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The rights of women victims of the Colombian armed conflict

Los derechos de las mujeres víctimas del conflicto armado colombiano

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ABSTRACT. This article identifies the rights of women victims of serious human rights and IHL violations and contraventions perpetrated by irregular armed actors during the Colombian internal armed conflict. To this end, it uses a descriptive and qualitative methodology. First, it identifies the international and regional instruments that protect women; then, it considers the national norms for the protection and guarantee of rights. Subsequently, the situation of Colombian women victims is analyzed, and the rights of the victims are described, especially concerning the right to truth, the right to justice, and the right to reparation. The Colombian State still has the duty to move forward in this regard.

KEYWORDS: human rights; international humanitarian law; justice; reparation; women; victims

RESUMEN. Este artículo tiene como objetivo, mediante una metodología descriptiva y cualitativa, identificar los derechos que tienen las mujeres víctimas de graves violaciones a los derechos humanos e infracciones al DIH perpetrados por actores armados irregulares con ocasión del conflicto armado interno colombiano. En tal sentido, se identifican en primer lugar los instrumentos internacionales y regionales que amparan a las mujeres; luego se consideran las normas nacionales de protección y garantía con respecto a los derechos. Posteriormente se analiza la situación de las mujeres colombianas víctimas, para luego describir los derechos de las víctimas, especialmente el derecho a la verdad, el derecho a la justicia y el derecho a la reparación, frente a los cuales el Estado colombiano aún tiene el deber de avanzar.

PALABRAS CLAVE: derechos humanos; derecho internacional humanitario; justicia; mujeres; reparación; víctimas

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Introduction

*The suffering should be inscribed in the collective memory,
but only so that it can increase our capacity to face the future.*

Tzvetan Todorov

The Colombian State has historically been characterized by its institutional weakness, its precarious presence in remote territories, its lack of social cohesion, and difficulty in accessing justice. Similarly, it has been characterized by other underlying structural difficulties, such as the unequal distribution of wealth, the stigmatization and discrimination of some sectors of the population, the low quality of education, and the absence of sources of work, especially in rural areas. Among others, these aspects have led to a situation in which irregular armed actors (IAA) were the only law, for decades, in various parts of the national territory.

In this context, Colombian women, particularly those living in vulnerable areas, have been affected by serious violations of human rights (HR) and breaches of international humanitarian law (IHL). They have been victims of murder, forced disappearance, death threats, displacement, abuse, sexual harassment, rape, extortion, and kidnapping. Among other things, their homes have been set on fire, and their populations attacked (Garay & Pérez, 2018; Quintero, 2018). These actions, perpetrated by IAA, have significantly affected their lives.

Thus, the constant and systematic violation of women's HR has persisted for five decades within the framework of the Colombian internal armed conflict (CAIC in Spanish), directly and indirectly affecting their emotional, family, social, economic, and cultural life (Álvarez & Rodríguez, 2018; Fernández & Pachón, 2019). It has reached a point that a large number of cases remain in impunity. Most of these people have little or no education and are unfamiliar with their rights and the policies developed by the Government in their favor. This lack of knowledge adds to the fear of denouncing their aggressors. It increases the stigmatization and discrimination to which they are subjected "when it comes to having access to judicial mechanisms to establish responsibilities and to obtain reparation of damages and restoration of their rights." (Valiña, 2006, p. 3)

Because women are particularly vulnerable to violence in its various manifestations in the context of armed conflict and cases of impunity for crimes against them are very high (Jiménez & Jiménez, 2019). The possibilities for female victims to enjoy their full rights and have access to justice, truth, reparation, and the guarantee of non-repetition, as indicated by the Colombian constitutional and legal system, is limited. These women also have the right to comprehensive fulfillment, which includes care and assistance; this should not be confused with comprehensive reparation.

Therefore, addressing the protection of the HR of Colombian women victims is compelling and greatly significant because they must claim their rights as victims. The State must be very attentive to this case; there are legally binding norms of international law that it cannot transgress. In this sense, the question of what the rights of women affected by serious violations associated with the CAIC are arises. This article intends to identify these rights to reflect on the complex situation that women victims of CAIC experience when it comes to claiming these rights. Likewise, it intends to contribute to making the rights of women victims visible from academia, based on the right to truth, justice, reparation, and guarantees of non-repetition.

International and regional instruments to protect women

Most of the numerous general and specific international protection instruments concerning the recognition of women's rights ratified in Colombia are part of the country's constitutional block. For example, the United Nations Charter of 1945 adopts measures to confirm the equal rights of men and women to live in peace. Therefore, it created an agency to study women's social and legal conditions (Organización de las Naciones Unidas [ONU], 1945, preamble).

The 1948 Universal Declaration of Human Rights –a milestone and base document– addresses the issue of HR at the legislative level. It indicates that States must ensure progressive national and international measures for recognition and effective implementation. It also recognizes the equal rights of men and women (Declaración Universal de Derechos Humanos, 1948, preamble).

The 1979 “Convention on the Elimination of All Forms of Discrimination Against Women” includes universal principles and measures to ensure that women enjoy equal rights in all aspects. It has been a major advancement in the field of women's rights (“Convención sobre la eliminación...”, 1979, preamble).

Another instrument is the 2002 Rome Statute. It establishes the basis for a legitimate, international penal institutionality, focused on the reparation of armed conflict victims. It includes a delineation of gender and defines the crimes of rape, slavery, pregnancy, forced sterilization, as well as war crimes, crimes against humanity, and genocide (Corte Penal Internacional, 2002, art. 7).

The 2010 “International Convention for the Protection of All Persons from Enforced Disappearance” states that no one shall be subjected to enforced disappearance. This includes arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State or groups of persons acting unlawfully or with the authorization, support, or acquiescence of the State, involving placing a person outside the protection of the law (“Convención Internacional...”, 2010, art. 2).

In the same vein, Resolution 1325 of 2000 on women, peace, and security, issued by the United Nations Security Council, typifies the circumstance of women in situations of armed conflict and urges “all parties to armed conflict to take special measures to protect women [...] from violence [...], particularly rape and other forms of sexual abuse, and all other forms of violence” (Consejo de Seguridad, 2000, p. 5). It also establishes the States’ obligation to consider the issue of prevention, participation, and protection of women from justice operators and armed actors (Olea, 2009, p. 30).

Resolution 81 of 2005 on impunity, issued by the United Nations Commission on Human Rights, proposes a set of principles for the protection and promotion of HR. It establishes the adoption of effective measures in the administration of justice, promotion of transparency, respect of international law, provision of justice to victims, as well as the protection of all persons as an obligation of the States (Comisión Colombiana de Juristas, 2007, p. 55). It also defines the basic guidelines on the right of victims of gross HR violations and grave breaches of IHL to appeal, obtain reparation, access justice, and receive reparation (Comisión Colombiana de Juristas, 2007, p. 55).

In terms of regional instruments, the 1994 “Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women” establishes the legal parameters for violence against women or any action or conduct against them that causes death, physical, sexual, or psychological harm or suffering. The previous considering that violence against women, wherever it occurs, is a violation of HR and fundamental freedoms as it entirely or partially limits the recognition, enjoyment, and exercise of these rights and freedoms. It is also an offense to human dignity and a manifestation of the historical inequality of power between women and men (“Convención Interamericana...”, 1994, preamble).

Although women’s rights have been addressed in international and regional instruments, focusing primarily on guaranteeing HR, in Colombia, the implementation and adoption of these principles are still precarious. Without detracting from the gradual progress that the State has made, in practice, the judicial operators, the justice system itself, the authorities, the entities in charge, as well as the policies, mechanisms, and measures developed continue to be deficient. Therefore, female victims of the CAIC have not been able to take real action for justice; thus, they have not been able to enjoy their rights effectively.

National regulations to protect and guarantee rights

Regarding the recognition, protection, and guarantee of women’s rights granted by the Colombian State, the Political Constitution of Colombia (1991) is explicit. It establishes that the State must guarantee the effectiveness of the principles, rights,

and duties contained in it (Constitución, 1991, art. 2). It also recognizes the primacy of an individual's inalienable rights and protects the family (Constitución, 1991, art. 4). It also contemplates the right of all people before the law to be protected, treated well, and enjoy the same rights, freedoms, and opportunities without discrimination. To this end, the State must create the tangible and effective conditions for equality by adopting measures in favor of groups that are marginalized or discriminated (Constitución, 1991, art. 13), among others.

However, despite this constitutional recognition, actions in the legal system to address and implement the rights of women victims of the CAIC have not taken place in an affirmative, efficient, and effective manner. The State fails to take action against acts that threaten the lives of women, because "the mere that a victim exists means that the responsibility to ensure the full enjoyment of that person's rights is not being [fulfilled] and that it must act to redress the damage." (Olea, 2009, p. 29)

Violence against women also emphasizes the inequality between men and women. For decades, IAA groups have mistreated, abused, harassed, and degraded thousands of women in different ways as a method of war, preventing these victims from fully exercising their HR, human dignity, integrity, life, and freedom. These are the founding principles of a social state based on the rule of law.

Thus, the Colombian Constitutional Court has consolidated an extensive and reiterated jurisprudence in the area of analysis of the content, scope, and development of victims' rights, particularly concerning the rights to truth, justice, and comprehensive reparation based on constitutional articles, the guidelines set by IHL, and the principles of the social rule of law (Corte Constitucional, Sentencia T-595, 2013).

Law 975 of 2005 or the Justice and Peace Law is among the national laws focused on providing CAIC victims comprehensive attention. It is the first regulatory framework developed to facilitate the process of demobilization of non-State armed groups. With this law, the Government sought to guarantee the victims' rights to truth, justice, and reparation to the highest possible degree¹ (Ley 975, 2005, art. 1). Its intention is to facilitate peace processes and the individual or collective members of illegal armed groups' return to civilian life. In this case, the interpretation and application of the planned provisions must be carried out in compliance with the constitutional norms and international treaties ratified by Colombia.

1 In this law, the term *victim* is understood as "A person who, individually or collectively, has endured direct harm, such as temporary or permanent injury, resulting in some form of physical, mental or sensory (visual or auditory) damage or disability, emotional suffering, financial loss or impairment of fundamental rights. The damage must be the result of actions that have violated penal law, carried out by members of organized armed groups outside the law." (Ley 975, 2005, art. 5).

This law introduced a peculiar process of transitional justice in Colombia, whose main purpose is to enable the end of the CAIC. It also establishes a differentiating approach that recognizes that there are populations with particular characteristics, including gender, race, ethnicity, sexual orientation, and disability status (Ley 975, 2005, art. 5). Thus, the victims must be approached accordingly in the penal and judicial process. As a result, the State must provide special guarantees and protection measures to women, children, seniors, people with disabilities, and displaced persons, among others (Ley 975, 2005, art. 5).

Within the framework of the CAIC, the vast majority of victims belong to the lowest socio-economic levels, making the magnitude of the situation more pressing. The quantitative information on this issue varies according to the sources. In this war, measurements are challenging. The armed actors have used strategies to mask their crimes. Sometimes, other forms of violence are attributed to the harm inflicted on the victims, in a war in which multiple types of violence are intertwined (Grupo de Memoria Histórica, 2014).

Law 1448 of 2011 or the Victims and Land Restitution Act is another relevant regulation. The purpose of this law is to establish a set of judicial, administrative, social, and economic measures, both individual and collective, within the framework of transitional justice to grant victims² the enjoyment of the rights to truth, justice, and reparation with a guarantee of non-repetition (Ley 1448, 2011, art. 1).

For years, the Colombian State has sought ways to attend to violated victims. Especially those who, because of the CAIC, have found it difficult to claim their rights. In this sense, it has designed policies that advocate and drive programs for specialized attention. However, they have been deficient in transforming the realities of female victims. The complexity of the actions and lengthy response times to the needs has allowed these women to be re-victimized. In this sense, even though they are granted rights, women victims of CAIC are deprived of these in these situations; this generates an inequitable social dynamic.

The situation of women victims of the internal armed conflict

As mentioned, the CAIC has a history of systematic violence against women in various settings and contexts. The IAA's mechanisms of repression and coercion against

2 In this law, a *victim* is a person who individually or collectively has suffered harm from events occurred that on or after January 1, 1985, as a consequence of IHL breaches or serious and manifest violations of international HR law on the occasion of the CAIC. The spouse, partner, same-sex partner, and relatives in the first degree of consanguinity or first degree of civil status of the direct victim, when the latter has been killed or has disappeared, are also victims. In the absence of these, those in the second degree of ascending consanguinity will be the victims (Ley 1448, 2011, art. 3).

women range from physical, psychological, and sexual abuse to displacement, forced pregnancy and abortions, disappearances, forced public nudity, and even death, among other aberrations.

The IAA's abuse of power throughout the national territory has contributed to unprecedented sexual violence. In some cases, these acts were committed with singular severity and used as an instrument of terror, humiliation, and ignominy³. According to Amnesty International's 2004 report, "the sectors most at risk include women of African descent and indigenous women, displaced women, peasant women, and women living on the outskirts of cities." (Amnistía Internacional, 2004, p. 2)

The status of "the indigenous woman [...]" implies a situation of illiteracy and insufficient education [...]. This factor, although not a determinant, affects vulnerability to violence and, in particular, to physical violence" (Calla, 2007) as well as sexual violence. Women are a universe of vulnerable victims that are confronted with exclusionary and discriminatory systems when they turn to institutions seeking services, where they do not receive a satisfactory response. These facts further aggravate the situation.

According to figures from the Victims' Unit, as of November 2018, one of the CAIC's most significant impacts has been on women's lives and bodies. This information shows that of the 4,361,511 women included in the Registry of Victims of victimizing acts, 23,949 women⁴ were victims of crimes against freedom and sexual integrity; 78,828 of forced disappearance; 203,058 of threats; 461,550 of homicides; and 3,799,561 of displacement ("Cerca de 24 mil", 2018).

In this regard, the Attorney General's Office issued "guidelines to address the fight against impunity in cases of sexual violence in the framework of the Colombian conflict, especially the committed against women and to guarantee their dignity" (Procuraduría General de la Nación, 2012). It urged all public officials to implement the information, orientation, and attention protocols for victims of sexual violence to safeguard their dignity and right to privacy. It also urged court officials to take into account the rights of victims of sexual crimes in judicial proceedings (Procuraduría General de la Nación, 2012).

However, in Colombia, impunity from sexual violence during the CAIC continues to be a fundamental issue that hinders women's rights, as a penal policy is

3 A study by the Humanas Corporation (2009) identified other purposes of sexual violence, those related to "the domination of the population and the territory, carried out in the contexts of attacks on the population, territorial control, deprivation of liberty, and violence, with the objective of dissuading, especially women in their work of denouncing or investigating, obtaining information, exterminating an organization, a social or political group, rewarding and generating cohesiveness for 'military successes' within the armed groups." (Ortegón, 2018, p. 82)

4 From this group of female victims, 7892 have been compensated, to September 2018, over 153,000 million pesos ("Cerca de 24 mil", 2018).

required to guarantee HR. The adoption of tangible measures must begin with educating women in vulnerable populations, jurisdictional operators, and all other officials involved in the matter. The fight against impunity for this type of crime still requires special efforts on the part of the Colombian judicial system.

The bodies of thousands of Colombian women have become another object of the logic of war (Montaño & Alméras, 2007, p. 66). Despite the CAIC's systematic and nefarious degradation of women, which has produced serious social and psychological trauma, the aggressors remain unpunished to this day. These mechanisms of terror and repression cannot remain in impunity; they are a violation of the specific recommendations of the Inter-American Court of Human Rights and other regional and international bodies.

The rights of victims on the occasion of the Colombian armed conflict

Regarding the rights of the victims, including the female victims addressed in this article, the national Government adopted the previously mentioned Law 1448 of 2011 or the Victims and Land Restitution Act. It provides for the following rights:

- To truth, justice, and reparation;
- To attend institutional and community dialogue scenarios;
- To benefit from affirmative action taken by the State to protect and guarantee the right to live in dignity;
- To seek and receive humanitarian attention;
- To participate in the formulation, implementation, and monitoring of public policy on prevention, care, and comprehensive reparation;
- To public policy derived from this law that has a differentiating focus;
- To family reunification when, because of their type of victimization, the family unit has been divided;
- To return to the place of origin or relocate voluntarily, safely, and with dignity;
- To the restitution of lands (if applicable);
- To information on directions and means of access to measures;
- To know the status of judicial and administrative proceedings that are taking place;
- and, for women, to live free of violence (Ley 1448, 2011, art. 28).

With these rights, the State seeks to alleviate somewhat the grave HR violations to female victims, which have exponentially affected their lives, homes, families, work, and communities. Therefore, the victims must have a clear understanding of the proportionality of the actions of attention, assistance, and reparation and the impact that each one has produced so that these differentiated effects are taken into account when claiming their rights.

The right to the truth

The right to the truth is a term that is subject to constant change and reinterpretation. Building a consensual notion is challenging, as well as assuming the consequences that can be derived from its perception. In any case, the truth has been considered both as an individual right and a collective right. It must be respected even under an existing amnesty law, as both direct and indirect victims have the right to know the facts (Rodríguez, 2018, p. 205).

Therefore, “trying to know the truth of what happened, as well as honoring the aspirations of freedom and dignity of the actors of the conflict and society in general, paying special attention to the victims” (Rodríguez, 2018, p. 45) is an exercise within the transitional justice process that promotes reconciliation. In this sense, truth plays a fundamental role in building peace. The victims, family, and society, in general, have the inalienable and imprescriptible right to know the truth about the motives and circumstances in which HR violations and IHL breaches were committed; and, in the cases of death or disappearance, their whereabouts must be known and revealed (Ley 1448, 2011, art. 23).

The right to the truth is not only a victim’s right, as recognized by the Inter-American Commission on Human Rights. Rather, “all of society has the inalienable right to know the truth about what happened, as well as the reasons and circumstances in which aberrant crimes were committed, in order to prevent such events from happening again.” (Tribunal Superior del Distrito, 2015)

Thus, the truth seeks to reveal the causes and motives of the CAIC, as well as the patterns and contexts of criminality and victimization. Therefore, confessions must clearly contribute to the reconstruction of the truth, as well as help determine the legal consequences of the acts committed and ensure that they do not happen again. Ultimately, the right to the truth is based on the right to know what happened, without limiting this knowledge to the particular episode experienced by a given victim, but rather extending it to its roots in history, to the context in which it occurred, and in which it was made possible.

The right to justice

The right to justice translates into a duty of the State to carry out an effective investigation that determines the violations, as well as to identify the responsible and establish their respective sanctions (Ley 1448, 2011, art. 26). The above is in accordance with international human rights law and international criminal law, which form part of the block of national constitutionality in article 93.

Thus, the Colombian State must investigate and clarify serious HR violations and IHL breaches and punish those responsible for these crimes proportionately. This duty does not imply the need to obtain results; it requires the provision of means. In other words, it compels the State to guarantee that investigations and sanctions are carried out with due diligence, following the terms established by Inter-American jurisprudence. Impunity for a serious HR violation would reflect the State's failure to protect the rights of the victims (Sánchez, 2013, p. 86).

In other words, if the State allows serious violations to go unpunished and does not re-establish the victim's rights, it would be failing in its duty to guarantee the fulfillment of the rights established in the Constitution and the international instruments to which Colombia is a signatory.

Thus, firstly, the State should sanction those responsible for serious HR violations. It is precisely from this that the limits of amnesties and pardons in peace processes arise. Nevertheless, it seems sensible "to make the recourse to granting amnesties and pardons in favor of persons who have taken up arms against the State compatible with the State's obligation to clarify, punish, and repair HR and IHL violations." (Comisión Interamericana de Derechos humanos, 2004)

Secondly, the State must impose appropriate penalties and fines according to the gravity of the conduct, as well as the confiscation of property or assets derived from illicit activities. Thirdly, the State should conduct prompt, impartial, and thorough investigations. Lastly, the States must allow the victims access to the judicial systems to report violations, request investigations, convictions, and reparations. These services must be effective and within the framework of the rules of due process, without discrimination.

The right to reparation

The right to reparation is the right of victims who have suffered rights violations to be compensated for the harm they have suffered, including their communities. This reparation must be made in an adequate, differentiated, transformative, and effective manner. It includes measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, in its individual, collective, material, moral,

and symbolic dimensions (Ley 1448, 2011, art. 25). This is complemented by the State's duty to adopt not only reparation measures for victims but also establish institutional and structural measures to prevent HR violations committed against human rights from occurring again.

Similarly, the jurisprudence of the Inter-American Court of Human Rights has determined that reparations must be “integral and full, in such a way as to guarantee, as far as possible *restitutio in integrum*, that is, the restitution of the victims to the state prior to the act of violation, and that if it is not possible [...], take remedial action” (Sánchez, 2013, p. 63).

Reparation must be fair and proportionate to the damage suffered. It must entail repairing material—including consequential damage and loss of earnings—and immaterial damages, which are the moral damages caused to the person. It must also be individual and collective.

Thus, female victims of HR violations and IHL breaches must be compensated as part of the justice process. However, the responsibility for this component should not only fall on the State but also on the direct perpetrators, that is, the victimizers. In fact, the basic principles and guidelines on the right of victims of gross HR violations manifested in IHL to remedy and reparation indicate that victims must file appeals and obtain reparations.

Victims require adequate, effective, and prompt reparation to promote justice and remedy the damage suffered (Núñez & Zuluaga, 2012, p. 213). The absence of reparation would constitute an act of impunity; this is a violation of the States' obligations to “provide victims with effective remedies and reparation for damages suffered, to guarantee the inalienable right to know the truth, and to take all necessary measures to prevent the recurrence of such violations.” (Núñez & Zuluaga, 2012, p. 213)

In this regard, the Colombian State has made significant progress in recognizing the rights of women victims of the CAIC. In these cases, the intrinsic connection between the right to truth, the right to justice, and the right to reparation have been stressed. By knowing what, how, and where things happened, as well as the intervening actors, the victims have been able to locate their relatives' remains. They also have the certainty that the pertinent investigations are made and that those responsible are sanctioned, achieving, in part, the reestablishment of their rights.

Conclusions

For decades, the IAA have enforced their law in large part of the Colombian territory through various strategies of war. They have demonstrated cruelty, ruthlessness, and heinous and inhuman behaviors to consolidate territories for their purposes and

criminal activities. In this context, they have perpetrated massacres, attacks, murders, kidnappings, threats, forced disappearances, sexual violence, and forced displacement as a form of social control against the civilian population to demonstrate their power to the State and society.

In the last decades, the Colombian State has developed a legislative framework, as well as public policies and government programs, to protect the victims of the CAIC. Despite this, they have not been adequately implemented and have not managed to transform reality, that is, to fully compensate the universe of victims.

There are several reasons for the difficulty in implementing Laws 975 of 2005 and 1448 of 2011, which focus on the care of victims, especially of women from vulnerable and ethnic populations. These include the lack of political will; the small budgets allocated, considering the number of victims; the corruption in State entities; the obstacles encountered by victims in the entities, and the lack of investigative specialization of officials. In addition to the previous, is the lack of knowledge that some of the victims have about their rights and the failures in the system of attention and administration of justice.

There are still discriminatory patterns in the judicial system against women victims of serious HR violations because of their gender. This bias impedes access to justice and exposes them to revictimization; hence, the high rates of impunity in cases of sexual violence. Thus, the measures adopted by the Colombian State have been insufficient and have fallen short on responding to a problem of such magnitude, given the high figures currently registered by the Unit for Victims.

According to published reports and court rulings of proceedings concerning sexual violence-related crimes under Law 975 of 2005, most of the charged demobilized persons have denied their participation, while others have claimed that the relations were consensual. Similarly, in public statements, former FARC members have denied having committed sexual crimes against women (Fernández, 2017; Cubides et al., 2019).

The Colombian State has issued Law 1448 of 2011 to guarantee the HR of women victims of the CAIC. It must meet the established criteria for the adoption of the right to truth, justice, and reparation with guarantees of non-repetition. Therefore, the State and its institutions must adjust and strengthen existing programs through strategies that communicate the rights of the victims so that women who have not reported physical, psychological, and moral damages can do so. They must be recognized and made visible to achieve comprehensive individual and collective reparation.

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