



**UNITED NATIONS COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST
WOMEN**

56th Session, Geneva, Switzerland

October 2013

*From Forced
Sterilization to Forced
Psychiatry:*

**REPORT ON
VIOLATIONS OF THE
HUMAN RIGHTS OF
WOMEN WITH
DISABILITIES AND
TRANSGENDER
PERSONS IN
COLOMBIA**

In response to the

**COMBINED SEVENTH
AND EIGHTH PERIODIC
REPORTS OF COLOMBIA**

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ELIMINATION OF DISCRIMINATION
AGAINST WOMEN**

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List of Acronyms

ACPEM	President’s High Council for Women’s Equality
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRPD	Convention on the Rights of Persons with Disabilities
CUNY	City University of New York School of Law
ENDS	National Survey on Demography and Health
EPS	Health Promoting Entity
FARC	Armed Revolutionary Forces of Colombia
GAT	Transgender Support Group.
HIV	Human immuneinsufficiency virus
IDP	Internally Displaced persons
IGLHRC	International Gay & Lesbian Human Rights Commission
IPES	Institute for Social Economy
IWHR	International Women’s Human Rights Clinic
LGBT	Lesbian, Gay, Bisexual, and Transgender
NGO	Non Governmental Organization
NUIOPD	Uniform Norms on the Equality of Opportunities for People with Discapacities
OHCHR	Office of the United Nations High Commissioner for Human Rights
PAIS	Action Program for Equality and Social Inclusion
POS	Compulsory Health Plan
RED	
UNIDOS	Microfinance Program
RIPS	Individual Regsitory of Provision of Health Services
SNIPD	National Counsel for Comprehensive Attention to the Displaced Population
SREOPD	Standard Rules on Equalization of Opportunities for Persons with Disabilities
UNGASS	Report on Global Progress in the Fight Against AIDS
UN	United Nations
YPAR	Investigation on Participative Action

Colombia - Political Map



Figure 1: Colombia – Political Map. Reprinted from: Presidency of the Republic. Available at: <http://web.presidencia.gov.co/asiescolombia/mapapolitico.pdf>

INTRODUCTION

Since Colombia's last review under the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") in 2007, the country has seemingly undergone many positive human rights changes including, the ratification international human rights instruments and domestic norms to guarantee the rights of persons with disabilities -including those who have been subjected to acid attacks and women with HIV-, the jurisprudential recognition and recognition in public policy y and local programs of the rights of gay, lesbian, transgender and intersex persons, the beginning of the process of peace with the FARC (Revolutionary Armed Forces of Colombia) and the approval of the public policy for the protection of victims of the armed conflict and the restitution of land. In spite of that there are a lot of tasks left for fulfill the guarantee of human rights to the beneficiaries of CEDAW and the elimination gender-based discrimination in the country. In this report, fourteen local and international organizations document some continuous human rights violations that are gender-based or that have a differentiated impact on a specific group because of the gender of its members.

This report is intended to supplement the Government of Colombia's report to the Committee on the Elimination of All Forms of Discrimination Against Women ("the Committee") and it offers specific recommendations so that the Colombian State can adequately comply with the requirements demanded by the Convention with regard to the following issues:

Firstly, we highlight the fact that Colombia's current legal framework on legal capacity allows for the sterilization of women with disabilities without their consent, in the case of women who are placed under plenary guardianship and therefore are deemed absolutely incapable. Widespread and persistent discrimination against women and girls with disabilities results in the systematic denial of their right to sexual education, to experience their sexuality, to have sexual relationships, and to start families on equal footing than women without disabilities¹. Surgical sterilization of women and girls is irreversible, and when forced, it is considered an act of gender-based violence,² a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.³

¹ This situation has been documented in other countries. See, Open Society Foundation , *Sterilization of Women and Girls with Disabilities, a brief paper*. (2011), Human Rightst Watch, Women with Disabilities Australia (WWDA), International Disability Alliance y Stop Torture in Health Care. Disponible en: <http://www.opensocietyfoundations.org/sites/default/files/sterilization-women-disabilities-20111101.pdf>

² CEDAW Comm., *General Recommendation No. 19: Violence Against Women*, ¶ 22, U.N. Doc. A/47/38 (11th Sess. 1992).

³ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶¶ 38-39,

Secondly, sexual violence in the context of the armed conflict continues despite ongoing peace negotiations and the current policies on the protection of victims. Women and girls in Colombia remain vulnerable to sexual violence and continue their search for justice for these crimes in a context of high impunity. In its Recommendations to Colombia in 2007, the CEDAW Committee recognizes the grave situation of women in Colombia and urged the Colombian Government “to address the root causes of violence against women and to enhance victims’ access to justice and to protection programmes.”⁴ Additionally, it requested Colombia to put effective monitoring mechanisms in place and to evaluate regularly the repercussions of all of its strategies and measures adopted for the full application of the Convention⁵. In spite of the Committee’s requests, sexual violence continues to be pervasive and the victims who seek to materialize their rights to justice, truth, reparation and access to rehabilitation services of rehabilitation continue face significant barriers.

Thirdly, transgender persons in Colombia face barriers in their implementation of their basic human rights, including their right to live free from discrimination and violence, and their right to access to health care and employment. These limitations are expressed in many aspects of daily life of this population, like the option to change their name and sex in identity documents, obtaining the military passbook, access to health care (including hormone administration procedures and body changes), education and employment.

Fourthly, it is documented that pregnant women with HIV do not receive the prenatal health care necessary to guarantee the full implementation of their right to health care and in a significant number of cases sterilization is performed during delivery of the child, generating a violation of sexual and reproductive rights.

Finally, in the past years an alarming number of acid attack cases to the face and neck areas were documented as manifestations of gender-based violence, being women the main victims and known men then main perpetrators. In these cases, the numbers of convictions are minimal and the victims face multiple barriers accessing the procedures necessary for their recovery and their social inclusion.

In light of these facts this report highlights five areas of major concern: (1) the negative impact of the current legal framework on legal capacity of women with disabilities, including their sexual and reproductive rights, (2) the persistence of sexual violence and gender-based discrimination in the context of the armed conflict, (3) the

U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak); Convention Against Torture Comm., *General Comment No. 2: Implementation of Article 2 by State Parties*, ¶ 22, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (39th Sess. 2007).

⁴ CEDAW Committee, Concluding comments to Colombia. 37th Sess. U.N. Doc. CEDAW/C/COL/CO/6 (2007) ¶ 11.

⁵ *Ibid.*

discrimination and violence against transgender persons, (4) the lack of access to adequate health care of pregnant women with HIV, (5) the lack of access to health services and the lack of access to justice of women assaulted with chemical agents.

The information contained in this report was prepared by local Colombian organizations and academic institutions as follows: Asdown Colombia⁶, the City University of New York School of Law (CUNY)'s International Women's Human Rights Clinic (IWHRC)⁷, Entre Tránsitos⁸, Fundación Procrear⁹, Fundamental Colombia¹⁰, Grupo de Apoyo Transgenerista (GAT)¹¹, International Gay & Lesbian Human Rights Commission (IGLHRC)¹², MADRE¹³, Profamilia¹⁴, Rostros sin Ácido¹⁵, Sinergias: Alianzas Estratégicas para la Salud y el Desarrollo Social¹⁶, Taller de Vida¹⁷, and the University of Los Andes through the Alberto Lleras Camargo School of Government

⁶ ASDOWN is the Colombian Down Syndrome Association, a parents association seeking to provide a dignified life for people with intellectual disabilities. It is an affiliate organization of Inclusion International. More information at: <http://www.asdown.org>

⁷ The International Women's Human Rights Clinic of CUNY advocates before international and regional human rights bodies and national and local court and legal institutions to combat gender discrimination and sexual violence, advance sexual and reproductive rights and economic and social rights and promote women's participation and empowerment. More information at: <http://www.law.cuny.edu/academics/clinics/iwhr.html>

⁸ Entre Tránsitos is a collective whose mission is the transformation in political, cultural and social contexts of the conventional imaginaries about masculinities to visibilize the experiences of trans persons in the Colombian context. More information at: <http://www.entrettransitos.org/>

⁹ Procrear is a non-profit organization seeking to implement interaction models with communities at high risk to create prevention and response at the community level to reduce vulnerability and suffering and to improve their quality of life. More information at: <http://procrearfundacion.org/>

¹⁰ Fundamental Colombia is a non-profit organization whose members are persons with psychosocial disabilities, users of mental health services and survivors of psychiatric violence. More information at: <http://www.fundamentalcolombia.com/>

¹¹ The Grupo de Apoyo Transgenerista (GAT) is a group of reflection and action that invites the participation of the community that transits through and transcends gender. More information at: <http://grupodeapoyotransgenerista.blogspot.com/>

¹² IGLHRC is an international organization dedicated to advocacy work on human rights of persons who are subjected to discrimination or abuse due to their sexual orientation, identity or gender expression of gender. More information at: www.iglhrc.org

¹³ MADRE is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights. More information at: <http://www.madre.org>

¹⁴ Profamilia is Colombia's largest non-profit provider of sexual and reproductive health care services and products. It is affiliated to the International Planned Parenthood Federation. More information at: <http://www.profamilia.org.co>

¹⁵ Rostros sin Ácido is a grassroots organization formed by women survivors of aggressions with chemical agents all over the country.

¹⁶ Sinergias is a non-profit organization seeking to promote the creation of public policies and to support actions aimed at strengthening health, well-being and social development for everyone, especially communities in vulnerable situations. More information at: <http://www.sinergiasong.org>

¹⁷ Taller de Vida non-governmental organization which promotes the development of personal, community and social resources of boys, girls, teenagers, families and communities, which are affected or in risk to be affected by social-political violence, contributing to strengthen human development from a psychosocial and legal perspective. More information at: <http://www.tallerdevida.org>

(YPAR Group)¹⁸ and the School of Law's Action Program for Equality and Social Inclusion (PAIS)¹⁹. In addition, information was gathered through interviews, field visits, and documentation of personal testimonies conducted in Colombia. Where indicated the victims' names have been modified to protect their integrity.

We hope that the findings in this report will be useful to the Committee and will serve as a catalyst for future advocacy efforts in Colombia.

¹⁸ The interviews conducted by Amy Ritterbusch in this report belong to the study: "A Youth Vision of the City: The Socio-Spatial Lives and Exclusion of Street Girls in Bogota, Colombia." "This dissertation documents the everyday lives and spaces of a population of youth typically constructed as out of place, and the broader urban context in which they are rendered as such. Thirty-three female and transgender street youth participated in the development of this youth-based participatory action research (YPAR) project utilizing geo-ethnographic methods, auto-photography, and archival research throughout a six- phase, eighteen-month research process in Bogotá, Colombia"(Ritterbusch, 2011). Youth-based participatory action research team members: Yohana Pereira, research peer leader; Argenis Navarro, research peer leader; Amy E. Ritterbusch, Assistant Professor, Universidad de los Andes; Alejandro Lanz, Language and Sociocultural Studies and Law Student YPAR researcher; Maria Ines Cubides Language and Sociocultural Studies and Anthropology student YPAR researcher; Laura Martinez, Anthropologist and master student YPAR researcher. This material is based on Ritterbusch's doctoral work supported by the National Science Foundation under Grant No. BCS-0903025. Financial support for doctoral research was also granted by the Fulbright U.S. More information at: <http://gobierno.uniandes.edu.co/>

¹⁹ PAIS – *Programa de Acción por la Igualdad y la Inclusión Social* (Action Program for Equality and Social Inclusion) is a human rights clinic at the Law School of the University of Los Andes that seeks to produce scholarship and engage in actions to advance human rights of people belonging to marginalized communities. Its focus is on the rights of people discriminated based on their disabilities, age, sexual orientation or gender identity. More information at: <http://paiis.uniandes.edu.co>

**ARTICLE 1: DISCRIMINATION AGAINST WOMEN IN
CONNECTION WITH ARTICLE 2: OBLIGATION TO ENSURE THE
EQUAL RIGHTS OF MEN AND WOMEN IN CONNECTION WITH
ARTICLE 3: OBLIGATION TO ENSURE THE FULL
DEVELOPMENT OF WOMEN**

Read together, Articles 1-3 of the Convention require that State Parties take affirmative steps to eliminate discrimination against women, as defined in Article 1, and ensure enjoyment of their civil, political, social, and economic rights on a basis of equality with men.²⁰ Under Article 2, State Parties agree to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women”²¹ Article 3 calls on State Parties to adopt “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”²²

Similarly, Article 43 of the Colombian Constitution states that, “women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination.” Article 13 of the Colombian Constitution further provides, “*All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights and freedoms, and opportunities without discrimination on the basis of sex, race, national or family origin, language, religion, political or philosophical opinion. The government will promote the conditions for equality to be real and effective and will adopt measures in favor of discriminated or marginalized groups. The government will especially protect those people that because of their economic, physical or mental condition are in circumstances of manifest weakness and will sanction all abuses and mistreatment committed against them.*”

²⁰ Convention on the Elimination of All Forms of Discrimination Against Women, art. 1-3, Dec. 18, 1979, U.N. Doc. A/RES/34/180 [hereinafter CEDAW].

²¹ *Id.* at art. 2.

²² *Id.* at art. 3.

I. WOMEN WITH DISABILITIES ARE SUBJECTED TO INTERSECTIONAL DISCRIMINATION

States Parties' obligations are such that they must “ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination - committed by public authorities, the judiciary, organizations, enterprises or private individuals - in the public as well as the private spheres.”²³ Interpreting Article 1, the Committee found that the definition of discrimination includes “gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”²⁴ Discrimination violations, under Article 2, are not restricted to “actions by or on behalf of Governments,” as States parties must take “all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”²⁵ Under the Convention, States may be “responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and [provide] compensation.”²⁶ In General Recommendation No. 18 the Committee, taking into account Article 3, stated their concern in particular for women with disabilities, who “suffer from a double discrimination linked to their special living conditions” and recommended that State Parties “provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation (...) and ensure that they can participate in all areas of social and cultural life.”²⁷

Furthermore, the Office of the UN High Commissioner for Human Rights (OHCHR) in its 2012 thematic study on the issue of violence against women and girls with disabilities, noted that:

[G]ender-specific neglect may compound discrimination against girl children with disabilities who are particularly vulnerable to violence and harmful practices, including . . . forced sterilization perpetrated by family members, members of the community and by those with specific responsibilities towards them, including teachers and employees of children’s institutions.²⁸

²³ CEDAW Comm., *General Recommendation No. 5: Temporary Special Measures*, ¶ 5, U.N. Doc. A/59/38 part I (30th Sess. 2004).

²⁴ CEDAW Comm. *General Recommendation No. 19: Violence Against Women*, *supra* at ¶ 22.

²⁵ *Id.* at ¶ 9.

²⁶ *Id.* at ¶ 9.

²⁷ CEDAW Comm., *General Recommendation No. 18: Disabled women*, U.N. Doc. HRI/GEN/1/Rev.6 (10th Sess. 1991).

²⁸ Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 24, U.N. Doc. A/HRC/20/5 (March 30, 2012).

Echoing this concern, the UN Special Rapporteur on Violence Against Women, its Causes and Consequences released a report in 2012 finding that although “[w]omen with disabilities experienced many of the same forms of violence that all women experienced - when gender, disability and other factors intersect—the violence against them takes on unique forms, has unique causes and results in unique consequences.”²⁹ These unique forms of violence particularly impact indigenous women with disabilities, rural women with disabilities, women with disabilities who are members of minority groups, and women with disabilities in conflict or post-conflict regions.³⁰

In contravention of this Committee’s recommendations, the Government of Colombia’s legal capacity jurisprudence allows for plenary guardianship over a person with a disability through a judicial process called “interdiction.” Law 1306 of 2009 permits full guardianship over persons with “absolute mental disabilities” and allows for partial guardianship over persons with “relative mental disabilities.”³¹ Even though Law 1306 of 2009 describes interdiction as a “protective measure,” it is routinely used to subject women and girls with disabilities to surgical sterilization without their informed consent. Once a guardian has obtained an interdiction order, he or she then has the power to petition the court for an order permitting the sterilization of the person with a disability, may institutionalize the person permanently, has full control over their patrimony, the interdicted person loses their right to vote and must obtain judicial permission to marry. In general, the designated guardian has plenary power over the person declared under interdiction.

Law 1306 of 2009 states that the interdiction procedure “is a restoration measure for the rights of the disabled and, as a result, any person can initiate it”³². Additionally, it states that “the **duty** to request interdiction lies with: 1. The spouse or life partner and blood or civil relatives up to third degree (3^o); 2. The heads of psychiatric and therapeutic treatment clinics and establishments, with regard to the patients that are institutionalized in the establishment; 3. The family defense attorney of the locality of residence of the person with absolute mental disability; y, 4. The public ministry of the locality of residence of the person with absolute mental disability”³³. This norm directly contradicts what is stated in

²⁹ Special Rapporteur on Violence Against Women, its causes and consequences, Rashida Manjoo, ¶ 13, U.N. Doc. A/67/227 (Aug. 3, 2012).

³⁰ *Id.*

³¹ Colombian Civil Code, art. 1504. “People who are deemed absolutely incapable include people with mental disabilities, prepubescent and deaf persons who cannot make themselves understood. Their actions do not result in even natural obligations and are not plausible for bond”

³² Law 1306 of 2009, Art. 25

³³ *Id.*

the Convention of the Rights of Persons with Disabilities and the recommendations made by its monitoring body³⁴.

Colombia's Civil Code's article 1504³⁵ establishes that those with "absolute mental disabilities", those who are prepubescent, and those who are deaf and cannot make themselves understood, are deemed absolutely incapable. A person must be declared under interdiction by a family judge to be deemed absolutely incapable. Therefore, all acts including giving consent for medical procedures, must be performed by their guardian. Law 1412 of 2010 regulates the practice of surgical sterilization in Colombia. It prohibits sterilization of minors and requires informed and qualified consent of the patient. Nevertheless, because a person placed under interdiction is deemed completely unable to consent, the informed consent form is signed by the guardian, regardless of what the person actually wants or knows.

The practice of forced sterilization in Colombia performed on women and girls with disabilities through consent of their guardian is justified by misconceptions that this practice protects them against rape that result in pregnancy as well as stereotypes about persons with disabilities as unfit parents.³⁶ Sterilization is an irreversible surgery that prevents women from conceiving and/or carrying a child. It is a unique form of violence promoted generally by the family members of women with disabilities who act on the advice of health and legal professionals, and which is sanctioned by the Government and judiciary through policies and legislation that legalize and promote this practice.

Article 6 of Law 1412 of 2010 states that "in the case of people with mental disabilities, the request and consent must be signed by the legal guardian with prior judicial authorization"³⁷. Colombia's Constitutional Court has established a standard of "medical necessity" in cases involving sterilization of women with disabilities as well as a consideration on whether the person is likely to be able to consent in the future³⁸. In a subsequent decision, the Court ratified the requirement of obtaining previous judicial permission to proceed with sterilization³⁹. Later the Court considered that women with disabilities can have various degrees of consent and establishes that specific medical

³⁴ See, Convention on the Rights of People with Disabilities, art. 12 and its Committee's recommendations to Tunisia (CRPD/C/TUN/CO/1), Spain (CRPD/C/ESP/CO/1), Peru (CRPD/C/PER/CO/1), Argentina (CRPD/C/ARG/CO/1), China (CRPD/C/CHN/CO/1), Hungary (CRPD/C/HUN/CO/1) and Paraguay (CRPD/C/PRY/CO/1).

³⁵ Colombian Civil Code, art. 1504

³⁶ Testimony of service providers provided through PAIIS, Asdown, and Fundamental Colombia, Bogotá (2012).

³⁷ Law 1412, art. 6.

³⁸ Constitutional Court, Decision T-850 of 2002.

³⁹ Constitutional Court, Decision T-248 of 2003.

evaluations must determine that the person has the ability to consent and judges should determine whether there is a medical necessity for sterilization⁴⁰.

Existing Colombian legislation on legal capacity and judicial findings on sterilization of women and girls with disabilities contradict international human rights standards on the prohibition of discrimination of women and other international instruments such as the UN Convention on the Rights of People with Disabilities, which establishes in its article 12 that all people with disabilities must be afforded full recognition of their legal capacity as well as the necessary safeguards to exercise supported decision making regarding all aspects of their lives⁴¹. The existence of the interdiction and inhabilitation procedures directly contradict the recognition of full legal capacity.

According to information provided by the Ministry of Health 505 women and 127 men with disabilities were sterilized between 2009 and 2011. The information provided does not state how many of these persons were placed under interdiction, what disability did the person have, how was it established that the person had a disability, nor does it state who signed the informed consent (See figure 2)⁴².

⁴⁰ Constitutional Court, Decision T-1019 of 2006.

⁴¹ UN Convention on the Rights of People with Disabilities, Article 12: Equal recognition before the law.

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

⁴² Response to Freedom of Information Request submitted by PAIIS to the Ministry of Health.

Question 4: Numbers of sterilization procedures of women or girls in childbearing age with disabilities

Table N7. Sterilization procedures of women in childbearing age with disability

CUPS PROCEDURE	2009	2010	2011
663910 - FEMININE NCOC STERILIZATION INCLUDING: THOSE CONDUCTED SIMULTANEOUSLY WITH CESARIAN SECTION (CODIFY SIMULTANEOUSLY)	4	4	3
663100 - SECTION AND/OR LIGATION OF FALLOPIAN TUBES (POMEROY TECHNIQUE) BY MINILAPAROTOMY	169	139	186

Source: RIPS - SISPRO Database

Question 5: Numbers of vasectomy procedures of men and boys in situation of disability

Table N8. Sterilization procedures of men in fertile age with disability

CUPS PROCEDURE	2009	2010	2011
637100 - LIGATON OR SECTION OF VASA DIFERENTIA	20	18	32
637300 - VASECTOMY	20	17	20

Source: RIPS - SISPRO Database

Figure 2: Number of surgical sterilization procedures of women and men with disability. Source Ministry of Health. Answer to derecho de petición presentado por PAIIS.

A significant advance on the rights of women with disabilities to full recognition of their legal capacity is Law 1618 of 2013, approved in February of 2013, which establishes in its article 21 a mandate for the Ministry of Interior and Justice to implement modifications to the interdiction procedure to favor full recognition of legal capacity and a supported decision-making system in line with article 12 of the Convention on the Rights of People with Disabilities. To date, the government of Colombia has not published a plan to comply with said mandate.

Women and girls with disabilities face multiple intersecting forms of discrimination that the Convention requires be addressed and eliminated. In General Recommendation No. 27, the Committee recognized that “Gender stereotyping, traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular those with disabilities.”⁴³ Sterilization without informed consent by the person who will be subjected to the procedure is forced and it is the result of discriminatory practices that violate the rights of specific individuals, based on their gender, disability and who have reached puberty. This discriminatory practice is perpetrated by both private and state actors and must be eliminated.

While the Government of Colombia reports on gender-based violence in their country report,⁴⁴ there is no mention of gender-based violence against women with disabilities, and more generally, the practice of forced sterilization.

II. INTERNALLY DISPLACED WOMEN FACE DISCRIMINATION IN ACCESSING HOUSING

Articles 2 and 3 of the Convention squarely place an affirmative obligation on State Parties to take steps, including enacting legislation, to eliminate discrimination against women. The first obligation of State Parties is to ensure that:

There is no direct or indirect discrimination against women in their laws and that women are protected against discrimination - committed by public authorities, the judiciary, organizations, enterprises or private individuals - in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies.⁴⁵

States parties must “address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.”⁴⁶

The CEDAW Committee has recognized that discrimination against women is “inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, social class, caste, sexual orientation and gender identity.”⁴⁷

⁴³ Manjoo, *supra* note 18, at ¶ 15.

⁴⁴ CEDAW Comm., *Colombia Periodic State Report*, ¶ 137-155 (2013) U.N. Doc. CEDAW/C/COL/7-8.

⁴⁵ Gen. Rec. No. 25, *supra* note 12, at ¶ 7.

⁴⁶ *Id.*

⁴⁷ CEDAW Comm., *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, ¶18, U.N. Doc. CEDAW/C/GC/28 (47th Sess. 2010); *see also* Human Rights Comm., *General Comment No. 28: Equality of*

Displaced persons nearly always suffer severe discrimination, and the CEDAW Committee has previously highlighted the heightened vulnerability of Colombia's internally displaced persons to increased discrimination.⁴⁸ The CEDAW Committee has also interpreted Article 4 on Special Temporary Measures to require States Parties to implement concrete policies and programs that improve women's *de facto* equality.⁴⁹ In its 2004 Concluding Observations on Angola, the Committee urged the State Party to "make the promotion of gender equality an explicit component of all its national development strategies, policies and programs"⁵⁰ while paying "special attention to the needs of rural women, women heads of household, refugee women and internally displaced women"⁵¹

An estimated four million Colombians have been forcibly displaced from their homes because of the country's armed conflict, making Colombia the country with the largest number of internally displaced persons in the world⁵². Approximately 10 percent of Colombia's population has been forcibly displaced⁵³. Women and girls living in areas with presence of armed actors flee their homes to avoid being subjected to gender-based violence, including sexual assault, forced recruitment of their children, and control of their social and cultural life and the imposition of specific gender norms. Women and girls represent more than 50 percent of the total population of registered IDPs, and approximately half of all displaced families are headed by women.⁵⁴ In 2010, 97.5 percent of registered displaced families lived below the poverty line and approximately 79 percent lived below the extreme poverty line.⁵⁵ Approximately 86 percent of those households are headed by women. As of 2009, only 5.5 percent of displaced families in Colombia had acquired decent housing.⁵⁶

rights between men and women (art. 3), ¶ 30, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (68th Sess. 2000) ("discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status").

⁴⁸ CEDAW Comm., *Concluding Observations: Colombia*, *supra* note 4, at ¶¶ 13-14. (the Committee noted its concern that the IDP population, especially female heads of household, "continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence" and urged Colombia to "increase its efforts to meet the specific needs of internally displaced women and children.").

⁴⁹ Gen. Rec. No. 25, *supra* note 12, at ¶ 4.

⁵⁰ CEDAW Comm., *Concluding Observations: Angola*, ¶ 149, U.N. Doc. CEDAW A/59/38 part II (2004).

⁵¹ Human Rights Watch. *RIGHTS OUT OF REACH: Obstacles to Health, Justice and Protection for Displaces Victims of Gender-Based Violence in Colombia*. (2012) At: <http://www.hrw.org/sites/default/files/reports/colombia1112forUpload.pdf>

⁵² *Id.* At 21, *See also* U.N. High UNHCR Country Operations Profile – Colombia, <http://www.unhcr.org/pages/49e492ad6.html>

⁵³ *Id.* At 24

⁵⁴ *Id.* at 23.

⁵⁵ *Id.* at 23.

⁵⁶ *Id.* at 24.

Testimony of an Internally Displaced Mother*

Katherine was forcefully displaced by the FARC from her home in Tolima. She arrived in Bogota in 2004 with her husband and three children. She and her husband applied for a housing subsidy numerous times at Compensar - Caja de Compensación Familiar, but each time they were told to wait for a phone call. In the meantime, Katherine and her family lived in cramped and unsafe conditions at the edge of the city. Crime was rampant and she feared for the safety of her family. Eventually she and her husband divorced. Katherine was unable to find employment and was frequently turned down for menial jobs and told she lacked experience. After inquiring again about housing, she learned that because the office required that her family register as a single unit under a primary registrant, her ex-husband was the only person authorized to access the benefits. She had to begin the application process over again, thus further delaying her prospects for housing. As of November of 2012, Karen has still not been given safe housing and continues to take shelter with her family in unsafe and unsanitary conditions.

*Testimony taken from woman forced from her home in the countryside by the armed conflict and displaced in Bogota, Colombia. Testimony provided by Taller de Vida.

In October 2011, the Constitutional Court of Colombia upheld a 2004 ruling finding again that the Government's failure to address internal displacement combined with the general vulnerability of displaced persons resulted in an "unconstitutional state of affairs."⁵⁷ The Court ordered the Government to adopt a wide range of measures, and report on their implementation and outcomes. In response, the Government adopted the Victims and Land Restitution Act in June 2011 to provide compensation to victims of the conflict including land restitution for IDP's. Civil society groups have been vocal about what they categorize as serious flaws in the structure of the law. For instance, the Internal Displacement Monitoring Centre, noted that although paramilitary groups are operating across Colombia and were responsible for the highest number of mass displacements in 2011,⁵⁸ the government still categorizes these groups as "criminal gangs" and therefore

⁵⁷ Corte Constitucional, April 14, 2008, Order 092, Decision T-025/04.

⁵⁸ The Civil Society Monitoring Commission defines a mass displacement as a situation where ten families, or approximately 40 people, flee together from a single threat. Internal Displacement Monitoring Centre,

their victims are not eligible for compensation under the Victim's and Land Restitution Law.

The Colombian Government also noted in its report the passage of the “National Counsel for Comprehensive Attention to the Displaced Population” (Sistema Nacional de Atención Integral a la Población Desplazada or SNIPD).⁵⁹ In 2006, SNIPD created Agreement No. 3, which lays out actions to be taken to protect the displaced population from discriminatory practices.⁶⁰ The following year, Agreement No. 8 was implemented in order to assess how various public policy measures affect the displaced population and to develop new policies based on their findings. The Government also noted in its report the creation of the President’s High Council for Women’s Equality (ACPEM), which has endeavored to strengthen the participation of women’s groups, including internally displaced women, in developing policies and strategies concerning women’s rights. A microfinance program (RED UNIDOS) was also established to promote female head of household micro-businesses.⁶¹ The Government noted that 383 out of 1,153 of participants were displaced. While these initiatives are helping to improve access to services for IDP’s in Colombia, in order to comply with CEDAW, the government must increase efforts to secure safe housing for its large internally displaced population.

III. WOMEN ARE VICTIMS OF GENDER-BASED DISCRIMINATION BY BEING SUBJECTED TO ACID ATTACKS

Infringement of articles 1, 2 and 3 of the Convention occurs when existing laws, policies and programs do not address and prohibit discrimination against women. The CEDAW Committee, in its General Recommendation No 19, established that “discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts **that inflict physical, mental** or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”⁶². (emphasis added)

The National Institute of Legal Medicine and Forensic Sciences shows that between 2010 and 2012, there have been 295 attacks with chemical agents, which makes Colombia one of the countries with the highest rates. Of this amount, most of the cases

“Improved government response yet to have impact for IDPs.” Dec. 29, 2011, pg 4 available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/4C851081FBE3FB10C1257975005E685E/\\$file/colombia-overview-Dect2011.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/4C851081FBE3FB10C1257975005E685E/$file/colombia-overview-Dect2011.pdf)

⁵⁹ CEDAW Comm., Colombia Periodic State Report, *supra*, at 18.

⁶⁰ *Id.*

⁶¹ *Id.* at 38.

⁶² CEDAW Committee . General Recommendation No 19. 11° *supra* at 1, 6

happened in Bogota (69) and Antioquia (50). According to the National Institute of Health, burns with chemical agents constitute 0.37% of the cases of physical violence in Colombia. The same report highlights that 83.8% of the victims of chemical attacks are women, and 79.5% of aggressors are men known to the victim. This percentage does not include Bogota's information. The average age of the victim is 26 years and the offender's age is 35. Of this percentage of victims, 48.6% of the cases correspond to women head of households, and 29.7% cases correspond to students.

In spite of the existing information, Colombia does not have unified statistics related to the occurrence of this crime, because the phenomenon is not clearly understood or are not clear and because the institutions involved are articulated, which hinders the construction of public policies for the prevention of crime and the protection of survivors.

This year Congress approved Law 1639 of 2013, intended to strengthen the measures of prevention, protection and integral attention towards the victims of acid attacks. This Law increased the penalties imposed on perpetrators and created control measures for the commercialization of the chemicals that produce the burns. Finally, it creates a route of integral attention for the victims of these attacks is ordered to the National Government, establishing that these services must be without charge.

IV. TRANSGENDER COLOMBIANS FACE DISCRIMINATION ON THE BASIS OF THEIR GENDER IDENTITY

In its Concluding Observations to Costa Rica, the Committee noted its concern regarding “discrimination in the State party against lesbian, bisexual, transgender and intersex women in access to education, employment and health-care services.”⁶³ The Committee recommended that Costa Rica intensify its efforts to fight discrimination against women based on their sexual orientation and their gender identity.⁶⁴

Between 2008 and 2013, the nongovernmental organization Colombia Diversa published two reports on the human rights of lesbian, gay, bisexual, and transgender (LGBT) persons who continue to be subjected to discrimination and abuse by private entities as well as by state actors⁶⁵. The first report states that transgender women are frequent victims to homicide due to

⁶³ CEDAW Comm., *Concluding Observations: Costa Rica*, ¶ 40, U.N. Doc. CEDAW/C/CRI/CO/5-6 (2011).

⁶⁴ *Id.*

⁶⁵ Colombia Diversa. All the duties, few rights. Human Rights Situation of Lesbian, Gay and Transgender persons in Colombia. 2008-2009 At:

http://colombiadiversa.org/colombiadiversa/images/stories/PUBLICACIONES_FINAL/DOCUMENTOS/IN

prejudice and that there is no definiteness in the registers on the violence against transgender persons. Also it states that they continue to be subjected to threats by armed actors.

A survey carried out by Profamilia and the National University of Colombia in 2007, published in 2009 states that “the most frequent victims of discrimination by police and forces of private security are transgender persons. Within this group the majority of persons have been discriminated against by the police (78,7%) and by private security staff (51,1%)⁶⁶.

Historically, transgender persons have been subjected to discrimination and exclusion from society, resulting in continued invisibilization. According to figures from the Sexual Diversity Division of the Planning District Secretary of Bogotá, 98 percent of transgender persons in the city have been discriminated against or had their rights violated. The report shows that 44 percent have been denied health services, 76 percent had problems renting, 62 percent had troubles with their neighbors due to their identity and 83 percent have been discriminated against at the time of accessing education⁶⁷. To avoid discrimination many transgender persons hide their gender identity during their school and academic experiences. Lilith Natasha, for example, made her diverse sexual orientation public but “kept her gender identity secret to be able to finish her studies.” However, a lot of people refuse to hide their identity and their orientation for such a long period.⁶⁸

Discriminatory barriers in the education system then lead to hindrances for transgender persons attempting to access the formal labor market. Data shows that 79 percent of transgender people have been discriminated against in the workplace, only 5.3 percent have signed a contract for employment, and 40 percent are forced to dress and act different at the workplaces.⁶⁹ Job opportunities for this population are also very limited, specifically to employment in hair and beauty salons or prostitution. Transgender women, however, are often forced into the latter, because working as a hairdresser requires previous studies and training.

Discrimination by the police and in the judicial system is also prevalent in the transgender community in Colombia. In its shadow report submitted to the UN Human Rights Committee in 2012, Colombia Diversa documented multiple cases of police abuses

FORMES_DH/documentos/SituacionderechoshumanospersonasLGBT2008_2009.pdf and Colombia Diversa. Impunity to no end. Human Rights Report on the Situation of Lesbian, Gay and Transgender persons in Colombia. 2010-2011 at: http://colombiadiversa.org/colombiadiversa/images/stories/PUBLICACIONES_FINAL/DOCUMENTOS/INFORMES_DH/documentos/InfDDHH%202010_2011.pdf

⁶⁶ Profamilia and National University of Colombia. LGBT Survey: Sexuality and rights. Participants of Gay Pride Parade 2007, Bogota, 2009 p. 104-105

⁶⁷ SENTIIDO. The challenges faced by transgender people. SENTIIDO.com Chronicles, Nov 18, 2012. At: <http://sentiido.com/los-retos-de-la-poblacion-transgenero>

⁶⁸ *Id.*

⁶⁹ *Id.*

against LGBT persons in Colombia.⁷⁰ Among these, were the cases of Nathalia Diaz Restrepo's and Lulu Muñoz'. On September 9, 2009, Nathalia Diaz Restrepo, a transgender woman and member of the organization "Fundación Santamaría"⁷¹ was a victim of police abuse in the city of Cali. As stated in the complaint, Nathalia was with Lulu Muñoz, another transgender woman, walking in the neighborhood of Las Veraneras at night, when they were approached by police officers who stopped them for a pat-down. Given their transgender identity, they requested a female police officer to execute the search. Instead, the police officers detained them for refusing to consent to the search.⁷² Not only was the arrest unjustified but due process was not followed, as they were verbally abused and not allowed to make a phone call as required by custody procedures.⁷³

Instances of police abuse against transgender persons are not an exception but rather a systematic practice used to denigrate, humiliate and intimidate transgender people. Victims of police abuse report that treatment was vulgar, aggressive and habitual.⁷⁴ They report that the vast majority of police officers in Colombia are uncomfortable with transgender persons. When transgender persons come into contact with police they are often ridiculed and made to feel inferior.⁷⁵

V. RECOMMENDATIONS

- To congratulate the Colombian government on the passing of Law 1618 of 2013 on the rights of people with disabilities, specifically on the aspects related to ensuring full legal capacity of persons with disabilities.
- To ensure that measures are adopted to guarantee full legal capacity of women with disabilities and that safeguards are put in place for supported decision-making in line with article 12 of the UN Convention of the Rights of People with Disabilities, to which Colombia is a State Party since May 2011.

⁷⁰ Colombia Diversa. (2010). *Shadow Report presented to the Committee on Human Rights UN: Human rights situation of LGBT*.

⁷¹ Santa María Foundation's misión is to contribute to the common goal of visibilizing and defending equality of rights, respect and social inclusion, focusing their work on the LGBT population. Since 2005, through its work identifying and monitoring cases of rights violations against transgender persons in Cali, it has denounced the homicide of more than 25 transgender women that have not had definite results in terms of prosecuting perpetrators, remaining in impunity and invisible for society.

⁷² Colombia Diversa. (2010). *Shadow Report supra*

⁷³ *Id.*

⁷⁴ Interview conducted by Amy Ritterbusch with Triana, Transgender Woman, in Bogotá, Colombia (May 14, 2010), *A Youth Vision of the City: The Socio-Spatial Lives and Exclusion of Street Girls in Bogotá, Colombia*. (A. Ritterbusch, & J. Pereira, interviewers).

⁷⁵ *Id.*

- To ensure that effective measures are adopted to prevent all forced sterilizations of women with disabilities and that their consent is assured by guaranteeing reasonable accommodations and education on their sexual and reproductive rights.
- To adopt measures to end institutionalization of women with disabilities and to ensure their full participation in their communities.
- To comply with the Constitutional Court of Colombia’s 2004 ruling ordering the government to adopt a wide range of measures to address internal displacement and report on their implementation and outcomes.
- To adopt adequate measures to prevent gender-based violence with chemical agents as well as to ensure immediate response of authorities involved.
- To adopt adequate measures to train law enforcement personnel on protecting the rights of transgender persons and ensure accountability for police abuses against transgender persons.
- To adopt protective measures for women and transgender persons engaged in sex work, including ending impunity for those who commit sexual and physical violence against them.
- To develop awareness programs and sensitivity trainings on gender identity and human rights for government officials at all levels as well as in schools.

ARTICLE 5: THE OBLIGATION TO ADDRESS GENDER-BASED STEREOTYPES AND CULTURAL PRACTICES THAT PERPETUATE GENDER-BASED DISCRIMINATION

Article 5 of CEDAW requires States Parties to “take all appropriate measures. . . [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁷⁶ The Committee voiced their concern in General Recommendation No. 19 that stated that “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse ... These harmful stereotypes, prejudices, and practices may “justify gender-based violence as a

⁷⁶ CEDAW, art. 5(a).

form of protection or control of women” the effect of which is to “deprive [women] the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”⁷⁷

The CEDAW Committee explained in General Recommendation No. 25 that the implementation of Article 5 entails, “address[ing] prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.”⁷⁸ The Committee also noted that temporary special measures should be implemented to “accelerate the modification and elimination of cultural practices and stereotypical attitudes and behavior” that lead to discrimination against women. Implicit in this recommendation is that temporary special measures should also be enacted and tailored for women who suffer multiple intersecting forms of discrimination.

I. THE FORCED STERILIZATION OF WOMEN WITH DISABILITIES IS ROOTED IN GENDER-BASED STEREOTYPES

In Colombia, the practice of forcibly sterilizing women with disabilities is justified by discriminatory stereotypes about the sexuality of women with disabilities. These stereotypes are reflected in the media and social attitudes that sexualize and infantilize women with disabilities, portraying them as immersed in situations involving sexuality and often helpless. Women with disabilities are portrayed as vulnerable and unable to understand the consequences of exercising their sexuality and defend themselves against abuse.

In addition to the media, discrimination against women with disabilities is also perpetuated within the family structure. Parents and guardians often argue that sterilization is necessary for persons with disabilities because they are more vulnerable to sexual violence. As revealed in interviews with counselors from the Program for Action for Equal and Social Inclusion (PAIS), families often are warned by health and legal professionals that sexual abuse against women is common and therefore they should ensure that they are sterilized.⁷⁹ Women with disabilities are indeed at a greater risk of sexual violence than women without disabilities; however, sterilizing a woman does not

⁷⁷ *Id.*

⁷⁸ Gen. Rec. No. 25, *supra* note 12 at ¶ 7.

⁷⁹ Interview by PAIS with Salam Gomez, President, FUNDAMENTAL COLOMBIA, a nonprofit NGO, in Bogotá, D.C., Colombia. (July 25, 2012). FUNDAMENTAL COLOMBIA develops strategies for mental health promotion, prevention and management of psychosocial disabilities, families and caregivers. The organization also contributes to the processes of autonomy, social inclusion, human rights advocacy and interests of people with disabilities as well as the continuous improvement of the Colombian population’s quality of life.

lessen her vulnerability to rape, sexual harassment, or other forms of sexual violence. Forced sterilization serves only to ensure that if women with disabilities are raped, they do not become pregnant⁸⁰.

Women with disabilities are also portrayed as asexual beings, increasing their levels of victimization. One of the most common stereotypes is that women with mental disabilities should be treated as children.⁸¹ Another popular misconception is that people with disabilities are hypersexual beings and thus, sexual education would “incite” them to do “unwanted things.”⁸² The language of attributing a person with an intellectual disability a “mental age” of a certain number is common among psychology and medical professionals, as well as forensic officers. This framework contributes to the infantilization of people with disabilities because their actual life experience is not recognized.

Other stereotypes perpetuated within society are that women with disabilities are unfit parents. In one case heard before the Court 2003, the state argued that if a person does not understand or cannot consent to a forced sterilization because of their cognitive disability, then the person cannot consent or understand the repercussions of having a child.⁸³ Therefore, the Court concluded, the procedure would not constitute a violation of the rights of a person with cognitive disabilities, as “in this regard the inexistence of possibility to give informed consent to conduct a tubectomy implies that there is an impossibility to decide on the affirmation of a family and the amount of children desired. That is, the rights in question cannot be limited nor annulled as the person is incapable of applying them”.⁸⁴

The legal framework of Colombia, reflects harmful stereotypes about persons with disabilities opposed to the international standards of human rights, when it permits declarations of absolute incapacity of persons with disabilities and their sterilization solely with the consent of their legal guardians.

⁸⁰ MARTIN, Sandra et al. Physical and Sexual Assault of Women with Disabilities. At: Violence Against Women, Vol. 12 No. 9, pp. 823-837 (Sept. 2006). At:

http://web.usu.edu/saavi/docs/physical_sexual_assault_women_disabilities_823.pdf

⁸¹ Interview by Natalia Acevedo (Clinical Student at PAIIS) with Monica Cortes from La Asociación Colombiana de Síndrome de Down (ASDOWN Colombia) (July 25, 2012). The Colombian Association of Down Syndrome (ASDOWN Colombia) is an association of parents that seek to ensure a decent life for people with Down Syndrome. <http://www.asdown.org/nosotros.html>.

⁸² *Id.*

⁸³ Constitutional Court, decision T-024/03.

⁸⁴ *Id.*

II. HOUSING DISCRIMINATION AGAINST INTERNALLY DISPLACED WOMEN IS ROOTED IN GENDER-BASED STEREOTYPES

Upon settling in Colombia's large urban areas, IDPs often face continued hardships as a result of being unwelcome by the local populations and government. A 2011 study by the Brookings Institution-London School of Economics Project on Internal Displacement found that families made up of many children or many relatives are discriminated against because they house several family members in one small dwelling, straining public services and causing tension with their host communities.⁸⁵ There are reports of women being harassed by the police and other government officials because of their displaced status. There have also been several incidents reported to local NGO's where the children of displaced single-mothers have been removed from their mother's custody after being placed with caretakers while they were at work. Those within the displaced community believe their children are being targeted as a means to intimidate them into leaving Bogotá where they are seen as a drain on society. Other women report

Testimony of an Internally Displaced Woman*

Nila's mother, Nila, and her infant daughter fled their home after suffering almost lethal abuse from her father. Nila reported that accessing housing and services was extremely difficult upon arrival in Bogota. Not only are they unable to access services, Nila believes that she and her family, along with other displaced families and single mothers, are being intimidated and threatened by the authorities in order to coerce them to leave Bogotá. She told us of an incident that occurred when Nila's mother was watching Nila's niece while her sister was at work. The police knew and took advantage of the situation and sent child protective services to the home. The children were forcibly taken away under the justification that they were being neglected by their mother. Nila's sister went down to the offices where her daughter was being held and was eventually allowed to take her home. Nila knows of similar incidents occurring in the displaced settlements.

*Nila was forcefully displaced from her home in Caquetá and fled to Bogotá. Testimony provided by Taller de Vida. The name has been modified to protect the identity.

⁸⁵ Brookings Institute, The Effects of Internal Displacement on Host Communities: A Case Study of Suba and Ciudad Bolívar Localities in Bogotá, Colombia, 12 (Oct. 2011), available at <http://www.brookings.edu/research/reports/2011/10/host-communities-colombia-idp>.

being denied employment opportunities for menial jobs they are more than qualified for.

The Colombian government noted in its country report the implementation of a human rights training program for the judiciary including a training on gender and forced displacement.⁸⁶ The report also contained information about a *Comisión Nacional de Reparación y Reconciliación* (National Commission for Reparation and Reconciliation) initiative that disseminated publications in order to promote the rights of the victims, the Justice and Peace Law, and provide guidelines for dealing with cases of violence within the context of the conflict, reconstruction of historical memory, with special focus on human rights and forced displacement.⁸⁷ It also issued guidelines for dealing with cases of violence against women in conflict and IDP's. The Government of Colombia should be commended for these initiatives; however, they must adopt more policies to address the pervasive stereotypes that are negatively affecting IDP's. In 2008, the Constitutional Court ordered the Government to adopt measures not only to protect IDP's, but also to create initiatives to fill in the gaps in public policy that do not adequately address the situation of IDP's. Negative stereotypes of IDP's are affecting their ability to find adequate employment, access housing, and are fueling clashes between IDP's and the police, government officials and workers, and private members of society. The Government must address these stereotypes. In Court Order 092, the Government was ordered to implement 13 specific programs for IDP's that include ensuring health care, access to education services, and employment opportunities.

III. ACID ATTACKS ARE ROOTED IN GENDER-BASED STEREOTYPES

In Colombia, the practice to attack women with chemical agents is rooted on discriminatory stereotypes about the role of woman in society. The report "Combating Acid Violence in Bangladesh, India, and Cambodia"⁸⁸ evidenced that the violence against woman in the world is a proof of standards based on the subordination of the woman; the majority of cases are intended to demonstrate the superiority of man, and used punishment for failure to comply with her role of inferiority.

⁸⁶ CEDAW Comm., *Colombia Periodic State Report*, *supra* note 24, at 52.

⁸⁷ *Id.* at 53.

⁸⁸ Avon Global for Center Women and Justice AT Cornell Law School in collaboration with Committee on International Human Rights of the New York City bar Association, Cornell Law international School Human Rights Clinic, and the Virtue Foundation. *Combating Acid Violence in Bangladesh, India and Cambodia*. Pg. 1. Available in: http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/AvonGlobalCenterforWomendJustice.pdf

These stereotypes that lead to the attacks against women are perpetuated within the structure of the family. The aggressors are in a considerable percentage, members of the victim's family: spouses (26.8%), companions (17.2%), parents (11.9%) and unknown (8.6%), in general terms 54.9% of the aggressions were perpetrated by people with whom they have had a sentimental relationship.

IV. VARIOUS INSTANCES AND PUBLIC OFFICIALS PERPETUATE HARMFUL STEREOTYPES ABOUT TRANSGENDER, LESBIAN, AND GAY PERSONS

Stereotypes about lesbian, gay, bisexual, transgender and intersex people are common and pervasive in Colombia. The Government of Colombia has failed to take appropriate measures to modify social and cultural patterns of conduct that are based on the idea of inferiority of transgender people.⁸⁹

A. STEREOTYPES PROMOTED BY GOVERNMENT OFFICIALS

The issue of marriage equality among same-sex couples arose after a Constitutional Court decision ordered Congress to enact legislation by June 20, 2013 authorizing Public Notaries and Judges to formalize and solemnize unions between same-sex couples.⁹⁰ However, on April 24, 2013, the Senate voted “no” on a bill to legalize same-sex marriage. During the congressional debate, various members of congress openly expressed harmful stereotypes of LGBT persons in direct violation of Article 5.

For example, Senator Roberto Gerlein declared that he looked upon a bed shared by two men “...with disgust...”⁹¹ and went on to state that such a “...dirty, filthy act deserves condemnation...”⁹² adding that it was “...excremental sex.”⁹³ He further stated that sexual acts “...practiced almost recreationally and incapable of generation life...”⁹⁴

⁸⁹ Corporación Caribe Afirmativo. (21 de julio de 2010). *at*: <http://www.caribeafirmativo.com/?p=1058C>.

⁹⁰ Constitutional Court, decision C-577 of 2011.

⁹¹ VALENCIA, Leon. “All sex is excremental”. *Revista Semana*. 22 December 2012, available at, <http://www.semana.com/opinion/articulo/todo-sexo-excremental/326306>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ “Sex between homosexuals is eschatological and with recreational purposes: Gerlein”. *El Espectador*. 23 April 2013. on-line. <http://www.elespectador.com/noticias/politica/articulo-417972-sexo-entre-homosexuales-escatologico-y-fines-recreativos-gerlein>.

are “...eschatological.”⁹⁵ The same senator referred to sex between women as “sex that is nothing and without great importance”⁹⁶

Other Senators made similar proclamations. For example, José Dario Salazar, former chairman of the Colombian Conservative Party stated that having same sex unions would be like “legalizing pederasty.”⁹⁷ Likewise, Senator Roy Barreras, current President of the Senate, affirmed that the reason he would not vote for the approval of an equal marriage act was because of the bullying that boys and girls undergo because they are children of homosexual parents, as well as the necessity for there to be both a mother and a father [in the family unit].⁹⁸

In another debate before Bogotá’s City Council, council member Jorge Durán declared in various sexist statements in the context of a public transportation debate that “he hoped that women would pick him up” talking about mobility and continued saying “that they should send me a lady who prefers men and not women because for sure I do not like that they send me these kind of sluts”.⁹⁹

Opinions as these expressed by government officials in exercise of their power and in the context of democratic debates do not form part of freedom of expression but constitute an incitement of hate, perpetuating stigma and stereotypes about persons with diverse sexual orientation.

Harmful stereotypes about transgender persons are also pervasive and will be addressed in detail in the sections below. The application of these stereotypes has a big impact on this group’s possibilities to exercise their rights to education, health care and employment.

⁹⁵ *Id.*

⁹⁶ “Senator Roberto Gerlein initiates controversy because of his statements against homosexual couples”. El Colombiano, Medellin, 20 nov 2012. At:

http://www.elcolombiano.com/BancoConocimiento/S/senador_roberto_gerlein_desata_polemica_por_declaracion_contra_parejas_homosexuales/senador_roberto_gerlein_desata_polemica_por_declaracion_contra_parejas_homosexuales.asp

⁹⁷ SPRINGER Natalia. Fariseos vs. Matrimonio Homosexual. EL Tiempo 25 March 2013, available at, <http://www.eltiempo.com/archivo/documento/CMS-12710739>.

⁹⁸ NEWMAN, Vivian. Fantasmas del Siglo XVI en el Senado. Revista Semana. 22 April 2013, available at, <http://www.semana.com/opinion/articulo/fantasmas-del-siglo-xvi-senado/340964-3>.

⁹⁹ Redacción, El Tiempo.com. *Liberal Council member calls lesbians sluts*. El Tiempo, 27 de mayo de 2013. En: http://www.eltiempo.com/colombia/bogota/ARTICULO-WEB-NEW_NOTA_INTERIOR-12827222.html

V. RECOMMENDATIONS

- To adopt effective measures to ensure that harmful stereotypes about the sexuality of women with disabilities resulting in their sterilization, institutionalization and lack of access to sexual education, are eliminated from laws, policies and practices.
- To provide resources to families of women with disabilities to be able to provide accessible sexual education to their children with disabilities.
- To commend the Government of Colombia for its initiatives to promote the rights of the victims and provide guidelines for dealing with cases of violence within the context of the conflict.
- To ensure that the guidelines for dealing with cases of violence against women and IDP's are being followed by all members of government and the judiciary; and to adopt measures to address stereotypes perpetuated by both government and private actors that are affecting the ability of IDP's to access housing and other government services.
- To ensure that all government agencies engage in respectful democratic debates without reaffirming harmful stereotypes of LGBTI persons.

ARTICLE 10: THE RIGHT TO EQUALITY IN EDUCATION

I. GIRLS AND FEMALE YOUTH ADOLESCENTS WITH DISABILITIES ARE NOT ACCESSING REGULAR EDUCATION AND SEGREGATED IN PRIVATE INSTITUTIONS.

Even though Colombian law mandates for inclusive education for people with disabilities, hundreds of children with disabilities remain out of the educational system and institutionalized in private institutions where they do not receive any form of formal education and remain isolated from society.

These private institutions are not overseen by any authorities because they are not certified as providers of formal education. PAIIS has received reports from families informing that they suspect abuse of their children in said institutions but cannot transfer them to another institution for lack of financial resources or rejection by various other institutions.

Teachers in smaller cities report not receiving training or tools to ensure adequate inclusion of children with disabilities in regular schools.

II. TRANSGENDER STUDENTS FACE PERVASIVE DISCRIMINATION IN SCHOOLS

Article 10 of the Convention requires States Parties to ensure gender-based equality in accessing education, including career and vocational guidance.¹⁰⁰ Transgender Colombians routinely face unequal access to education due to discrimination on the basis of gender identity. This is reflected in a survey of 1,213 LGBT Colombians conducted by the Sexual Diversity Office of the Secretary of Education for the District of Bogotá in 2010, which found that the high level of discrimination against LGBT students is the principal cause of dropouts, and that transgender students are most vulnerable to discrimination.¹⁰¹ In that same study, 83 percent of transgender respondents reported experiencing unequal treatment in education, and 75 percent reported being physically or psychologically assaulted in school because of their gender identity.¹⁰²

Discrimination impedes transgender people's access to formal education because schools often are hostile spaces. Discrimination begins from the moment a transgender student enrolls in school. For example, when enrolling in university programs, admissions officers may insist on using the masculine/feminine pronouns corresponding to the person's assigned sex at birth (i.e., addressing a transgender woman with masculine pronouns and a transgender man with feminine pronouns) and on asking intrusive questions about the student's gender identity, revealing the institution's lack of transgender-sensitive training.¹⁰³ Likewise, they usually refuse to use the transgender person's chosen name. Students report being counseled by admissions officers on how to dress so as not to draw attention to themselves, and being advised not to display signs of affection toward other students.¹⁰⁴ These reported incidents demonstrate that educational institutions hold discriminatory attitudes toward transgender students in violation of Article 10 of the Convention.

¹⁰⁰ CEDAW, art. 10.

¹⁰¹ *Los retos de la población transgénero, supra* .

¹⁰² *Id.*

¹⁰³ Testimony provided through Procrear, Bogotá (2012).

¹⁰⁴ *Id.*

For the majority of transgender students, discrimination and harassment are common hallmarks of the educational experience. Verbal and physical harassment from peers and teachers causes them to drop out of school and leave the formal education system.¹⁰⁵ For example, a transgender student named Leonela reported being teased, bullied, and subject to aggressive behavior by students and teachers alike.¹⁰⁶ She dropped out of school and moved to the neighborhood of Santa Fe, which is a ghettoized area of the city with a large number of transgender inhabitants.¹⁰⁷

Testimony of Frida Casas, a transgender woman*

Your classmates reject you because you are the way you are. They make fun of you --and you constantly have to defend yourself, which doesn't feel good. Why would someone go to school when they're always rejected there? You can't do well on your school work, you can't study well, so you stop going to school. They rejected me, they were always looking to start something with me . . . you're going to school to learn but your classmates and your teachers have something against you because of who you are. So I dropped out, I decided to stop going to high school . . .

*Interview conducted by Amy E. Ritterbusch, *A Youth Vision of the City: The Socio-Spatial Lives and Exclusion of Street Girls in Bogotá, Colombia*, ProQuest ETD Collection for FIU, Paper No. AAI3484191, available at: <http://digitalcommons.fiu.edu/dissertations/AAI3484191> (Jan. 1, 2011).

The Government of Colombia is in violation of Article 10 of the Convention because discriminatory practices and prejudices impede transgender persons' right to access education. Discrimination and cultural stereotypes directly contribute to high dropout rates among transgender youth. This limits the opportunity to access all levels of education and vocational training.

¹⁰⁵ *¿Cómo vive un transexual en Colombia?*, NOTICIAS CARACOL (Dec. 11, 2012), <http://www.noticiascaracol.com/nacion/video-281503-vive-un-transexual-colombia>.

¹⁰⁶ Andrea García Becerra, *Tacones, Siliconas, Hormonas, y Otras Críticas al Sistema Sexo-Género: Feminismos y Experiencias de Transexuales y Travestis*, 45 *Revista Colombiana de Antropología* 1 (2009).

¹⁰⁷ *Id.*

Testimony of Cristina Rojas Tello, mother of a transgender man*

In my opinion, school was the most complicated place to deal with my son's diversity . . . Every educational stage has its own characteristics that, unfortunately, coincide with a distinct form of discrimination, beginning with the earliest years of preschool and primary school where children receive a perverse education in masculinity and femininity, stigmatizing those who do not conform to those parameters like their families do. This is done by constantly calling attention to the child, punishing, and mandatory participation in "gender-appropriate" games; it even goes so far as other parents stigmatizing the child. In secondary school, the problems become more serious as it is no longer just about rejection by the school, but also about the school's permissiveness when it comes to others abusing the person. It's justified by saying that person is abnormal. In this particular situation, my son had to live through constant physical and verbal abuse by his classmates, as well as being excluded by his teachers, who publicly ridiculed him, refused to acknowledge his masculinity because he did not have a penis, and would not call him by his masculine name, even though it had been legally changed.

*Testimony provided through Entre Tránsitos, Bogotá (2012).

III. RECOMMENDATIONS

- To Promote effective measures to deinstitutionalize girls, adolescents and women with disabilities so that they can access regular education and to submit reports on how many girls and women with disabilities are not in school.
- To commend the Colombian Constitutional Court for urging the Ministry of Education and other government entities to articulate a comprehensive, consistent, and unified national education policy that contributes to the social inclusion of LGBT students and their peaceful co-existence with others.¹⁰⁸
- To take the necessary measures to overcome discrimination in education by implementing educational programs aimed at eliminating prejudice against transgender persons in educational institutions.

¹⁰⁸ Constitutional Court, Decision T-314/11.

- To provide training and educational tools to teachers in both private and public institutions so they promote inclusive education for students with disabilities and for transgender students.
- To accommodate educational environments to ensure equality of transgender students and students with disabilities.

ARTICLE 11: THE RIGHT TO EQUALITY IN EMPLOYMENT

I. THE INABILITY TO CHANGE ONE’S SEX ON IDENTITY DOCUMENTS LEADS TO VIOLATIONS OF TRANSGENDER PEOPLES’ RIGHT TO EMPLOYMENT

Article 11 of CEDAW asserts that all States Parties should ensure that women are not discriminated against when seeking employment or when actually employed. More specifically, it states that “State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.”¹⁰⁹ These rights include, among others, “the right to work as an inalienable right of all human beings,”¹¹⁰ “the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment,”¹¹¹ and “the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.”¹¹²

More specifically, the Committee has stated that a concentration of women in informal jobs with no social security or other benefits is a violation of Article 11.¹¹³ It has also emphasized that some regulations on dress can impact access to work. Limitations or institutional regulations regarding access of women to certain positions on the basis of their way of dressing may impede their ability to exercise the right to work.¹¹⁴

Discrimination against transgender women and men in the field of employment is one of the most critical problems faced by transgender people in Colombia. Transgender

¹⁰⁹ CEDAW, art.11(1).

¹¹⁰ *Id.* at art.11(1)(a).

¹¹¹ *Id.* at art.11(1)(b).

¹¹² *Id.* at art.11(1)(c).

¹¹³ CEDAW Comm., *Concluding Observations: Costa Rica, supra* at ¶ 28-29.

¹¹⁴ CEDAW Comm., *Concluding Observations: Norway*, ¶ 29-30(f), U.N. Doc. CEDAW/C/NOR/CO/8 (2012).

women are particularly harmed by Colombia's legal framework on identity documents, as detailed below. On the other hand, lack of access to education, employment limitations imposed by stereotypes about transgender people, workplace discrimination, and low wages are common issues for the transgender population.¹¹⁵

In 2011, Fundación Procrear reported that transgender women in its locality did not have the same job opportunities as the rest of their peers. They are, moreover, unable to freely choose jobs that allow them to live with dignity under the law. Current social and cultural representations marginalize the transgender population and end up pushing transgender women to engage in two activities: sex work (including commercial sex exchange and stripping) and hairdressing. In the report, a transgender woman states that “people often see us as sexual objects and not as people that are capable of working and being productive people who are able to meet our goals and objectives.”¹¹⁶

A. IDENTIFICATION CARD (CÉDULA)

In Colombia, the “unique valid means to verify oneself in whichever civil, political, administrative or judicial act is the identification card”¹¹⁷ That is, that for whichever process of contracting with public and private entities the potential employees can only identify in front of the potential employers by their identity card because those are civil or administrative acts. Every citizen must obtain Colombia's main identity document, the “*cédula*,” at the age of 18 and must carry it at all times. The *cédula* contains a photo, a fingerprint, and biographical information, including the sex of the holder, defined as masculine or feminine (see image below). When a transgender person's gender identity does not correspond to the name or sex registered in the *cédula*, he or she is forced to make his or her transgender identity public, which will most certainly result in refusal to hire. This forced exposure results in systematic discrimination against transgender persons in the labor market, which in turn perpetuates the cycle of poverty they are already caught in.

¹¹⁵ Fundación Procrear, *Tacones legales y barbas jurídicas: reflexiones estratégicas sobre las identidades de género*, 5, Bogotá: Universidad de los Andes (2013).

¹¹⁶ Fundación Procrear, *Informe Final Proyecto Zona Trans 2011*, Bogotá: Ministerio de Protección Social y Secretaría De Salud de la Alcaldía Mayor de Bogotá (2011).

¹¹⁷ Law 39 of 1962, art. 1

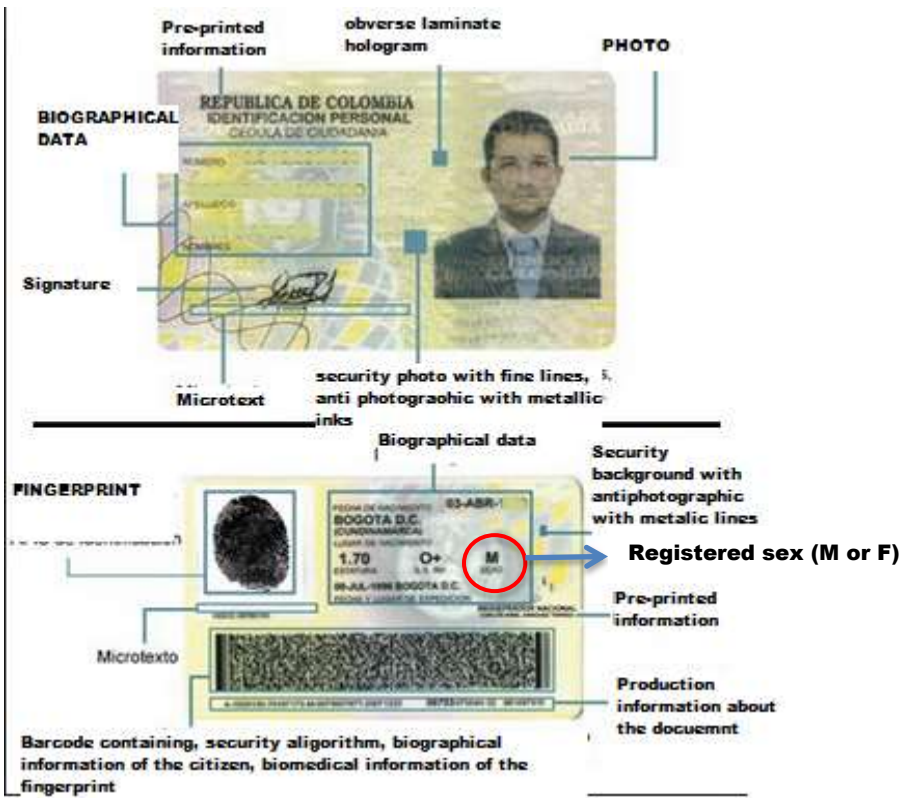


Figure 2: Colombian National Identity Document “Cédula”

Under Colombian law, every person is allowed to legally change his or her name before a Public Notary (who is a public servant and an attorney). Nevertheless, to change the sex one was registered with at birth requires a judicial order. As a result, in many cases transgender persons are able to change their legal name in the cédula but not their legal sex, a circumstance that can also lead to hiring discrimination when a potential employee is inadvertently revealed to be transgender.

B. MILITARY PASSBOOK (LIBRETA MILITAR)

Law 48 of 1993 states that every Colombian “male” over age eighteen is required to register with the military and obtain a military passbook.¹¹⁸ This passbook is the only document that establishes military clearance, either as a result of conscription, the payment of a military compensation or exemption (which only applies to indigenous persons, persons with disabilities, reinserted persons and persons in situation of

¹¹⁸ L. 48, March 3, 1993 The same law states that military service for women is voluntary but shall be mandatory when circumstances demand it and the national government determines it is necessary.

displacement). Military service in Colombia is a constitutional duty and is therefore mandatory; it can last anywhere from twelve (12) to twenty-four (24) months.¹¹⁹ This process poses a significant burden for transgender persons, a burden different for transgender men and transgender women.

The first step to obtaining a passbook requires “males” to register for service in the appropriate military district and present their birth certificate, identification document, income certificate or salary statement, and a photograph.¹²⁰ This process is fraught with opportunities for discrimination and complications for transgender men and women alike. A typical case is that of “Letitia,” a transgender woman.¹²¹ Letitia went to her military district to make an appointment to obtain her military clearance. An official told her that women did not need a military passbook because military service was not obligatory for them. She explained that she was a transgender woman and showed officials her identification documents, an act which she says left her feeling vulnerable and exposed. Immediately after Letitia showed the officials her documents, they stopped referring to her as a woman and started speaking to her as if she were a man, using masculine pronouns and adjectives to refer to her. Letitia was put on a three-month waiting list to obtain a clearance appointment, while a man waiting in line with her got an appointment for the next day. When Letitia asked the officials why the other man received his appointment three months ahead of her, they answered, “It’s a different case.”

Letitia then decided to go to another city known for its efficiency in taking care of military clearance cases. The officials there referred to her as “him” and told her that it was mandatory for her to remove her makeup and earrings and that she must put her hair in a clip before they could take her official picture. The officials then modified the picture, adding a masculine blazer, tie, and shirt. Eventually, after six hours, the officials issued Letitia her military passbook, referring to her as “the weird guy with the weird last names.”

The second step in completing conscription requires “males” to submit to psychological and physical medical exams to determine their fitness for military service. Those who complete the first step of conscription by registering with the military district but do not attend the exams are fined 20 percent of their minimum salary for every year of non-completion. People who do not comply with military service must pay a fine called “military compensation fee”.¹²²

¹¹⁹ Constitutional Court, decision T-728 of 2009: “Constitutional duties, the Court has established... are behaviors or conduct of a public character which are enforceable by law against the citizen and impose physical or economic burdens, therefore affecting the sphere of personal freedom.”

¹²⁰ Law 48 of 1993, Title II, Article 14.

¹²¹ Testimony provided through GAT (Grupo de Apoyo a Transgeneristas), Bogotá (2012). Letitia is a pseudonym assigned to maintain the individual’s privacy.

¹²² Law 48 of 1993, arts. 15-22

Punishments for non-compliance with the conscription procedures disproportionately affect transgender people. For example, “David” was a transgender man who transitioned as a minor. He was called to the draft while in high school but did not respond.¹²³ Even though his *cédula* stated that he was registered as female, he appears in the military database system as absent without leave, a very serious violation that is punishable by fines that increase yearly and which also carries the risk that the citizen will be immediately drafted if he is stopped by the police.¹²⁴

Moreover, every person over the age of 18 who is considered to be “male” by the State is generally required to show proof of his military clearance status in order to access employment. Transgender men are asked for this document if the employer does not recognize their gender identity forcing them to reveal their transgender status. This is true even though Article 36 of Law 48 of 1993 expressly establishes that no public or private entity can ask individuals to present their military passbooks. The same article states that the military passbook is only indispensable to signing a contract with any public entity, to entering administrative careers, to taking possession of any public charge, or to obtaining a professional degree in a higher education school.¹²⁵ Despite this exhaustive list of situations where citizens may be asked to present their military passbooks, it is a common employment practice to ask potential employees for their passbooks during the hiring process.

The organization Entre Tránsitos has documented how transgender men are less visible and passed up for jobs more frequently than cisgender men¹²⁶. This is because when transgender men apply for a job, they must reveal that they are transgender in order to explain why they do not have a military passbook, which often results in employers’ refusal to hire them.¹²⁷ According to Entre-Tránsitos, the passbook requirement often leads to a “forced visibility,” meaning that the absence of a passbook often relegates the transgender man to three choices: (1) Refusing to answer for the absence of the passbook and effectively walking away from the job; (2) Explaining that he is a transgender man, which is problematic for privacy reasons and because it makes him more vulnerable to employment discrimination as a result of social stereotypes and stigmas; and (3) Using false documents, as did at least one of the transgender men who sought help at Entre-Tránsitos, in order to hide gender identity from potential future employers.¹²⁸

¹²³ Testimony provided through Entre-Transitos, Bogotá (2012).

¹²⁴ Entre-Transitos, *Tacones legales y barbas jurídicas: reflexiones estratégicas acerca de las identidades de género*, 4, Bogotá: Universidad de los Andes (2013). This article is attributed to Fundación Procecar at 107 and to GATT at 116.

¹²⁵ Law 48, Article 36, as modified by Decree 2150, Article 111, December 5, 1995.

¹²⁶ Cisgender persons are those whose gender identity matches the assigned roles of their birth sex.

¹²⁷ Entre-Transitos, *supra*

¹²⁸ *Id.*

The legal organization Colectivo de Abogados states that, “the legal hiring requirements are one of the main reasons transgender people end up working in informal jobs, or in jobs that have been historically assigned to them, such as in beauty parlors or as prostitutes [for transgender women] and in informal sales or car garages [for transgender men].”¹²⁹

Transgender women also face discrimination as a result of their military conscription status. Transgender women who were registered as male at birth are still required to show their military passbook when they apply for jobs. Many transgender women have not applied for the passbook for fear of harassment and violence. GAT (Grupo de Apoyo a Transgeneristas), for instance, explains that many people in society perceive military service to be a corrective way to masculinize effeminate boys. The mother of a transgender woman explained, “*There are a lot of young guys like my son who have no respect for anyone; nowadays...there are lots of effeminate transvestites walking around and at the malls, so the experience of the military service can help them to become better citizens.*”¹³⁰ Some families see military service as a way to “cure” or change a transgender person.¹³¹ Stories like this generate much fear among transgender women, who perceive military service as a threat to their physical safety and gender identity.

As a consequence of this fear, transgender women often do not register with the military when they turn eighteen, and, consequently, do not have the necessary employment documents. Fundación Procrear, for instance, documented the case of several transgender women who applied for minimum wage jobs with the Institute for Social Economy and were rejected for not having military clearance, leaving many of them feeling disillusioned.

II. RECOMMENDATIONS

- To eliminate the requirement of a military passbook to access the right to work.
- To adopt the necessary measures so that transgender persons are not discriminated against in any way, nor abused by military forces, no matter if in active military service, in the course of military career or processing civil or military services. This includes the implementation of medical exams by qualified personnel, respecting the privacy and dignity of the person in question.

¹²⁹ Abogados, C. C., *Día Internacional contra la Homofobia: En Colombia es patente la discriminación y exclusión de población LGBT en espacios laborales*, Bogotá (2012).

¹³⁰ Testimony provided through GAT, Bogotá (2013).

¹³¹ GATT, *Tacones legales y barbas jurídicas: reflexiones estratégicas sobre identidades de género*, 6, Bogotá: Universidad de los Andes (2013).

ARTICLE 12: THE RIGHT TO HEALTH IN CONNECTION WITH ARTICLE 16(E): THE RIGHT TO DECIDE FREELY AND RESPONSIBLY ON THE NUMBER AND SPACING OF THEIR CHILDREN

Article 12 highlights the right to adequate and discrimination-free health care, including family planning and pregnancy services. Paragraph 1 states, “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”¹³²

I. THE FORCED STERILIZATION OF WOMEN WITH DISABILITIES VIOLATES THEIR RIGHT TO ADEQUATE AND DISCRIMINATION- FREE HEALTHCARE (ART. 12) AND TO FREELY CHOOSE THE SPACING AND NUMBER OF THEIR CHILDREN (ART. 16)

Addressing women with disabilities specifically, General Recommendation No. 24(25) calls on States to “take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.”¹³³

The CEDAW Committee recognizes that “acceptable [medical] services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.”¹³⁴ More specifically, the Committee reports that “women have the right to be fully informed by properly trained personnel of their options in agreeing to treatment or research,”¹³⁵ which means that “States Parties should not permit forms of coercion, such as non-consensual sterilization.”¹³⁶ To prevent non-consensual sterilization, the Committee finds that States should “enact national legislation prohibiting, except where there is a serious threat to life or health, the sterilization of girls, regardless of whether

¹³² CEDAW, *supra* art. 12(1).

¹³³ CEDAW Comm., *General Recommendation No. 24: Women and Health*, ¶ 25, U.N. Doc. A/54/38/Rev.1 (20th Sess. 1999).

¹³⁴ *Id.* at ¶ 22.

¹³⁵ *Id.* at ¶ 20.

¹³⁶ *Id.* at ¶ 22.

they have a disability, and of adult women with disabilities in the absence of their full informed and free consent.”¹³⁷

In *A.S. v. Hungary*, the Committee found that the Government of Hungary violated A.S.’ rights under Articles 12 and 16(e) when they asked her to sign a confusing sterilization consent form en route to the hospital for an emergency cesarean section.¹³⁸ Hospital personnel told the woman only that by signing the form she was consenting to caesarean section; the doctors did not express their plan to sterilize her or explain the sterilization procedure, its risks, or its consequences.¹³⁹ Further, the consent form A.S. signed used the Latin word for sterilization, not the Hungarian word.¹⁴⁰ The Committee found that Hungary violated A.S.’s Article 12 rights to (1) fully informed consent to medical procedures,¹⁴¹ (2) information on family planning,¹⁴² and (3) appropriate services in connection with pregnancy and the post-natal period.¹⁴³ It recommended that Hungary “provide appropriate compensation”¹⁴⁴ to A.S. and take measures to ensure health officials give adequate information to patients and obtain informed consent before sterilization.¹⁴⁵

In Colombia, health care providers are obliged to obtain consent to the sterilization before performing it, except in the case of women with disabilities who are under plenary guardianship through interdiction. In this case their legal representatives or guardians have the legal power to sign the informed consent, regardless of what the woman to be sterilized knows or wants. Although there is official data provided by the Ministry of Health on how many sterilizations were performed on women with disabilities (see figure 1), there is no information on how the women were determined to have a disability, nor whether they were interdicted, nor on who signed the legal consent. State institutions provide little information about the forced sterilization of women and girls with disabilities. PAIIS, for instance, sent out 23 right-to-information requests¹⁴⁶ to various public institutions, requesting information on the interdiction process in general and sterilization of women and girls with disabilities in particular; only three institutions¹⁴⁷

¹³⁷ CEDAW Comm., *Concluding Observations: Australia*, ¶ 43, U.N. Doc. CEDAW/C/AUS/CO/7 (2010).

¹³⁸ CEDAW Comm., *Communication No. 4/2004 (A.S. v. Hungary)*, U.N. Doc. CEDAW/C/36/D/4/2004 (2006).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at ¶ 11.3.

¹⁴² *Id.* at ¶ 11.2.

¹⁴³ *Id.* at ¶ 11.3.

¹⁴⁴ *Id.* at ¶ 11.5.

¹⁴⁵ *Id.*

¹⁴⁶ In Colombia, Article 23 of the Constitution establishes the fundamental right of any person to send a respectful information request to any official or public institution. This request must be answered within 15 business days of the date it was received by the institution.

¹⁴⁷ These responses were from the Ministry of Health, the Bogotá District Health Office, and a local Family Duty Station (“Comisaría de Familia,” an office that provides psychosocial and legal counseling to individuals, allowing them resolve family issues without having to go to court).

responded with information on these issues, and two of these emphasized that their databases do not contain any reliable information or data on either interdiction or forced sterilization of women and girls with disabilities.

More specifically, the 11th Family Commissary in charge of responding to family conflicts¹⁴⁸ explained that its lack of data stems from the fact that it is not authorized to carry out interdiction procedures. The Commissary did, however, observe that in its experience most individuals request interdiction in order to safeguard patrimonial goods of the person with disability and to “avoid fecundation,” or ensure that the woman or girl with a disability cannot get pregnant (i.e. sterilization).

The Bogota District Health Secretary,¹⁴⁹ meanwhile, explains that its lack of data arises from the limitations of the national health registry, or the Registro Individual de Prestación de Servicios de Salud (RIPS).¹⁵⁰ Although all local institutions are required to document any incidences of sterilization, they are not required to report differentiated data about sex, disability, or the underlying reasons for the sterilization. This means that even though an organization cannot perform a sterilization on a person with a disability unless it has obtained proof that the person is under plenary guardianship *and* specific judicial authorization for sterilization, none of this proof is recorded in RIPS or on individual medical records, making it extremely difficult to determine whether this requirement is actually being complied with.

The Ministry of Health was able to provide some data regarding sterilization procedures performed on women and girls with disabilities, although this data is limited¹⁵¹. The Ministry stated, for instance, that between 2009 and 2010 there were 505 sterilizations performed on women with disabilities while 127 were performed on men with disabilities. More data needs to be collected, however, in order to provide a more accurate and comprehensive picture of the problem.

The Ombudsman’s Office of Colombia¹⁵² added that there are currently 71 interdiction cases pending in Bogotá alone, underscoring how widespread the procedure is. Moreover, because the courts are famously flooded with cases of all types, it is impossible to know how many requests are actually made every year throughout the country. From the information gathered, however, it appears that interdiction and sterilization requests are common, and that forced sterilization of women and girls with disabilities is not rare. Because of the lack of reporting and data collection mechanisms, however, the exact numbers remain unknown.

¹⁴⁸ Request No. 4. Response to Freedom of Information Request submitted by PAIIS

¹⁴⁹ Request No. 13. Response to Freedom of Information Request submitted by PAIIS

¹⁵⁰ RIPS was established by Resolution 3374, December 27, 2000.

¹⁵¹ Request No. 22. Response to Freedom of Information Request submitted by PAIIS

¹⁵² Request No. 16. Response to Freedom of Information Request submitted by PAIIS

Based on the data detailed above, then, it appears that women and girls with disabilities are forced to undergo non-consensual sterilizations at a higher rate than men or women without disabilities, a violation of Article 12's right to discrimination-free healthcare. In order to verify or disprove this contention, however, Colombia should be urged to develop more comprehensive and disaggregated data on the sterilization of women and girls with disabilities. In failing to provide this type of data, Colombia explicitly violates the CEDAW.

Accessible sexual and reproductive healthcare services for women and girls with disabilities are not available and therefore, they rarely receive adequate information and treatment to ensure their sexual and reproductive well-being.

II. INADEQUATE ACCESS TO SAFE ABORTIONS AND CONTRACEPTIVES AND/OR FORCED ABORTIONS AND CONTRACEPTIVE USE VIOLATES THE RIGHTS TO ADEQUATE AND DISCRIMINATION-FREE HEALTH CARE AND TO DECIDE FREELY AND RESPONSIBLY ON THE NUMBER AND SPACING OF THEIR CHILDREN (ART. 12 AND ART. 16(E))

Article 12 requires State Parties to take all appropriate measures to eliminate discrimination against women in the field of healthcare, assuring men and women equal access to health care services, including those related to family planning.¹⁵³ Moreover, States Parties should take appropriate measures to ensure that women are not subject to coercion in regard to fertility and reproduction, meaning that they must guarantee that women give their full and informed consent to medical procedures after receiving appropriate information and services related to family planning and pregnancy.¹⁵⁴ States Parties must also ensure that women are not subjected to unsafe medical procedures, including abortions performed by unlicensed and improperly trained medical personnel.¹⁵⁵

Article 16 guarantees women's right to equality with men in marriage and family relations. It calls on States Parties to ensure women's right to decide on the number and spacing of their children and to have the information needed to exercise that right. The CEDAW Committee has found that "[c]ompulsory sterilization or abortion adversely

¹⁵³ CEDAW, art. 1.

¹⁵⁴ CEDAW Comm., *Gen. Rec. No. 19* supra.

¹⁵⁵ *Id.* at ¶¶ 20, 24.

affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”¹⁵⁶

Women and girls serving in illegal armed groups have reported being forced into sexual slavery, raped by members of the armed groups, forced to use harmful methods of contraception and forced to have abortions. The most commonly used contraceptive is Norplant, which is implanted into the upper arm of the girl, generally by an untrained medic who, despite having little to no medical education or training, has been recruited by the armed group to administer health services. Demobilized women and girl soldiers have reported that they were never given instructions about what the contraceptive does, what its side effects might be, or what they could or could not do while on it, an oversight that can lead to, among other things, illness and contraceptive failure.¹⁵⁷

When the contraceptives fail, women and girls in armed groups have been forced to undergo abortions performed by the untrained medics as late as the sixth month of pregnancy. In undergoing such late term abortions, women and girls' lives are put at increased risk, and they may suffer from more severe emotional trauma if the abortions are unwanted.¹⁵⁸ Many girls who are recruited by the armed groups reported being forced to have abortions at very young ages, sometimes as young as fourteen.¹⁵⁹ In some cases, the armed group leaves them behind and they are forced to survive and care for their child on their own.

Demobilized girl child soldiers have also recounted cruel and inhuman treatment during the practice of forced abortion and contraceptive use in illegal armed groups. One girl recounted that after she was forced to undergo an abortion performed by the medics of the armed group, the medics placed the fetus in a river, where it floated away.¹⁶⁰ She explained that this was a common practice.

Additionally, demobilized girls have reported suffering sterilization as a result of forced abortions during the fifth and six months of their pregnancies.¹⁶¹ Girls commonly report contracting infections in their sexual organs after being forced to have unsterile abortions by the armed groups to which they belong, infections that ultimately cause sterilization. In one account, the girl began to suffer an extremely high fever and, realizing that she was ill, escaped from the armed group with a friend. When she arrived at the nearest hospital, the medical staff reported that they could smell the infection in her body. Upon investigation, they discovered that the infection had “completely destroyed” her

¹⁵⁶ *Id.* at ¶ 22.

¹⁵⁷ Testimony of former girl child soldiers provided through Taller de Vida, Bogotá (2012).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

sexual organs.¹⁶² Forced pregnancy, forced abortion and forced use of contraceptives constitute clear human rights violations in contradiction of CEDAW.

III. DENIAL OF ADEQUATE PRENATAL AND POST-PARTUM CARE TO HIV POSITIVE PREGNANT WOMEN AND THEIR STERILIZATION DURING DELIVERY (ARTICLE 12 Y 16 (E))

In 2011, Colombia's public health monitoring system identified one thousand four hundred fifty-six women (1,456) between the ages of 15 and 49 years old with HIV, although the number could likely be much higher if one takes into account the prevalence of infection in this age group (0.52%)¹⁶³. Each year, 3.5% of these women of childbearing age become pregnant and the likelihood of their child being born HIV-free is under 2% as long as the established protocol to prevent mother-child transmission of HIV is followed, which involves measures included in Colombia's Mandatory Health Plan (POS) and include: 1) antiretroviral therapy during pregnancy; 2) intrapartum prophylaxis with antiretroviral; 3) cesarean delivery; 4) antiretroviral prophylaxis for the newborn; and 5) provision of formula during the first six months. Although all of these measures are included within the obligations of the Colombian health system, not all the steps are jointly and fully carried out in Colombia¹⁶⁴. This is the situation in Colombia according to figures from the Global Progress Report on the Fight Against AIDS - Colombia 2012 (UNGASS 2012)¹⁶⁵ and the National Survey of Demographics and Health 2010 (ENDS 2010).¹⁶⁶

Activities related to the promotion of prenatal treatments for the prevention of HIV transmission from mother to fetus are limited. According to Sinergias' research only 78% of pregnant women were screened for HIV, 67% received an informed consent format for having the test and 23% received counseling after the test.¹⁶⁷ Education about sexual and

¹⁶² *Id.*

¹⁶³ Sinergias, UNICEF, UNFPA, Ministry of Health and Social Protection. A look at the quality of prenatal care in Colombia. An evaluation of clinical histories in twenty departments. Colombia 2009-2011.

¹⁶⁴ Sinergias, Alianzas estrategias para la salud y el desarrollo social, IOM, Ministry of Health and Social Protection. Search for mothers and children beneficiaries of the strategy for the elimination of mother to child HIV transmission, 2009-2011 and development of a strategy for monitoring and control aimed at health insurers, regional health care promoters with primary health care directed at the elimination of mother to child transmission of HIV. Final Report. Colombia, March 7, 2013.

¹⁶⁵ Ministry of Health and Social Protection UNGASS Report – 2012. Monitoring of the Declaration of Commitment on HIV / AIDS.

¹⁶⁶ Profamilia. National Survey of Demographics and Health-ENDS 2010, available at, <http://www.profamilia.org.co/encuestas/Profamilia/Profamilia/>.

¹⁶⁷ Sinergias, A look at the quality of prenatal care in Colombia, *supra*

reproductive rights is incomplete, as is the information regarding services by health providers, which limit a woman's right to decide the provider from which they wish to receive services.¹⁶⁸

Despite the fact that in Colombia 97% of women obtain prenatal care in a health care facility (ENDS 2010), according to the HIV Observatory, less than half (45%) will be screened for HIV and of those infected, only 71% receive antiretroviral therapy during pregnancy.¹⁶⁹ These figures may be lower if the pregnant woman is not affiliated to a healthcare insurer, living in a rural area, has limited financial resources, belongs to an indigenous group, or is Afro-Colombian¹⁷⁰. There are also significant differences in the coverage and quality of care among women who belong to the subsidized healthcare regime versus the contributory healthcare regime, the latter being 3.8% more likely to receive prenatal treatment and subsequent overall care.¹⁷¹ Overall coverage of basic prenatal care does not exceed 50% of the pregnant population.¹⁷²

According to Sinergias, there are multiple barriers that lead to this low coverage and quality of prenatal health care and follow-up. For example, the places that provide these services are centralized in capital cities of the provinces. This situation forces pregnant women to travel long distances and thus increases the cost of the service, because even though the consultation is free, women must cover the cost of travel, food and lodging¹⁷³. These expenses, combined with the cost of various medicines for HIV treatment, that are not provided timely by the health insurer render the service as inaccessible for the most vulnerable population. The lack of available comprehensive services and the deficiencies in staff training make it so that when one ultimately gains access to the service, the quality is inadequate. Likewise, the fact that the staff has little awareness generates stigma against HIV-positive women, creating fear among them that they face the risk of being discriminated against upon approaching health centers. Attention tends to be fragmented, untimely and presents many bureaucratic barriers, which are difficult to overcome.¹⁷⁴

Although ninety-three percent (93%) of pregnant Colombian women deliver under the supervision of a health professional, only 81% of women with HIV will receive prophylaxis with antiretrovirals during delivery and only 86% had a cesarean delivery.¹⁷⁵ Of the total number of fetuses exposed to HIV during pregnancy and born alive, 90% will

¹⁶⁸ Sinergias, Research on mothers and children, *supra*.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

be administered antiretroviral prophylaxis for 6 weeks and a little over 2/3 will receive replacement milk formula.¹⁷⁶ Thus, in this context, the health system crisis in Colombia and legislation do not suit the needs of different parts of the country and the situation is specifically preventing the fulfillment of goals to reduce maternal mortality during childbirth and HIV transmission to children.¹⁷⁷

Sinergias' preliminary findings point to a much higher rate of sterilization of HIV positive women than the national average. The 2010 ENDS evidence that of all the women in the country that use birth control methods 24% consist on sterilizations. The study found that in about 70% of the cases, HIV positive pregnant women had been permanently sterilized at birth. Even though there is not sufficient evidence to state that HIV positive women are being forcibly sterilized systematically, the rates are alarming and should raise significant concerns as to whether women are fully consenting to sterilization with adequate knowledge of its implications and information on becoming HIV positive parents.

IV. COLOMBIA'S HEALTH SYSTEM CONTAINS STANDARDS THAT CONSTITUTE DISCRIMINATION AGAINST WOMEN WHO HAVE BEEN VICTIMS OF ACID ATTACKS BECAUSE OF GENDER-BASED STEREOTYPES

Regulations on health, in particular the compulsory health Plan¹⁷⁸ excludes essential services for the rehabilitation of women who have been attacked with acids because it considers these procedures as cosmetic plastic surgery. These exclusions have become the main barriers of access for the survivors to reconstructive surgical procedures.

In these procedures, is the doctor the one that defines if the surgeries have reconstructive or aesthetic character. This situation has caused that many survivors cannot accede to reconstructive procedures because this depends on the discretion of a particular physician. Thus, the Health Plan excludes "treatments with aesthetic purposes of vascular or skin conditions", that in the case of the survivors of attacks with chemical agents results in the deprivation of access to elements like: chinrest, masks, belts of upper and lower extremities, chest, furacina, sports, marks, slices in gel glass mesh, to diminish scars and Keloids in the post-operative, among others.

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ Agreement 029 of 2011, the Obligatory Health Plan contemplates the use of some technologies that are essential for the diagnosis, treatment, rehabilitation and pain reduction of the diseases of the citizens, in accordance with the doctors prescriptions.

In accordance with the *Association Faces without Acid*, (Rostros sin Ácido) of the 40 women who are part of the Organization, near 10% had to access to treatments and surgeries through an “Acción de Tutela”, the remaining percentage has not had access to them or they have assumed the costs on their own.

V. GENDER-BASED DISCRIMINATION IN ACCESS TO APPROPRIATE HEALTHCARE SERVICES VIOLATES TRANSGENDER PEOPLE’S RIGHT TO ADEQUATE AND DISCRIMINATION-FREE HEALTHCARE AND REQUIRING TRANSGENDER PEOPLE TO OBTAIN A DIAGNOSIS OF “GENDER DYSPHORIA” SO THAT THEY CAN ACCESS HORMONES AND HEALTHCARE DURING THEIR TRANSITION VIOLATES THEIR RIGHT TO ADEQUATE AND DISCRIMINATION-FREE HEALTHCARE (ART. 12)

The CEDAW Committee has, in the past, expressed its concerns about State party discrimination against lesbian, bisexual, transgender, and intersex women in the provision of healthcare services.¹⁷⁹ It has also expressed the need to improve health services designated for lesbian and transgender women and other minority women groups.¹⁸⁰

According to the results of a study conducted by the local government of Bogotá on the rights of LGBT people, transgender people face the worst violations of their right to health. More specifically, 45 percent of LGBT persons have experienced discrimination in their right to health. According to the report, 54 percent of transgender people have felt discriminated against when attempting to access health care services and 43.84 percent of them have been denied medical attention.¹⁸¹ As Frida Casas explains:

In hospitals it’s always the doorman who embarrasses you, always...the health checkpoints, and hospitals and such, when you ask about an appointment...they’re always mocking you, they don’t treat you right, always laughing and mocking. They don’t respect you, even without knowing you, and they are too familiar with

¹⁷⁹ CEDAW Comm. Gen Com 19, supra note 95, at ¶ 33.

¹⁸⁰ CEDAW Comm., *Concluding Observations: New Zealand*, ¶ 33-34(e), U.N. Doc. CEDAW/C/NZL/CO/7 (2012).

¹⁸¹ Bogotá’s Major’s Office, *Balance y Perspectivas de la Política Pública LGBT* (2011).

you, like flirting with you and such nonsense, mocking, knowing you're looking for an appointment, in pain, just asking to be let through, the door opened^{182]}

Transgender women who seek to transition also experience discrimination when they attempt to transform their bodies, a process essential to their lives. The Public Healthcare System is not accessible to this population, however, and transgender people are forced to transform their bodies in hazardous ways. In a research project conducted by the Universidad Colegio Mayor de Cundinamarca¹⁸³ at a neighborhood in Bogota where there is a high population of transgender women who engage in sex work, 96 percent of the transgender women interviewed answered that at least once in their lifetime they had used informal, non-medical mechanisms to transform their bodies. 35.4 percent had done so in a friend's house, 13.8 percent in other places such as concealed clinics or aesthetic clinics, and 26.2 percent in countries like Ecuador or Italy. 62 percent of the women had repeated this practice more than once, and some of the interviewees had gone through these kinds of procedures up to four times.¹⁸⁴ Without adequate access to safe, affordable transformation services, however, transgender women are forced to undergo unsafe procedures, greatly risking their health and even their lives. This discrimination, resulting from their gender identities, constitutes a direct violation of Article 12.

In Colombia, there is no particular norm that requires that transgender people present a "gender dysphoria" certificate to access to body transformations (hormones processes, hysterectomy, breast implants and sexual reassignment surgery, among others). However in medical and judicial practice, the certification constitutes a recurrent practice that implies a pathologizing of transgender identities. Entre Tránsitos considers that in Colombia, the pathologization process is the only way to make a safe transition because it is the only way in which transgender persons may have access to medical professionals. Several transgender persons who have successfully transitioned with medical oversight have had to be subjected to a psychiatric evaluation to determine whether they can be diagnosed with "gender dysphoria", in which case, sex reassignment surgery and hormone procedures are seen as a way to "cure" a person who is mentally ill. Otherwise, they are

¹⁸² Interview conducted by Amy Ritterbusch with Frida Casas, Transgender Woman, in Bogotá, Colombia (July 22, 2010).

¹⁸³ Natalia Espitia Pachón & Karen Peralta Cruz, *Cuerpos que gritan: transformaciones corporales de mujeres Transgeneristas*, Bogotá: Universidad Colegio Mayor de Cundinamarca (2012).

¹⁸⁴ Id.

obliged to transform their bodies in hazardous ways and based in empirical experiences without the assistance of medical technologies.¹⁸⁵

PAIIS sent right to information requests to 11 entities asking about the processes that transgender people should follow to access to body transformations (hormones processes, hysterectomy, breast implants and sexual reassignment surgery) under the current public health system as well as the legal basis to support the procedure. PAIIS inquired if the body transformation procedures for transgender people were covered by the POS (mandatory public health program) and the party in charge of covering the costs of the procedure (the State or the patient). In terms of pathologization, PAIIS inquired if transgender people have to be diagnosed with "gender dysphoria" to access body transformations and what was the legal basis for that requirement. PAIIS received a total of 7 responses.

The Ministry of Health responded only half of the questions made and informed that the rest of the questions would be answered by two internal offices in the ministry. PAIIS has not received those responses yet. Regarding the "gender dysphoria" certificate questions, the answer proved that the government is not informed about the access to the right to health of the transgender people because they said they needed an explanation about what the gender dysphoria certificate was in order to respond the inquiry. However, they added that "the user with gender dysphoria" (regardless of the age group to which it belongs) to decide to undergo the process of "sex change", the EPS (Health Provider) is not required to secure funding of these interventions and their cost should be covered by the user with their own resources. Moreover, the Health Provider would be required to cover the psychological and / or psychiatric condition that the patient may require for emotional or mental disorders (psychotherapy for psychology and psychiatry) identified in Article 17 of Agreement 029 of 2011.

The information received about the processes that a transgender person should follow in the health system to access to body transformations was irregular. There are no unified and official criteria to determine the process to access to body transformations. All of the five health providers answered that these types of procedures were not covered by the Mandatory Public Health System. One of them answered that they covered the hysterectomy but that only and exclusively for gynecological problems such as Uterine Fibroids, Cancer, Abnormal Uterine Bleeding, intrapartum complications. They added that if a transgender person does not require this service functionally, it is not possible to access the service via the Mandatory Public Health System and therefore, by the Health Provider. Another one answered that a doctor from the Health Provider should order the procedure if necessary but that it was not included in the Mandatory Public Health System.

¹⁸⁵ ENTRE-TRÁNSITOS. (20 de octubre de 2011). CIVIS. Recovered on 25 de March de 2013.

Even though they all answered that they did not have a specialized group of professionals that were experts in body transformations. Two of them informed about particular cases which involved body transformations. One of them informed that they did a breast resection and a penile implant to one person (the response does not indicate the date of the procedures). Another response documented three cases. The first case was a person who sued the Health Provider because they did not wanted to realize a sex reassignment surgery and the judge said that it was not a violation of any fundamental right. The second case was a voice feminization process and a laser depilation procedure in one person. The last case is a voice feminization procedure.

All of the Health Providers responded that they did not have a particular internal process to refer a transgender person to a group of specialists or health professionals, most of them argued they were not legally obliged to have this procedure because “aesthetic” interventions are not included in the Mandatory Public Health System according to Agreement 029 of 2011. About the requirement of the “gender dysphoria certificate” they all answered that because the procedures were not covered in the Mandatory Public Health System; they could neither require nor waive the requirement. All of the Health Providers answered that there was no particular norms to diagnose the “Gender dysphoria disorder” and none of them had data or a register system for the body transformations of the transgender population.

Pathologizing transgender persons who wish to transform their bodies is an approach also adopted by Colombia’s Constitutional Court, which refers to diagnosis of gender dysphoria in the clinical history of the plaintiff to protect the right to health.

VI. RECOMMENDATIONS

- To prohibit the performance of surgical sterilizations without the informed consent of the women that is going to be subject of the procedure weather or not the woman possess or not a disability .
- To implement all necessary measures to guarantee the necessary and adequate reasonable accommodations so women with disabilities can take their own decisions about their private life in an informed way.
- To collect specific information on forced sterilization of women with disabilities. This includes collecting information that is disaggregated based on sex, disability, and reasons for seeking sterilization.
- To implement all necessary measures to investigate and sanction the violations of the sexual and reproductive rights committed inside the illegal armed groups.

- To ensure that transgender women have safe and affordable access to discrimination-free healthcare, including body transformation services without requiring that their gender identity be framed as a mental illness or “dysphoria”.
- To ensure that health care providers are adequately trained on the provision of sexual and reproductive health care services to transgender persons.
- To implement unified protocols with best practices in the provision of integral health care services to transgender persons.
- To ensure that transgender persons are allowed to legally change their officially recognized sex without undergoing any medical procedure and without requiring that the person be labeled as “mentally ill” or diagnosed with “gender dysphoria”.
- To ensure adequate pre-natal and post-partum healthcare services to HIV positive pregnant women by eliminating identified barriers and ensuring respectful, easily accessible and centralized provision of services to them.
- To collect specific data on sterilization of HIV positive women at the time of birth and ensure the implementation of adequate protocols to ensure that full information is provided and that there are no coercive practices

ARTICLE 15: THE RIGHT TO LEGAL CAPACITY

Article 15 addresses women’s right to legal capacity by requiring States Parties to accord to women “equality with men before the law”¹⁸⁶ and, in civil matters, “a legal capacity identical to that of men and the same opportunities to exercise that capacity.”¹⁸⁷ The OHCHR explains that legal capacity as it is used in the Convention refers to women’s capacity and power to exercise their rights themselves.¹⁸⁸ This means that under CEDAW, women with disabilities are entitled to assert and exercise all of their rights, including their reproductive rights, themselves. Similar to Article 15 of CEDAW, Article 12 of the Convention on the Rights of Persons with Disabilities codifies the right of persons with disabilities to “enjoy legal capacity on an equal basis with others in all aspects of life.”¹⁸⁹

In its Reporting Guidelines, the CRPD Committee explains that States Parties should report on actions taken to ensure:

¹⁸⁶ CEDAW, art. 15(1).

¹⁸⁷ *Id.* at art. 15(2).

¹⁸⁸ United Nations, Office of the High Commissioner for Human Rights, *Background Conference Document Prepared for the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, ¶ 24 (2005), available at, <http://goo.gl/ijIN1R>

¹⁸⁹ Convention on the Rights of Persons with Disabilities, art. 12(2), May 3, 2008, U.N. Doc. A/RES/61/106

. . . the equal right of persons with disabilities to *maintain their physical and mental integrity*, full participation as citizens, own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and their right not to be arbitrarily deprived of their property.¹⁹⁰

Thus, the CRPD Committee finds that the legal capacity of persons with disabilities may be violated when third parties infringe on their right to maintain their physical and mental integrity. Physical integrity is certainly implicated by non-consensual, permanent sterilization procedures, and the emotional and psychological effects of forced sterilization bear on the issue of mental integrity as well. The CRPD Committee’s findings on the right of persons with disabilities to exercise their legal capacity may provide guidance for the CEDAW Committee as it interprets whether the Article 15 right to legal capacity for women and girls with disabilities may be violated by forced sterilization.

I. CURRENT LEGAL STANDARDS ALLOW FOR WOMEN WITH DISABILITIES TO BE STERILIZED WITHOUT THEIR INFORMED CONSENT IN VIOLATION OF THEIR RIGHT TO LEGAL CAPACITY.

It is well-established that informed consent is a necessary precondition to any medical procedure.¹⁹¹ As explained above, in Colombia, women with disabilities under interdiction are assumed to lack the capacity to consent to a sterilization procedure themselves. They are subjected to a process of “substituted consent,” whereby their guardian is the ultimate decision maker and signs the informed consent document on their behalf.¹⁹² The legal process of interdiction and its application in sterilization proceedings strip women with disabilities of their right to legal capacity. The Constitutional Court has held that when a guardian substitutes consent, it must consider the best interests of the woman under interdiction. As discussed in Article 5 above, the myriad stereotypes and assumptions about women with disabilities surely color the best interests analysis. The substituted consent procedure violates women with disabilities’ right to legal capacity because it denies them the right to decide on a permanent reproductive procedure themselves and allows another person to make that decision instead.

¹⁹⁰ CRPD Comm., *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities*, ¶ 9, U.N. Doc. CRPD/C/2/3 (Nov. 18, 2009).

¹⁹¹ *See, e.g.*, Gen. Rec. No. 24, *supra* at ¶ 22.

¹⁹² Law 1412, Oct. 19, 2010

The process of giving supported decision making to provide consent, rather than substituted consent, would protect women with disabilities' right to legal capacity while also acknowledging that in some cases women with disabilities will require support in comprehending the sterilization procedure and its effects. The Constitutional Court has established and applied such a framework to the case of sexual reassignment surgery in intersex children, where it prohibits parents from making the decision to undergo sexual reassignment surgery on their child's behalf. In sexual reassignment cases, the final decision maker is the person undergoing the surgery, and s/he must sign the informed consent document. The Constitutional Court has held that the lower court must balance (i) the urgency and importance of the surgery to the child's interest, (ii) the risks and intensity of the treatment's impact on the child's current and future autonomy, and (iii) the child's age.¹⁹³ An interdisciplinary medical team including social workers and psychologists must work with the child to explain the procedure to him/her and assess whether the child demonstrates legally valid consent.¹⁹⁴

The Constitutional Court's jurisprudence on the rights of intersex children shares two important aspects in regards to the rights of women with disabilities. One justification for such a thorough and careful assisted consent in sexual reassignment cases is that the procedure is invasive and irreversible. The same is true of sterilization – the World Health Organization and the International Federation of Gynecology and Obstetrics both characterize sterilization as an invasive and irreversible procedure.¹⁹⁵ Additionally, the Constitutional Court emphasizes the right of the intersex child to bodily autonomy. For example, in denying the petition of a mother who sought to expedite an order for a sexual reassignment surgery for her child, the Constitutional Court held that because of the right to autonomy, “[the person] herself (and not anybody on her behalf) is the one who can give meaning and direction to her own existence.”¹⁹⁶ The same is true for women with disabilities. Their right to legal capacity is inextricably tied with their right to bodily autonomy, and their ability to decide on whether to undergo invasive, irreversible procedure cannot be taken from them and given to their guardian. Thus, the process of obtaining judicial consent for a sterilization procedure should follow a similar procedure to that for sexual reassignment surgery, whereby the woman with disabilities and her family receive a comprehensive, interdisciplinary explanation of the procedure to assist her in deciding whether or not to undergo sterilization. Most important, the woman with

¹⁹³ Constitutional Court, May 12, 1999, Decision SU-337.

¹⁹⁴ Constitutional Court, Oct. 23, 1995, Decision T-477.

¹⁹⁵ Int'l Fed. Gynecology & Obstetrics, *Female Contraceptive Sterilization* ¶¶ 5, 13 (Mar. 2011), available at <http://cop.health-rights.org/files/3/b/3b9c9578a78db801d651be468de5489f.pdf>; World Health Organization, *Female Sterilization: What Health Workers Need to Know* (1999), available at <https://apps.who.int/rht/documents/FPP94-2/FPP94-2.htm>.

¹⁹⁶ Decision SU-337 of 1999, *supra*

disabilities must be the ultimate decision maker, and she must sign the written consent document herself.

Law 1618 of 2013 poses a very significant opportunity for the State to harmonize its legal framework with article 12 of CRPD and ensure full enjoyment of women with disabilities' sexual and reproductive rights.

II. RECOMMENDATIONS

- To ensure that adequate norms, policies, programs and practices are put in place to ensure the full exercise of legal capacity of women with disabilities with particular attention to their exercise of their sexual and reproductive rights.
- To collect differentiated data and statistics on a yearly basis of the numbers of sterilization procedures conducted to women with disabilities.
- To ensure accessible sexual and reproductive health care services for women with disabilities, which respect their privacy and provide all reasonable accommodations necessary.

ARTICLE 16: THE RIGHT TO EQUALITY IN MARRIAGE AND FAMILY RELATIONS IN CONNECTION WITH ARTICLE 10(H): THE RIGHT TO SPECIFIC EDUCATIONAL INFORMATION TO HELP ENSURE THE HEALTH AND WELL-BEING OF FAMILIES

Article 16 guarantees women's right to equality with men in marriage and family relations. It calls on States Parties to ensure that women can enter into a marriage freely and with full consent, can choose a spouse freely, and can exercise the same rights and responsibilities as men during the marriage and at its dissolution. Further, women are guaranteed the right to decide on the number and spacing of their children and to have the information needed to exercise that right. Article 10(h) is concerned with this aspect of Article 16, as it states that women have the right to specific education information to help ensure the health and well-being of their families, including family planning information and advice.

Article 16 ensures women's right to equality with men in family relations. Equality in family relations encompasses a woman's right to decide freely and responsibly decide

on the number and spacing of her children.¹⁹⁷ Spouses, parents, partners, and Government may not limit this individual right.¹⁹⁸ The CEDAW Committee has found that “[c]ompulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”¹⁹⁹ The parameters of this right were discussed in *A.S. v. Hungary*, where the CEDAW Committee found that the state of Hungary violated A.S.’ right to decide the number and spacing of her children when a medical worker presented her with handwritten, illegible consent form using the Latin term for “sterilization,” which she signed while in an ambulance en route to have an emergency caesarean section.²⁰⁰ The CRPD affirms that women’s right to decide on the number and spacing of their children applies to women with disabilities as well.²⁰¹ Further, the International Federation of Gynecology and Obstetrics has found that sterilization of women with disabilities without their free and fully informed consent is a human rights violation.²⁰² Thus, the interdiction process which permits the guardian of a woman with disabilities to consent to the irreversible sterilization procedure is a violation of the woman with disabilities’ right to decide on the number and spacing of her children.

All women are entitled to access the necessary information, education, and means to determine the number and spacing of their children. Article 10(h) states that women have a right to “specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.” States Parties may be in compliance with Article 16(e) when they ensure that women have information about contraceptive measures, their use, and guaranteed access to sex education and family planning services.²⁰³ The Standard Rules on Equalization of Opportunities for Persons with Disabilities (SREOPD), adopted by the UN General Assembly, stress that persons with disabilities must have the same access to family-planning methods and sexual education as other persons.²⁰⁴ It also emphasizes that persons with disabilities “must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood.”²⁰⁵ The UN Special Rapporteur on Violence Against Women has affirmed this belief, finding that the “lack of sexual education of women and girls with disabilities, wrongly perceived as non-sexual beings, contributes to

¹⁹⁷ CEDAW, art. 16(e).

¹⁹⁸ CEDAW Comm., *General Recommendation No. 21: Equality in marriage and family relations*, U.N. Doc. A/49/38 ¶ 22 (13th Sess. 1992).

¹⁹⁹ Gen Rec. No.19, *supra* at ¶ 22.

²⁰⁰ *A.S. v. Hungary*, *supra* at ¶ 11(4).

²⁰¹ CRPD, *supra* art. 23(1)(b).

²⁰² Int’l Fed. Gynecology & Obstetrics, *supra* note 196, at ¶¶ 5, 13.

²⁰³ Gen. Rec. No. 21, at ¶ 22.

²⁰⁴ G.A. Res. 48/96, Rule 9(2), U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/96 (Dec. 20, 1993).

²⁰⁵ *Id.*

sexual violence against them, as they are unable to distinguish inappropriate or abusive behaviors.”²⁰⁶

I. THE LACK OF A COMPREHENSIVE SEXUAL EDUCATION POLICY FOR GIRLS AND WOMEN WITH DISABILITIES VIOLATES THEIR RIGHTS TO EQUALITY IN MARRIAGE AND FAMILY RELATIONS AND TO SPECIFIC EDUCATIONAL INFORMATION TO HELP ENSURE THE HEALTH AND WELL-BEING OF THEIR FAMILIES

The Government of Colombia has made some efforts on paper to recognize that women with disabilities are entitled to sexual education. Law 1618 of 2013 calls on the Ministry of Health and Social Protection to “ensure that sexual and reproductive health programs are accessible to people with disabilities.”²⁰⁷ It further provides that all health service providers must (i) ensure access to sexual and reproductive health procedures and services; (ii) train its staff to ensure the inclusion of people with disabilities; (iii) establish at-home sexual and reproductive health services and ensure that health care services are near the residence of people with disabilities; and (iv) remove administrative barriers that impede access to health services for people with disabilities. Further, Decree 2968 of 2010 affirmed the importance of sexual education and ordered the creation of a National Intersectional Commission to streamline sexual education policies and execute such policies as a means of guaranteeing sexual and reproductive rights.

While there have been some legislative efforts to provide sexual education and family planning information to women with disabilities, in practice, little is being done. Thus far, the policies in place suffer from a lack of differentiation in sexual education strategies for women with and without disabilities, as reflected by the absence of any norms or guidelines in place regarding sexual education of girls or women with disabilities. Further, the Ministry of Education reported in a right-to-information request that it has been developing a Sexual Education and Citizenship Building Program since 2006; however, this program does not specifically refer to persons with disabilities.²⁰⁸ Similarly, the Ministry of Health’s National Policy on Sexual and Reproductive Health, launched in 2003, is intended to provide access to family planning information for the entire

²⁰⁶ Special Rapporteur on Violence Against Women, *Thematic study on the issue of violence against women and girls with disability*, ¶ 19, U.N. Doc. A/HRC/20/5 (Mar. 30, 2012). In his latest report to the Commission on Social Development, the Special Rapporteur on Disability expressed his support for the findings of Special Rapporteur on Violence Against Women, ¶¶ 78-81, U.N. Doc. E/CN.5/2013/10 (Nov. 27, 2012).

²⁰⁷ Law 1618, Feb. 27, 2013

²⁰⁸ Freedom of Information Request, No. 2012EE82186 Submitted by PAIIS

population, but it does not discuss how family planning information will be provided to persons with disabilities.²⁰⁹ In Bogota, the District's Department of Health has a policy on sexuality.

When the Government of Colombia has focused its sexual education and family planning efforts on persons with disabilities, its approach has been disjointed and decentralized. For example, the Ministry of Health reported in a right-to-information request that it had conducted a series of sexual education workshops with the National Institute for the Blind, the National Institute for the Deaf, representatives of the Colombian Paralympic Committee, and other disability rights groups. However, these trainings lack a cohesive policy and strategy for implementation, as they do not promote a consistent set of sexual education rights, best practices, or reproductive health policies.

The Constitutional Court has promoted adequate education for women with disabilities and should be commended for that.

II. RECOMMENDATIONS

- The National Plan must include communication in all type of languages, e.g: Text Display, Braille, Tactile Communication and Large Print as well as accessible multimedia such as audio, plain-language, human-reader and augmentative and alternative modes, among others;
- The National Plan should make outreach campaigns about sexual and reproductive rights, accessible for people with disabilities;
- There must be information services of sexual education and family planning for woman with disabilities that respect their right to privacy, confidentiality and will.
- Sexual educators, health professionals and institutions should provide reasonable accommodations or adjustments to ensure the access of persons with disabilities the exercise their right to education;
- There should not be a difference in the contents of the sexual and reproductive plan methods for persons with or without disabilities.
- Women with disabilities must be guaranteed the possibility of making informed decisions on starting a family and receive adequate supports to materializa it.
- To document and publish the cases of women under guardianship or not that are subjected to sterilization.

²⁰⁹ Freedom of Information Request, No. 20132100000911 Submitted by PAIIS