

The Additional Impact on Victims during the Judicial Process of Sexual Violence Cases in the Context of the Internal Armed Conflict in Colombia

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Abstract

The article presents a study related to the victimization of individuals in judicial processes related to the Colombian internal armed conflict. Under this scenario, a conceptual, comparative and doctrinal analysis was proposed to understand the social dimension of the victims of the armed conflict in the judicial scenario. This study is relevant, as it allows us to glimpse topics or spectrums that are rarely analyzed in judicial scenarios.

Keywords: Victimization, access to justice.

1. Introduction

Throughout history, various peoples have experienced wars and armed conflicts, as evidenced by vestiges, books and historical records. These confrontations are often narrated in an epic manner from the perspective of the victors, including cruel passages that justify subsequent reactions, often heroic, but also bloody. Despite this, the cruelty and suffering resulting from these situations, even in extreme cases such as genocide, have not been silenced and have motivated the implementation of regulations to reduce them.

Since the end of the 19th century, international agreements have been adopted to regulate hostilities, especially after the Second World War, when the international community, with the support of the International Committee of the Red Cross, developed Conventions and Protocols to prevent harm, especially among the civilian population. Initially, hostilities in international conflicts were sought to be regulated, and later, rules for armed conflicts within the territories of States were developed. The objective of this regulatory framework is to establish limits on armed confrontation between the sides and to clearly define who does not participate in war activities.

After the Second World War, behaviour that caused suffering led to debates and the creation of International Tribunals to judge conduct that had ignored the parameters of the Law of Nations, changing the tradition of judging such behaviour through national judicial bodies. With the Nuremberg and Tokyo Tribunals, established to judge military leaders of Germany and Japan, the idea of the imprescriptibility of crimes against humanity was introduced as a justification for their prosecution, due to the seriousness of the acts committed. This marked the beginning of the formation of International Tribunals to judge serious cases of war crimes and crimes against humanity, culminating in the creation of the International Criminal Court, at the end of the 20th century, as a subsidiary body to national judicial bodies.

Although various acts against the life, liberty, integrity and property of individuals and communities were prohibited and penalized, sexual violence against women only began to be specifically penalized in the 1990s. Before that, it was considered as conduct that offended the honor of women.

Among the recurrent violations of human rights in Colombia are those related to sexual violence. Although these practices remained unpunished for many years due to the lack of judicial attention, the persistence of victims and numerous civil society organizations managed to have sexual violence finally recognized. The Constitutional Court issued a statement in the context of declaring an unconstitutional state of affairs in the care of the population that is the victim of forced displacement. In response, measures were taken to protect displaced women, especially with regard to their sexual and reproductive rights, by identifying the systematic nature of sexual violence. This progress made it possible to move from analyzing individual cases of sexual violence to a judicial recognition of this practice as a systematic and widespread phenomenon within the armed conflict. Based on the above, the following question arose: What is the additional impact on victims during the judicial process of cases of sexual violence in the context of the internal armed conflict in Colombia?

2. Methodology

The methodology proposed in the present study is based on a hermeneutic paradigm. A descriptive study with a qualitative approach was applied, since what was intended was a documentary study and, for this purpose, the study was applied through documentary review and construction of information sheets.

3. Results and Discussion

Colombia has played a prominent role in political armed conflicts throughout its history. These confrontations have been a constant since the time of independence from Spain, with brief periods of peace followed by more intense armed confrontations. In the 20th century, significant war events stand out, especially the period known as the "violence" —between 1948 and 1953— and —from 1964 to the present— a complex internal armed conflict that, in recent times, has been considered an attack on democracy, particularly after the events of September 11, 2001 in New York.

The Colombian armed conflict has generated around 7,392,679 victims (Registry of the Unit for Comprehensive Attention and Reparation to Victims, 2015) over a period of 50 years, during which illegal armed groups have competed for control of illicit activities, land, among others. These confrontations have involved sexual assaults, mainly directed at women and girls. According to Amnesty International (2011), those responsible for these assaults are paramilitary groups (currently criminal gangs), members of the security forces and guerrilla fighters.

Among the human rights violations in Colombia, those related to sexual violence have been repeatedly denounced. Although, for a long time, these violations went unpunished due to the lack of judicial action, the recognition of sexual violence was achieved thanks to the persistence of the victims and various civil organizations. The Constitutional Court, in the context of a declaration of an unconstitutional state of affairs to address the population that is the victim of forced displacement, adopted measures to protect displaced women, especially with regard to their sexual and reproductive rights, identifying the systematic nature of sexual violence in the armed conflict.

Colombia has suffered serious attacks against the civilian population, perpetrated by both illegal armed groups and members of the State's armed forces. These attacks have deeply affected communities, involving homicides, torture, forced disappearances, forced displacement, recruitment of minors and personal injuries due to anti-personnel mines or explosive devices.

At the end of the 20th century and beginning of the 21st century, in attacks on the civilian population and during clashes between the parties in conflict, there was widespread and systematic recourse to the commission of acts that affected freedom and sexual integrity, mostly directed towards women. According to the analysis carried out by Céspedes (2010), the reason behind sexual violence in the Colombian armed conflict is linked to territorial aspects. "These actors base a large part of their dynamics of violence on the strategic role they assign to their presence in certain areas, to the control of strategic corridors or simply to predation."

The magnitude of this crime is considerable, according to Rodríguez and Rodríguez (2014), who provide approximate figures of 489,687 women who have been direct victims of sexual violence from 2001 to 2009. They underline the need for a cultural change to eradicate this form of violence, pointing out that - although norms, laws, resolutions and rights contribute to reporting and recognizing sexual violence against women - it is essential to reflect socially and transform cultural patterns in daily life and especially in all institutions.

The population affected by the conflict resorts to institutions, in accordance with what is established by the norms and following the indicated procedures. In situations where the authorities intervene immediately after the crime, the process designed for flagrante delicto cases is followed. However, when the damage occurs without the presence of authorities, victims must inform the authorities about the facts, so that they can initiate their action. Such action depends on objective factors, evidence and regulations, as well as subjective factors, such as the conviction of the need to intervene, which can have a greater impact on the development of legal actions than evidence or regulations.

Gutiérrez de Piñeres describes secondary victimization as the phenomenon of negative psychological, social, legal and economic repercussions resulting from the victim's interaction with the criminal justice system. This implies a frustrating mismatch between the victim's legitimate expectations and institutional reality, which leads to a lack of understanding about the psychological and physical suffering caused by the crime. That is, secondary victimization is "the poor or inadequate attention that the victim receives once he or she comes into contact with the justice system." (Beristain, 1994).

Secondary victimization refers to the inappropriate relationship that develops between institutions and victims. In this context, the prejudices of judicial professionals, police and health personnel define the dynamics of the relationship and assign a place to the victim, without considering their intentions and needs. This process implies ignorance of the rights of the victim, even discriminating—according to characteristics such as gender, sex, age, culture, ethnicity, disability or national origin—and ignoring the experience lived with the crime.

In a recent report carried out in El Salvador, with the support of the United Nations Population Fund (UNFPA), the Technical Executive Unit of the Justice Sector (UTE, 2013) highlights that secondary victimization can be more damaging than primary victimization. This is because the system does not fulfill the promise of justice and protection, which adds to the frustration and guilt experienced during primary victimization, generating skepticism and distrust in the system. Some of the factors identified as generating secondary victimization include long procedural times, the repetition of testimonies at different times during the process, the lack of specialized guidelines for the collection of evidence, the absence of adequate spaces for the reception of statements, and the limited availability of technical and human resources to provide protection to victims. Also noted is the lack of focus on repairing damage to victims, the lack of belief in technical and scientific evidence, and the excessive importance given to the debate on the credibility of testimonies, among other aspects.

With regard to women victims of sexual violence, it has been observed that, in the initial care, officials tend to minimize the women's stories. In some cases, after listening to them, officials refer them to another institution where they must repeat their testimony. In addition, there have been cases in which officials identify too much with the person being assisted, becoming excessively involved and, consequently, can deprive the victim of their decision-making capacity, reproducing dynamics of dominance and submission present in the victim-victimizer relationship.

Due to these situations and practices, victims have been harmed, without the full exercise of their rights being restored. From the moment they file a complaint, victims find themselves in stressful situations in which the emotions experienced during the incident resurface. Instead of receiving the necessary emotional support, the requirements of the criminal process often go against the victims' needs for emotional support.

According to Gutiérrez de Piñeres (2009), secondary victimization can occur at any of the different moments in which the relationship is established between the victim and the entities, whether public or private, involved in handling the case. The severity or mitigation of this situation depends on the type of crime for which the victim seeks help from the authorities, with sexual crimes being the most frequent ones that generate revictimization practices. In these cases, officials often blame the victim for what happened, suggesting that women could have avoided the situation by changing their behavior. Furthermore, it is noted that, in many cases, families pressure victims to remain silent, fearing the dishonor that would supposedly come with making the abuse public.

From the moment the complaint is filed, the victim finds herself in stressful situations, reliving the associated emotions. Instead of receiving the necessary emotional support, the requirements of the legal process go in the opposite direction to the needs for emotional support.

The UTE of El Salvador, based on the work of Gutiérrez (2009), highlights that studies with victims revealed that their needs and feelings were not considered relevant. Furthermore, expectations of justice were low, leading to frustration, skepticism, and perceptions of wasted time and money. In cases of sexual crimes, victims feel accused and singled out by judicial officials, which, when the facts are public, leads to social exposure and loss of credibility. This provokes feelings of guilt and fear, resulting in psychological deterioration. Irregularity in procedural scheduling requires constant availability, affecting job performance and, in some cases, causing job loss.

In this study, the various victimization factors were classified into three main categories. The first refers to factors associated with the ideological-cultural framework, which include attitudes, stereotypes, prejudices and cultural preconceptions about gender roles that influence the perception of victims. The second category addresses factors linked to the procedural structure and the exercise of due process, in which the victims' statements are questioned and what happened is examined. Finally, the third category focuses on factors associated with the work dynamics of judicial offices, which can erode sensitivity and empathy towards those who suffer.

The attribution of victim status is given by professionals and justice operators, based on the interpretation of the information available to them. Many times, this status is conferred by subjective aspects and not by legal factors. A judge could observe a victim and subjectively decide whether the victim meets his or her preconceived judgments as to whether the victim really is a victim: based on the way the victim dresses, the socioeconomic class he or she belongs to, and the circumstances that imprisoned the victim [Unidad Técnica Ejecutiva del Sector Justicia (UTE), 2013].

In the context of women who have been victims of sexual violence, it has been observed that, during the initial care, officials sometimes tend to minimize the women's stories. In some cases, after listening to them, they refer them to another institution where they must repeat the story of the events. In addition, there have been situations in which officials identify too much with the person being cared for, becoming excessively involved in the care, which could deprive the victim of her decision-making capacity. This could reproduce dynamics of dominance and submission, present in the relationships between victims and aggressors.

Therefore, each case and situation may be unique and unrepeatable, which implies that applying a standardized approach to care could have the effect of re-victimizing the person (Calle, 2004).

In this context, it is advisable to distinguish the current state of the victim, her life history, perceived abilities, understand her religious and ideological perspective on gender violence and the repercussions this has on her relationships. This is essential to determine the appropriate course of action.

Thus, people who have suffered gender violence, including victims of sexual violence affected in the context of the internal armed conflict, may face situations during the investigation and judicialization process that result in new forms of victimization. These experiences are so painful that they could hinder the processes to manage the consequences and develop resilience capacities.

Although, from an internal legal perspective, it could be considered that the actions of judicial operators could give rise to diverse judicial decisions in extraordinary appeals and generate the right to compensation within the framework of administrative reparation actions for damages attributable to the State, the protection that all people should receive would not be clearly ensured.

In Colombia, from the late 1990s, reports began to emerge on situations of sexual violence directed towards women and based on gender.

This is attributed to the action of several women's organizations, which began to report on the serious situation they were facing in various parts of the country. These organizations carried out various activities before international bodies and agencies, with the aim of making known the situation of the female population in areas affected by armed actors.

These initiatives were recorded in reports by the UN, the IACHR, women's organizations at the national level, declarations by the Constitutional Court, promulgation of regulations and, recently, in historical memory reports on violence against women.

In the INVS, Sexual Violence is understood as the concept defined by the (World Health Organization) as, "any sexual act, the attempt to consummate a sexual act, unwanted sexual comments or advances, or actions to commercialize or otherwise use a person's sexuality through coercion by another person, regardless of the relationship between the person and the victim, in any setting, including the home and the workplace."

The National Centre for Historical Memory (CNMH) has a Memory and Conflict Observatory (OMC), responsible for collecting figures and data on human rights violations during the armed conflict. After reviewing various sources, including those of the Unit for Comprehensive Care and Reparation for Victims (UARIV), as well as information collected by non-governmental organizations, it has been concluded that there is insufficient information on the total number of cases. Furthermore, the information available is not adequate to adequately support the cases reported to the National Information Network (RNI) of the UARIV.

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According to the estimate made by the Constitutional Court of Colombia (2008), sexual violence in the context of armed conflict and forced displacement cruelly uses women's bodies. This phenomenon occurs in a widespread and silent manner, both in public and private spaces, and affects approximately 36% of displaced women, whether in their places of origin or destination, and both by armed actors and by close people in family or social circles.

In April, the Constitutional Court of Colombia (2015), provided the Attorney General's Office, in a confidential manner, with information on 183 cases that could involve approximately 600 women victims of sexual violence. The instruction was for the Attorney General's Office to carry out the corresponding investigations and present the necessary accusations. Subsequently, through Ruling 009 of 2015, the Constitutional Court reported that by 2013, according to data provided by the Attorney General's Office, 18 convictions had been issued. In addition, in 24 cases, alleged perpetrators were identified, 76 cases were in the preliminary phase, and decisions were made to file cases in 69 cases.

Sexual violence in the context of the armed conflict in Colombia has highlighted the way in which communities are subjugated to those who control the territory. This territorial control implies absolute and sovereign dominion over bodies and territory, since these actors have the capacity to decide on life and death, both morally and physically (Segato, 2004, cited in CNMH, page 21). The diversity of actors, moments, intensities and narratives of the victims, as well as the statements of the perpetrators and the methods used, has led to the identification of different scenarios in which the crimes have been perpetrated, including the scenario of armed dispute, territorial control and the intra-fila scenario.

In each context, sexual violence takes on different practices and objectives, but all of them reinforce the patriarchal nature of armed conflicts and associated sexual violence.

The legal and judicial management of sexual violence during armed conflicts has been influenced by the active action of women's groups, both internationally and in Colombia. Without the

intervention of these organizations, it is likely that this crime would have remained hidden and with higher rates of impunity.

In the report /CN.4/2003/75, issued on January 6, 2003, by the United Nations Economic and Social Council, during the 59th session, in item 12 a) of the provisional agenda on the Integration of Women's Human Rights and the Gender Perspective, specifically in Subheading E, which deals with violence against women, mention is made of:

37. In 1994, the crime of sexual violence was an invisible crime that was rarely reported or prosecuted. Female victims were often too ashamed to come forward, and if they did, they were penalized by the criminal justice system. This led to a reconsideration of the problem, and many countries began to consider legislative reform to provide victims with a better justice system. 38. The legal structure derived from classical approaches to rape and sexual violence results in strong suspicions being cast on the victim. In some countries, rape is considered a crime against honour rather than a crime against the person. According to this paradigm, rape is a moral issue rather than a problem of violence. If a woman is not "honest" in a social sense, then her cause loses strength. In some countries, a man who marries the woman he has raped can obtain forgiveness for his crime. This is seen as protecting the woman's "honour" and the "integrity" of her family. In these legal systems, the act of rape as a violation of the integrity of the person does not have its proper place in criminal law.

In Colombia, in the early years of the 21st century, sexual violence against women, within the internal armed conflict, experienced a critical increase. The formation of the AUC, a paramilitary organization that united various paramilitaries from the last decade of the previous century, became the strategy to confront the guerrillas. The FARC, with a large number of members and strategic advances, began dialogues with the government in 1998. While the dialogues were taking place, the AUC took advantage to occupy territories and control populations, carrying out indiscriminate attacks, especially against women.

The international mobilization of women's organizations promoted the construction of local experiences and the elaboration of plans to highlight gender issues on public agendas. This allowed the dissemination of the problems of Colombian women in international instances. Initially, complaints of sexual violence were ignored by the media, government institutions and justice, which focused on more obvious violations of rights. Organizations such as Casa de la Mujer and Sisma Mujer facilitated the presentation of cases to international bodies, so that they would include the situation of Colombian women in their reports.

In light of the serious violations of women's human rights, the Rapporteur (Coomaraswamy, 2001) expressed her concern by pointing out that one of the main problems of secondary victimization lies in the formulation and execution of the Colombian State's criminal policies. This is due to the lack of specific measures to ensure adequate access to the administration of justice:

“The impunity of those responsible for gender-based violence is one of the most important factors contributing to the continued violation of women's rights and the increase in violence in general. The Special Rapporteur regrets the prevailing situation of impunity in Colombia and

notes that the State will be responsible for all human rights violations that occur as long as it does not take measures to ensure that justice is administered in a fair and effective manner in the country.”

Colombia has experienced a notable change in the criminalization of sexual violence in the context of the armed conflict. From lacking any provision in this regard, it now has a comprehensive structure that includes administrative and judicial bodies, regulations, procedures and protocols for the investigation, prosecution and punishment of sexual violence. Before the reports of the United Nations Rapporteurs and the IACHR, there were no regulations or public policy measures in this regard. Thanks to Order 092 of 2008 of the Constitutional Court, the judicial authorities were provided with normative, technical, procedural and conceptual tools related to sexual violence, and now have a variety of regulations at their disposal to make decisions in any situation related to this problem.

4. Conclusion

Women become a medium through which various actors in the Colombian armed conflict send messages of violence. Sexual violence in this context seeks to instill terror in communities, take revenge on adversaries, or silence women human rights defenders or social leaders. This practice allows organizations to demonstrate their power and carry out such acts without facing consequences. Furthermore, humanitarian assistance in rural areas does not include psychosocial assistance to victims of sexual violence linked to the armed conflict. Some regions of the country still lack services beyond medical care. This suggests that victims of sexual violence may experience victimization, not only by their aggressors, but also through the care system, their own families, and institutions. The impact of this violence has reached levels of social trauma in some communities, underlining the importance of implementing collective reparation processes in certain areas of the country.

Secondary victimization in situations of sexual violence is influenced by structural aspects of society and not only by deficiencies in the functioning of judicial institutions. Consideration of gender in studies on violence against women reveals the various elements that influence the formation and establishment of social interactions. It is clearly perceptible how social categories, roles, hierarchies, as well as rights and obligations are configured.

In short, throughout history, wars and armed conflicts have left a mark of suffering and cruelty. However, awareness of brutality has led to the implementation of international regulations to mitigate the impact on the civilian population.

In the specific case of Colombia, the internal armed conflict has left a marked violence, especially against women, with sexual violence as a systematic phenomenon. Despite initial impunity, the persistence of victims and civil organizations managed to highlight this violence, leading to protection measures and judicial recognition.

Secondary victimization, which encompasses psychological, social, legal and economic aspects, becomes an additional challenge for those seeking justice. Lack of understanding, discrimination and lack of emotional support during the judicial process contribute to this victimization.

The magnitude of sexual violence in Colombia is alarming, affecting a large number of women. And, despite the implementation of legal and judicial measures, challenges persist, such as re-victimization and the lack of a comprehensive response that addresses the emotional and psychological needs of victims.

A cultural change is crucial to eradicate this form of violence and transform patterns rooted in society. The active participation of women's organizations and international mobilization have been fundamental to making this problem visible and addressing it.

In this sense, it is important to raise awareness about the process followed with victims of sexual violence, promoting the formation of multidisciplinary teams that provide them with respectful and considerate treatment. It is recognized that justice plays a therapeutic role. In addition, the importance of implementing preventive, care and sanction measures at the individual, microsocial, mesosocial and macrosocial levels, related to victimizing acts of gender-based sexual violence, is highlighted.

It is necessary to implement a gender perspective with favorable circumstances to apply equality policies and affirmative measures, and considering the attention dedicated to women by international human rights organizations, such as the Belem do Pará Convention and notable rulings of the Inter-American Court of Human Rights, there is an urgent need to examine judicial processes, especially those linked to sexual crimes against women.

WORKS CITED

- Beristain, A. (1994). *Nueva Criminología Desde El Derecho Penal y la Victimología*. España: Tirant Lo Blanch.
- Calle, S. (2004). *Consideraciones sobre la victimización secundaria en la atención social a las víctimas de la violencia de Género*. En *Revista Portularia* (págs. 61-66). Universidad de Huelva. Nº 4.
- Coomaraswamy, R. (2001). *Informe de la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias*. Misión a Colombia. Bogotá: Organización de las Naciones Unidas. .
- Corte Constitucional de Colombia. (2008). Auto 092 de 2008 de seguimiento. Obtenido de Sentencia T-025 de 2004.: <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>
- Corte Constitucional de Colombia. (2015). Auto 009 de 2015 de seguimiento . Obtenido de Auto 092 de 2008 Pág 84. : <http://www.corteconstitucional.gov.co>
- Organización Mundial de la Salud. (s.f.). *Violencia Sexual*. . Comprender y abordar la violencia sexual contra las mujeres.
- Registro de la Unidad para la atención y reparación integral a las víctimas. (1 de Mayo de 2015). *Unidad para las Víctimas* . Obtenido de <https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/>
- Unidad Técnica Ejecutiva del Sector Justicia (UTE). (2013). *Por una atención libre de victimización secundaria en casos de la violencia sexual*. . Obtenido de Fondo de Población de Naciones Unidas (UNFPA) : <https://www.ute.gob.sv/>