

May 20<sup>th</sup>, 2020

Esteemed

Ms. Dubravka Šimonović

Special Rapporteur on violence against women, its causes and consequences

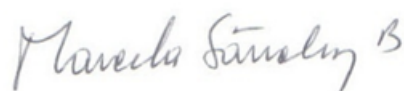
United Nations

*Ref.: Answers to questionnaire for the thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*

Dear Ms. Šimonović,

Colombia Diversa is a leading LGBT human rights organization in Colombia and Latin America. For over 15 years, we have produced information and advocated for national and international authorities to uphold and promote LGBT rights. In our view, contributing to international human rights mechanisms and furthering their understanding of the violence and discrimination faced by people with non-normative sexual orientations and gender identities (SOGI) is a fundamental part of this work. As such, below we submit our responses to the *Questionnaire for the Thematic Report on Rape as a Grave and Systematic Human Rights Violation and Gender-based Violence against Women* regarding sexual violence against lesbian, bisexual, and trans (LBT) women in Colombia. Our information draws from our research on the prejudice-based violence against these populations within and beyond the Colombian armed conflict. We hope you find this information useful and that it helps cast a light on the heinous acts of sexual violence faced by lesbian, bisexual and trans women in our country.

Warmly,



**Marcela Sánchez Buitrago**

Executive Director  
Colombia Diversa

## Annex 1

### Answers by Colombia Diversa to the questionnaire on the criminalization and prosecution of rape

#### Definition and scope of criminal law provisions

1. *Please provide information on criminal law provisions on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.*

In Colombia, rape (and other analogous forms of sexual violence) are subject to two criminal justice systems, one which regulates conduct in the context of the armed conflict and a second that regulates conducts beyond the scope of the armed conflict. We will begin with the latter.

Within the ordinary justice system, rape is defined in Chapter I of Title IV of the Criminal Code and is understood as a series of offenses against the legal right to “sexual freedom, integrity and education” (so called since Act 360 of 1997). The crime is not gender-specific, meaning that all persons (regardless of their gender) can commit or be a victim of rape.

The types of rape covered by the Colombian Criminal Code are:

- Article 205, *acceso carnal violento* or sexual penetration, defined as “carnal knowledge of another person through violence”.
- Article 206, a violent sexual act, which consists of any “sexual act other than sexual penetration by means of violence”.
- Article 207, sexual penetration or a sexual act with a person who is unable to resist such an act. In this type of crime, the inability to resist is defined as being incapacitated, unconscious or mentally disabled in such a way that it impairs the person’s ability to understand the sexual act or give consent.

The definition of sexual penetration can be found in article 212 of the Criminal Code: "For the purposes of the conduct described in the previous chapters, sexual penetration shall mean penetration of the anal, vaginal or oral cavity by the virile member, as well as vaginal or anal penetration with any other part of the human body or object" (article 212 of the Colombian Criminal Code).

The definition of violence is found in article 212A of the Criminal Code: "For the purposes of the conduct described in the preceding chapters, violence shall be understood to mean: the use of force; the threat of the use of force; physical or psychological coercion, such as that caused by fear of violence, intimidation; illegal detention; psychological oppression; abuse of power; the use of coercive environments and similar circumstances that prevent the victim from giving free consent".

Chapter II of Title IV of the Criminal Code criminalizes abusive sexual acts, protecting minors under the age of 14 from sexual penetration (article 208, thus establishing the age limit for consent at 14); persons incapable of resisting sexual penetration or mental disorder from abusive sexual acts (article 210); and all persons from sexual harassment (article 210A). The latter offense

was established under Statute 1257 of 2008, which recognized sexual violence as a type of gender-based violence. Article 3 of this law can be interpreted to mean that the crimes of rape and abusive sexual acts are linked to the concept of sexual harm or suffering against women. However, the crime is not gender-specific, so any person can commit or be a victim, including LBT women.

With regard to acts of sexual violence committed during the armed conflict, the Colombian Criminal Code prohibits the following crimes against persons and civilian goods protected under International Humanitarian Law (IHL):

- Article 138, Rape (violent sexual penetration) against protected persons. This provision states that this kind of rape must be committed “in the context of (*en ocasión de*) and during the course of armed conflict”. It is not gender-specific, so the provision may be applied to any kind of rape committed by any armed group directly participating in hostilities. As far as the definition of rape, it refers back to the definition provided by art. 205 of the same Criminal Code.
- Article 139, violent sexual acts (same as described above) against protected persons
- Article 140, forced prostitution

In 2014, Statute 1719 modified the Criminal Code, increasing prison sentences for crimes perpetrated against protected persons under 14 years of age and adding reproductive-sexual violence and other acts recognized as war crimes and crimes against humanity under International Criminal Law:

- Article 138A, Rape (abusive sexual penetration) against a protected person under age 14.
- Article 139A, violent sexual act (any sexual act different from rape) against a protected person under age 14.
- Article 139B, forced sterilization
- Article 139C, forced pregnancy
- Article 139D, forced nudity
- Article 139E, forced abortion
- Article 141A, sexual slavery against a protected person
- Article 141B, sex trafficking

All of these provisions are gender-neutral, which means that the victim can be any person, regardless of their sexual orientation, gender identity or sex assigned at birth. However, it is important to emphasize that the provisions in Statutes 1257/2008 and 1719/2014 were specifically created to address the grave situation of violence against women and girls within and beyond the armed conflict. They seek to challenge the structural violence and rampant impunity faced by women and girls in Colombia and thus represent a key victory of the women’s and feminist movement.

2. Based on the wording of those provisions, is the provided definition of rape:

1. *Gender specific, covering women only* YES/NO
2. *Gender neutral, covering all persons* YES/NO
3. *Based on the lack of consent of victim* YES/ NO
4. *Based on the use of force or threat* YES/NO
5. *Some combination of the above* YES/NO
6. *Does it cover only vaginal rape?* YES/NO
7. *Does it cover all forms of penetration?* YES/NO. *If yes, please specify.*

As stated above, the criminalization of rape includes vaginal and anal penetration, with body parts (penis, fingers, feet, etc.) or objects (sticks, clubs, bats, dildos, etc.).

\*(We do not expand on the subject of marital sexual violence because we know other feminist organizations with more expertise in the matter are providing such information).

3. *What is the legal age for sexual consent?*

14<sup>th</sup> years old as stated in Response 1.

### **Aggravating and mitigating circumstances**

6. *Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?*

6.1. *Is rape by more than one perpetrator an aggravating circumstance?* YES/NO

Criminal Code, art. 211, circumstances of punitive aggravation: 1. The conduct is committed with the assistance of another person or persons.

6.2. *Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)* YES/NO

Criminal Code, art. 211, circumstances of punitive aggravation:

2. The person responsible should have any character, position or office that grants him particular authority over the victim or prompts the victim to place their trust in him.

7. If committed against person in a situation of vulnerability due to of their age, ethnicity, physical, mental or sensory disability, occupation or trade.

8. If committed with the intention of generating social control, fear or obedience in the community.

6.3. *Is rape by spouse or intimate partner an aggravating circumstance?* YES/NO

Criminal Code, art. 211, circumstances of punitive aggravation:

5. If committed against a relative up to the fourth degree of consanguinity, fourth degree by affinity or first civil degree, on a spouse or permanent companion, or against any person who is

permanently integrated into the domestic unit, or taking advantage of the trust placed by the victim in the perpetrator or in one or more of the participants. For the purposes of this article, affinity shall be derived from any form of marriage or *unión libre* (cohabitation).

*7. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.*

Not specifically for sexual violence crimes. However, the Criminal Code foresees mitigating circumstances for criminal behavior in general, as follows:

**ARTICLE 55. CIRCUMSTANCES OF LESSER PENALTY.** The circumstances that allow for lesser punishment, provided that they have not been accounted for in any other way, are as follows:

1. The lack of prior criminal record.
2. Acting for noble or altruistic motives.
3. Acting in a state of emotion, excusable passion, or intense fear.
4. Exigent personal or family circumstances at the time of the offense.
5. Voluntarily attempting to undo or ameliorate the conduct's consequences after its commission.
6. Voluntarily repairing the damage caused, even if it is not total. Likewise, if the persons affected by the punishable act have been compensated.
7. Reporting voluntarily to the authorities after having committed the punishable act or averting the unfair accusation of third parties.
8. Indigence or lack of enlightenment, insofar as they have influenced the commission of the punishable conduct.
9. Conditions of mental inferiority determined by age or by disability, insofar as they have influenced the commission of the punishable conduct.
10. Any circumstance of similar significance to the above.

**ARTICLE 56.** Whoever carries out the punishable conduct under the influence of profound situations of marginality, ignorance or extreme poverty, insofar as such circumstances have directly influenced the commission of the punishable conduct and are not sufficiently grave as to preclude responsibility, shall incur a penalty of no more than half of the maximum, nor less than one sixth of the minimum indicated in the respective provision.

**ARTICLE 57. ANGER OR INTENSE PAIN.** Whoever commits the punishable conduct in a state of anger or intense pain, caused by serious and unjustified behavior of others, shall incur a penalty of not less than one-sixth of the minimum and not more than half of the maximum indicated in the respective provision.

*8. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO*  
*If so, at what stage and what are the consequences?*

Since 2008, Statute 1257 does not allow prosecution to forgo or close an investigation of sexual violence and other gender-based crimes when the victim and the perpetrator reach a private reconciliatory arrangement. Before the Statute, the Criminal Code allowed victims of domestic violence (*violencia intrafamiliar*, as it is called in Colombia, but not rape or other sexual violence crimes) to withdraw from an investigation if an arrangement was reached with the perpetrator. The reasoning behind such allowances was that the State should only become involved in ‘private crimes’ when a bilateral and voluntary agreement could not be reached. The Statute shifted away from this reasoning, adopting a new view of domestic violence based on the notion that the State has the duty to prevent and correct the power asymmetries between perpetrators and victims of such violence, particularly since it arises from structural discriminations on the basis of sex, gender, and other axes of inequality. Since these provisions are gender-neutral, they are applicable to LBT women suffering violence in the context of marital relationships.

9. *Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?*  
YES/ NO *If yes, please specify.*

9.1. if the perpetrator marries the victim of rape? YES/ NO

9.2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/ NO

10. *Is rape reported to the police prosecuted ex officio (public prosecution)?*  YES/ NO

11. *Is rape reported to the police prosecuted ex parte (private prosecution)?* YES/ NO

12. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?* YES/ NO

According to the Criminal Procedure Statute (L. 906 of 2006), the defense and prosecution can reach an agreement (akin to a plea bargain) before the process advances to the judging phase. The goal of these agreements is to terminate the criminal proceedings and reduce the backlog of cases in courts. In this regard, any criminal proceeding, regardless the kind of crime being prosecuted, can be terminated through such an agreement. The only exception is for sexual violence committed against a minor. Per article 199.5 of the Statute for the Protection of Childhood and Adolescence (L. 1098 of 2006), these benefits do not apply when sexual violence crimes are committed against a child or adolescent. This, of course, includes LBT girls and adolescents.

As previously mentioned, the Colombian criminal justice system does not allow for friendly settlements between victims and perpetrators of sexual violence crimes.

4. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?* YES/ NO
5. *Please provide information on the statute of limitations for prosecuting rape.*



Article 83 of the Criminal Code states that the statute of limitations for each offense established under criminal law must be equivalent to the maximum prison sentence that the offense carries. This period cannot be less than 5 years or exceed 20 years. In the case of rape (violent sexual penetration, article 205), the prison sentence ranges from 8 to 15 years. As such, the statute of limitations for simple rape is 15 years (maximum of the prison sentence established by article 205). Additionally, according to article 83, sex crimes against children have a statute of limitations of 20 years, i.e., the maximum allowed by the law.

### ***Additional information on criminalization of sexual violence against LBT women:***

#### The broader protection of LBT women against sexual violence

Through constitutional ruling C-029 of 2009, same-gender couples were included in the regulations governing other crimes such as domestic violence, aggravated homicide, failure to provide food, kidnapping and threats. All these crimes had circumstances of punitive aggravation or definition in which the spouse or permanent partner was included in a heterosexual interpretative logic. The interpretation of Ruling C-029 of 2009 will be taken into account for the application of the circumstances of aggravation of punishment for crimes of sexual violence when it is exercised against a person who is part of the family nucleus, who is a spouse or permanent partner regardless of whether or not he or she is of the same gender as the aggressor. It also serves as a new key of interpretation for article 230 of the Criminal Code (offense of abuse by restriction of physical freedom), which broadens the concept of family and partnership to include same-sex couples.

In Ruling T-1096 of 2004, the Constitutional Court protected the rights of a homosexual man deprived of his liberty who had been the victim of sexual violence by other prisoners because of his sexual orientation. In this case the Court upheld the need to protect the rights of the population deprived of liberty, especially considering the fact that this is a social group that has been traditionally discriminated against. The authorities were ordered to implement measures to prevent further human rights violations against the victim and to initiate the respective criminal investigations.

The Attorney General's Office, the only prosecutorial body in Colombia, created an investigation protocol for cases of sexual violence. This document is a guideline within the institution, issued and approved by its own internal regulatory mechanisms. This protocol contemplates acts of sexual violence against LGBT persons as mechanisms of retaliation, alleged correction and means of social punishment.

Based on the presidential decree (Executive Order) 4151 of 2011, the Constitutional Court in ruling T-288 of 2018 recognized that one of the functions of prison and penitentiary establishments is that "when there is a complaint, claim or denunciation of acts of discrimination on the grounds of sexual orientation, gender identity, sexual violence or violation of the right to intimate visits of a person deprived of his or her liberty, these facts will be brought to the attention of the area of citizen services or the director of the establishment. This will ensure that

the necessary measures are taken to ensure that the threat or violation ceases. In addition, the complaint will be referred to the Attorney General's Office or the General Prosecutor's Office, as appropriate, without prejudice to internal investigations. And, when there is an alleged commission of a punishable conduct, the officers of the surveillance and custody corps who perform judicial police functions may receive the complaint and carry out the urgent actions, to ensure the first material elements of evidence".

### Protection of LBT women against sexual violence in Colombian criminal law

The definition of "rape" (abusive and violent sexual acts) is applicable in situations of sexual violence against non-binary persons, intersex and in cases of sexual violence between persons of the same gender. Likewise, the criminal offense of femicide, created by Law 1261 of 2015, includes among the elements of context that indicate its commission the exercise of sexual violence concomitant with or preceding the murder of a woman because of her status as a woman or because of her gender identity, thus recognizing the close relationship between sexual violence and gender violence (according to Article 1 of the same law). It also includes a circumstance of punitive aggravation if this conduct is carried out because of the victim's sexual orientation. Colombia was the first country in Latin America to apply this crime of femicide due to prejudice against a trans woman, in 2017.

Regarding the circumstances for punitive aggravation, the Constitutional Court of Colombia ruled on the absence of gender identity as a factor of discrimination that may constitute a motive that makes the punishment of crimes more burdensome. In this regard, it indicated that the wording of the normative text complies with the parameters of equality and non-discrimination established in article 13 of the Political Constitution, insofar as gender identity must be understood to be effectively included on the basis of a systematic and teleological interpretation of the notions of "sex" and "sexual orientation". Specifically, the Court noted that

The point is based on the normative premise that crimes motivated by the victim's gender identity are not a more punishable circumstance. The Court understands, however, that a textual, contextual and teleological approach to the accused precept rules out this conclusion. First, because Article 58.3 of the Criminal Code does aggravate crimes motivated by aversion to the sex of the victim, and the determination of the sex of persons may take into account not only their biological conditions but also their own perception of their sexual identity; in other words, the category of sex subsumes that of sexual orientation. And secondly, because Article 58.3 of the Criminal Code aggravated crimes motivated by aversion to the victim's sexual orientation. To this regard, the Court asserted that when the Criminal Code was issued, in the legal community the notions of sexual orientation and gender identity were identical and synonyms, so it must be presumed that the legislator wanted to aggravate both forms of discrimination even though it's not expressly stated in the legal disposition.

In addition, as noted above, article 211 of the Criminal Code provides a series of grounds for aggravating the penalties for offense against sexual freedom, integrity and education (see question 2.1 above). Act No. 1257 of 2008 added to this list several circumstances that, if



verified in the prosecution of the conduct, would allow the penalty to be increased by one third. These include acts of sexual violence committed:

- 7.[...] [against] persons in a situation of vulnerability due to their age, ethnicity, physical, mental or sensory disability, occupation or trade.
8. [...] with the intention of generating social control, fear or obedience in the community.

We do not know if these provisions have actually been used in the framework of criminal proceedings conducted by the Prosecutor's Office. However, they can be applied as an aggravating factor in cases where acts of sexual violence are committed against LBT persons in the context of sex work, in situations of forced displacement, or when the purposes of such violence are intended to establish various forms of social control, fear or obedience in the victim and other LBT persons or perceived as such in a broader social context (for example, when corrective, instructive, exemplary or punitive violations of the victim's real or perceived sexual orientation and/or gender identity are committed).

In addition, the inclusion of the categories of sexual identity and sexual orientation for the application of criminal law in the area of gender violence and sexual violence in armed conflict (from Statutes 975 of 2005, 1448 of 2011 and 1592 of 2012) is relevant. Although they imply general rules to describe circumstances of discrimination, there is no rule that directly sanctions the exercise of violence against LGBT persons, even in the area of armed conflict, even when the systemic nature of this type of violence has been demonstrated.

Since the implementation of the Final Peace Agreement (2016), the possibility has been opened up for cases of gender-based violence, including sexual violence against LGBT people in the context of the armed conflict, to be brought before the Special Jurisdiction for Peace (JEP by its abbreviation in Spanish). In February 2020, a request was made to open a case of sexual and reproductive violence and other crimes motivated by the sexuality of the victims.

## War and/or conflict

15. *Is rape criminalized as a war crime or crime against humanity?* YES/NO

See above, response 1.

16. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts?* YES/NO

According to article 83 of the Criminal Code, “Criminal proceedings for the crimes of genocide, crimes against humanity and war crimes shall be imprescriptible”. In that sense, since sexual crimes are codified as war crimes (and, in some cases, as crimes against humanity), there is no statute of limitations for sexual crimes related to the armed conflict.

17. *Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?* YES/NO

See above, response 16.

4. *Has the Rome Statute of the International Criminal Court (ICC) been ratified?* YES/NO

Colombia signed the Rome Statute in 1998. Before the ratification process, Act 01/2001 amended the Constitution in order to incorporate provisions of Rome Statute, particularly those regarding the statute of limitations for crimes under its jurisdiction. Then, Statute 742 of 2002 incorporated the treaty into domestic law.

### ***Sexual violence against LBT women in Colombian Armed Conflict***

Sexual violence is one of the primary repertoires of violence used against LGBT people in the Colombian armed conflict. In this regard, Colombia Diversa has begun to build a database of episodes of SOGI-motivated violence during the armed conflict. Of the 139 recorded episodes, 38 are of sexual violence. Of these events 8 were perpetrated by the United Self-Defense Forces of Colombia (AUC), a far-right paramilitary group; 6 by paramilitary successor groups that arose after the partial demobilization of the AUC in the Justice and Peace Process; 3 by unidentified paramilitary groups; 13 by the FARC-EP; 3 by the Armed Forces; 3 by the National Police; and 3 by unidentified actors. This means that sexual violence has been perpetrated by all actors in the war, attacking the sexual freedom, integrity and the access to other social rights of LGBT people solely because of their homophobic and transphobic prejudices.

During the armed conflict, sexual violence was not isolated or random, but rather a sustained war practice and a cruel expression of prejudice against LBT women. Such violence served different purposes for all the perpetrators and had different impacts on the victims. For example, in our research of sexual violence perpetrated by the FARC-EP guerilla, we found that this armed group used sexual violence as a way to ‘correct’ those sexualities seen as inappropriate or incongruent with the moral standards set out by the group for the communities or territories

they intended to govern. That was the case of a lesbian human rights activists in Putumayo, who was subjected to a multiple-perpetrator rape in the presence of her family as a way to correct her sexuality and her lesbian activism. They also used sexual violence as a form of punishment, whenever victims did not allow the group members to instrumentalize them. That was the case of an older transgender woman from Rioblanco, Tolima, who was forced to perform a oral sex on a guerrilla commander because she refused to tell them the location of her son, a young child whom the guerilla wanted to forcibly recruit. Finally, sexual violence was also operated as a display of the male-warrior power over vulnerable and 'helpless' feminine and feminized peoples and bodies, like transgender women or gay men. This happened to a group of trans women and gay teenagers, who were targeted by FARC-EP members due to their visibly feminine gender expression. These combatants led them to a dark and remote place where they were forced to perform in a beauty pageant for the armed group, which subsequently subjected them to the most heinous and abhorrent acts of collective sexual violence in Tumaco, Nariño.

Such acts of sexual violence worked to reinforce the perception that LGBT people have no worth and no place in Colombian society. As victims internalized this message, they entered into a state of deep sorrow, loneliness, and frustration, remaining silent and even moving away from their community.

This being the case, the role that impunity plays in sexual violence against LGBT women in Colombia must be examined. It is no coincidence that the State does not keep official or centralized statistics on the prevalence of these crimes and, at the same time, that their common denominator is impunity or institutional resistance to receiving complaints. This sheds light on the way in which prejudice structures and permeates state institutions as it does individual consciences. The weak institutional commitment to preventing, addressing, prosecuting and repairing survivors of LGBT survivors of conflict-related sexual violence reveals the Colombian state's lack of political will to uphold the rights of LGBT women. This negligence shows that, despite the rights LGBT victims of conflict-related sexual violence may have on paper, in practice, the state is not interested in recognizing or protecting them, which is consistent with the social complicity that enables and legitimizes these crimes.

The existence of Law 1719 of 2014 should be highlighted, which provides for greater penalties for the perpetrators of sexual violence in the context of the armed conflict and establishes measures to guarantee access to justice for the victims of these same crimes. This law allowed for greater dignity in the treatment of victims of conflict-related sexual violence and made it possible to establish better contextual connections between the conflict and sexual violence as a weapon of war. In addition, it protects victims from suffering humiliating treatment by defense attorneys and compels the Attorney General's Office to consider sexual violence as a systematic attack against the civilian population and to conduct the investigation within a reasonable period of time.

Recently, as part of the *Alianza CincoClaves*, we petitioned the Special Jurisdiction for Peace, a judicial body created by the 2016 Peace Agreement with the FARC-EP in order to prosecute grave, systematic, and representative crimes committed during the armed conflict, to prioritize the investigation and prosecution of sexual violence, reproductive violence and other crimes motivated by the sexuality of the victims, in the same way that it has prioritized the investigation of kidnappings committed by the FARC-EP (Case 001) or extrajudicial executions committed by



the Army (Case 003). The organizations that make up this coalition (Colombia Diversa, Corporación Sisma Mujer, Corporación Humanas, Red Nacional de Mujeres, and Women's Link Worldwide) have called on the JEP and international organizations to recognize and support these victims' demand for justice and reparations. Together, these organizations have presented at least 9 reports with nearly 100 cases of sexual violence committed during the armed conflict. Within these reports, more than 20 cases of LGBT victims of the conflict were reported by Colombia Diversa, 10 of which experienced acts of sexual violence.

### **Data**

*19. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.*

### **Official data**

In Colombia, several state institutions produce statistical information on rape/sexual violence as part of their mission. However, even though they their information systems have the technical capabilities to identify LBT persons among their records, and to differentiate types of violence, this information is rarely open to the public or disseminated in official publications or social media. In addition, these databases have various problems such as: i) lack of suitable variables, ii) lack of clarity about the protocols for collecting and processing information, iii) lack of coordination between the databases that record violent or criminal acts, and iv) lack of training regarding specialized variables for officials who input the information, as well as lack of awareness of the issue.

The Attorney General's Office runs one such database that collects information on sexual violence against LBT women that is not available to the public. This entity has included the LGBT variable as a vulnerable population group among its categories for recording cases, and has carried out, with the support of civil society organizations, gender-sensitivity workshops for the personnel charged with inputting information into the system. However, public figures on sexual crimes do not show this information and only disaggregate it by sex in the victim's document.

Another source of official statistics is the National Institute of Legal Medicine and Forensic Sciences' database. This entity performs and records the medical and forensic examinations for victims of sexual violence and publishes the information annually in the *Forensis* report. This report has a section dedicated exclusively to sexual violence that analyzes the socio-demographic information of the persons examined. However, the data on LGBT persons is only disaggregated by sex in the identity document, which prevents the identification of lesbian or bisexual women, and renders the gender identity of trans person invisible.

Between 2015-2017, the Institute reported 24 (13, 13, and 19 per year, respectively) cases of sexual violence in which the victim was woman belonging to the LGBT population. In the last report (published in 2019 with figures for 2018), it noted that "it cannot be ignored that by 2018 there were 237 cases of sexual violence against people belonging to the LGBT community, of which 22.36% were bisexual women, 34.14% were lesbians and 33.75% were gays".

In addition, as part of the strategies implemented to combat gender-based violence, the Colombian state, together with UN Women, developed the Integrated Information System on

Gender Violence (SIVIGE). This system seeks to integrate and centralize information from different entities on gender-based violence against women and includes sexual orientation and gender identity as separate categories. The information collected is published on the website of the National Observatory on Violence, which is run by the Ministry of Health and Social Security. However, in the public display of statistical data, it is not possible to obtain disaggregated information on LB women or transgender people.

Finally, the Office of the Ombudsman of Colombia, which is the entity charged with protecting the human rights and freedoms of all persons against illegal, unjust, unreasonable, negligent or arbitrary acts, threats or actions by any authority or individuals, created a special department dedicated to women's rights and gender issues (*Defensoría Delegada para los Derechos de las Mujeres y Asuntos de Género*). This office promoted the incorporation of variables in the institution's information system and publishes figures and reports on violence, including sexual violence against LGBT persons, disaggregated by sexual orientation and gender identity. In the Ombudsman's report on gender-based violence and discrimination, it stated that: "in 2018, 19.4% of the 3,225 cases received by *dulpas de género* were for acts of sexual violence committed against women and people with diverse sexual orientations and gender identities. With regard to women, in 43% of the cases the alleged aggressor was a family member, of which 2.3% belonged to the police or the national army, while for lesbian, gay, bisexual, trans and intersex persons, 42% were assaulted by an acquaintance or family member, and 58% by an unknown person".

### **Figures on sexual violence in armed conflict**

Law 1448 of 2011 created the Unitary Registry of Victims (RUV, by its Spanish acronym), a tool that fulfills two functions: i) to count those who have suffered acts of violence in the context of the armed conflict since 1985, as a way of monitoring armed violence in Colombia, and ii) to identify the persons who, in accordance with the provisions of the law, will be beneficiaries of the administrative programs for individual and collective reparations and humanitarian assistance.

The central unit of analysis in this Registry is the "victimizing event" (*hecho victimizante*), that is, the human rights violation or breach of IHL to which the person who registers as a victim was subjected. The list of 15 victimizing acts to be reported includes crimes against freedom and sexual integrity in the context of the armed conflict. According to the RUV, up until April 30 2020, 33,506 events of conflict-related sexual violence were recorded, with a toll of 32,092 victims, of which 487 identified as LGBT.

As Colombia Diversa has mentioned in many reports, the way in which victimizing events are reported according to the sex of the victims is extremely problematic. When a victim seeks inclusion in the RUV or access to reparations programs and humanitarian aid, that person must make a statement before the Victims Unit about the violence they experienced and indicate whether they are male, female or LGBT. This poses a major barrier to reporting because it treats diverse sexual orientations or gender identities as a "third sex", which victims are forced to choose openly. This happens in a context in which victims do not have any prior experience or relationship with the public official who takes their statement and in which years of violence and discrimination make it exceedingly difficult to openly embrace LGBT identities, especially in the presence of strangers. Another problem is that it does not disaggregate by subpopulation, so it is

impossible to examine SOGI-based violence, including sexual violence, across each of the identities and experiences included in the acronym.

In any case, the Registry is a valuable tool for tracking the phenomena of armed violence against LGBT people in the armed conflict, considering factors such as temporality, location and age of the victims.

**Data from civil society**

As part of its efforts to monitor violence against LGBT persons, Colombia Diversa reviews news sources and social media and requests relevant information from government institutions in order to triangulate available data and obtain more complete and reliable statistics than those currently offered by the state. However, government institutions sometimes obstruct access or provide low-quality information. Below, we include statistics on sexual violence against LB women and trans people during the period between 2015-2018 and delve into two case studies that we consider relevant to the present discussion.

**A. Statistics on cases of sexual violence against lesbian and bisexual women and trans persons**

Between 2015 and 2018 at least 71 lesbian and bisexual women and trans people were victims of some form of sexual violence. The majority of victims are lesbian women (47), followed by trans women (12) and bisexual women (8).

	2015	2016	2017	2018	TOTAL
<i>Lesbians</i>	7	11	16	13	47
<i>Bisexual women</i>	3	1	0	4	8
<i>Trans men</i>	2	1	1	0	4
<i>Trans women</i>	4	3	4	1	12
<b>TOTAL</b>	16	16	21	18	71

Figure 1. Cases of sexual violence by sexual orientation and gender identity and year of occurrence. Own elaboration.

The age of most victims was in the range of 20-29 years, followed by 10-17 years and 30-39 years. Of particular concern are the cases of minors.

	10 a 17	18 a 19	20 a 29	30 a 39	40 a 49	50 a 59	No information	TOTAL
<b><i>Lesbians</i></b>	12	5	23	6	0	0	1	47
<b><i>Bisexual women</i></b>	2	0	4	0	0	0	2	8
<b><i>Trans men</i></b>	1	1	1	1	0	0	0	4
<b><i>Trans women</i></b>	3	0	8	1	0	0	0	12
<b><i>TOTAL</i></b>	18	6	36	8	0	0	0	71

Figure 2: Cases of sexual violence by sexual orientation and gender identity and age range of the victim Own elaboration.

Finally, we have collected information regarding the relationship between the alleged perpetrator and the victim in 47 cases. Per this information, most of the perpetrators are acquaintances (17), followed by strangers (15), and family members (10) of the victims.

	Acquaintances	Strangers	Family members	Guerrillas	Partner or former partner	No information	TOTAL
<b><i>Lesbians</i></b>	16	10	6	1	1	13	47
<b><i>Bisexual women</i></b>	0	1	2	0	0	5	8
<b><i>Trans men</i></b>	0	0	1	0	0	3	4
<b><i>Trans women</i></b>	1	4	1	0	0	6	12
<b><i>TOTAL</i></b>	17	15	10	1	1	24	71

Table 3: Cases of sexual violence by sexual orientation and gender identity and alleged perpetrator Prepared by the authors.

Finally, we would like to point out that the sexual violence against two trans women and a bisexual woman was present in the events in which the victims lost their lives.

### ***B. Relevant cases of sexual violence against a lesbian woman and another trans woman***

- Neighbor raped a lesbian woman because of her sexual orientation.

On October 8th 2016, a man raped a lesbian woman in Santa Rosa de Osos, Antioquia. At 1:30 am the victim left a bar where she had been drinking with her friends, and a neighbor offered to accompany her on her way home. That night he tried to hug her several times while they were walking and also asked her why she did not like men. When they reached a remote, dark area, he pushed her away and raped her. The victim arrived at her house at 3:00 am, her clothes stained with dirt and blood. The 32-year-old man had told her on other occasions that she “had to try a male, so that she would stop the nonsense of 'arepiar” (Arepiar or arepera is a common insult against lesbian women in Colombia).

The next day the victim went to the authorities and lodged a formal complaint against the aggressor. The forensic examination confirmed the rape. However, two weeks after the complaint was filed, the assailant was still free and ultimately fled the village. Before fleeing, the perpetrator threatened the victim several times via text messages and phone calls, until she withdrew the complaint. As reported in the press, the prosecutor on the case did not issue an arrest warrant despite having all the evidence to do so. Furthermore, the victim was not given the psychosocial support required by law in such cases.

- Men attempted to kill a trans woman after forcing her to perform non-consensual acts

On July 13, 2019, three men tried to rape a trans woman. They beat her and stabbed her in Ipiales, Nariño. According to press sources, the victim left a bar on the Pan-American Highway and got into a pirate transport vehicle carrying two passengers and the driver. The three men took her to a secluded area on the Umbarud road. There they groped her, forced her to perform oral sex and when they tried to rape her they realized she was a trans woman, so they beat her and stabbed her several times. The victim managed to escape with serious injuries.

The victim was revictimized in the process of filing the complaint because the authorities were unfamiliar with the concept of gender identity and did not give her timely and necessary attention. The procedure took almost 8 days to legalize the documentation at both the National Institute of Forensic Medicine and the Prosecutor's Office.

### ***C. State of criminal investigations***

To date, the Prosecutor's Office has only reported 10 criminal prosecutions for sexual violence against LGBT persons between 2015 and 2019. None of these criminal proceedings have resulted in convictions. Three of the investigations were closed due to the impossibility of identifying those responsible, six others remained in the first stage of investigation and only one advanced to the trial of the alleged perpetrators.