

Reproductive violence

Report

An overview from
a gender and
reproductive rights
perspective



in the Armed Conflict in Colombia

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1. Introduction



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During the Colombian armed conflict, the armed illegal and legal actors used a number of types of sexual and reproductive violence against young, adolescent and adult women and LGBTI persons as a “usual, extended, systematic and invisible” practice.¹

This violence is part of the structural context of gender discrimination and is accompanied by a lack of effective access to reproductive health services and information, contraceptive methods, elective termination of pregnancy (ETP), and gynecological and obstetric health, under dignified and good quality conditions. These gaps are wider for rural, indigenous, black and Afro-Colombian women and girls², among others, due to their historical lack of access to health institutions and to obstacles in the form of stereotypes and the State’s limited presence in outlying areas.³

Recognizing the forms that reproductive violence took in the conflict and its impacts and providing victims with comprehensive reparations would be decisive steps toward reconciliation in the transitional justice process. It would also represent significant progress toward achieving equality and gender justice, in keeping with States’ international human rights obligations.

2.

Reproductive rights



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in the context
of armed
conflicts

In conflict and post-conflict contexts, States remain bound by their international human rights obligations,⁴ which protect women and children and are supplemented by other bodies of international law, such as the international humanitarian law (IHL) and the international criminal law.⁵ Although the IHL and the international human rights law (IHRL) have different focuses, they share the objectives of protecting dignity, life and health, and prohibiting discrimination and torture or other cruel, inhuman and degrading treatment.⁶

State obligations to ensure reproductive health covers women and girls affected by conflicts and

are established in the rights to equal protection, life and health, as well as in the rights to be free from torture and cruel, inhuman or degrading treatment, the right to be free from violence, the right to information and informed consent,⁷ and the right to an effective remedy.⁸ In Colombia, these rights are protected by the Political Constitution and in the constitutional body of law.⁹ Reproductive rights are fundamental rights¹⁰ and the obligations to prevent, address and redress gender-based violence (GBV) are recognized in constitutional jurisprudence¹¹ and in laws 1257/08, 1448/11, and 1719/14.

3. Reproductive violence in the armed conflict in Colombia

Reproductive violence includes practices that directly or indirectly compromise and violate reproductive freedom,

understood as the capacity of individuals to decide whether they want to have children or not and when, as well as their capacity to access sexual and reproductive health information and services such as contraception, safe abortion and gynecological and obstetric health services. Given the dynamics of the Colombian conflict, its occurrence should be understood on the basis of the local histories and specific geographic contexts where it took place. Reproductive violence during the conflict eliminated or reduced the chances women and girls had to control their reproductive capacity and, therefore, the course of their lives.

Although clear and significant progress has been made toward recognizing the GBV affecting women and girls in the context of conflicts, the emphasis has historically been almost exclusively placed on rape, with less attention paid to other forms of violence that violate the reproductive freedom of persons. The effect of this invisibilization is that forms of reproductive violence are identified to a much lesser degree than rape, and consequently, victims are usually not recognized or redressed.

The Center for Reproductive Rights seeks to contribute to increasing the visibility of the forms of reproductive violence that took place during the armed conflict in view of the extent of the damage caused and its impact on the victims, so that forms of reparation to specifically address this violence can more effectively be identified and proposed. This briefing paper presents the findings of an investigation involving the review and analysis of more than 60 public reports¹² to catalogue the array of reproductive violence that demobilized armed groups were documented to have employed.

1. Forced contraception or forced reproductive planning

Refers to the actions taken by any actor in the conflict without the consent of women and girls to prevent them from reproducing. It was identified as a form of GBV¹³ and has been documented as a practice used on girls and women in the ranks of armed groups. There is evidence that it was a policy of the FARC-EP guerrilla group,¹⁴ although it was also reported as a practice of the Guevarista Revolutionary Army (ERG)¹⁵ and the Casanare and Bloque Norte Campesino Self-Defense paramilitary group.¹⁶ It is characterized as: i) a practice generally carried out during recruitment, regardless of the age or health of girls and women; ii) using hormonal contraceptives including injections or implants and intrauterine devices; and iii) in contrast to men, the contraceptive control over women is constant. There is also evidence that this practice was used by paramilitary groups on women doing sex work in certain parts of the country.¹⁷

2. Forced sterilization

This is defined under the Colombian law as acts of violence during the conflict in which “a protected person is deprived of the capacity to reproduce biologically.”¹⁸ It can be considered a crime against humanity or a war crime.¹⁹ It is one of the least documented types of violence, as there are few references to it taking place. In cases brought before Justice and Peace,²⁰ nine cases of forced sterilization of women were reported in the municipality of Zapayán, Magdalena, perpetrated by the Bloque Norte of the AUC.²¹

Similar cases were documented by the National Center for Historical Memory²² in the Magdalena department. In both instances, it was used against women of the civilian population, and the procedures were carried out in nearby hospitals, which may be because local authorities collaborated or were under the control of the armed groups.

3. Forced or coerced maternity

These are cases of women, girls and LGBTI persons forced to become mothers as a result of a pregnancy from rape. This may be so for multiple reasons: forced by family; difficulties, disinformation, or stigma in accessing an abortion; lack of awareness about the pregnancy. In this type of violence: i) women are all alone in dealing with the difficult decision of whether to tell the child about his or her origins; ii) it creates a rupture in their life projects; iii) children could be stigmatized as a result of their physical characteristics, uncertain parentage, or for being the child of an armed enemy actor;²³ and iv) they face greater violence at the hands of their mothers. An additional impact is the feminization of poverty.

In many cases, forced motherhood is the natural result of the control and appropriation of the bodies of girls and young

women in militarized contexts. The constant presence of members of the law enforcement agencies in outlying areas has led to an increase in pregnancies among girls and adolescents, who must then face unwanted motherhood alone.²⁴

On the other hand, lesbian women and trans men have become pregnant after being raped due to prejudice²⁵ in a specific type of corporal punishment. In the case of lesbian women, forced motherhood may intersect with gender stereotypes that call into question their maternal capacity due to their sexual orientations.²⁶ For trans men, the pregnancy may conflict with the corporeal transformation that is important for the construction of their identities.²⁷ They may also face constant threats of losing their children as their ability to raise them is called into question.²⁸

4. Forced or coerced pregnancy

Under Colombian law, this is when a protected individual who has become pregnant through rape is forced to carry the pregnancy to term.²⁹ The Constitutional Court has identified it as a form of GBV used in the conflict.³⁰ This definition is broader than that used in the Rome Statute, which defines it as “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of the international law.”³¹ As forced sterilization, it is a less documented modality. During the course of the investigation, only one report was found of a case of forced pregnancy resulting from sexual slavery. It was perpetrated over the course of four years against a civilian woman by a member of a paramilitary group, causing her to have two children.³²

5. Forced and nonconsensual abortion

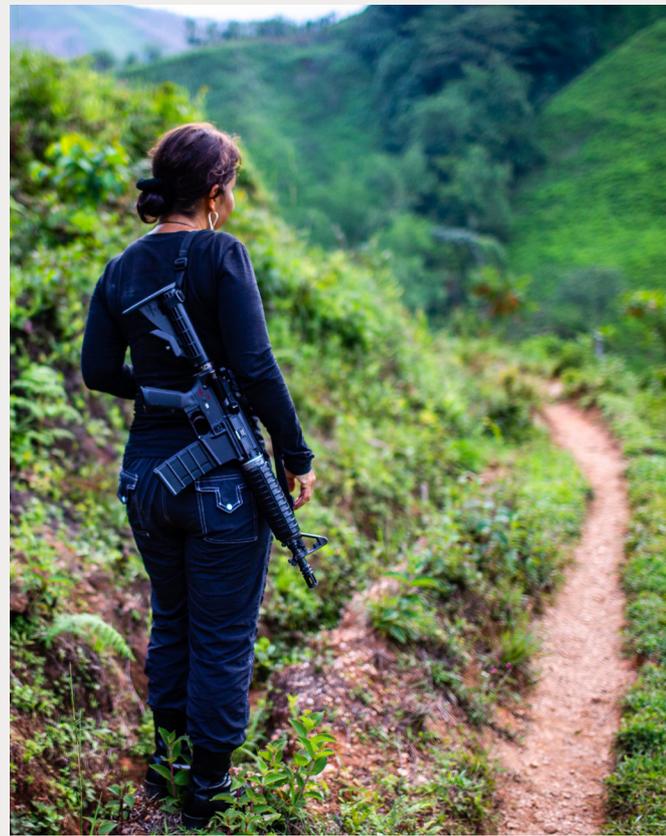
It is typified in Colombia as a conduct committed by those who, “as part of and during the armed conflict, using violence, terminate or force the termination of the pregnancy of a protected person without that person’s consent.”³³ Members of a number of armed groups have been convicted for offenses of nonconsensual abortion and forced abortion in cases where women, both civilian and combatants, were forced to have abortions after they became pregnant from a rape. There were also cases in which violence committed against pregnant women cause them to miscarry.³⁴ This type of violence is threefold:

> ABORTION AS A MEANS OF DOMINATING WOMEN AND GIRLS IN ARMED GROUPS

Forced abortion in the FARC-EP guerrilla group was a clear and explicit policy, as evidenced by its systematic nature and the provisions made to carry it out: i) regular checkups to detect pregnancies, ii) individuals “specialized” in performing the procedures, iii) availability of medications such as Misoprostol and surgical equipment used for the procedures, and iv) physical spaces set aside for it. In several cases, the procedures were performed in unsanitary conditions, endangering the lives and safety of women. A report from the Office of the Attorney General found that forced abortion was a regular practice, and hiding a pregnancy or resisting the abortion were punished with

court-martial. There were 232 reported cases of victims of sexual violence, of which 14% were cases of forced abortion in the ranks.³⁵

In the case of the EGR guerrilla group, a ruling of the Superior Court of Medellin acknowledged this type of violation, along with force contraception, as a “systematic, regular and widespread” practice. The ruling indicates that forced abortions were carried out in conditions that endangered mothers: without any medical supervision and/or accounting for the risks of late-term pregnancies, prescribing medication without a doctor’s guidance, among other conditions.³⁶



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6. Institutional reproductive violence

> ABORTION TO ELIMINATE EVIDENCE OF RAPE

Paramilitary groups, the Bloque Norte of the Córdoba and Magdalena AUCs, forced abortions on women who had become pregnant as a result of sexual slavery. The purpose of abortions was to avoid “leaving evidence” of the atrocities that were committed.³⁷

> ABORTION TO TERRORIZE THE CIVILIAN POPULATION

In the context of scenarios of bloody violence such as massacres, extortions, kidnappings, abductions and homicides, violence against pregnant women was used to terrorize a population. Armed groups used this particular form of violence to torture and murder pregnant women. In a society where women as mothers hold special meaning, directing violence against the bodies of pregnant women sent the message that there were no limits and that the enemy would be annihilated.³⁸

> STIGMATIZATION OR DENIAL OF ETP IN THE CONTEXT OF ARMED CONFLICTS

The difficult conditions faced by girls and women who were victims of the armed conflict in accessing health means the State’s ineffectiveness caused a second level of violence: re-victimization, when the State, having failed to protect them from such violence, failed again to provide them with dignified care on a timely basis. It took shape in the stigmatization by health personnel of women pregnant as a result of rape during the conflict who sought access to ETP. It also takes the form of refusing to provide the service, failing to comply with protocols, disrespecting confidentiality, spreading disinformation and the lack of safe and private spaces for providing care.³⁹

> MISCARRIAGES AS A RESULT OF GLYPHOSATE SPRAYING

As part of a program to spray glyphosate aerially (PECIG), the Colombian government used a herbicide (glyphosate) to eradicate illegal crops in rural

areas by spraying it from the air. Between 1999 and 2015, more than 1.8 million hectares were sprayed in the country.⁴⁰ There is scientific evidence indicating that exposure to glyphosate can have significant negative impacts on human reproductive health, including fertility and fetal development problems. It can also cause miscarriages and possible future disabilities in fetuses exposed to it during pregnancy.⁴¹ There have been reports of miscarriages as a result of the women being exposed to glyphosate sprayed as part of the PECIG. This includes the case of Yaneth Valderrama, who was sprayed in Caquetá in September 1998, when she was four months pregnant. When she went to seek medical attention, a curettage was performed after an incomplete miscarriage was discovered. She died in March 1999. Her case was brought before the IACHR which found it admissible on June 21, 2018. Another case brought before the IACHR was that of Doris Yaneth Alape, who gave birth prematurely at 28 weeks. Her son died shortly after, in 1999.⁴²

4. The impact of



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reproductive violence

The impacts of reproductive violence on victims, their families and their communities are manifold and interconnected.

In terms of physical health, it can leave scars, infections or sepsis as a result of operations performed in unsanitary conditions. It can also temporarily or permanently impact women's fertility and/or their bodily integrity.⁴³ Girls and adolescents may see their development affected. In terms of mental and emotional health, it can cause isolation, denial, silence, shame and self-blame as a consequence of the stigma they face.⁴⁴ It can also lead to symptoms of depression, anxiety and post-traumatic stress, causing difficulties when they attempt to recommence their life projects, including difficulties maintaining romantic relationships and a satisfying sex life.⁴⁵ They can also experience impacts on their family lives, particularly on the maternal bonds with the children conceived from rape.

5. International obligations

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regarding the
victims of
reproductive
violence

The international human rights standards derived from instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, and, at the inter-American level, the American Convention on Human Rights, the Convention of Belém do Pará, and the Protocol of San Salvador, establish States' obligations regarding the victims of reproductive violence. According to said standards, during the conflict, States must provide reproductive health information, services, materials and facilities and ensure they are available, acceptable and of good quality for all women, as well as free from any discrimination,⁴⁶

violence and coercion.⁴⁷ This includes maternal health services, contraception, emergency contraception, safe abortion,⁴⁸ postabortion care and prevention, and HIV-AIDS treatment.⁴⁹

States are required to prevent, prohibit, investigate, prosecute and punish all forms of gender violence, including forms of reproductive violence.⁵⁰ The CEDAW Committee has recommended States to "provide effective and timely remedies for the various types of violations experienced by women," which must address violations of sexual and reproductive rights,⁵¹ including actions to "prevent, investigate and punish gender-based violations such as forced marriages, forced pregnancies, abortions or sterilization of women and girls in conflict-affected areas."⁵² Additionally, the Human Rights

Committee and other bodies have recognized that some forms of reproductive violence can constitute torture or cruel, inhuman or degrading treatment.⁵³ Such violence may also constitute war crimes or crimes against humanity under the Rome Statute, as determined by the International Criminal Court.⁵⁴ In the Inter-American system, nonconsensual sterilization has been recognized as a form of GBV and a serious human rights violation.⁵⁵ In this regard, States have explicit obligations to prevent, punish and eradicate violence against women and to act with due diligence to prevent, investigate and punish such violence, as well as to change sociocultural patterns of behavior between men and women.⁵⁶

The CEDAW Committee established that States' obligations "require them to address all violations of women's rights as well as the underlying structural sex and gender-based discrimination underpinning such violations."⁵⁷ States must provide the victims of reproductive violence with appropriate reparations, including compensation, restitution, rehabilitation, measures of non-repetition, and measures to promote their physical and psychological recovery.⁵⁸ The Committee also established that "transitional justice mechanisms have the potential to secure a transformative change in women's lives."⁵⁹ In this regard, individual reparations are not enough, as "reparation measures should seek to transform the structural inequalities that led to violations of women's rights, be suitable to women's specific needs and prevent their re-occurrence."⁶⁰

Given that it involves violating reproductive freedom, reproductive violence violates multiple rights, beginning with the

right to information and informed consent. It also gravely affects other intrinsically-related rights, such as the rights to life, integrity and health, as well as the right to live free from torture and cruel, inhuman and degrading treatment and the right to live free from gender violence, among others. In cases involving medical procedures, it also violates fundamental ethical principles, such as respect for individuals and their autonomy, non-maleficence, beneficence, and justice.⁶¹ Therefore, failing to acknowledge the forms of reproductive violence that took place during the armed conflict would be a failure by the Colombian State to comply with its obligations to address and comprehensively redress all aspects of the violence suffered by girls and women in this context, including transformative measures to address structural gender discrimination in the country.

6. The work of truth commissions



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in addressing reproductive violence

Clear progress has been made towards incorporating a gender perspective into the work of truth commissions, an issue that has previously been ignored in cases such as those of Argentina, Chile, and El Salvador.⁶² In countries such as Guatemala, South Africa and Peru, the commissions included a focus on gender, even when their mandates did not explicitly call for them to do so. While in Haiti, Sierra Leone and East Timor, the issue of gender or sexual violence was explicitly part of their mandates.⁶³ However, efforts to identify and provide reparations for forms of reproductive violence are still limited, and such violence is often only considered when it is the result of rape.

Some examples of this include Peru and East Timor. The final report of Peru's Truth and Reconciliation Commission recognized that some forms of reproductive violence had taken place, including forced abortion and pregnancies as a result of rape. However, other modalities, such as forced sterilization, were not included. Additionally, the Comprehensive Reparation Plan resulting from the report only includes victims of sexual violence, failing to provide reparation to all victims of reproductive violence.⁶⁴ East Timor's Commission for Reception, Truth and Reconciliation went further in this area by recognizing the existence of a coercive reproductive planning

program and its impacts,⁶⁵ as well as by documenting cases of forced maternity and obstacles to reproductive health services.⁶⁶ However, other types of violence such as forced abortions and pregnancies were only examined as part of the impact of sexual violence. It should be noted that this Commission recommended the implementation of education and reproductive health programs, as well as effective access to reproductive health services, to foster the ability to make decisions in this area free from coercion or violence.⁶⁷

The effect of this limited recognition of reproductive violence is that it is not as widely identified and documented as other types of violence during conflicts, even when attempts are made by transitional justice mechanisms to apply a gender perspective. Classifying forms of reproductive violence only as an impact of sexual violence: i) obscures the understanding that such violence in itself entails grave human rights violations; ii) makes it difficult to gauge such violence's gravity and the damage caused to victims, their families and their communities, and iii) consequently, adequate measures are left out of reparation processes. This leads to gaps for victims that prevent them from recovering and recommencing their life projects, while also impacting social reconciliation processes.

Recommendations



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1. To identify where forms of reproductive violence have taken place in the armed conflict and recognizing them as grave human rights violations. This includes forced abortions, coercive pregnancies, sterilizations, forced motherhood and reproductive planning, and any other form of control over the reproductive capacity of persons exercised by any actor in the conflict.
2. To explicitly consider how reproductive violence disproportionately affects girls, women and LGBTI persons as part of a structural context of gender discrimination.
3. To assess the physical, emotional and social damage of reproductive violence on victims, families and communities, including its interaction with other forms of GBV.
4. With the participation of victims, to determine forms of reparation that include measures to improve effective access to the sexual and reproductive information and health services they need to exercise their reproductive freedom and recommence their life projects, including the enjoyment of a satisfying sexuality.
5. To determine the social and cultural conditions that make invisible and normalize reproductive violence in order to implement educational strategies to ensure non-repetition.
6. To consider measures to improve effective access to sexual and reproductive health information and services for women, girls and LGBTI persons in rural areas of Colombia as part of reparations to ensure non-repetition.



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Endnotes

- 1 Constitutional Court of Colombia, ruling 092 of 2008 (Reporting Judge José Cepeda Espinosa: April 14, 2008) [hereinafter: Constitutional Court, ruling 092 of 2008]; Constitutional Court of Colombia, ruling 009 of 2015 (Reporting Judge Luis Ernesto Vargas Silva: January 27, 2015) [hereinafter: Constitutional Court, ruling 009 of 2015];
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- 16 CNMH, La guerra inscrita en el cuerpo, supra endnote 14, pg. 176.
- 17 National Center for Historic Memory (CNMH), Violencia paramilitar en la altillanura: Autodefensas del Meta y Vichada. (2018), pg. 201, available at: <http://centrodehistoriahistorica.gov.co/wp-content/uploads/2020/01/violencia-paramilitar-en-la-altillanura-1.pdf>.
- 18 Colombian Criminal Code [CPC]. Law 599 of 2000, article 139B (as amended by Law 1719 of 2014) and article 7. July 24, 2000 (Colombia), [hereinafter: Criminal Code].
- 19 Rome Statute of the International Criminal Court (Rome, July 17, 1998), Article 7 g) and 8 d) vi), Doc. UN A/CONF.183/9 [Hereinafter: Rome Statute of the International Criminal Court].
- 20 Transitional justice system created under Law 975 of 2005 to prosecute crimes committed by paramilitary groups: “Whereby provisions are issued for the reincorporation of members of organized armed groups operating outside the law who contribute effectively to attaining national peace, along with other provisions on humanitarian agreements,” July 25, 2005. D.O. No. 45.980.
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- 23 Patricia A. Weitsman, “The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda.” *Human Rights Quarterly*, 30(3), (2008), pg. 561-578.
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- 28 National Center for Historical Memory (CNMH), Revista Transpopulares. “Ciudadan@ a la calle,” (2015), pgs. 66 and 67, available at: <http://cc.museodememoria.gov.co/wp-content/uploads/2020/03/84.-Ciudadan@-de-la-calle.-Proceso-de-la-Colectiva-Transpopulares-por-cuerpos-libres.pdf>.
- 29 Criminal Code, supra endnote 18, article 139C (amended by Law 1719 of 2014, article 8).
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- 33 Criminal Code, supra endnote 18, article 139E (amended by Law 1719 of 2014) and article 10. It should be noted that although in principle there are interpretations according to which standards have progressively included them as pertaining to forms of gender-based violence. For example: CEDAW Committee, General Recommendation No. No.30, supra endnote 4 and the case of Bosco Ntaganda before

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- 36 Superior Court of Medellín, December 16, 2015, supra endnote 15.
- 37 Superior Court of Bogotá, November 20, 2015, supra endnote 21.
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- 45 Id.
- 46 Committee on Economic, Social and Cultural Rights (CESCR), General Comment 16, para. 29, Doc. UN E/C.12/2005/4, (2005).
- 47 Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14, para. 12, Doc. UN E/C.12/2000/4, (2000); CEDAW Committee, General Comment 24, Doc. UN A/54/38/Rev. 1. 1999, para. 2
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- 59 CEDAW Committee, General Recommendation No. No. 30, supra footnote 4, para. 77.
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- 61 Rebeca Cook et al, Salud Reproductiva y Derechos Humanos, Oxford, Profamilia, (2003), pg. 64 and following, available at: http://www.bdigital.unal.edu.co/51594/1/9588164184_1.PDF.
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