

Analysis of the Colombian Constitutional Court's Transformative Approach to Conflict-Related Sexual Violence

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journals.sagepub.com/home/sls**Isabel Inguanzo***University of Salamanca, Spain***Angélica Rodríguez Rodríguez** *Universidad del Norte, Colombia*

Abstract

This paper aims to assess whether the Colombian Constitutional Court has had a transformative approach to transitional justice in relation to conflict-related sexual violence. Building upon previous literature on feminist approaches to transitional justice, we carry out a content analysis of all 37 Autos related to conflict-related sexual violence issued by the Colombian Constitutional Court between 2008 and 2016. In doing so, we delve into how the high court identifies perpetrators and survivors of sexual violence, the causes that lead to sexual violence during conflict and displacement, and the measures they propose to eradicate this crime. Overall, while we find that critical decisions are transformative in most of the analysed dimensions, there remains some room for improvement.

Keywords

Colombia, conflict-related sexual violence, content analysis, gender, transitional justice

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Introduction

The Habana Peace Accords in 2016 constituted a benchmark in the Colombian Peace Process, putting an end to over 50 years of armed conflict between the Colombian Government and the FARC-EP Guerrillas. Prior to that, paramilitary groups had already started to demobilize in the mid-2000s, and today, the remaining major active armed group, the ELN, is now in negotiations with the newly elected Petro Colombian Government. Throughout this 20-year peace process, different transitional justice mechanisms have been put in place to respond to the legacy of massive and serious human rights violations derived from armed conflict.

Along this process, feminist and women's organizations in Colombia have denounced multiple cases of sexual violence in the contexts of both peace and conflict. In Colombia, heteropatriarchal norms prevail throughout the country, which has facilitated the normalization of gender-based violence (Pallitto and O'Campo, 2005). For Colombian women, violence did not begin with the conflict but was exacerbated by it. According to the Unified Registry of Victims (RUV in Spanish), as of 31 August 2022, the number of victims of the conflict amounted to 9,342,426, of which 50.2% are women (Unidad para las Víctimas, 2022). In regard to conflict-related sexual violence, the Truth Commission states that 32,446 people, of which 92.5% are women and girls, have been victims of acts against sexual freedom and sexual integrity in its chapter on the findings of the differentiated effects experienced by Colombian women in the armed conflict. On the other hand, of the 1294 facts reported to the Commission corresponding to 1154 people who were victims of sexual violence, 89.51% of them were related to women and sexual violence was the fourth most reported kind (Comisión para el Esclarecimiento de la Verdad, 2022).

Although the Habana Peace Agreement introduced a panel on women's rights, there are valid concerns that the peace process will contribute to the reproduction of the existing sexual and ethnic hegemony (Acosta et al., 2018). In light of these worries and the uncertainty surrounding the implementation of the peace agreement, it is critical to understand how transitional justice mechanisms and actors already in place have been approaching women's rights' violations, and more specifically, conflict-related sexual violence (CRSV).

Previous literature on peace and security has highlighted that the gender perspective has often been ignored in transitional processes and that when it was addressed, it was generally limited to crimes of sexual violence as a weapon of war against civilian women (Kirby, 2015). This narrow approach presents several limitations that reduce the scope of transitional justice for both men and women. An increasing number of authors have argued that applying a broader gender perspective on these types of crimes allows transformative justice to be delivered (Bell and O'Rourke, 2007; Campbell, 2007; Lemaître and Sandvik, 2014; Ní Aoláin, 2012; Rubio-Marín, 2006; Rubio-Marín and De Greiff, 2007). Transformative justice refers to a type of transitional justice that seeks to change the social structures that initially led to previous oppression. With regard to justice for women, it acts on the structural causes of gender inequality that ultimately lead to sexual and gender-based violence before, during, and after armed conflict (Lockett, 2008). When studying transitional justice from this perspective, most

studies have focused on the role of political authorities, civil society organizations, and international communities in advancing transformative justice (Kreft, 2020; Weber, 2018). However, far less attention has been devoted to judicial power. To our knowledge, no study has yet examined whether the Colombian Constitutional Court (CCC), as a key factor in this transitional process, is using a transformative or restorative approach concerning women's rights.

In this paper, we focus on the CCC to assess whether this high court has had a transformative approach to transitional justice in relation to CRSV, prior to the signature of the peace agreement. We focus on the period 2008–2016 because although complete transition had not yet taken place in Colombia, mechanisms of transitional justice were already implemented by judicial officials. In fact, previous research during that period pointed at the necessity to deliver transformative justice (Lemaitre and Sandvik, 2014; Meertens, 2010) but never systematically analysed whether the CCC had already adopted a transformative approach to transitional justice that could break new ground for the peace agreement. Accordingly, we conduct a content analysis of all 37 CCC Autos that mention CRSV at least once, using N-Vivo software, paying special attention to how the high court judges identify the perpetrators and survivors of sexual violence, the factors that lead to sexual violence during conflict and displacement, and the measures they propose to eradicate this crime. The analysis shows that the CCC mainly has a transformative approach, although the assessment also identifies spaces for improvement.

Literature Review

According to the literature on transitional justice (TJ), Colombia is a *sui generis* case for two different reasons. First, TJ mechanisms started before the transition, when the armed conflict was still going on (García-Godos and Lid, 2010; Meertens, 2010; Pérez Murcia, 2014; Theidon, 2007). As a result, the whole peace process aimed to simultaneously achieve two different goals: peace and justice. This tension has led to different understandings based on whether priority should be given to negative peace (understood as the absence of violence) or to truth and reparations. Consequently, different Colombian Administrations have passed different legislation emphasizing peace and demobilization (Law of Justice and Peace in 2005) or justice and reparations for the victims (Law of Victims and Land Restitution in 2011). These different approaches reflected diverse domestic and international influences over the years (Phelan and True, 2022).

Second, even before the peace agreement was signed, the Colombian Government was already bound by international obligations towards the Inter-American Court of Human Rights and the International Criminal Court in matters related to TJ (Hillebrecht et al., 2018). This has led to frictions and the coexistence of different reparation regimes both at the domestic and international levels (Björkdahl and Warvsten, 2022; Sandoval, 2017). As a result, during the whole peace process, and notably before the peace agreement was signed, the CCC¹ reviewed TJ legislation and government practices to ensure that they aligned with international obligations and, more specifically, with a victim-centred and transformative perspective (Nauenberg Dunkell, 2021).

Indeed, in Colombia, one of the main actors in this transitional process has been the CCC, both before and after the Habana Peace Accords in 2016 (Bernal, 2022; Rowen, 2017). More specifically, its work has been critical in upholding the rights of women in the context of armed conflict in the years prior to the signing of the peace agreement in 2016 (Lemaitre and Sandvik, 2014; Meertens, 2010; Meertens and Zambrano, 2010). Of utmost importance was Auto 092-2008, where the CCC recognized for the first time ‘the disproportionate impact of violence on women and called on the state to prevent gender-based—especially sexual—violence against women in conflict and during or after forced displacement’ (Meertens, 2010). This Auto from the CCC was issued 3 years before the Parliament issued the Law of Victims and Land Restitution.² Therefore, to better understand whether the CCC could be a major actor in gendering the transformative approach to Colombian TJ, we should now turn to how the feminist literature approaches CRSV.

In recent decades, CRSV has been a key issue of discussion in peace and security research, policy, and activist agendas (Kirby and Shepherd, 2016). Critical feminist activists and peace scholars have enriched the debate by denouncing prejudices and biases when both international scholars and policymakers approach the subject. The most common criticisms focus on the fetishization and securitization of sexual violence (Meger, 2016), as well as on the reinforcement of the notion of women as vulnerable people to be protected rather than as political subjects (Carpenter, 2005). Other scholars have criticized the short-sightedness of accounts that fail to recognize that increased rates of sexual violence continue in the aftermath of conflicts, displacements, and resettlements (Krause, 2015). According to certain scholars, the oversimplifications that frequently surround the diagnosis and prognosis of CRSV foster international actions that limit the solutions to sexual violence in emergency settings because they fail to address the root causes of sexual violence in the first place (Abdelnour and Saeed, 2014; Lockett, 2008; Sahin and Kula, 2018; Stern, 2019).

Perceptions of the nature of CRSV are crucial to understand which types of interventions are encouraged or supported at the international, national, and community levels (Kreft, 2020). From an international perspective, for many decades, CRSV has been reduced to a mere strategy of war. In fact, one of the core focus areas of early feminist approaches to TJ has been justice for harm perpetrated against women, typically defined as prosecuting wartime sexual violence and rape (Dunn, 2017). According to Kirby (2015), this conceptualization of sexual violence as a weapon of war against civilian women can be problematic, since it presents three important limitations: (1) it ignores sexual violence that is not perpetrated by armed actors as part of a systematic and premeditated attack, (2) it tends to identify women and girls as the only victims of this type of violence, and (3) it places an excessive emphasis on the impunity of sexual crimes in conflict episodes as the main cause of sexual violence in conflict situations. Therefore, it is critical to pay attention to the identity of perpetrators, the identity of victims and survivors, the identified causes of sexual violence and the proposed interventions to evaluate any measure to end sexual violence both in times of conflict and in times of peace.

First, only identifying perpetrators who are members of armed groups underestimates the extent of CRSV. Many studies in the field have documented that sexual violence is often perpetrated by persons already known to the survivor – such as relatives, partners,

and members of the community – and these crimes increase in post-emergency situations and displacement (Albutt et al., 2017; Hynes et al., 2016). Apart from relatives and other members of the community, sexual violence can also be perpetrated by members of the resettlement community, guards at displaced and refugee camps, public officers, and humanitarian personnel (Beswick, 2001). Therefore, armed group members are only one type of perpetrator of sexual violence. Approaches considering armed actors as the sole perpetrators of sexual violence ignore the fact that sexual violence might have already been common even before the conflict started. This type of approach usually fails to identify patriarchal values, traditional gender roles, and the beliefs in communities or among individuals as the main drivers of sexual violence (Fry et al., 2017; Htun and Weldon, 2012). It also fails to explain why certain armed groups use sexual violence against civilians as part of their repertoire, while others do not (Wood, 2006, 2009).

Second, considering sexual violence as a weapon of war also fails to recognize that CRSV does not affect all social groups homogenously. Several studies suggest that power hierarchies are critical to understanding why someone becomes vulnerable to CRSV (Lemay Langlois, 2018). While in documented cases of CRSV, women and girls are the most frequent targets, several studies show how those belonging to oppressed social groups are at a higher risk of suffering CRSV (Rooney and Ní Aoláin, 2018). These groups are people with disabilities (Barrios Suarez, 2013; Marshall and Barrett, 2018; Tanabe et al., 2015), ethnic minorities (Hagan et al., 2009; Kaiser and Hagan, 2015), LGBTQI people (Zea et al., 2013), and people in situations of helplessness (due to their legal status) or subject to the authority of or dependence upon others (Keygnaert et al., 2012).

At the same time, although it is true that most sexual violence is perpetrated by men against women and girls, this perspective disregards the fact that some men and boys also suffer sexual violence, especially if they belong to vulnerable or subordinated groups, in both conflict and post-emergency situations (Zea et al., 2013). During the conflict, sexual violence against girls and boys is frequent in situations of forced conscription and might continue as long as they remain in the armed groups (Johnson et al., 2008; Patel et al., 2013). Regarding adult men, the sexual mutilation of men is a common form of torture (Zalewski et al., 2018), and cases of the rape of men have also been documented (Ferales et al., 2016; Oosterhoff et al., 2004). The goals of types of sexual violence against men are diverse: from undermining the masculinity of the ‘enemy’ and impacting the gender identities of survivors (Drumond, 2019) to downgrading ethnic rivals by symbolically appropriating the masculinity of the male ethnic Other (Žarkov, 2007). Again, social norms on sexuality and gender roles are behind this type of aggression, since the goal is to emasculate the men of the opposite side. Sexual violence against men is in some cases even more invisible and stigmatized than sexual violence against women. As a result, many men who have survived it do not seek medical or psychological help and do not report it or access the social services and benefits that are available for sexual violence survivors (Chynoweth et al., 2017; Drumond, 2019; Edström and Dolan, 2019).

Third, while most feminist scholars in the field of peace and TJ identify prior hetero-patriarchal values, gender inequality, and discrimination as the main drivers of CRSV (Boesten, 2017; Kreft, 2020), other scholars have pointed out other contextual causes that are enhanced by the situation of conflict or later emergency. Some researchers

point to the precarious living conditions of forcibly displaced people, which might make them more vulnerable to forced marriage, child marriage, forced pregnancy, sexual trafficking, and the exchange of basic goods for sexual favours (McAlpine et al., 2016). Others argue that the exceptionality of conflict, displacement, and post-emergency situations increases the likelihood of sexual aggression as a result of the erosion of support networks and other social norms that are used to keep a community stable and united (Schulz, 2018) and as a result of a generalized context of impunity (Bennett and de Lacey, 2017; Martin, 2011).

However, feminist scholars in the field of peace and TJ have been critical of the restorative justice approach and its excessive emphasis on the state breakdown and climate of impunity hypotheses. Critics of restorative justice argue that focusing solely on these components directly implies adopting limited measures aimed at decreasing the impunity of these crimes as a deterrent mechanism against potential future sexual crimes in contexts of conflict. According to them, this is problematic mainly for two reasons.

On the one hand, there is no sound evidence that would suggest that measures aimed at reducing impunity in post-emergency and humanitarian situations are effective (Kirby, 2015). This lack of effectiveness is due to trials commonly being conducted by foreign courts, and when this happens, the affected community often does not trust alien procedures or their outcomes. Moreover, the scope of the transformation of these extraordinary judicial procedures is rather limited (Williams and Palmer, 2016). Additionally, there is no evidence that when customary justice is used, survivors obtain either justice or sufficient reparation (Kirby, 2015). Furthermore, on many occasions, legal institutions themselves reiterate gender inequalities and heteropatriarchal norms when addressing cases of CRSV (Campbell, 2007).

On the other hand, focusing only on reducing impunity implies adopting a narrow perspective on the problem, since the goal is to seek restorative justice instead of transformative justice (Williams and Palmer, 2016). Restorative justice seeks to return to the pre-emergency status and hence to the original levels of sexual violence, whereas transformative justice entails the following:

transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes, and the challenge of unequal and intersecting power relationships and structures of exclusion at both the local and the global levels (Gready and Robinsy, 2014).

In the Colombian case, precisely to respond to the causes and not just the symptoms of the conflict, a more transformative than a restorative approach to justice is needed. By this, we do not mean in any way that transformative justice is the opposite of restorative justice since the latter makes recognition, consultation, and reparation of victims the centrepiece of TJ processes. However, transformative justice has a particular potential to modify structures such as patriarchy (as a gendered power structure), imperialism/colonialism, and capitalism understood as the root causes that enable and normalize sexual violence. Transformative justice points out that it is not possible to separate mass violence developed within the framework of a conflict from 'wider continuums and continuities of

violence, including heteronormative and patriarchal institutions that overtly or tacitly enact and condone gender and sexual-based violence against men, women and gender non-conforming persons' (Baines and Oliveira, 2021: 345).

Similarly, advocates of feminist and transformative justice emphasize transformative measures that foster women's economic, social and political rights, such as land restitution for women and ethnic minorities (Meertens and Zambrano, 2010; Ruiz González et al., 2021) and fostering women's political organization and participation (Lemaitre, 2016; Lemaitre and Sandvik, 2014; Phelan and True, 2022; Weber, 2018). The aim here is to revert gender inequalities and hierarchies that were already present prior to the conflict. Transformative justice could offer a meaningful change in societies undergoing transitions by addressing the continuities of political and structural violence, focusing on the societal causes of violence, and promoting context-specific participatory mechanisms (Gready and Robinsy, 2014)

In this sense, applying a gendered differential approach to TJ means adopting a transformative agenda that looks not only for reparations but also for rectification. The goal is to avoid re-establishing a previous system that generated inequalities and human rights violations (Kirby, 2015).³ In the following sections, we seek to translate a well-established body of transitional scholarship into specific indicators of transformative justice and to analyse whether the CCC aims at restoring or transforming Colombian social structures in regard to women's rights.

Methodological Considerations

The aim of the paper is to assess whether the CCC already had a transformative approach to CRSV before the signing of the peace agreement. To answer this question, we review all CCC Autos that address CRSV at least once. Autos are binding court decisions through which the CCC can suspend terms, request information, ask for evidence from the government, or demand compliance with the sentences. They are judicial decisions that resolve issues other than the principal subject matter of the litigation that arise during a jurisdictional process. Therefore, the Autos do not rule over a specific case but instead determine the essence of the controversy by giving a guideline to be followed by the parties, providing clarification on the situation consulted and indicating the orientation of the administration. Other scholars who have analysed CCC approaches to women rights have also relied on Autos as primary sources of interpretation (Lemaitre and Sandvik, 2014; Meertens, 2010; Meertens and Zambrano, 2010).

To analyse all these Autos, we perform a preliminary analysis following the content analysis strategy. Previous work has shown that content analysis can be a useful methodology for analysing judicial opinions (Evans et al., 2007; Hall and Wright, 2008). Content analysis of legal documents, such as judicial opinions, allows the United States to better identify linguistic reliance across rulings and argumentative patterns across a medium-large number of cases. Similarly, we build upon previous work by Ortiz-Barreda et al. (2011) and Inguanzo and Rodríguez-Rodríguez (2019) in which they analyse key legal documents that proposed measures to end violence against women through content analysis. Finally, we also rely on previous literature on policy frame analysis that stresses the connections between diagnosis (identification

of causes) and prognosis (proposal of measures) with regard to transformative TJ (Gready and Robinsy, 2014).

For our analysis, we conducted a search on the CCC online archives of all Autos (*non-substance decisions*) referring to the armed conflict from 2008 to 2016. We decided to start with 2008 because it was in that year, specifically with Auto 092-08, that the CCC first highlighted ‘the disproportionate impact of violence on women and called on the state to prevent gender-based—especially sexual—violence against women in conflict and during or after forced displacement’ (Meertens, 2010). We stop the search at Autos published after 20 September 2016, since that is the official date of signature of the peace agreement in Colombia. According to this search, we found 145 Autos containing at least one reference to the ‘armed conflict’. Out of these 145 Autos, 37 make at least one reference to sexual violence.⁴ Table 1 collects the 37 Autos on armed conflict that include at least one reference to sexual violence.

In the first round of screening, documents are analysed to identify all the passages that mention some type of sexual violence (this includes the following terms, translated from Spanish: ‘sexual violence’, ‘sexual aggression’, ‘sexual abuse’, ‘sexual harassment’, ‘sexual attack’, ‘sexual exploitation’, ‘sexual subjugation’, ‘sexual coercion’, ‘sexual torture’, ‘sexual slavery’, ‘sexual mutilation’, ‘sexual pressure’, ‘rape(s)’, ‘forced prostitution’, ‘forced sterilization’, ‘forced pregnancy’, ‘forced nudity’, ‘coercion for having/maintaining sexual intercourse’, ‘violent carnal access’).⁵

Once these references to sexual violence are identified, the surrounding text is analysed with content analysis strategy to identify any pattern related to the identity of victims/survivors (how diverse they are) and the identity of the perpetrators (whether they belong to an armed group).⁶ We then proceed with the identification of the structural or contextual causes associated with these CRSV references. The structural causes are further divided according to the literature into the following categories: heteropatriarchal gender norms and discrimination, precarious living conditions, the collapse of social norms and support networks, impunity, militarization, and ‘other causes’. Finally, the policies and measures proposed to prevent sexual violence are also codified by type of policy: education, raising awareness and changing attitudes and gender norms, improving living conditions, reducing impunity, strengthening institutions, strengthening women’s support networks, and other policies and measures.

The following table shows a summary of references to sexual violence, perpetrator identity and the identity of persons sexually attacked. The details of the codification of particular texts or documents are available upon request.

To measure the transformative or restorative nature of the different *Autos*, we examine both the diagnosis and the prognosis. As a result, an *Auto* is considered transformative if:

1. It identifies perpetrators within and beyond armed groups (Albutt et al., 2017; Krause, 2015).
2. It recognizes different types of survivors or victims (Rooney and Ní Aoláin, 2018), including men and boys (Drumond, 2019; Ferrales et al., 2016).
3. It acknowledges that sexual violence in times of conflict and displacement is a continuation or exacerbation of previous patterns of violence against women and gender discrimination (Gready and Robinsy, 2014; Kreft, 2019, 2020).

Table 1. Autos on CRSV included in the analysis.

Autos	Main topic of the Auto	References to:		
		Sexual violence	Identity of perpetrators	Gender of victims/survivors
A092-08	Displaced women	85	51	162
A116-08	Proposal of the indicators of the effective fulfilment of rights for displaced people	51	0	39
A237-08	Displaced women	84	13	93
A251-08	Displaced children	75	38	48
A004-09	Displaced indigenous people	23	28	27
A005-09	Displaced Afro-descendants	3	4	2
A006-09	Displaced people with disabilities	3	0	2
A009-09	Orders for the authorities: The case of the assassination of a women leader's relative	4	1	3
A382-10	Injunctions for indigenous communities	1	0	1
A383-10	Coordination of local and national policy towards displaced people	3	0	0
A219-11	Monitoring sentence T025-2004 (Peace Process)	2	0	6
A028-12	Monitoring sentence T025-2004 (Peace Process)	14	0	10
A173-12	Injunctions for indigenous communities	2	0	0
A008-13	Female leaders and human rights defenders	1	0	1
A027-13	Request for information: Case of the assassination of a female leader	1	0	1
A028-13	Request for information: Programs to prevent sexual violence against displaced women	23	0	17
A052-13	Monitoring sentence T025-2004 (Peace Process)	1	0	1
A098-13	Displaced female leaders	40	12	53
A119-13	Monitoring sentence T025-2004 (Peace Process)	1	0	0
A206-13	Request for clarification: Victims Agency	1	0	0
A234-13	Request for information: Buenaventura Municipality	1	0	2
A073-14	Afro-Colombian communities	3	4	0
A074-14	Request for information: Buenaventura Municipality	3	0	0
A173-14	Displaced people with disabilities	39	0	4

(Continued)

Table 1. (continued)

Autos	Main topic of the Auto	References to:		
		Sexual violence	Identity of perpetrators	Gender of victims/survivors
A009-15	Sexual violence against displaced women	436	85	660
A029-15	Monitoring: Assistance and Reparation for Victims	15	1	7
A246-15	Monitoring: Truth & Memory	14	0	4
A281-15	Request for information: displaced women	5	0	5
A333-15	Displaced children and youth	47	6	37
A443-15	Request for information: displaced women	6	0	7
A458-15	Monitoring: displaced women	14	0	9
A101-16	Monitoring: displaced women	1	0	1
A181-16	Annulment of judgement	37	0	11
A310-16	Request for information: Regions of Chocó and Urabá	1	2	0
A316-16	Request for information: Death of a victim of CRSV	8	0	3
A370-16	Monitoring: Attorney Office	13	1	13
A373-16	Monitoring Sentence T025-2004 (Peace Process)	13	1	4

4. It proposes more transformative preventive measures (such as changing gender norms, promoting the socioeconomic independence of women and strengthening women’s support networks and organizations) than restorative measures (such as reducing impunity or providing economic compensation for past harms) (Bell and O’Rourke, 2007; Brown and Ní Aoláin, 2015; Lemaitre and Sandvik, 2014; Ní Aoláin, 2012; Rubio-Marín and Sandoval, 2011).

Just to be clear, restorative measures are important for justice; however, for this justice to be transformative, these measures should not constitute the core of the prognosis.

Results

When applying the transformative TJ framework, we recognize strong differences between CCC Autos. As we will show in the following paragraphs, Auto A009-2015 is the most transformative. Autos A092 and 237 are also somewhat transformative in their diagnosis and prognosis.

First, in relation to the identity of perpetrators, when the CCC specifies the identity of aggressors, in 87.4% of the cases, it identifies them as belonging to an armed group. The references to nonarmed perpetrators are unevenly distributed among CCC Autos and

usually refer to CRSV against children and youth. For example, Auto A251–2008 on displaced childhood states that ‘girls [...] are exposed not only to a higher incidence of episodes of domestic violence, but especially to a greater risk of sexual violence in their homes. In these cases, joining the ranks of illegal armed groups stands, in the perception of children and adolescents, as an alternative to get rid of situations of abuse and violence’. Multiple references to nonarmed perpetrators are also present in Auto A009–2015 on sexual violence against displaced women and, to a lesser extent, in Auto A092–2008 and Auto A237–2008, which are both about displaced women. Among the 47 occasions where the CCC identifies a perpetrator who is not a member of an armed group, it usually refers to men known by survivors such as partners, relatives (especially fathers and stepfathers), neighbours, and teachers.

Second, regarding the identity of the survivors, the CCC clearly adopts an intersectional approach. Throughout the different Autos, gender and age are the main determining factors for becoming a victim/survivor. However, several Autos highlight that indigenous and Afro-Colombian women are more likely to suffer sexual violence.⁷ Disability as a risk factor for sexual violence in conflict and displacement settings is also considered in Autos A006–2009 and A173–14 on people with disabilities, and Auto A092–2008, A237–2008, and Auto A009–2015 on displaced women. Diverse sexual orientation and gender identities have also been identified as risk factors in Autos A009–2015 and A333–15 and once in Auto A092–2008. Moreover, Auto A116–08 requests that the Colombian Administration provide data on sexual violence cases disaggregated by gender and other sociodemographic categories (age, ethnicity, disability status, and sexual orientation).

However, most Autos fail to identify men as possible victims or survivors of sexual violence. Indeed, Autos A092–2008, A251–2008, A219–11, A234–13, A009–2015, A333–15, A370–16, and A373–16 identify male victims, but this is very rare. In fact, only 3.74% of the victims and survivors whose gender is specified in CCC Autos are male. This contrasts with the estimated rate of sexual violence in Colombia, which is 15% against men and 18% against boys according to Auto A009–2015. In fact, from the 46 times where male victims were identified in CCC Autos, 39 passages relate to sexual violence against boys. In Auto A092–2008, the CCC quotes the United Nations Special Rapporteur on Sexual Violence against Women in Colombia (1998) and states the following about the perpetrators of sexual violence against men:

[They] seek to emotionally damage men, making them feel they are no longer “‘true’ men”, that castration was common during massacres and selective homicides in the context of the Colombian conflict and that men have also been attacked because of their sexual orientation or gender identity.

Regarding the structural causes of sexual violence, in most Autos, the CCC gives more importance to discrimination and heteropatriarchal social norms on sexuality and gender roles than to militarization *per se*.⁸ Autos A092–2008, A237–08, A098–2013, and A009–2015 specifically highlight gender discrimination. Indeed, in Auto A092–2008, basing its arguments on previous opinions on Colombia from the Inter-American Commission on Human Rights, the CCC states that there are:

cultural factors 'previous' to the armed conflict, particularly sexist and degrading stereotypes, and representations of women, that foster discrimination and violence [...] These prior structural factors are boosted, exploited, capitalized and degenerated by actors involved in the armed conflict (Auto A092-2008).

Furthermore, Auto A009-2015 (pp. 13–15) explains that armed groups teach and reinforce specific female and male representations and gender roles to their members. These representations and gender roles are later imposed on the communities in the territories they control, and those who attempt to disobey them are usually punished with violence and sometimes sexual violence. In fact, the CCC stresses that sexual violence is not simply a weapon of war but has its roots:

in cultural patterns that link the body of women to the honour of men and the community and therefore favour woman's victimization in a context of war, the generalized scorn and undervaluing of the dignity and female sexuality, or the interest to control or exploit her body and reproductive capacity (Auto A092-2008).

Actually, this Auto, the first of 2008 (and Auto A333-215), highlights the previous patriarchal sociocultural norms as the main cause of sexual violence in times of both peace and conflict. According to the CCC Autos, these patriarchal social norms are imposed by the armed groups controlling every single dimension of the lives of women and men: the way they dress, where they go, the hours when they can be outside the home, who they talk to, their sexual and social relationships, etc. Therefore, these sexist and homophobic control strategies affect not only women but also LGBTQI people. Similarly, female social leaders and human rights defenders are particularly targeted by armed groups since they contravene the regulations imposed on women's behaviour in controlled territories (Autos A098-2013, A008-13, and A027-13).

In fact, throughout different Autos, the CCC acknowledges the intersectionality of the phenomena, since it highlights on several occasions that different types of discrimination overlap. It is noteworthy that several Autos stress the historic patterns of discrimination and oppression against certain communities, notably indigenous and Afro-Colombian peoples, as one of the main causes of sexual violence against women. For example, Auto A009-2015 (p. 24), quoting an Afro-Colombian civil society organization called Afrodés, reports that:

racist imaginaries that were shaped during the era of the slave trade and have survived to this day in Colombian society produced a set of stereotypes about black women with prejudices about (their) bodies that remain used as justification for all kinds of practices and crimes against sexual and reproductive rights (...) Specifically, the experience of slavery involved different types of violence that consolidated the representation of women of African background as 'sexual objects'.

In other rulings, the CCC acknowledges that the discrimination, exclusion, marginalization and lack of social and political participation of people with disabilities make them more vulnerable to sexual violence (Autos A006-2009 and A173-14).

The precarious living conditions of the displaced population are also one of the main causes of sexual violence identified throughout the CCC Autos, especially when referring to sexual violence against children (Auto A251-2008). Indeed, overcrowding in reception centres is frequently mentioned as a cause of sexual violence against displaced children. Moreover, according to the analysed texts, socioeconomic vulnerability might push certain groups of displaced populations towards sexual trafficking and forced prostitution networks.

Militarization or the presence of armed actors is often mentioned in the texts as a cause of the increase in sexual crimes. In the CCC documents, this factor is specifically related to sexual violence against indigenous women and girls (Auto A004-2009). However, according to different Autos, the presence of armed actors, such as the army, the guerrillas, the paramilitary, or other criminal groups (drug trafficking networks, etc.) in resettlement areas is a catalyst of sexual violence (Autos A009-09, A119-13, A009-15), especially against children and youth (Auto A333-15). Again, in this case, the different types of armed groups establish and reinforce patriarchal social norms in their controlled territories in such a way that both factors, militarization and cultural patterns, interact as a detriment to the sexual and reproductive rights of the civil population.

Regarding the preventive policies and measures recommended by the different CCC Autos, most proposals are based on campaigns for raising education and awareness, reducing the impunity of these types of crimes and strengthening the presence of state institutions and services. Regardless, there are important differences between CCC Autos. In fact, Auto A092-2008, Auto A237-2008, and Auto A009-2015 most frequently propose preventive measures. It is noteworthy that Auto A009-2015 proposed as many preventive measures focused on raising awareness as on reducing impunity. However, Auto A092-2008 gives more importance to reducing impunity than to raising education and awareness, while Auto A237-2008 gives more importance to raising awareness than to reducing impunity.

In regard to education and awareness-raising campaigns, CCC Autos refer to multiple international instruments such as the CEDAW, the Beijing Platform, the Belém do Pará Convention, and the Inter-American Court of Human Rights when it argues the following:

The efforts of the States must be oriented towards the eradication of patterns, stereotypes and practices that undervalue the feminine condition in all social spheres – economic, labour, political, educational, in the administration of justice, in family and private relationships. This would help to minimize the patterns generated by the contextual conditions in which acts of sexual violence, sexual exploitation and sexual slavery are committed against the female population, especially in the context of internal armed conflict and forced displacement by violence (Auto A009-2015).

Indeed, the transformative nature of the prognosis of the CCC in that Auto is based on CEDAW recommendations on Women in Prevention of Conflicts, Situations of Conflict and after Conflicts when it says that TJ should be an opportunity not only to investigate sexual violence as a manifestation of discrimination or gender-based violence but also to 'establish transformative reparations in order to modify the gender stereotypes that led to

severe human rights violations and infractions of international humanitarian law against women in the context of conflict' (Auto A009-2015). Similarly, in subsequent Autos, the CCC reminds the Colombian state that it has 'the constitutional obligation to eliminate gender stereotypes' by implementing 'specific measures to modify social and cultural patterns based on the idea of inferiority or superiority of any of the sexes and on stereotyped roles for men and women' (Auto A181-16).

Among the direct orders, the CCC urges the Colombian state to:

elaborate a diagnosis that describes in detail how discrimination and structural gender violence, present in the different spheres of social life [...], influences sexual violence against women in the context of armed conflict and forced displacement. The foregoing, with the purpose of (i) disseminating this diagnosis both in institutions and within civil society, particularly among entities and officials responsible for preventing, attending, investigating, prosecuting and punishing sexual violence against women in contexts of armed conflict and forced displacement, as well as in displaced population organizations; and (ii) sensitizing these subjects on how the prevention of discrimination and structural gender violence can have an effective impact on the prevention of sexual violence against women during armed conflict and forced displacement (Auto A009-2015).

This Auto goes on to ask for the design of workshops and seminars coordinated by the National Ministry of Education. It also calls for the inclusion of specific modules within the armed forces programme on 'zero tolerance to sexual violence', focusing on the rights of women to a life free from violence and discrimination and on the differentiated impacts of sexual violence on women. Moreover, Autos A116-08 and A009-2015 specifically request the Ministry of Defence to report on actions and programmes aimed at preventing sexual violence.

Autos A092-2008 and A237-2008 refer to specific programmes aimed at promoting, enhancing and defending the rights of indigenous and Afro-Colombian women. In particular, Auto A237-2008 recommends the most educational measures, such as (1) training for members of the armed forces, the educational, health and judiciary sector, and women in risk zones and (2) awareness-raising campaigns in communities, neighbourhoods and municipalities and through leaders, civil society and mass media.

All these measures provide a good picture of the transformative potential of CCC Autos. However, as stated above, impunity measures are equally important for the high court. In fact, based on the Belém do Pará Convention, the CCC states that 'the guarantee of truth, justice and reparation to the survivors of sexual violence, [is] the preventive measure *par excellence* and the 'first line of defence' against this type of violence' (Auto A009-2015). It says so because, according to the court:

Failure to observe due diligence in investigations, trials and criminal sanctions against those responsible for violations of Human Rights and International Humanitarian Law perpetuates the social conditions that give rise to the violation of the fundamental rights of sexual crime survivors, since the inaction or poor performance of the State [...] reinforces patterns of discrimination and violence by sending a message to society and aggressors, in the sense that violence against women is tolerated and that its perpetration does not entail legal-criminal

consequences or institutional rejection. To that extent, the guarantee that aggressors will be prosecuted and punished represents *one of the main prevention strategies* against violence and gender discrimination, including sexual violence (Auto A009-2015). [emphasis added]

Most of the measures proposed by the court aim at eliminating the obstacles to accessing justice for women who have survived sexual violence. One of the main goals here is to ensure the guarantee of nonrepetition. The court calls on the Special Administrative Unit for the Integral Attention and Reparation of Victims, the National Centre of Historic Memory and the High Presidential Counsel for Women's Equity and issues specific orders to the Ministry of Defence and the Public Prosecutor.

Discussion

The CCC is an institution at the core of any future development on peace and CRSV in Colombia. Focusing on the interpretations made by the CCC has allowed us to critically evaluate the coherence of the conceptualizations of CRSV with the interventions proposed, in an instance that is able, on the one hand, to order and monitor its implementation and, on the other hand, to incorporate the discourses and demands of both local women and other minority rights groups (Lemaitre, 2020; Phelan and True, 2022) and the international community (Björkdahl and Warvsten, 2022; Rubio-Marín and Sandoval, 2011; Sandoval, 2017). According to our analysis, the CCC opened the door to transformative justice in Colombia through an incremental process from 2008 to 2016. Through several Autos, the high court has drawn attention to the structural causes of sexual violence in conflict and displacement, simultaneously applying an inter-sectional lens to the identification of survivors (Rooney and Ní Aoláin, 2018). However, the analysis of certain components pointed out by Kirby (2015) offers mixed results. While the conception of CRSV as a mere war weapon strategy is superseded by a broader understanding of the structural causes of sexual violence that existed prior to the conflict itself, there is still room to increase the visibility of male victimization (Lemay Langlois, 2018) and broaden the spectrum of preventive measures such as fostering women's economic and political rights (Bell and O'Rourke, 2007; Lemaitre, 2020; Meertens and Zambrano, 2010; Ní Aoláin, 2012).

Regarding the visibility of different types of victims or survivors, the CCC does a good job identifying the different subordinated categories of women and girls who are particularly vulnerable to sexual violence, but male survivors are far less mentioned. This could be fine in general, since the vast majority of documented sexual violence is perpetrated against women and girls. However, the CCC should be careful not to excessively reinforce the current binary vision of women-victims and men-perpetrators (Lemay Langlois, 2018), especially when it simultaneously massively identifies perpetrators with armed group members. As pointed out by Drumond (2019), 'in postconflict settings, efforts to achieve justice and reintegration often reinforce such practices, thus contributing to the marginalization and social exclusion of [certain] survivors'.

The other possible limitation to the transformative potential of the CCC approach relates to the scope and effectiveness of their proposed measures to prevent CRSV. Recent research has found that the effectiveness of most interventions to end and

prevent CRSV around the world is far from evident (Nordås and Cohen, 2021). For example, educational and awareness-raising preventive measures, which are clearly incentivized by the CCC, have only partial effects in regard to reducing sexism and gender inequality in society (Guthridge et al., 2022). Furthermore, the CCC also makes a strong emphasis on reducing impunity as a key preventive measure. This is evident, not only through the number of times this type of measure is proposed but also through expressions such as prosecution being ‘one of the main prevention strategies’ and/or the truth, justice and reparation as ‘the preventive measure par excellence’.

While some authors have criticized the excessive emphasis on reducing the impunity of sexual crimes in transitional processes (Kirby, 2015), they often do so by mentioning the lack of effectiveness of alien procedures or customary justice.⁹ While this may have been the case in Africa, where all of this research was conducted, in Colombia, the situation is likely to be different. It is the CCC, not an alien international court or a local customary system, who is pushing for this transformative strategy. Nonetheless, the trust component of the judiciary process remains worthy of discussion. According to the Latinobarometer data for 2020, only 23% of Colombian citizens trust the judicial system (Latinobarometer, 2021). Given this circumstance, the potential effectiveness of measures aiming at reducing impunity in Colombia could be low. However, evaluating the implementation of particular measures in Colombia by far exceeds the scope and aim of this paper which was to assess the CCC transitional approach to CRSV. Nevertheless, further studies analysing the relationship between institutional trust and the effectiveness of transformative initiatives for eradicating sexual violence would be most welcome.

According to feminist scholars, both types of measures – reducing impunity and arising awareness about gender equality – would lack transformative potential if they continue to be top-down interventions and elitist processes (Boesten and Wilding, 2015). Therefore, it is unclear how a top-down process led by the CCC could eventually offer a long-lasting transformation of gender structures (Bell and O’Rourke, 2007; Sriram, 2017). Several authors have highlighted that for justice to be transformative, it is crucial that civil society perspectives be incorporated and that women’s rights activists of different ethnic and social backgrounds participate directly in the transition process (Acosta et al., 2018; Agerberg and Kreft, 2020; Kreft, 2020; Lemaitre, 2020; Rubio-Marín and De Greiff, 2007; Sahin and Kula, 2018; Weber, 2018). While the CCC has made efforts to integrate the reports and perspectives of women’s organizations in some *Autos*, the direct participation of these civil society organizations and women’s rights activists, with their differentiated perspectives on CRSV, in the peace process is limited. Although their voices and approaches are incorporated through the *Autos* of the current judges of the CCC, this makes transformative justice and reparations in Colombia dependent on the will of particular justices who are seated on the country’s highest court.

Overall, the scope of these findings is difficult to estimate. As stated in the Methods section, content analysis of legal texts helps us to explore patterns across similar types of judicial decisions, but to validate our results, we invite other scholars in the field to replicate our content analysis or complement it with a more traditional interpretivist approach. Only after subsequent validations of our method, we could confidently argue that the CCC had already a transformative approach in the diagnosis of CRSV, prior to the signature of the peace agreement in 2016.

Conclusion

Overall, we find that critical CCC Autos are transformative in the diagnosis of CRSV. The court applies an intersectional approach when identifying victims and survivors of sexual violence and refers to structural causes of CRSV. Accordingly, patriarchal values, ethnic discrimination, and power imbalances are identified as the main drivers of sexual violence. However, regarding preventive measures to eradicate CRSV, the court pays special attention to reducing impunity, and education and raising awareness without critically assessing the true effectiveness and scope of these top-down interventions. Therefore, as there is still room for improvement, we recommend widening the scope of possible perpetrators, improving the visibility of certain types of boys and men who are especially vulnerable to suffering this type of crime, and balancing the relevance of the proposed preventive measures based on an assessment of their effectiveness on the ground. To do so, incorporating the inputs of local activists and women organizations is of utmost importance.

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Notes

1. The CCC was born in the framework of the 1991 Constitution, to ensure the integrity and supremacy of the Constitution and guarantee the protection of the fundamental rights of citizens. In the Colombian case, the Constitutional Court has not only contributed to delimiting the negotiation space in which transitional justice is agreed upon but also reviewed the laws and evaluated the constitutionality of the implementation norms. To rule, the Constitutional Court makes use of Autos. Autos are binding court decisions through which the CCC can suspend terms, request information, ask for evidence from the government or demand compliance with the sentences.
2. This Law establishes measures of assistance and comprehensive reparation to victims of breaches of International Humanitarian Law or serious and manifest violations of international human rights law, which have occurred during the Colombian internal armed conflict since 1985. It is particularly relevant for three reasons: it formally recognizes the existence of an armed conflict in Colombia; it places the victims and not the perpetrators at the centre of the approach; and it broadens the concept of victim beyond the subject who has directly suffered the grievance. According to Weber (Weber, 2018), the Victims' Law itself has been considered a 'best practice in transitional justice, combining land restitution and individual and collective reparations' but also falls short of its transformative potential, putting too much stress on a

- 'differential focus' that is based in a highly essentialized and narrow understanding of 'gender' and of women as a vulnerable group.
3. For a critical view on transformative reparations, see Walker (2016). She argues the approach of transformative justice is excessively vague and creates a false dilemma between corrective and transformative reparations. Additionally, different studies have pointed at the challenges or weaknesses of the law in regard to delivering transformative results (Campbell, 2007; Humphrey, 2018; Sriram, 2017; Weber, 2018).
 4. Auto A038-12 was excluded from the list of 37 Autos because the only reference to the Colombian armed conflict was on a bibliographic reference in a footnote.
 5. The terms in Spanish included as references to sexual violence were: 'violencia sexual', 'agresión sexual', 'abuso sexual', 'acoso sexual', 'ataque sexual', 'explotación sexual', 'sometimiento sexual', 'coerción sexual', 'tortura sexual', 'esclavización sexual', 'mutilación sexual', 'presión sexual', 'violación', 'violaciones', 'prostitución forzada', 'esterilización forzada', 'embarazo forzado', 'desnudez forzada', 'coacción para mantener actos sexuales' y 'acceso carnal violento'.
 6. By surrounding text, we mean extended paragraph (+/- 10 lines surrounding a sexual violence reference). We acknowledge that employing this strategy might sometimes leave out some relevant information regarding the context of the reference or its location within the Auto, which could only be properly analysed through a more traditional interpretative analysis of the whole text (Hall and Wright, 2008). However, content analysis as a methodological strategy often discards word order and location (Grimmer and Stewart, 2013) because the purpose is not to provide a 'deeply reflective understanding of a single pivotal case' but rather to identify patterns across several and similar documents (Hall and Wright, 2008: 65–66).
 7. Especially in Autos A009-2015 and Autos A004-2009 on indigenous peoples, Auto A005-2009 on the Afro-Colombian population, Autos A092-2008 and A237-2008 on displaced women, Autos A251-2008 and A333-15 on displaced childhood and youth, Auto A383-10 on coordination of local and national policy towards displaced people and Auto A092-2013 on female leaders and human rights defenders.
 8. It is, however, noteworthy that Auto A251-2008 on displaced childhood gives greater importance to precarious living conditions, and Auto A004-2009 identifies militarization as the main cause of sexual violence against indigenous women and girls.
 9. See Ho and Pavlish (2011) and Scott et al. (2013).

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