

General Background on Colombian Laws on Violence against Women, Orders of Protection, and Shelters

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For the past two years, the authors have been conducting an evaluation of the implementation of Colombia's laws that address intimate partner violence. Their qualitative needs assessment study has been conducted from the point of view of service providers. This information provided by the authors to the UN Rapporteur for Women and her staff in connection with the Experts' Meeting in January 2017, is based on this study.

Colombia's principal law on violence against women is [Ley 1257 de 2008](#). It, together with earlier law, [Ley 294 de 1996](#), which established the crime of domestic violence¹ and the ability of women to seek an order of protection, fulfill Colombia's obligations under CEDAW and OAS Convention do Belem. Law 1257 clearly establishes the right of a woman to live a life free of violence as a fundamental human right that is also protected by Colombia's Constitution.

- A wide variety of measures can be included in orders of protection in addition to ordering the aggressor to stop the acts of violence, including, without limitation, removing an aggressor from the household, requiring the aggressor not to approach the victim (physically or through electronic means), removal of firearms, police protection, and temporary custody, support and visitation. Temporary orders of protection are to be issued within 4 hours of a request for one being made. They are to be followed within 10 days by a hearing at which further proof is presented and the aggressor has the opportunity to contest the order. Post-hearing, a permanent order of protection is issued if appropriate and will remain in place until one of the parties seeks to modify it.
- When Law 294 was enacted, judges were tasked with issuing orders of protection. Even though Law 294 establishes domestic violence as a crime, in its originally enacted provisions regarding issuance of orders of protection, it clearly stated (and continues to state) that *at any time* (e.g., even if there is no criminal proceeding) any member of a family who has been victim of domestic violence can seek an order of protection from either a municipal civil judge or a general municipal judge (Juez de Promiscuo). (Subsequently, Comisarios de Familia or Family Commissioners, instead of judges, were authorized to issue orders of protection.)
- In 2000, [Law 575](#) transferred the authority to issue orders of protection from judges to Family Commissioners, who thereby were given judicial administrative powers. The transfer was urged by judges to assist in decongestion of the judicial system. Judges hearing criminal cases for domestic violence, however, retained their ability to issue orders of protection as part of the criminal proceeding. In the context of conducting

¹ Law 294 creates the crime of "intrafamiliar violencia", which we herein refer to as "domestic violence." Violence between intimate partners is encompassed within the crime of domestic violence.

research on the implementation of the laws, the authors' have found that, as a practical matter, they rarely do so. Prosecutors also have stated that they will send a woman who has made a criminal complaint based on intimate partner violence to a Family Commissioner for an order of protection because the process of securing such an order from a judge can take many months, whereas the Family Commissioner can act quickly.

Family Commissioners

- Family Commissioners were created under the original [Code of Minors](#) from 1989, which was enacted to protect at-risk minors. Under the Code, children were not viewed as having rights, but rather viewed as being in an “irregular” situation where the protective roles to be performed within the family were not being observed.
- Under the system for protection of minors established by the Code, Family Commissioners were given a “supporting” and generally minor role. Their principal task was to resolve family conflicts. The Instituto Colombiano de Bienestar Familia (ICBF) was the national organization designated to strengthen the family, provide services, and protect minors. Within the ICBF, civil servants known as Defensores de Familia or Family Defenders were created. Family Defenders were given the key responsibility for protecting children, as well as acting as their legal representatives when a child is accused of a crime. If the ICBF did not have a Family Defender in a municipality, then Family Commissioners were charged with performing the responsibilities of a Family Defender. Family Commissioners, however, unlike Family Defenders, were not housed within the ICBF, and their costs were not covered from the ICBF budget. Instead, the Code required that in each municipality the municipal council create, and fund, the position of Family Commissioner. The task of hiring the Family Commissioner fell to the local mayor. The Code established minimal requirements for a Family Commissioner and a Family Defender, which were identical (e.g., a lawyer with a specialty in family law or administrative law, not having any indication of ethical impropriety).
- The Code of Minors was replaced, virtually in its entirety in 2006 when Colombia adopted Ley 1098, the [Código de la Infancia y la Adolescencia](#). The law was significant in several respects, most notably for recognizing that children are holders of legal rights. The law maintains the roles of Family Defenders and Family Commissioners and left largely unchanged the relevant provisions relating to them, including the requirement that Family Commissioners also perform the role of Family Defender if the ICBF does not have a presence in the municipality.
- When the responsibility for issuing civil orders of protection, an administrative judicial power, was added to the portfolio of Family Commissioners in 2000 by Law 575, Family Commissioners thereby were given an administrative role in the judicial system. However, nothing else about their operation changed. Family Commissioners remained part of the executive branch of government and under the authority of their local mayor. In recognition of Family Commissioner’s administrative judicial role in issuing civil orders of protection, the Ministry of Justice and Law was given authority to issue guidelines to them in connection with issuing civil orders of protection related to domestic violence, but otherwise the Ministry of Justice has no role in supervising Family Commissioners. Decisions of Family Commissioners can be appealed to Family Court Judges. When a Family Commissioner issues a sanction for violation of an order of

protection, a Family Court judge must confirm it. However, Family Commissioners were not placed within the judiciary and are not supervised by it.

Shelters

Overview

- Since 2008 Law 1257 has required the Ministry of Health to provide women who are victims of violence and at further risk of severe violence with services constituting of housing, food support and transportation. However, the Ministry of Health has consistently failed to provide these services. (Article 19 of Law [1257](#)).² The law does not require the Ministry of Health to build and create women's "shelters" –understood to mean a separate structure providing housing and other services to women who have been victims of violence. It does, however, require the Ministry to provide appropriate "shelter" (housing) and can include putting a woman and her children up in a hotel facility.
- Shelters, to the extent they exist, have been created by local municipal governments. Currently, only four cities, Bogotá, Medellín, Cali and Cartagena, have either women's shelters or spaces in secure private homes to house women who are victims of domestic violence and who are at risk from their aggressors and their children. Existing shelters therefore depend on the continued political will and funding of the respective municipality and could be discontinued at any time by the particular municipality.
- Colombia has a population of approximately 49 million. Bogotá has 8-10 million; Medellín, 3 million; Cali, 2.3 million; and Cartagena almost 1 million. In other words, approximately 17 million of Colombia's 49 million inhabitants live in cities with shelters. Conversely, approximately 60% of Colombia's population (that living outside of Bogotá, Medellín, Cali and Cartagena) has no access to shelters.

² **Artículo 19.** [Reglamentado por el Decreto Nacional 4796 de 2011.](#) [Reglamentado por el Decreto Nacional 2734 de 2012.](#) Las medidas de atención previstas en esta ley y las que implementen el Gobierno Nacional y las entidades territoriales, buscarán evitar que la atención que reciban la víctima y el agresor sea proporcionada por la misma persona y en el mismo lugar. En las medidas de atención se tendrán en cuenta las mujeres en situación especial de riesgo. a. Garantizar la habitación y alimentación de la víctima a través del Sistema General de Seguridad Social en Salud. Las Empresas Promotoras de Salud y las Administradores de Régimen Subsidiado, prestarán servicios de habitación y alimentación en las instituciones prestadoras de servicios de salud, o contratarán servicios de hotelería para tales fines; en todos los casos se incluirá el servicio de transporte de las víctimas, de sus hijos e hijas. Adicionalmente, contarán con sistemas de referencia y contrarreferencia para la atención de las víctimas, siempre garantizando la guarda de su vida, dignidad, e integridad. b. Cuando la víctima decida no permanecer en los servicios hoteleros disponibles, o estos no hayan sido contratados, se asignará un subsidio monetario mensual para la habitación y alimentación de la víctima, sus hijos es hija, siempre y cuando se verifique que el mismo será utilizado para sufragar estos gastos en un lugar diferente a que habite el agresor. Así mismo este subsidio estará condicionado a la asistencia a citas médicas, psicológicas o psiquiátricas que requiera la víctima. En el régimen contributivo éste subsidio será equivalente al monto de la cotización que haga la víctima al Sistema General de Seguridad Social en Salud, y para el régimen subsidiado será equivalente a un salario mínimo mensual vigente. Las Empresas Promotoras de Salud y las Administradoras de Régimen Subsidiado serán las encargadas de la prestación de servicios de asistencia médica, psicológica y psiquiátrica a las mujeres víctimas de violencia, a sus hijos e hijas. **Parágrafo 1°.** La aplicación de las medidas definidas en los literales a. y b. será hasta por seis meses, prorrogables hasta por seis meses más siempre y cuando la situación lo amerite. **Parágrafo 2°.** La aplicación de éstas medidas se hará con cargo al Sistema General de Seguridad Social en Salud. **Parágrafo 3°** La ubicación de las víctimas será reservada para garantizar su protección y seguridad, y las de sus hijas es hijas.

Background on the Legal Obligation under Colombian Law to Provide Women Victims of Intimate Partner Violence Who Are At Risk of Repeated Aggression with Physical Security

- In connection with the adoption of Law 1257, the provision that would have required the national government to provide women's shelters through its Ministry of Health was struck in response to objections from the Ministry of Health, which the authors understand were principally related to cost and difficulty of implementation considerations.
- Instead, Law 1257 of 2008 included provision for health officials to provide "measures of attention" or specific services for women who were victims of domestic violence and at special risk. The services that must be guaranteed are housing, food support and transportation for the woman and her children for a period of 6 months, which can be extended upon order for a further period of 6 months. (Article 19 of Law 1257)
- The Ministry of Health challenged the constitutionality of Law 1257's provision requiring it to provide measures of attention, focusing on the cost and potential for what they felt was the likelihood of misuse of government financial assets (women who did not need the protection or had not been actual victims of violence would seek it, at great cost to the government). The Constitutional Court in its decision [C-776 of 2010](#) found the Law 1257 provision constitutional, but read in a requirement that a Family Commissioner (or in their absence, a judge) must evaluate the circumstances and determine whether the woman (1) is a victim of violence and (2) at risk such that special measures of attention are needed. Further, regulations of the Ministry of Health should include safeguards so that the measures of attention are awarded only to women who are the intended beneficiaries of the law.
- Subsequently, when the Ministry of Health adopted regulations implementing Article 19 of Law 1257. (See, in particular, [Decree 2744 of 2012](#)) The regulations include the requirement that Family Commissioners must review the circumstances of a victim of domestic violence and issue an order setting forth the measures of attention a woman is to receive when a woman is in a "special risk situation." The regulation defines a special risk situation as "aquella circunstancia que afecte la vida, salud e integridad de la mujer víctima, que se derive de permanecer en el lugar donde habita" or "that circumstance that affects the life, health and integrity of the woman victim, and that arises from remaining in the dwelling that she inhabits."
- Further, prior to issuing an order, the Family Commissioner should receive a report from the police confirming that the woman is at special risk and certain other requirements must be satisfied.
- Notwithstanding the requirements of Article 19 of Law 1257 and the Constitutional Court's decision upholding it, Family Commissioners, other government officials, and members of civil society that we interviewed say this provision of law is "ley muerta," a dead law. Even though the Family Commissioners may order the measures of attention, the Ministry of Health does not provide them.
 - Some Family Commissioners interviewed in the context of the study nonetheless order them as a way to try and demand that the law be enforced and push the system.
 - Most, however, do not order the Ministry of Health's measures of attention, knowing they will go nowhere.

- Instead, if a Family Commissioner lives in a city that has a shelter or an arrangement within secure private homes for women who are at risk and that is provided by the local municipality, the Family Commissioner, after consultation with the woman, ascertaining her willingness to move to a shelter, and confirming space availability, will provide in the relevant order of protection for the woman (and her children) to be given this service. Thereafter, depending on the particular operating procedures of a shelter, either a representative of the shelter will meet the woman at the office of the Family Commissioner (Medellín) or the psychologist or social worker on the Family Commissioner's staff will take the woman to the shelter (Bogotá).

Shelter Description

- As noted above, four cities – Bogotá, Medellín, Cali and Cartagena – have women's shelters or secure private homes. Shelter programs are generally established by the municipality's Secretaria de la Mujer or Secretariat for Women, and fall within its budget. These programs provide a full set of support services. (link to Bogotá's Secretariat for Women public page describing their [Casas de Refugio](#))
- Each city devises its own approach to shelters. There is no uniform agreement on or sharing of policies, practices, or programming.
- Family Commissioners are aware of available shelters, and their specific requirements. When they have a woman whom they believe to be at high risk from their aggressor, they will recommend that a woman consider a shelter, explain the requirements both for entry and the associated program, and encourage women to enter a shelter. The decision to enter a shelter, however, must be the woman's. If the woman wants to go to the shelter, the Family Commissioner calls the shelter to secure a space. Sometimes places are not available. Many women also are reluctant to go to a shelter because they do not want to move their children and do not want to follow the shelter rules that call for cutting off contact with friends and family members. Other women may not qualify if they are drug or alcohol dependent; the limited space in shelters is not available to them.
- Because all women's shelters are dependent upon funding from local municipalities and local political will to support them, in theory, they could be cancelled at any time. The likely time for program closure or cut back occurs when a new government is elected, which happens every four years. Moreover, financial resources available to municipalities to fund programs, like shelters, vary significantly. Municipalities are limited in their ability to raise many types of taxes, and many smaller towns depend almost entirely on Colombia's system of financial transfers from central to local government. If a municipality's financial resources diminish, programs must be cut, and that can put shelters at risk.
- Bogotá's shelters, which are under Bogotá's Secretariat for Women, were originally established with the assistance of the Spanish Development Agency. They are modeled after the shelters in Spain, and the rules regarding who qualifies for a place in the shelter, and the care and requirements for those who are in the shelter, are modeled on those in Spain.
- In Medellín, shelters are arranged through a contract with a nonprofit and consist of places in individual homes at undisclosed locations. The nonprofit also provides psychological and legal support.

- The authors are not personally familiar with the structure for shelters in the other two cities in which they are offered, and have not researched them as the topic falls outside the scope of the study.

Observations on Colombian Legal Requirement that Undercuts Purely Civil Nature of Orders of Protection

- Family Commissioners must send all cases of domestic violence to the Prosecutor (Fiscal) for investigation of the crime of domestic violence and related crimes. (Article 5, paragraph 3, Law 294³) In Colombia, the crime of domestic violence is “por oficio;” in other words, the victim does not have to make an official complaint in order for a prosecutor to commence a criminal proceeding. It also is “no drop”—even if the victim subsequently decides not to testify or participate in a trial, the prosecutor must pursue the trial until judgment.
- Colombia therefore does not provide a woman the option of seeking a civil order of protection without running the risk of involving the criminal justice system. Every request for a civil order of protection filed with the Family Commissioner could lead to a criminal prosecution.
- Moreover, sanctions in Colombia for the crime of domestic violence are significant. A conviction for the crime of domestic violence results in a prison sentence of 6 or more years. As a practical matter, however, the system is so overburdened that the likelihood of a Prosecutor commencing a criminal proceeding for the crime of domestic violence based on the original request for a civil order of protection appears relatively remote. However, the authors are aware of instances where this happens.
- The interviews with Family Commissioners have revealed that they do not know what happens with the materials sent to prosecutors. Occasionally Family Commissioners will receive a call or a request for the complete files on a matter, but according to interviewees, this may happen months or even years after the original order of protection has been issued. Family Commissioners will always advise a woman of her right to file a criminal complaint, in addition to receiving an order of protection, and explain how she may go about doing so. Depending on the circumstances, some Family Commissioners also will encourage a woman to file a criminal complaint. There are other Family Commissioners who will flag files that they send to Prosecutors where death threats have been issued, they believe the woman is at grave risk, or the nature of the violence is extreme.
- Interviews with prosecutors reveal that even where a woman makes a complaint directly to a Prosecutor and a criminal proceeding is commenced, the woman may change her mind about testifying when she realizes that her partner faces significant jail time and/or that, without him, she will lack the economic resources needed to feed her children and herself. The sanctions for a once in twenty years punch and for a continued multi-year pattern of psychological and low level physical violence are the same. While in jail, most aggressors lack the means to provide financial support. This becomes a significant consideration for many women where the aggressor’s financial contribution means the difference between feeding her children or making them go hungry. In these cases, the

³Law 294, Article 5 PARÁGRAFO 3º provides “La autoridad competente deberá remitir todos los casos de violencia intrafamiliar a la Fiscalía General de la Nación para efectos de la investigación del delito de violencia intrafamiliar y posibles delitos conexos.”

woman will exercise her constitutional right not to testify, even sitting with the accused. In Colombia, the constitutional right not to testify extends to various members of a family where the accused is a family member. Neither a woman nor a child can be compelled to testify against a spouse/partner or father. A criminal judge must remind a spouse/partner or a child of this right and confirm that they do not want to invoke it before allowing them to testify in a criminal matter against a spouse/partner/father or other family member. Unless there is other eyewitness testimony from a child (who is willing to testify) or neighbors or the aggressor has been caught *en flagrancia* by the police, the criminal case will fail because there will be nothing to tie the woman's injuries to the particular aggressor. It may be possible that the tendency of victims of not testifying has the unintended consequence of being assigned low priority when complaints are forwarded from the Family Commissioners to the Prosecutor.

- Other factors revealed in the study that diminish the likelihood of prosecution based on Family Commissioner referrals include the following:
 - Prosecutors' heavy workload based on cases where the victim has filed a complaint directly with the Prosecutor.
 - Prosecutors' view that the materials sent by Family Commissioners are not sufficient, in and of themselves, to allow a Prosecutor to make a decision whether to prosecute. Further investigation is necessary. By the time the Prosecutor gets to a particular Family Commissioner referred matter, evidence is no longer readily available, the parties may have moved, or they may have reconciled. While this concern is reasonable, it is not within the control of the Family Commissioners. Family Commissioners read Law 294 to require them to send the materials in their possession at the time they become aware of acts of domestic violence—e.g., at the time a victim files a request for a temporary order of protection. (Article 9 and Article 5, paragraph 3, Law 296) The law allows Family Commissioners to issue a temporary order of protection so long as at least “indicios leves” (light standards of proof) exist. (Article 11, Law 294) Consequently, Family Commissioners may issue a temporary order of protection based on the testimony of the victim. At this point, the hearing on a permanent hearing for an order of protection will not have been held, the aggressor will not have had the opportunity to present a defense, and other evidence, such as psychological evaluations and home visits, will not have taken place. There may or may not be a report from Forensic Medicine or a hospital on the victim's injuries. In summary, a Family Commissioner must send information to a Prosecutor at a time when the Family Commissioner has enough information to issue a temporary order of protection, but is unlikely to have collected sufficient evidence to support the level of proof required for a successful criminal prosecution.