEDAW Committee** in relation to Colombia's Ninth Periodic Report regarding access to justice, prioritising those referencing strengthening the judicial system, including, among others: "increasing its provision of financial, technical, and specialised human resources so that it can process cases in a timely, gender-sensitive, non-discriminatory, and competent manner throughout the country, and especially in rural areas", and, specifically, "increasing the number of judges and prosecutors specialised in sexual violence" and "ensuring access for women and girls to legal aid services".
- ◆ Advance the development of a **Public Policy for Access to Justice and Prevention of Sexual Violence against Children and Adolescents** within the framework of Law 2137 of 2021, ensuring the consultation and active participation of Afro-descendant, Indigenous, and disabled children and adolescents. Such a policy must incorporate international standards on the elimination of geographical, cultural, and institutional barriers that prevent victims/survivors, especially those in rural areas, from accessing complaint and adjudication mechanisms. It must also design transformative reparations models that recognise the historical context and impact of structural racism on their lives.
- ◆ **Work jointly with Afro-descendant communities, with leadership from Black, Afro-Colombian, Raizal, and Palenquera adolescents and women**, to develop proposals for **public policies** and special legislation that address the causes of and strategies for the eradication of sexual violence and access to justice in contexts outside of armed conflict, using participatory methodologies.
- ◆ **Promote the effective provision of reasonable and procedural adjustments and accessible supports** so that **women with disabilities can fully exercise their legal capacity** during judicial proceedings. This includes improving access to appropriate psycho-legal support mechanisms, adapted communication tools, and judicial personnel trained in approaches relating to disability, gender, and childhood.

- ◆ **Make sexual violence visible and disaggregate the data presented, in order to overcome the statistical invisibility surrounding the contexts in which sexual violence occurs against girls, adolescents, and women, particularly those who are Afro-descendant, Indigenous, and disabled.** To that end, there is an urgent need to adopt specific indicators and incorporate new categories of analysis into public information systems such as SIVIGILA, to better understand the conditions, contexts, risks, and reparations needs of survivors, and to establish reliable, public, and accessible systems for monitoring investigations and sanctions related to sexual violence.
- ◆ **Provide clear guidance to eliminate discriminatory practices** that reproduce stereotypes based on sex, gender, race, ableism, socio-economic status, and other conditions of oppression.



### To the Congress of the Republic:

- ◆ **Prioritise legislative processes aimed at ensuring special and appropriate care for girls, adolescents, and women victims of sexual violence, recognising the gravity and urgency of this problem.** In particular, we recommend promoting legislative initiatives to ensure coordination between the Special Indigenous Jurisdiction and Ordinary Judicial System, with the aim of establishing a legal framework that guarantees respect for cultural diversity and the rights of Indigenous girls, adolescents, and women, without compromising their integrity or access to justice.



### To traditional Indigenous authorities:

- ◆ **Strengthen Indigenous justice mechanisms, guaranteeing effective access to justice and care pathways for all Indigenous women, without discrimination based on age, disability status, or sexual orientation.** This implies the progressive harmonisation of Indigenous justice procedures with international human rights standards, ensuring that Indigenous girls, adolescents, and women can live free from all forms of violence.
- ◆ **Promote the participation of Indigenous women in the National Indigenous Justice Council** and various fora aimed at establishing strategies for investigating, prosecuting, and punishing violence against Indigenous girls, adolescents, and women, and for monitoring the processes conducted by local and regional Indigenous authorities.
- ◆ **Deepen efforts to eliminate discriminatory practices, norms, and measures** that normalise sexual violence and harmful practices, promoting an urgent cultural shift that prioritises the rights of survivors.

### To justice system officials:

- ◆ **Administer justice from an intersectional perspective** together with other approaches such as those informed by gendered biases and cross-culturalism, to enable Afro-descendant, Indigenous, and disabled girls, adolescents, and women to access justice effectively, while in practice ensuring their cases do not remain shrouded in impunity.
- ◆ **Promote consultation and decision-making spaces on institutional policies, protocols, and guidelines related to the administration of justice.** This includes active participation in processes such as the design of the Ten-Year Justice Plan overseen by the Superior Council of the Judiciary, which should move forward by collaboratively building prevention pathways for GBV in conjunction with Indigenous communities and peoples.
- ◆ **Strengthen intercultural strategies for addressing GBV and harmful practices within Indigenous communities,** as well as expand valuable developments already identified, such as the Ati Kwakumuke Government House of the Arhuaco people in Pueblo Bello, César<sup>74</sup> and the Pathways for Prevention and Protection against Violence Towards Women and Families led by the UNIPA Women and Family Office.<sup>75</sup>
- ◆ **Ensure the permanent presence of professional translators and interpreters who are specifically trained to provide culturally appropriate approaches** grounded in the understanding of the worldviews, languages, and traditional practices of each Indigenous community or people.
- ◆ **Guarantee comprehensive reparations for all girls, adolescents, and women victims/survivors of sexual violence, without any form of discrimination.**
- ◆ Urge the JEP to **advance swiftly to thoroughly investigate Macro Case 11, while ensuring the active and meaningful participation of Black, Indigenous, and disabled women who were victims of sexual violence.** These women must be included in the design and monitoring of their own or alternative sanctions imposed by the Tribunal, and reasonable and necessary adjustments must be made to ensure full accessibility and availability of the justice system, particularly in cases involving women with disabilities.

### To civil society organisations:

- ◆ **Promote prevention, reporting, and accompaniment actions** for Afro-descendant, Indigenous, and disabled girls, adolescents, and women survivors of sexual violence across the national territory.
- ◆ **Share the findings of this report** on your platforms to demand that the Colombian government uphold its international commitments to guarantee Afro-descendant, Indigenous, and disabled girls and adolescents access to justice **without discrimination.**
- ◆ **Participate in Equality Now's campaigns to end sexual violence** and support the adoption and updating of laws, protocols, and procedures aimed at its prevention and redress.

## Annex I - International standards applicable in cases of sexual violence

### Obligation to prevent sexual violence

- ◆ The prevention strategy should be comprehensive. In other words, it should prevent risk factors while at the same time strengthening institutions so they can provide an effective response to cases of violence against women. States should also take preventive measures in specific cases where it is evident that certain women and girls may be victims of violence.<sup>76</sup>
- ◆ States Parties should have an appropriate legal framework for protection, with effective enforcement, and prevention policies and practices that allow for proactive action in response to denunciations.<sup>77</sup> This framework should include legal, political, administrative, and cultural measures that promote the safeguarding of rights.<sup>78</sup>
- ◆ Appropriate legislative and other preventive measures should be adopted and implemented to address the underlying causes of GBV against women, with the aim of addressing and eradicating stereotypes, prejudices, customs, and established practices that condone or promote GBV against women.<sup>79</sup>

**Duty to apply a gender-based and intersectional approach**

- ◆ Justice personnel should apply a gender-based approach and an intersectional perspective<sup>80</sup> that takes into consideration the age, maturity, sex, gender, sexual orientation, socio-economic level, disability, and other particular conditions of the victim.<sup>81</sup>
- ◆ States Parties should recognise that rural women are not homogeneous and that they face multiple forms of discrimination: Indigenous and Afro-descendant women in rural areas suffer discrimination due to their ethnicity, language, and traditional lifestyle.<sup>82</sup>
- ◆ An intersectional and differential approach should be applied to address the discrimination and violence faced by Black, Afro-descendant, and Afro-Caribbean women, as well as the urgent need for regulatory and social transformation to eradicate racist stereotypes.<sup>83</sup>
- ◆ Comprehensive reparations in both Indigenous and non-Indigenous systems should be guaranteed; training campaigns should be adopted at the community level; free, quality legal assistance should be guaranteed; measures that recognise historical conditions of poverty, racism, and GBV should be adopted.<sup>84</sup>
- ◆ Reparations in cases of violence against Afro-descendant women should be addressed from a racial, gender-based, and intersectional approach.<sup>85</sup>
- ◆ In the current migratory context, States should ensure confidential services, the prevention of GBV, and protection mechanisms regardless of migration status. The majority of perpetrators are non-State actors, which requires a diligent State response to ensure the protection of victims.<sup>86</sup>
- ◆ The handling of cases of sexual violence against children and adolescents should involve a child-focused approach, guaranteeing the best interests of the child<sup>87</sup> as a guiding principle, as well as reinforced protection of their rights, prioritising their safety and access to justice in conditions of equality,<sup>88</sup> without falling into secondary victimisation.<sup>89</sup>
- ◆ The intersection between gender and disability requires adjustments to proceedings aimed at guaranteeing accessibility and full participation. These may include sign language interpretation, accessible information formats, assistive technologies, flexibility in procedures, testimony by videoconference, and adaptations to deadlines, venues, and judicial formalities.<sup>90</sup>
- ◆ The intersection between gender and race requires an investigative process that takes into account the structural context of racial discrimination faced by Afro-descendant women,<sup>91</sup> avoids the use of stereotypes that tend to criminalise or hypersexualise them, prevents any form of secondary victimisation and takes into account the history of exclusion and systemic racism that has marked their lives.<sup>92</sup>



### Consent must be the key focus of crimes of sexual violence

- ◆ Sexual violence is defined as acts of a sexual nature committed against a person without their consent, which, in addition to involving the physical invasion of the human body, may include acts that do not involve penetration or even any physical contact at all.<sup>93</sup>
- ◆ Rape is considered to be any form of vaginal, anal, or oral penetration that takes place without consent, carried out using any part of the body or objects; minimal penetration is sufficient for the crime to be considered to have been committed.<sup>94</sup>
- ◆ Consent has to be expressed in a free, informed, prior, and reversible manner. It cannot be inferred from silence, lack of resistance, state of vulnerability, or the existence of power relations.<sup>95</sup>
- ◆ Sexual violence must revolve around the key concept of consent, i.e., for a rape to be perpetrated, proof of threat, use of force, or physical violence should not be required; it being sufficient to prove, by any suitable evidentiary means, that the victim did not consent to the sexual act.<sup>96</sup>
- ◆ Laws should clearly state the circumstances in which consent cannot be presumed, including coercion, threats, manipulation, or any form of intimidation.<sup>97</sup>
- ◆ The legal concept of '*estupro*' establishes hierarchies of sexual crimes that conceal the severity of sexual violence against adolescent girls. Any case of sexual intercourse with a person between 14 and 18 years of age that takes place without their consent or in a context in which their consent cannot be inferred, due to seduction, deception, abuse of power, coercion, intimidation, or any other reason, must be considered as the crime of rape.<sup>98</sup>
- ◆ States should not criminalise adolescents of similar ages (peers) for consensual, non-coerced, and non-exploitative sexual activity among themselves, while ensuring that all forms of sexual exploitation of children are prohibited. This approach takes into account the evolving capacities of adolescents, while protecting them from sexual violence.<sup>99</sup>

### Duty to provide comprehensive care and protection to survivors throughout the process

- ◆ The State is required to provide free legal assistance, emergency medical care, and psychological services on an ongoing basis as necessary.<sup>100</sup>
- ◆ This support should be continued throughout the criminal process, ensuring that it is the same professional dealing with the child or adolescent.<sup>101</sup>
- ◆ Immediate protective measures should be taken following a complaint, based on an adequate assessment of the risk factors, in order to prevent further violence, threats, or pressure on the victims.<sup>102</sup>
- ◆ These guarantees of protection should be strengthened during the investigation and criminal proceedings when the case refers to the rape of a girl, especially if this sexual violence was exercised within the family.<sup>103</sup>

**Duty to guarantee the participation of victims and their access to information**

- ◆ The victims' opinion should be heard and valued in all proceedings affecting them, guaranteeing their participation without revictimisation.<sup>104</sup>
- ◆ Information on procedures should be communicated clearly, taking into consideration the victim's age, development, and maturity. Privacy must be respected, and all personal information should be kept confidential.<sup>105</sup>
- ◆ Victims of sexual violence should expect "empathetic neutrality" from justice system officials.<sup>106</sup>

**Obligation to investigate in an effective, impartial, and timely manner**

- ◆ Investigating sexual violence is an obligation of means rather than of results and must be carried out in a serious, objective, diligent, and unbiased manner.<sup>107</sup>
- ◆ Revictimisation should be avoided at all times.<sup>108</sup>
- ◆ The chain of custody of evidence, medical and psychological examinations by qualified personnel, recognition of the victim's testimony as fundamental evidence, a context-centred, victim-sensitive approach, and a focus on the perpetrator's behaviour are all essential.<sup>109</sup>
- ◆ Documentary or graphic evidence of the crime should not be required to initiate legal proceedings.<sup>110</sup>

**Duty to comply with conditions for the physical examination of survivors**

- ◆ The physical examination should be performed by professionals experienced in child sexual violence, respecting the child's privacy and avoiding causing additional trauma or revictimisation.
- ◆ Prior to the examination, the victim must have given their informed consent (themselves or through their legal representative) according to their degree of maturity, taking into account the right of the child or adolescent to be heard in a suitable place and with a professional of the sex of their choosing, as well as in the presence of a trusted person.<sup>111</sup>
- ◆ The appropriateness of an expert gynaecological opinion should be considered on a case-by-case basis, taking into account the time that has passed since the sexual violence is alleged to have occurred. The request for an examination must be justified in detail, and in the event it is not appropriate or does not have the victim's informed consent, the examination should not take place, which under no circumstances should serve as an excuse to discredit the victim and/or impede an investigation.<sup>112</sup>

#### **Duty to avoid repetition of unnecessary and victimising statements**

- ◆ The victim's testimony must be taken in a safe, private, and sensitive environment and recorded in a manner that avoids or limits the need for repetition.<sup>113</sup>
- ◆ The interview should be conducted by a specialised psychologist or professional from a related discipline, duly trained in taking this type of statement. This professional will allow the child or adolescent to express themselves in a manner of their choosing and in accordance with their wishes, and they cannot be questioned directly by the court or the parties.<sup>114</sup>
- ◆ The statement should be videotaped to avoid repetition and a trusted companion allowed; in addition, clear and understandable language appropriate to the degree of maturity and comprehension of the girl, boy, or adolescent should be used.<sup>115</sup>
- ◆ The victim should be given the same level of credibility as any other complainant.<sup>116</sup>

#### **Hearings and evidentiary evaluations should be free from stereotypes**

- ◆ Judicial proceedings should be impartial, free from stereotypes and focused on children's rights.<sup>117</sup>
- ◆ The credibility of victims cannot be questioned on the basis of their prior or subsequent sexual behaviour.<sup>118</sup>
- ◆ The best interests of the child must be prioritised in all interpretations and decisions.<sup>119</sup>

#### **Access to justice requires due process and a reasonable timeframe**

- ◆ The independence, impartiality, integrity, and credibility of the judiciary and fight against impunity should be ensured.<sup>120</sup>
- ◆ Conciliation or mediation is not permissible in cases of sexual violence.<sup>121</sup>
- ◆ Proceedings should take place within a reasonable timeframe, guaranteeing the search for truth and punishment of those responsible in proportion to the facts.<sup>122</sup>
- ◆ States should ensure that the statute of limitations is in line with the victims' interests.<sup>123</sup>
- ◆ No statute of limitations should be established for initiating judicial actions for the crime of rape.<sup>124</sup>

**Full reparations must cover material and non-material damages**

- ◆ Reparations should be designed and implemented so as to meet the needs of victims of sexual violence and should take into account all forms of sexual violence and their consequences, including the physical, psychological, material, financial, and social consequences, immediate or otherwise, suffered by the victims.<sup>125</sup>
- ◆ Victims have the right to comprehensive reparations that include economic compensation for material and non-material damages,<sup>126</sup> access to legal, social, medical, and psychological services, satisfaction measures, and guarantees of non-repetition.<sup>127</sup>



## Endnotes

- 1 Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 35, CEDAW/C/GC/35, July 26, 2017, available at: <https://documents.un.org/doc/undoc/gen/n17/231/57/pdf/n1723157.pdf?OpenElement>.
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- 4 World Health Organization. Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women, Geneva, 2021. <https://www.who.int/publications/i/item/9789240022256>.
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- 6 *Sistema Integrado de Información de la Protección Social* [Integrated Social Protection Information System] (SISPRO), National Gender-Based Violence Monitor, complete at: <https://www.sispro.gov.co/observatorios/onviolenciasgenero/Paginas/home.aspx>.
- 7 Ibid.
- 8 Ibid.
- 9 The Defensoría del Pueblo [Colombian Human Rights Ombudsman] is an entity within the Public Ministry charged with defending, promoting, protecting, and disseminating human rights and the guarantees and freedoms of the country's residents and of Colombians abroad in response to illegal, unjust, unreasonable, negligent, or arbitrary acts, threats, or actions on the part of any authority or individual. <https://www.defensoria.gov.co/web/guest/que-hacemos>.
- 10 Ibid.
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- 12 United Nations Office of the High Commissioner for Human Rights, A/72/133: *Health and Sexual and Reproductive Rights of Girls and Young Women with Disabilities* (easy-reading version), New York, 14 July 2017, available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/A\\_72\\_133\\_Easy\\_to\\_read\\_version.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/A_72_133_Easy_to_read_version.pdf).
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- 14 Information obtained through the right to petition, submitted by the Corporación Polimorfos to the Office of the Attorney General; response received in 2023.
- 15 Instituto Colombiano de Bienestar Familiar [Colombian Institute for Family Wellbeing]. Income Dashboard, Administrative Process for Reestablishing Rights. [https://public.tableau.com/app/profile/anal.tica.institucional.icbf/viz/INGRESOS\\_PARD\\_16280564609400/PARD](https://public.tableau.com/app/profile/anal.tica.institucional.icbf/viz/INGRESOS_PARD_16280564609400/PARD).
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- 21 UN Women. Women and Girls with Disabilities. United Nations. <https://www.unwomen.org/es/what-we-do/women-and-girls-with-disabilities>.
- 22 Sexual Violence in the Darién Gap is Ever More Cruel and Dehumanising. <https://www.msf.es/noticia/la-violenciasexual-tapon-del-darien-cada-vez-mas-cruel-y-deshumanizante>.

23 For the Inter-American Commission on Human Rights (IACHR), inter-American human rights standards represent “general guidance,” whose role is to provide “minimum protection that must necessarily be respected by the State”. These behavioural obligations derive from diverse sources and are comprised of State obligations contained in: (i) the texts of inter-American treaties that protect human rights; (ii) the sentences and advisory opinions of the Inter-American Court of Human Rights; and (iii) the set of decisions, thematic country reports, and other recommendations adopted by the IACHR. Likewise, the IACHR has also attributed the role of standards to a set of duties to act contained in regional protocols that States must implement so as to prevent human rights violations.

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27 *Angulo Losada v. Bolivia*. Judgement of 18 November 2022 (Preliminary Objections, Merits, and Reparations), Series C No. 475, San José, Costa Rica, adopted by the Tribunal on 18 November 2022 and announced on 19 January 2023.

28 Approach promoted by international human rights law mechanisms to place victims at the center and guarantee them access to impartial justice by prioritising their needs, security, wellbeing, and rights at each step of judicial proceedings.

29 They provide that the international treaties and agreements ratified by Congress recognising human rights and prohibiting their restriction in states of emergency prevail in domestic order, and that to that end the rights and duties enshrined in the political charter shall be interpreted in accordance with the international human rights treaties ratified by Colombia. Political Constitution of Colombia. Article 93.

30 The ‘constitutional block’ is a legal unit comprised of “regulations and principles that, while not formally appearing in the articles of the Constitution, are employed as parameters for ensuring the constitutionality of the laws, and as such have been normatively integrated into the Constitution in various way and by command of the Constitution itself. They are, thus, true principles and rules with Constitutional validity, despite at times containing reform mechanisms that differ from the regulations in the Constitution’s articles, strictly speaking.” Constitutional Court of Colombia. 2003. Sentence C-067 of 2003. MP: Marco Gerardo Monroy Cabra. Available at: <https://www.corteconstitucional.gov.co/relatoria/2003/c-067-03.htm>.

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42 The ‘resguardos’ [Indigenous reserves] are a legal and sociopolitical institution of a special nature, comprised of one or more Indigenous communities that hold collective title to the land, enjoy private-property guarantees, own their territory, and govern its management and their internal life through an autonomous organisation protected by the Indigenous charter and their own regulatory system.

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