

# VIOLENCE AGAINST WOMEN AS AN ECONOMIC ISSUE: making sense of a fragmented field // *Helena Alviar García*<sup>1</sup>

## Keywords

violence against women / development / world bank / colombian legal system

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## Abstract

Violence against women has been a recurring theme of analysis since the 1970's. This conceptualization has evolved over time. Initially, the efforts were directed to define, prosecute and punish the crime. Then, the problem was understood as a public health one. More recently, the economic consequences of violence and discrimination against women has become central. The article starts out by relating international discussions about the relationship between gender and development and the rising prevalence of violence against women as an economic issue. The second part draws a picture of how this debate has permeated the Colombian context. This local narrative presents an example of what this article proposes: a critical analysis of the recent trends to understand violence as an access to the market issue, as well as the observation that the problem is not one of lack of regulation, but of fragmentation and overflow of institutions and policies aimed at attacking this problem.

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# **VIOLÊNCIA CONTRA MULHERES COMO UM TEMA ECONÔMICO:** conferindo sentido a um campo fragmentado // *Helena Alviar García*

## **Palavras-chave**

violência contra mulheres / desenvolvimento / banco mundial / sistema de direito colombiano

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## **Resumo**

A violência contra a mulher é um tema recorrente desde os anos 1970. Essa conceitualização tem se desenvolvido ao longo dos anos. Inicialmente, os esforços se concentraram na definição, persecução e punição do crime. Depois disso, esse problema começou a ser compreendido como uma questão de saúde pública. Mais recentemente, as consequências econômicas e a questão da discriminação contra as mulheres se tornaram centrais. Este artigo inicia por meio de uma descrição da relação entre gênero e desenvolvimento e o aumento da prevalência da violência contra a mulher como uma questão econômica. A segunda parte do texto ilustra como esse debate permeou o contexto colombiano. Essa narrativa local é um exemplo do propósito deste artigo: uma análise crítica da tendência recente de compreender a violência como um tema de acesso ao mercado, além da observação de que tal problema não é resultado de uma falta de regulação, mas sim de uma fragmentação e excesso de instituições e políticas para atacar tal problema.

In 2012, the World Bank Development Report was dedicated to the issue of gender equality. Its text describes the importance of the issue in the following terms:

*[...] gender equality matters instrumentally, because greater gender equality contributes to economic efficiency and the achievement of other key development outcomes [...]*<sup>2</sup>

According to this report, gender equality is “smart economics” for three main reasons. First, it removes barriers that prevent women from having the same access as men to education, economic opportunities, and productive inputs. Second, “[...] improving women’s absolute and relative status feeds many other development outcomes, including those for their children.” Third, if women and men have equal chances to become socially and politically active, make decisions, and shape policies, this will lead to more representative and more inclusive institutions and policy choices.<sup>3</sup>

Linking the issue of gender equality to economic development is not a recent event; since the late 1970s there has been an effort by feminists to explore the relationship between gender and development. Nevertheless, framing the issue as one of economic efficiency and productivity is much more recent and the World Bank report is a striking example.

The connection between women and development has been unpacked in relation to different topics, including the issue of violence against women. Therefore, in a report elaborated by the Global Women’s Institute at the World Bank, the connection is clearly set up:

*Violence against women and girls (VAWG) affects survivors’ ability to achieve their individual potential and contribute to the economy [...] The costs of survivor medical injuries and foregone productivity can have a significant impact on a country’s Gross*

2 The World Bank, World Development Report (2012). Gender Equality and Development. (Washington, 2012), 3. Available at: <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/Complete-Report.pdf>

3 Ibid.

*Domestic Product (GDP).*<sup>4</sup>

This article is framed within the discussion about the relationship between gender and development generally, and how it is translated into specific policies attacking violence against women. Its main goal will be to answer the question: what is gained and what is lost in the different ways in which violence against women is attacked?

In order to do this, the paper will have the following structure. In the first section I will describe the different ways in which gender has been incorporated into the discussion about development as well as the recent feminist critiques of the Neoliberal agenda. Then, I will lay out how the discussion about eliminating violence against women has evolved from a purely criminal perspective, to an issue of public health and more recently a question of economic efficiency and women’s access to the market. In the third section I will describe how these international discussions have been incorporated into the Colombian legal and administrative regulatory regime. This part includes a description of the diverse institutions in charge of regulating the issue, how they have evolved over time as well as the fragmentation that characterizes the field. Finally, I will present some conclusions.

## 1 Gender and development

The discussion surrounding the relationship between women and economic development dates back to the early 1970’s after Esther Boserup’s groundbreaking work: ‘Woman’s Role in Economic Development’<sup>5</sup>

4 The World Bank, The Global Women’s Institute, IDB, *Violence Against Women & Girls. Finance and Enterprise Development* (2015), 1. Available at: [http://www.vawgresourceguide.org/sites/default/files/briefs/vawg\\_resource\\_guide\\_finance\\_and\\_enterprise\\_development\\_brief\\_april\\_2015.pdf](http://www.vawgresourceguide.org/sites/default/files/briefs/vawg_resource_guide_finance_and_enterprise_development_brief_april_2015.pdf)

5 Boserup, E. (1970) *Women’s Role in Economic Development*. New York: St. Martin Press.

As Tinker points out: “In 1970 the General Assembly included in the International Development Strategy a phrase- later widely copied- which stated the importance of encouraging ‘full integration of women in the total development effort’. In 1974 the SID/WID produced a bibliography, a mere five pages long, and in the process ‘discovered’ Ester Boserup’s *Women’s Role in Economic Development*. Her book was instantly embraced because Boserup’s theory legitimized efforts to influence policy development with a combined argument for justice and efficiency”. Tinker, I. *The Making of*

In it, Boserup explored the gendered division of labor in relationship to agricultural production and the importance of women to subsistence production. These two facts became essential in understanding women's relevance in any development model.

The link between women and economic development has had competing perspectives. First, one which I will call liberal and was initially argued by Boserup, agrees with the basic premises of development understood as growth, but criticizes the fact that women have not been adequately included in development plans or agendas, in other words that they are not equal to men in the development agenda. The way to solve this problem would be to include policies geared towards women and to include quotas for women in terms of economic development public policies.

A second approach criticizes both the idea of development understood simply as growth and the idea that by including policies specifically targeting women the problem will be solved. What really affects women is the sexual division of labor which has marginalized them and forced them to limit their work to caretaking and subsistence production with little or no access to wages, resources or property. These two critiques are wonderfully expressed by Lourdes Beneria and Gita Sen in the following terms:

*Modernization is not a neutral process, but one that obeys the dictates of capitalist accumulation and profit making. Contrary to Boserup's implications the problem for women is not only the lack of the participation in the process as equal partners with men; it is a system that generates and intensifies inequalities, making use of existing gender hierarchies to place women in subordinate positions at each different level of interaction between class and gender. This is not to deny the possibility that capitalist development might break down certain social rigidities oppressive to women. But these liberating tendencies are accompanied by new forms of subordination.*<sup>6</sup>

a field: Advocates, practitioners and scholars. In: Visvanathan, T. N.; Dugan, L.; Nisonoff, L. and Wiegnerma L. (eds.). *The women gender and development reader* (1997). London. Zed Books.

6 Lourdes, B. & and Gita, S. Accumulation, Reproduction and Women's Role in economic development: Boserup Revisited. In:

These different perspectives influenced more contemporary debates about how women were incorporated into the neoliberal development agenda. In this sense, the feminist criticisms to neoliberalism have built upon the same themes described above. Liberal feminists call attention upon the difficulties faced by women to enter the market. Socialist feminists initially concentrated their analysis on the description of the negative effects that both privatization and the downsizing of the state had upon women. More recently socialist feminist have focused their efforts on highlighting the feminization of poverty by showing the exploitation of women in export led industries- the liberal version of including women in the economy. In the following paragraphs I will explain these perspectives in more detail.

Liberal feminists have criticized neoliberalism for not being liberal regarding women. For this group of academics, neoliberalism does not do enough to promote equality or to eliminate the conditions that make inequality possible. Their critique concentrates on stating the reasons why women can't enter the market in conditions equal to those of their male counterparts.

As a matter of fact, neoliberalism has been able to incorporate most of these critiques within its normative content. A result of this is that employment and political discrimination have been banned and legislation against domestic violence has been discussed in both international forums as well as in local legal and regulatory agendas.

On the other side of the political spectrum are socialist feminists who describe the negative effects of state reduction and privatization. According to this analysis, the state has historically employed more women than the private sector. Most of this research was advanced in former socialist countries in Eastern Europe, where work generated by the State was a way of giving real opportunities and equal treatment to women, beyond jobs traditionally occupied by women such as nursing and education, but also in technical areas, in the industrial as well as in the agricultural sector.<sup>7</sup> As the state reduced its size and was

*The Women, Gender and Development reader* (p. 47-48). Op. Cit.

7 Meurs, M. , *Downwardly Mobile: Women in the Decollectivization of*

replaced by the market, women suffered higher rates of unemployment. In addition, not only did women lose their jobs, but there was a male backlash to retrieve their dominating role as main providers.<sup>8</sup>

Socialist feminists have also analyzed the types and quality of jobs generated by the export-led growth model. Flexibility, long hours, meager wages and the lack of job security are some of the main characteristics of the type of jobs generated with the promotion of free trade and exports. According to a range of studies these jobs are mostly female because women are considered more docile, are not members of unions and have natural talents for certain type of industries such as the production of flowers or garments for export.<sup>9</sup>

Within socialist feminism, there are other academics criticizing the dismantling of social policies, showing how this hits women harder. Their main argument is that when neoliberalism eliminates social assistance provided by the state, poverty increases and since women are on average poorer than men,<sup>10</sup> neoliberalism ends up affecting them more.

## **2 The international path to consider violence against women as an economic harm**

Including violence against women as an economic issue can't be understood if we don't take into account the way the debate has evolved in the international

arena. The last two decades have been characterized by the globalization of both neoliberal ideas and the protection of women's rights. In 1981, the efforts that had been made since 1945 to locate women's rights in the international agenda were finally realized at the Convention for the elimination of all sorts of discrimination against women (CEDAW).<sup>11</sup> In 1995, the issue of domestic violence as well as a strategy to attack it was specifically included in the Beijing Platform.<sup>12</sup> In 2001, the World Bank set forth the idea of gender equality as a condition for development.<sup>13</sup>

Parallel to this, violence against women has been a recurring theme of analysis since the 1970s.<sup>14</sup> Initially, it was formulated exclusively as a problem that would be solved through criminal law. Therefore, between 1970 and 1990, the conceptualization of violence against women by many academics, activists and international institutions was directed towards the definition, prosecution and punishment of the crime.<sup>15</sup> Then, during the 1990s, different international organizations participated in its identification as a public health problem and as a human rights issue.

The expansion of the concept also led to the detection of economic consequences associated with gender inequality and violence against women. The implications of such violence were then associated with economic growth. Taking this into account, the following part of the text presents an overview of how the problems related to the concept of violence against women shifted over time.

*East European Agriculture* en Visvanathan, T. N.; Dugan, L.; Nisonoff, L. and Wiegnerma L (eds.) *The Women, Gender and Development Reader* (1997, p. 333), Zen Books. Another article that deals with this topic is: Toni, M., *Social Policy and Gender in Eastern Europe* en Diane Sainsbury (ed.), *Gendering Welfare States* (1994, p. 188-206), SAGE Publications.

<sup>8</sup> Goven., J. *Sexual Politics in Hungary: Autonomy and Antifeminism* en *Sexual Politics and the Public Sphere: Women in Eastern Europe after the Transition* (1992), Routledge.

<sup>9</sup> Folbre, N.; Bergmann, B.; Agarwal, B.; Floro, M. (eds), *Issues in Contemporary Economics, Vol 4: Women's Work in the World Economy*, New York University Press, 1992.

<sup>10</sup> Deere, C.; D.; Safa, H.; Antrobus, P. *Impact of the Economic Crisis on Poor Women and their Households*, en Visvanathan, T. N.; Dugan, L.; Nisonoff, L. and Wiegnerma L (eds.) *The Women, Gender and Development Reader* (1997, pp. 267-277), Zen Books, 1997.

McCluskey, M. *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State* (783), Indiana Law Journal.

<sup>11</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (New York, 18 December 1979), available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>12</sup> United Nations, *Report of the Fourth World Conference on Women* (Beijing, 4-15 July of 1995), 12, available at: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20S.pdf>

<sup>13</sup> Kerry Rittich, "Engendering Development/Marketing Equality" (575), Albany Law Review.

<sup>14</sup> Tjaden, P. "Defining and measuring violence against women: Background, issues, and recommendations" in Expert Grup Meeting, *Violence Against Women: A Statistical Overview, Challenges and Gaps in Data Collection and Methodology and Approaches for Overcoming Them* (Geneva: UN Division of the Advancement of Women and Economic Commission for Europe and the World Health Organization, 2005).

<sup>15</sup> Johnson, H.; Ollus, N.; Nevala, S. *Violence Against Women. An International Perspective* (p. 3-4, 2008), New York: Springer.

## 2.1 1970s Feminism and the Criminalization of Violence Against Women

Although during the 1950s and 1960s the United Nations adopted some instruments to protect the political rights of women, it is in the 1970s that several organizations advanced research agendas and conferences that led to the incorporation of women's rights as well as to the understanding of the specific problems faced by women around the world.<sup>16</sup>

A prevalent problem that was identified was violence faced by women around the globe. According to some authors, feminists at the time were able to change the paradigm in the way violence against women was understood and confronted. Their struggle was to make it a part of the public policy agenda.<sup>17</sup> In addition, an important effort was made in order to attack high levels of impunity around cases of violence against women. Public policy reform was mainly centered on criminal law in order to create specific crimes and strengthen the penalties for crimes such as rape, incest and partner violence.<sup>18</sup>

In 1972, the United Nations General Assembly proclaimed 1975 as the International Women's Year under the slogans of equality, development and peace. This led to the establishment of the 1975 World Conference of the International Women's Year.<sup>19</sup> It was the first UN conference dedicated exclusively to women's issues. The issue of violence against women wasn't central, however, in some passages of the report, the

governments are called to prosecute expressions of violence such as forced prostitution.<sup>20</sup> One of the most valuable aspects of this conference was the fact that the United Nations Decade for Women was established and a series of objectives directed to examine the status and rights of women between 1976 and 1985<sup>21</sup> were set.

In 1980, at the World Conference of the United Nations Decade for Women, the issue of violence against women was studied in greater depth. In this conference the United Nations suggested the creation of family courts to prevent and punish expressions of physical or psychological violence against women.<sup>22</sup> Five years later, in 1985, the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women assessed the progress in relation to the goals set in 1975. At this conference, violence against women was recognized as one of the major obstacles to achieve the goals set in 1975; the United Nations urged countries to take preventive and legal measures to deal with such violence including offenses of various kinds.<sup>23</sup>

As can be seen, this was a period of recognition and approach to the problems surrounding violence against women. Although the United Nations made an effort to make violence against women an important issue, there were no clear decisions on the subject and most of the objectives that were set forth had to do with identifying the components of the problem.

16 Johnson, H.; Ollus, N.; Nevala, S. *Violence Against Women. An International Perspective* (p. 3-4, 2008), New York: Springer

17 Susana T. Fried, "Violence Against Women" in *Health and Human Rights* 6 (2003, 89).

18 Tjaden, P. "Defining and measuring violence against women: Background, issues, and recommendations" in Expert Grup Meeting, *Violence Against Women: A Statistical Overview, Challenges and Gaps in Data Collection and Methodology and Approaches for Overcoming Them* (Geneva: UN Division of the Advancement of Women and Economic Commission for Europe and the World Health Organization, 2005).

19 General Assembly of the United Nations, *Resolution 3010 (XXVII)* (New York, 1972), available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/270/40/IMG/NR027040.pdf?OpenElement>; United Nations, *Report of the World Conference of the International Women's Year*, (Mexico City, 19 June- 2 July of 1975), 2-7, available at: <http://www.un.org/womenwatch/daw/beijing/otherconferences/Mexico/Mexico%20conference%20report%20optimized.pdf>

20 United Nations, *Report of the World Conference of the International Women's Year*, (Mexico City, 19 June- 2 July of 1975), 79-80, available at: <http://www.un.org/womenwatch/daw/beijing/otherconferences/Mexico/Mexico%20conference%20report%20optimized.pdf>

21 United Nations, *Report of the Fourth World Conference on Women* (Beijing, 4-15 July of 1995), 12, available at: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20S.pdf>

22 United Nations, *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace* (Copenhagen, 14-30 July of 1980), 67-68, available at: <http://www.un.org/womenwatch/daw/beijing/otherconferences/Copenhagen/Copenhagen%20Full%20Optimized.pdf>

23 United Nations, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace* (Nairobi, 15-26 July of 1985), 290, available at: <http://www.un.org/womenwatch/daw/beijing/otherconferences/Nairobi/Nairobi%20Full%20Optimized.pdf>

## 2.2 Broadening the Concept: Human Rights and Public Health Issues

The efforts made during the 1970s and 1980s were reflected in 1993, in the World Conference on Human Rights and in the Declaration on the Elimination of Violence Against Women. This moment is, according to different texts, the turning point in the recognition of women's rights and, particularly, in the expansion of the concept of violence against women.<sup>24</sup>

One of the main concerns in the World Conference on Human Rights was the fact that there are various forms of discrimination and violence against women around the world.<sup>25</sup> This conference recognized that violence against women is a violation of human rights and, for this reason, urged the designation of a Special Rapporteur on violence against women:

*In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.*<sup>26</sup>

Taking this into account, it asked that the General Assembly adopt a draft declaration on violence against women and urged States to combat and reject this type of violence. Accordingly, all types of violations against the human rights of women require a particu-

24 Johnson, H.; Ollus, N.; Nevala, S. *Violence Against Women. An International Perspective* (2008, p. 6-7) New York: Springer.

Secretario General de las Naciones Unidas, *Integrating the genre perspective into the work of United Nations human rights treaty bodies* (Nueva York, 1998), Section II. Available at: <http://www.un.org/womenwatch/daw/news/integrating.htm>

25 United Nations, *Report of the World Conference on Human Rights* (Viena, 14-25 June of 1993), 21, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/853/46/PDF/G9385346.pdf?OpenElement>

26 United Nations, *Report of the World Conference on Human Rights* (Viena, 14-25 June of 1993), 37, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/853/46/PDF/G9385346.pdf?OpenElement>

larly effective response:

*(...) Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuits of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women.*<sup>27</sup>

In addition, the meeting welcomed the creation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women.<sup>28</sup>

This conference was therefore a very important step in centering the idea that States needed to take steps in order to eradicate violence against women. On the one hand, it was emphasized that the elimination of such violence is a human rights obligation for States and on the other hand, it called for the integration of women's rights in all activities of the United Nations.<sup>29</sup> Moreover, this conference created the necessary basis for the development, also in 1993, of the Declaration on the Elimination of Violence Against Women.<sup>30</sup>

This declaration explicitly addressed violence against women by establishing a framework for action at national and international level.<sup>31</sup> It clearly defines what is meant by violence against women:

27 United Nations, *Report of the World Conference on Human Rights* (Viena, 14-25 June of 1993), 37, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/853/46/PDF/G9385346.pdf?OpenElement>

28 Ibid.

29 Chinkin, C. "Violence Against Women; The International Legal Response" in *Gender and Development* (1995, 26).

30 UN Women, *Global Norms and Standards: Ending Violence against Women*, available at: <http://www2.unwomen.org/es/what-we-do/ending-violence-against-women/global-norms-and-standards>

31 Christine Chinkin, "Violence Against Women; The International Legal Response," *Gender and Development 3* (1995, 26) in UN Women, *Global Norms and Standards: Ending Violence against Women*, available at: <http://www2.unwomen.org/es/what-we-do/ending-violence-against-women/global-norms-and-standards>

*For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*<sup>32</sup>

Furthermore, it is understood that this declaration broadens even more the concept of violence against women. Therefore in article 2, it defines different forms of violence against women including physical, sexual and psychological:

*Violence against women shall be understood to encompass, but not be limited to, the following:*

- a. *Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*
- b. *Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*
- c. *Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.*<sup>33</sup>

### 2.3 The Discussion About Public Health

As a consequence of the expansion that occurred in the 1990s and the recognition that violence against women is a clear threat against human rights, the world began to recognize that such violence is not only a criminal policy issue, but also it is a public

<sup>32</sup> United Nations, *Declaration on the Elimination of Violence Against Women* (New York, 20 December 1993), Art. 1, available at: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>33</sup> United Nations, *Declaration on the Elimination of Violence Against Women* (New York, 20 December 1993), Art. 2, available at: <http://www.un.org/documents/ga/res/48/a48r104.htm>

health problem. Since it was established that violence against women should be addressed and confronted by various international organizations, the World Health Organization (WHO) presented a series of reports on the subject starting in 2002.

In that year, the *World Report on Violence and Health* was published. This document states that violence is a global health issue. The fourth chapter is devoted to analyzing intimate partner violence and victimization of women as a public health problem.<sup>34</sup>

According to the WHO, violence against women has a serious impact on health. Women who are victims of violence in their homes not only can be seriously injured, but they are also more likely to develop, among other things, addiction, psychiatric diseases and reproductive health problems.<sup>35</sup> Repeatedly, the WHO explained that the fact that violence against women can be psychological causes a much more complex public health problem. As a matter of fact, psychiatric and psychological diseases derived from this type of violence have a greater complexity, as they are more difficult to cure than common physical wounds.<sup>36</sup> Therefore, the WHO calls in 2004 to prevent violence as a public health problem of great magnitude.<sup>37</sup>

### 2.4 Violence Against Women, Productivity and Economic Growth

During the 90s, at the very moment in which violence against women was recognized as a human rights and public health issue, the world was in the midst of economic restructuring. The United Nations referred to the situation that women were living at the time. At the Fourth World Conference on Women held in Beijing, this organization warned about the difficul-

<sup>34</sup> World Health Organization, *World Report on Violence and Health* (Geneva, 2002, 89). Available at: [http://apps.who.int/iris/bitstream/10665/42495/1/9241545615\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf)

<sup>35</sup> World Health Organization, *World Report on violence and Health* (Geneva, 2002, p. 100-101). Available at: [http://apps.who.int/iris/bitstream/10665/42495/1/9241545615\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf)

<sup>36</sup> World Health Organization, *The Economic Dimensions of Interpersonal Violence* (Geneva, 2004, 23). Available at: <http://apps.who.int/iris/bitstream/10665/42944/1/9241591609.pdf>

<sup>37</sup> World Health Organization, *The Economic Dimensions of Interpersonal Violence* (Geneva, 2004, 23). Available at: <http://apps.who.int/iris/bitstream/10665/42944/1/9241591609.pdf>



ties that women were facing around the world. It explained that, at that moment, poverty was increasing and that women around the world were suffering the consequences of this rise of poverty. Therefore, it stated that women deserved special attention and highlighted that they had a special role in the struggle against poverty:

*(...) Women are key contributors to the economy and to combating poverty through both remunerated and unremunerated work at home, in the community and in the workplace. Growing numbers of women have achieved economic independence through gainful employment.*<sup>38</sup>

Therefore, the UN mainstreamed the idea that women had an important role in the pursuit of economic growth and it was accepted that the empowerment of women was a decisive factor in the eradication of poverty.<sup>39</sup>

Within this context, different articles began to emerge from the World Bank to link violence against women to economic implications. These articles were mostly centered around two ideas. First, demonstrating that at the micro level, gender violence lowers household income. Second, that at a social level, women are less involved in development processes because of the lack of economic empowerment that violence against them entails.<sup>40</sup>

Beyond these statements and reports, given the expansion of the concept, when violence against women starts to be treated as a public health problem, it is recognized that the effects on health arising from violence against women generate different costs. It is argued that this type of violence produces costs for health systems and in addition there is a reduction in the productivity of working women who, in many cases, can't go to work or have to stop working as a

result of aggressions.<sup>41</sup>

## 2.5 The World Bank and the World Development Reports

Taking into account these efforts to link violence against women and economic growth, the World Bank, in two of its reports on global development, published positions in relation to the economic impact of violence against women. In a 1993 document, the World Bank recognized the progress in the literature to start considering that violence against women was a problem for global health. It presents violence against women as one of the health problems that must be faced in order to achieve development. Along with other documents of the United Nations, this report is the first to present the prevention of violence against women as a global need; prevention measures are highlighted as ones promoting development.<sup>42</sup>

*Violence against women is widespread in all countries in which it has been studied. Although this has only recently been viewed as a public health issue, it is a significant cause of female morbidity and mortality, leading to psychological trauma and depression, injuries, sexually transmitted diseases, suicide, and murder [...] This is an issue with complex economic, cultural, and legal roots, and it is therefore not easily dealt with by public policies. Prevention will require a coordinated response on many fronts. In the short to medium term, the right measures include training health workers to recognize abuse, expanding treatment and counselling services, and enacting and enforcing laws against battering and rape. In the long term, much depends on changing cultural beliefs and attitudes toward violence against women.*<sup>43</sup>

In 2014, the World Bank published a guide on violence against women. This document reiterates the eco-

38 United Nations, *Report of the Fourth World Conference on Women* (Beijing, 4-15 July of 1995, p. 10-11) available at: <http://beijing20.unwomen.org/~media/Field%20Office%20Beijing%20Plus/Attachments/BeijingDeclarationAndPlatformForAction-en.pdf>

39 United Nations Secretary General, *Estudio Mundial sobre el Papel de la Mujer en el Desarrollo*, (Washington, 2009, 6). Available at: <http://www.cepal.org/mujer/noticias/paginas/5/38885/A6493E.pdf>

40 Heise, L.; Pitanguy, J.; Germain, A. *Violence Against Women*. (24), Washington: The World Bank.

41 World Health Organization, *World Report on Violence and Health* (Geneva, 2002, p. 102-103). Available at: [http://apps.who.int/iris/bitstream/10665/42495/1/9241545615\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf)

42 The World Bank, *World Development Report 1993. Investing in Health*. (New York: Oxford, 1993, p. 50-51). Available at: <https://openknowledge.worldbank.org/handle/10986/5976>

43 The World Bank, *World Development Report 1993. Investing in Health*. (New York: Oxford, 1993, p. 50-51). Available at: <https://openknowledge.worldbank.org/handle/10986/5976>

conomic implications of violence against women and raises the idea that eradicating violence against women boosts economic growth.<sup>44</sup> In addition, it suggests that “Violence against women has direct costs for enterprises due to its effects on personnel through absenteeism, turnover, layoffs, and reduced productivity during work hours, among other consequences.”<sup>45</sup>

Finally, it is argued that the eradication of violence against women is connected to women’s possibility of accessing and controlling resources within a household: “A woman’s ability to access and control resources (especially economic assets), particularly within a household, can have a bearing on whether she is able to leave an abusive relationship.”<sup>46</sup> Accordingly, it identifies some of the economic benefits of attacking violence against women:

*Taking action to address gender inequality and prevent VAWG within finance and enterprise development activities is “smart economics”, since economically empowered women are major catalysts for development, usually investing in their family’s health, nutrition, and education.*<sup>47</sup>

In the same year that this guide was published, another report of the World Bank also highlights the link between violence against women and losses on productivity:

[...] *constraining women’s agency by limiting what*

44 The World Bank, The Global Women’s Institute, IDB, in *Violence Against Women & Girls. Finance and Enterprise Development* (2015, 1). Available at: [http://www.vawgresourceguide.org/sites/default/files/briefs/vawg\\_resource\\_guide\\_finance\\_and\\_enterprise\\_development\\_brief\\_april\\_2015.pdf](http://www.vawgresourceguide.org/sites/default/files/briefs/vawg_resource_guide_finance_and_enterprise_development_brief_april_2015.pdf)

45 The World Bank, The Global Women’s Institute, IDB, *Violence Against Women & Girls. Finance and Enterprise Development* (2015, 1). Available at: [http://www.vawgresourceguide.org/sites/default/files/briefs/vawg\\_resource\\_guide\\_finance\\_and\\_enterprise\\_development\\_brief\\_april\\_2015.pdf](http://www.vawgresourceguide.org/sites/default/files/briefs/vawg_resource_guide_finance_and_enterprise_development_brief_april_2015.pdf)

46 The World Bank, The Global Women’s Institute, IDB, *Violence Against Women & Girls. Finance and Enterprise Development* (2015, 1). Available at: [http://www.vawgresourceguide.org/sites/default/files/briefs/vawg\\_resource\\_guide\\_finance\\_and\\_enterprise\\_development\\_brief\\_april\\_2015.pdf](http://www.vawgresourceguide.org/sites/default/files/briefs/vawg_resource_guide_finance_and_enterprise_development_brief_april_2015.pdf)

47 The World Bank, The Global Women’s Institute, IDB, *Violence Against Women & Girls. Finance and Enterprise Development* (2015, 2). Available at: [http://www.vawgresourceguide.org/sites/default/files/briefs/vawg\\_resource\\_guide\\_finance\\_and\\_enterprise\\_development\\_brief\\_april\\_2015.pdf](http://www.vawgresourceguide.org/sites/default/files/briefs/vawg_resource_guide_finance_and_enterprise_development_brief_april_2015.pdf)

*jobs they can perform or subjecting them to violence, for example, can create huge losses to productivity and income with broader adverse repercussions for development.*<sup>48</sup>

Furthermore, violence against women costs are emphasized

*Beyond the human costs, violence incurs major economy wide costs. Those costs include expenditures on service provision, forgone income for women and their families, decreased productivity, and negative effects on human capital formation.*<sup>49</sup>

As it can be seen, violence against women is a changing idea. The discussions on the elimination of such violence have shifted. These debates have evolved from an idea of criminal policy, to an issue of public health, and more recently to a topic of economic efficiency and market access. The changing terms of the conversation have influenced legal systems such as the Colombian one. Therefore, as I will explain in the following pages, many of the discussions found in organizations like the World Bank are taking place in the local administrative and regulatory regime.

### 3 The debate in Colombia

As I already mentioned, interestingly, the debate in Colombia has followed a similar path to the one found on the international level. Initially, it was an issue that responded to broader plights of women’s movements<sup>50</sup> as well as specific pleas to make it visible as a human rights violation<sup>51</sup> and to include it as a

48 Klugman, J.; Hanmer, L.; Twigg, S.; Hasan, T.; McClearly, J.; Santamaria, J., *Voice and Agency. Empowering Women and Girls for Shared Prosperity* (2). Washington: The World Bank.

49 Klugman, J.; Hanmer, L.; Twigg, S.; Hasan, T.; McClearly, J.; Santamaria, J., *Voice and Agency. Empowering Women and Girls for Shared Prosperity* (p. 75-76), Washington: The World Bank.

50 Nieves, R., *Violencia de Género: un problema de derechos humanos*, Serie Mujer y Desarrollo 16. CEPAL, 1996.

51 “The Office of the Ombudsperson frankly alerted that the judicial authorities continue to consider the cases of gender violence ‘as simple conflicts within the home’, when it has been sufficiently established that these cases are human rights violations. The Court also reviewed international jurisprudence in these cases and Colombian laws that intend to stop, once and for all, this silent violence,” (Translated by the author). Cano, M. J. M.; Palma, J. D. L. “La tutela que puso a la Corte a hablar sobre la violencia económica en

crime that has to always be punished with jail time.<sup>52</sup> Later, it was addressed as a public health issue<sup>53</sup> or as a problem of economic efficiency.<sup>54</sup>

In this part of the text I will lay out how these different ways of understanding domestic violence have permeated the Colombian legal system, judicial interpretation, as well as the policy and institutional design landscape. There are many laws, judicial opinions, regulations and institutions aimed at attacking the problem, but nevertheless it is far from being solved.

### 3.1 Initial stages

An interesting starting point that links with the second part of this article is the fact that Colombia signed a range of international treaties geared toward women's protection and invited countries to change laws and institutions in order to protect women's rights. As a consequence, the Colombian Constitutional Court has stated in many of its rulings that women's rights are human rights.<sup>55</sup> Specific laws intended to

deal with the issue of violence against women are: legislation set in place to eliminate violence and discrimination;<sup>56</sup> to promote equality and inclusion;<sup>57</sup>

tual rigor, this agreement is unnecessary, because the woman is a person, and the rights of individuals are already established and protected, both by human rights treaties and by the Constitution. But, unfortunately, in practice, violence and discrimination against women are widespread; they are an exercise of power derived largely from the unequal relations that subsist between women and men. Therefore, the Court considers that [...] this legal instrument has great importance in the international and Colombian social context as various forms of violence affect the dignity, life and integrity of women in many different ways", *Sentencia C-408/96*, Colombian Constitutional Court (1996) accessed from: <http://www.corteconstitucional.gov.co/RELATORIA/1996/C-408-96.htm>

56 See for example: Law 51 of 1981, "Through which the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18 of 1979 and signed in Copenhagen on July 17 of 1980, was approved"; Decree 1398 of 1990, "Through which Law 51 of 1981 that approves the Convention on Elimination of All Forms of Discrimination against Women, is developed"; Law 348 of 1995, "Through which the International Convention on the Prevention, Punishment and Eradication of Violence against Women, signed in the city of Belem Do Para, Brazil, on June 9, 1994, is approved"; Law 294 of 1996, "Which establishes norms to prevent, remedy and punish domestic violence, penalizing sexual violence between spouses and partners."; Law 679 of 2001, "which issues a statute to prevent and counter exploitation, pornography and sexual tourism involving children, in implementation of Article 44 of the Constitution"; Law 882 of 2004, "Through which Article 228 of Law 599 of 2000 is amended; Decree 4685 of 20007, "Which promulgates the 'Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' adopted by the General Assembly of the United Nations on October six of 1999"; Law 1257 of 2008, "Which establishes norms of awareness, prevention and punishment of forms of violence and discrimination against women, it amend the Criminal Code, the Criminal Procedure Code, and Law 294 of 1996"; Law 1542 of 2012, "Which establishes rules of awareness, prevention and punishment of forms of violence and discrimination against women, it amends the Criminal Code and the Criminal Procedure Code"; Law 1639 of 2013, "Which strengthens the protective measures to the integrity of victims of acid attacks, and adds Article 113 to Law 599 of 2000"; Law 1719 of 2014, "By which measures are adopted to ensure access to justice for victims of sexual violence, especially sexual violence during the armed conflict"; Law 1761 of 2015, "which creates the crime of femicide as an autonomous crime".

57 Law 28 of 1932, "On civil reforms" Free administration of property by women; Law 581 of 2000 "Which regulates the adequate and effective participation of women at decision-making levels of the various branches and organs of public power, in accordance with Articles 13, 40 and 43 of the Constitution"; Law 731 of 2002, "Which establishes actions to improve the living conditions of rural women and their affiliation to the General System of Professional Risks in addition to its inclusion in formation processes and in processes of social, economical and political participation; Law 755 of 2002, "Which grants paternity leave benefit to the father of the

el estrato seis," *El Espectador* (March 9, 2016), accessed March 16 of 2016, <http://www.elespectador.com/noticias/judicial/violencia-economica-una-tragedia-de-pocos-hablan-articulo-622584-0>

52 "We invite women who have been mistreated or who believe that their rights can be violated, to denounce these cases, because domestic violence is a serious crime that must be punished," (Translated by the author). "Cada día 18 mujeres son víctimas de maltrato", *El Tiempo* (November 26, 2016), accessed March 16 of 2016, <http://www.eltiempo.com/archivo/documento/MAM-4989781>

53 "Violencia de género: un problema de salud pública," *El Espectador* (November, 23, 2014), accessed March 16 of 2016, <http://www.elespectador.com/noticias/salud/violencia-de-genero-un-problema-de-salud-publica-articulo-529167>

54 "From the economic point of view, violence against women in Colombia impacts negatively on income, labor participation, health and education of the affected. According to a study presented in 2008, supported by the Fonade, about the social and economic costs of domestic violence, this phenomenon can cost the country 4% of the national GDP per year.

The amount is understandable if it is considered that 37.4% of Colombian women who have lived with a man, have been physically assaulted by their couple; 39.2% of these women considered that their productivity declined for this reason. The International Labour Organization (ILO) estimates that labor losses caused by stress and violence, represent between 1% and 3.5% of the GDP," (Translated by the author). "Violencia contra la mujer cuesta el 4% del PIB nacional," *El Herald*, April 3, 2014, accessed March 16, 2016, <http://www.elheraldo.co/economia/violencia-contra-la-mujer-cuesta-el-4-del-pib-nacional-149163>

55 "In fact, some might consider that, in strictly logical and concep-

to create institutions to take care of its victims;<sup>58</sup> and to design everything that is necessary for their inclusion as economic actors.<sup>59</sup>

As has been stated in this article, there have been competing views about what is at the root of violence against women and how to eradicate it. Each one of the perspectives entails blind spots. However, the fact that in recent years it has been argued more in terms of efficiency and women's difficulty to enter the market has limited greatly the ways of dealing with the issue, and leaves a narrow understanding the harm it entails. An example of this recent trend is clearly argued in congressional debates preceding a law to eradicate violence against women:

*In Colombia one out of 3 women has been physically assaulted by their partner or former partner. 76% of them didn't go to any institution to denounce this violence; 6% reported that they were forced to have sexual relations. 66% of them narrated how their husbands or partners controlled them in some way according to the National Survey on Demography and Health 2010.*

*A study advanced by the National Planning Department,*

child, so that he can provide care and protection even if he is not the husband or life partner of the mother"; Agreement 091 of 2003, "Through which the equal opportunities plan is adopted for gender equity in the Capital District"; Law 823 of 2003, "which rules on equal opportunities for women; Agreement 381 of 2009, "Through which the use of inclusive language is promoted"; Law 1448 of 2011, Art 114-118, "Which establishes measures of attention, assistance and integral reparation to victims of the internal armed conflict"; Law 1468 of 2011, "By which Articles 236, 239, 57, 58 of the Labor Code are amended"; Law 1496 of 2011, "By which equal pay and labor retribution are granted through the establishment of mechanisms to eradicate all forms of discrimination."

58 Decree 2200 of 1999, "Which establishes norms for the operation of the Presidential Council for Women Equity of the Administrative Department of the Presidency of the Republic"; Law 1009 of 2006, "Through which the permanent Observatory of Gender is created"; Decree 164 of 2010, "Through which an intersectorial commission, the 'Inter-Agency Committee to End Violence Against Women', is created"; Agreement 490 of 2012, "Through which the Administrative Sector of Women and the District Secretary for Women are created"; Decree 001 of 2013, "By which the organizational structure and functions of the Secretary for Women are established".

59 See Law 1413 of 2010, "Which regulates the inclusion of the care economy in the system of national accounts in order to measure the contribution of women to the economic and social development of the country, and to define and implement public policies. "

*ment, the IDB and Los Andes University stated that the loss in income for women as a consequence of domestic violence correspond to 2.2 of the nation's GDP and it is estimated that the annual costs of domestic violence could reach 4% of the nation's GDP.<sup>60</sup>*

### 3.2 Violence against women as a crime: the problems of putting all your eggs in the criminal law basket

The turn to criminal law has been a prevalent trend in regulating the issue. Its basic aim has been to include as many criminal conducts as possible, increase the punishment and make them crimes for which avoiding prison time is impossible. This position is clearly stated in the following statement provided by women in Congress supporting a law discussed in 2011.

*What matters is that society doesn't tolerate domestic violence. What we want is that, no matter who the perpetrator is, any citizen can denounce it so that a criminal process can be set in place against the accused one.<sup>61</sup>*

In addition to increasing punishment, the fact that any citizen can set forth the investigation for the crime of domestic violence has been an important characteristic in its regulation. This trend is established in order to break with the separation between the public and the private, a feminist liberal mantra in the United States for many years. The following quote is an extraordinary example of this quest:

*Only 51% of the Colombian population thinks that if a man assaults his wife people outside the family circle should intervene, a big percentage of the population thinks that it is a private matter.<sup>62</sup>*

60 Bill 107 of 2003, Senate, *Exposición de motivos*. Gaceta del Congreso 1045 de 2013. This bill cites the research report: *Violencia en las familias Colombianas, costos socioeconómicos, causas y efectos*, Departamento Nacional de Planeación, Banco Interamericano de Desarrollo and Centro de Estudios sobre Desarrollo Económico CEDE, Universidad de los Andes, Bogotá: 2004.

61 "Bancada femenina presenta Ley anti-bolillo en el Senado", *El Espectador* (November 9, 2011), accessed March 5, 2016, <http://www.elespectador.com/noticias/politica/bancada-femenina-presenta-ley-anti-bolillo-el-senado-articulo-310395>.

62 Debate of Law 1542 of 2012, *Gaceta del Congreso de la República No. 149 de 2012* (11).

In a parallel form, the criminalization trend has been accompanied with the human rights dimension. Therefore, the issue of violence against women becomes a problem of discrimination, equality and not abiding to international treaties:

*It is important to remind our honorable Senator that women have the right to a life free of violence and discrimination, protected by the Belém de Pará Convention and that family interests do not come above women's rights as it used to be.*<sup>63</sup>

At the end, even though discussions about human rights and international treaties are presented, the local developments are centered on criminal law.

Many laws are defended according to the rising number of crimes and to the possible time of punishment. An example would be the defense of Law 1257 of 2008, which had, exactly, these characteristics:

- // It included sexual harassment in the workplace, in social environments or in the family as a crime;
- // It increased punishment for homicide when it is done to a woman for the fact of being a woman;
- // It included kidnapping within the household;
- // It included any mobility restriction to family member as a form of abuse and it broadened the concept of family group to include spouses, partners, parents, grandparents, children, adopted children and anyone included within the household.<sup>64</sup>

### 3.3 Violence against women as a public health issue: broadening the scope

Violence against women as understood as a public health issue that must be dealt with directly by the state, has also been a part of our national discussions. The National Health Ministry has adopted regulations in line with what the World Health Organization has set forth and has argued why it is necessary in Colombia. This argument states that violence against women is a public health problem for two main reasons. On the one hand, it affects the wellbeing and physical health of victims, their families and

63 Ibid.

64 Ibid.

society as a whole. On the other hand, it affects an important number of people: mainly girls, boys, teenagers, young as well as grown women. This argument underlines the fact that that violence against women is a social and public issue and not only an individual, private, psychological problem. Rather it is a cultural and social problem that requires broader policies.<sup>65</sup>

As a consequence, the National Council on Social Security set forth a regulation (acuerdo 117 de 1997) which is framed within this perspective:<sup>66</sup>

### 3.4 Violence against women as an efficiency issue

In debates in Congress the reference to the lack of economic efficiency is normally related to the fact that violence prevents women from entering the labor market or once in it, forces them to exit. This of course brings consequences in terms of dependency to the state:

*In relation to the question about who will support the families when the perpetrator goes to jail, we would like to remind you that if what is set up in law 1257 of 2008 and reiterated by the Constitutional Court in ruling C-776 of 2010, women would have the necessary subsistence conditions to survive with their children. No doing this would mean that perpetrators could not go to jail and as a consequence women would have to bear with aggression if they lack economic resources. In that same ruling, the Constitutional Court said that violence against women is a national problem and because of this it is the state should guarantee food and shelter for victims.*<sup>67</sup>

Further along in Congressional debates, the benefits for economic development are laid out:

*Respect for human dignity, equality and non-dis-*

65 Maira, O.; Luz Janeth, F (Ministerio de Salud e Instituto Nacional de Salud), *Protocolo de vigilancia en salud pública: violencia de género* (2015, 6).

66 Which establishes the mandatory development of activities, procedures and interventions of induced demand and the attention to diseases of public health interest.

67 Debate of Law 1542 of 2012, *Gaceta del Congreso de la República No. 149 de 2012* (10).

*crimination are constitutional principles that are guaranteed through women's rights. Recent studies have demonstrated that gender equality brings economic and benefits as it raises productivity and efficiency. Therefore, protecting them is essential for the construction of a society that is inclusive, equal, prosperous and democratic.*<sup>68</sup>

In recent years, gender equality as well as violence against women has become a relevant topic for the National Planning Department (DNP) and has specifically been included in public policy for some time now. DNP is an administrative agency that belongs to the executive branch of the government. It depends administratively on the President's office. It is responsible of directing and coordinating different aspects of the government's public policy design. The DNP, an entity that according to its own definition promotes the implementation of a strategic vision of the country in social, economic and environmental fields, through the design, orientation and evaluation of the Colombian public policy.<sup>69</sup> One of the main functions of the DNP is the design, socialization, evaluation and monitoring of the *National Development Plan*. This development plan is directed to lay the basis and provide a guideline for new public policies<sup>70</sup>.

In addition, there is the National Council for Economic and Social Policy in charge of setting forth public policy through documents that are called CONPES. In the past 10 years these documents have addressed the issue of violence against women and its relationship to economic development in several occasions. The reference to World Bank documents summarized above is evident:

*It is important to reiterate that even though the relevance of the gender issue is related to the protection of fundamental rights, it is also related to*

*the economic development arena because making gender equality transversal to public policy creates intelligent economies characterized by improvements in efficiency, productivity increase and greater growth for future generations as well as the strengthening of representative institutions.*<sup>71</sup>

### 3.5 Competing views and fragmentation: the universe of laws and institutions geared towards preventing and ending violence against women

In this section, I will present a landscape of a range of laws, institutions and regulations that have been set forth in order to attack violence against women. I will start with the existing laws. Then public policy documents as well as the participation of other institutions. As this section shows, there are range of laws, institutions and regulations that nevertheless haven't been able to solve the issue.

#### **Law 294 of 1996, "Which establishes norms to prevent, remedy and punish domestic violence, penalizing sexual violence between spouses and partners":**

Law 294 of 1996<sup>72</sup> pursues the harmony and unity of families in Colombia, it seeks to prevent, correct and punish all forms of violence that threatens them. This law was controversial because it considered sexual violence between spouses as a less serious crime than the generic sexual violence crime included in the Colombian Criminal Code (Art. 25). The Colombian Constitutional Court declared this article as unconstitutional arguing that this distinction violated the equality clause.<sup>73</sup>

#### **Law 882 of 2004, "Through which Article 228 of Law 599 of 2000 is amended":** Law 882 of 2004, popularly known as the law of the black eyes<sup>74</sup>, increased

71 The original text cites this report: World Bank. World Development Report 2012: Gender Equality and Development. 2011 The International Bank for Reconstruction and Development / The World Bank; Washington DC. Cfr. Consejo Nacional de Política Social y Económica, Departamento Nacional de Planeación, Documento CONPES Social 161 (17).

72 Regulated by Decree 652 of 2001.

73 Corte Constitucional Colombiana, ruling C-285 de 1997, M.P. Carlos Gaviria Díaz.

74 "According to Profamilia 78 percent of women don't denounce because they think that it isn't serious enough, that they can manage on their own or that they deserved punishment. For this

68 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013).

69 "Acerca de la Entidad," *Departamento Nacional de Planeación*, accessed April 5, 2016, <https://www.dnp.gov.co/DNP/Paginas/acerca-de-la-entidad.aspx>

70 "Qué es el Plan Nacional de Desarrollo" *Departamento Nacional de Planeación*, accessed April 5, 2016, <https://www.dnp.gov.co/Plan-Nacional-de-Desarrollo/Paginas/Qu-es-el-PND.aspx>

penalties for the crime of domestic violence in the Colombian Criminal Code. Likewise, it included, as an aggravating circumstance, the offense committed against a child, a woman or a person over 65 years, making explicit that these are the most frequent victims of this type of behavior.

**Law 1257 of 2008, “Which establishes norms of awareness, prevention and punishment of forms of violence and discrimination against women, it amend the Criminal Code, the Criminal Procedure Code, and Law 294 of 1996”:** Law 1257 of 2008<sup>75</sup> was created especially for women. It had the intention of granting a life free of all forms of violence suffered by women in public and private spheres.<sup>76</sup> It tried to find mechanisms that would enable women to exercise their rights (recognized in the Colombian law and in the international order), as well as to facilitate access to judicial and administrative mechanisms for their protection.

This law calls upon state authorities to recognize the social and biological differences in the public policies that they set forth. In this sense, it highlights the duty of territorial entities to increase awareness and prevention of gender-based violence. It includes new mechanisms to confront violence against women outside of their homes and guarantees attention for women by the social security system in health, including hotel services, transportation or monthly cash grants, as well as psychological and psychiatric attention. The law also states that the relevant authorities, including judges and Family Commissioners, can give the victims preferential access to technical or higher education, curricular activities, internships, or re-entry into the school system for underage women.

Finally, it includes incentives for employers that hire workers who have been victims of such violence. It gives these employers the possibility to deduct from income up to 200% of the value of wages and benefits

reason the law was presented by Senator Carlos Moreno de Caro. For more see: ‘La ley de los ojos morados, *El Tiempo*, septiembre 13 de 2003, consultada en abril 11 de 2016, <http://www.eltiempo.com/archivo/documento/MAM-1036442>

<sup>75</sup> Regulated by decrees 4463, 4796, 4798 y 4799 de 2011.

<sup>76</sup> Previous laws in this matter focused exclusively on the private sphere.

paid during the taxable year. It also creates the offense of sexual harassment to punish those who use their superiority or authority to harass or persecute a person with sexual purposes and establishes a series of aggravating circumstances for various crimes when committed against women.

**Law 1542 of 2012, “Which establishes rules of awareness, prevention and punishment of forms of violence and discrimination against women, it amends the Criminal Code and the Criminal Procedure Code”:**

This law eliminates the possibility of withdrawing the complaints related with domestic violence, as a way to meet national and international obligations of guaranteeing women a life free of violence.

**Law 1719 of 2014, “By which measures are adopted to ensure access to justice for victims of sexual violence, especially sexual violence during the armed conflict”;** and **Law 1761 of 2015, “which creates the crime of femicide as an autonomous crime”.**

These two laws aim to guarantee the right of access to justice for victims of sexual violence in the context of the Colombian armed conflict. It includes aggravating circumstances and tougher sentences for traditional sexual offenses if they are committed in the context of the Colombian armed conflict.

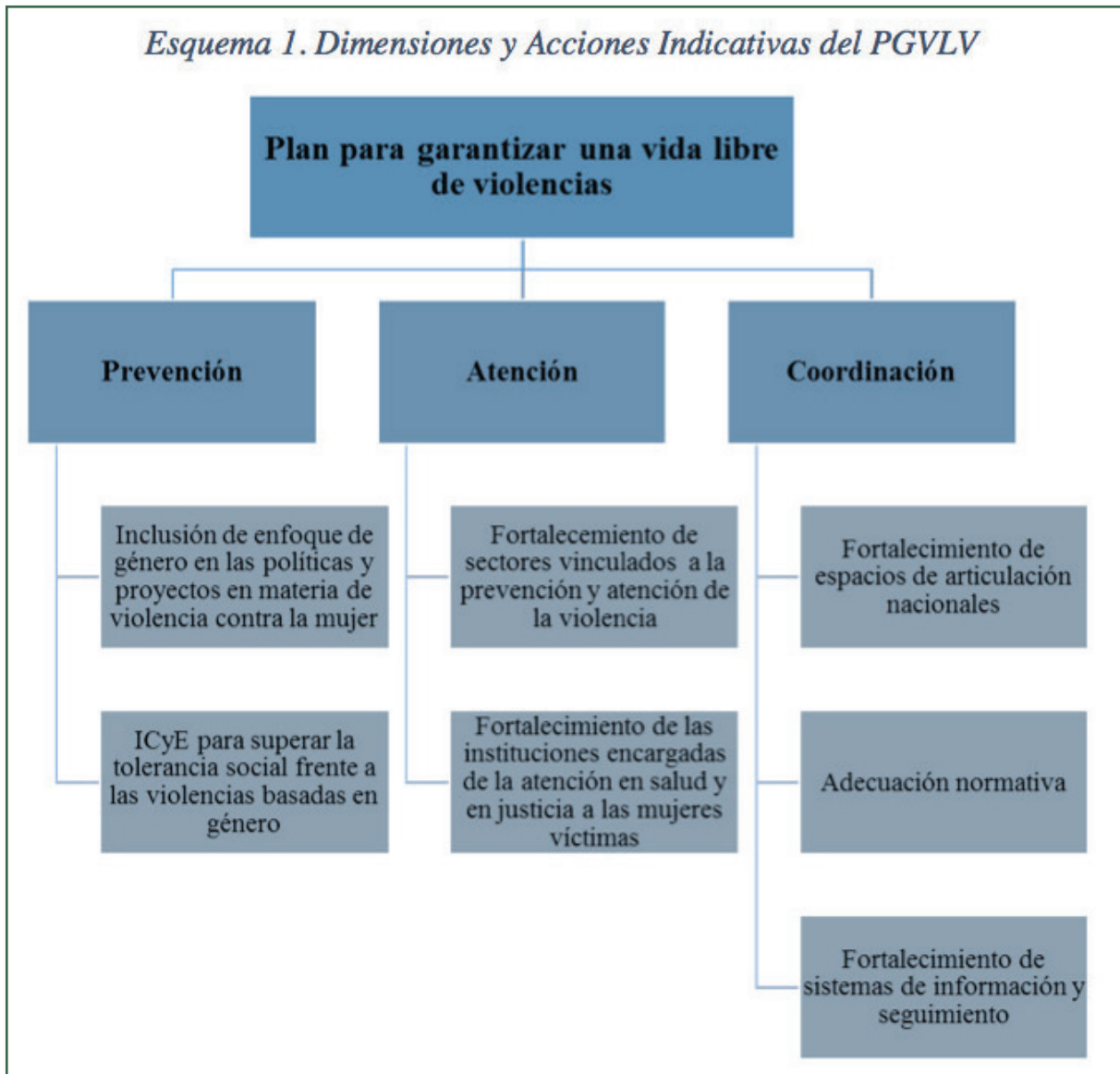
**Law 1761 of 2015, “which creates the crime of femicide as an autonomous crime”.** Known as the Rosa Elvira Cely Law<sup>77</sup>, it created the crime of “femicide” to punish with imprisonment those who killed a woman only for the fact of being a woman.

In addition to these laws, there is also a universe of administrative regulations. In the following paragraphs I will provide some examples of such regulatory measures.

The National Planning Agency DNP, has been very active in designing public policy regarding this issue.

<sup>77</sup> Rosa Elvira Cely was a woman who was cruelly murdered in circumstances that were condemned by Colombian citizens. Her story was what motivated this law. “Aprobada ley Rosa Elvira Cely que castiga hasta con 50 años los feminicidios,” *El Espectador*, junio 2 de 2015, consultada en abril 11 de 2016, <http://www.elespectador.com/noticias/politica/aprobada-ley-rosa-elvira-cely-castiga-hasta-50-anos-los-articulo-564105>

*Esquema 1. Dimensiones y Acciones Indicativas del PGVLV*



Fuente: DNP, Tercer informe de seguimiento al CONPES Social 161, noviembre de 2014

The most recent and important document is CONPES document 161. In it, the main characteristics of the government’s strategy to achieve gender equality for women in Colombia are established. The text specifically includes an integrated plan to guarantee women a life free of violence. It highlights that Colombia has advanced significantly in the recognition of violence against women and gender-based violence. Regarding this progress, it reiterates the importance of Law 1257 of 2008,<sup>78</sup> which not only defines violence against

women but also raises alternatives to face it.<sup>79</sup>

Nevertheless, the document also explains that violence against women is still a major problem that needs a better answer in order to offer improved attention for the victims and to ensure effective prosecution of perpetrators. One of the biggest concerns has to do with social tolerance of violence against women. According to this public policy, in Colombia it is still common to find attitudes and practices that facilitate violence against women and even justify it. Many women are

78 This law includes norms of awareness, prevention and punishment of forms of violence and discrimination against women are held, and modifies the Criminal Code, the Criminal Procedure, and Law 294 of 1996.

79 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013, p. 33-34).



unaware of the rights and laws that protect them.<sup>80</sup>

In addition, institutional information systems to document cases of violence against women are not integrated among them and as a consequence information cannot be compared and reliable databases cannot be created.<sup>81</sup> The document describes a range of weaknesses that Colombian institutions have when dealing with the issue. For example, in the health sector there are shortcomings when providing psychological assistance to victims. There are also problems related to access to justice and the effective defense of their rights.<sup>82</sup> Finally, according to the text, Colombia needs to recognize other types of gender-based violence such as economic violence and sexual harassment.<sup>83</sup>

The document includes three different areas of work: a) prevention; b) attention to victims; c) coordination. The following chart summarizes this.

#### Ministry of Justice and Law

Within the framework of the strategy drawn by the CONPES 161, the Ministry of Justice and Law has participated in a series of initiatives to address violence against women. These initiatives are:

Resolution 163 of 2013	Through Resolution 163 of 2013, the Ministry approved a technical guideline for the Family Commissions and other administrative authorities with judicial functions on skills, procedures and actions related to care for victims of gender-based violence.
Resolution 1895 of 2013	Through Resolution 1895 of 2013, resources for financing care measures for women victims of violence were assigned.

80 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013, p. 36).

81 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013, p. 37).

82 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013, p. 38-40).

83 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013, p. 40).

Law 1719 of 2014	Through Law 1719 of 2014, measures were adopted to ensure access to justice for victims of sexual violence, especially sexual violence during armed conflict.
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#### ICBF

The ICBF is the Colombian Institute of Family Welfare. This institute was created in 1968 and works for the protection of the early infancy, childhood, adolescence and the wellbeing of families in Colombia. This institute provides several care services to children, teenagers and families.<sup>84</sup> Based on the strategy drawn by the CONPES document summarized above, the ICBF also participated in the creation of the guideline approved through Resolution 163 of 2013. Moreover, in relation to the confrontation of violence against women, the ICBF has focused on creating technical guidelines and programs to protect families from this type of violence. Some of these programs are:

Institutional plan 2015-2018	This document includes the objectives of the ICBF for this period of time. In this plan, one of the main problems highlighted is violence in different forms. One of the strategies to confront violence is to strengthen the Generations Welfare Program, aimed at complementing the educational process of children and teenagers. Likewise, this plan also recognizes the need of improvement of the attention given to young girls who have been victims of sexual violence. <sup>85</sup> This plan acknowledges the necessity of confronting domestic violence and gender-based violence, but it only explains that innovative strategies are necessary in order to intervene in families that suffer domestic violence. <sup>86</sup>
Families With Welfare	This is one of the programs directed to give a better attention to families in Colombia. This program includes an operating manual for institutions in charge of assisting families within the national territory. <sup>87</sup>

84 "Qué es el ICBF," *Instituto Colombiano de Bienestar Familiar*, accessed April 6, 2016, <http://www.icbf.gov.co/portal/page/portal/PortalICBF/EiInstituto>

85 Plan Indicativo Institucional 2015-2018 (Instituto Colombiano de Bienestar Familiar, 2015, p. 28-29).

Technical guideline of specialized care for teens and women over 18 years old, pregnant or nursing with unobserved, threatened or violated rights.	This guideline includes several strategies to address the vulnerability of pregnant teenagers and women. This guide suggests special attention to pregnant teenagers since this population is much more vulnerable to violence. The guide establishes some instructions in order to recognize pregnant women or teenagers who are suffering any kind of violence. <sup>88</sup>
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Ministerio de Salud y Protección Social (MSYPS) - Instituto Nacional de Salud (INS)

*Women cannot contribute fully to their work or their creative ideas if they are overwhelmed by the physical and psychological wounds of abuse.<sup>89</sup>*

As was briefly described previously, the public policy of the Ministry of Health and Social Protection, and the National Institute of Health<sup>90</sup> has been aimed at preventing, addressing, documenting and mitigating sexual violence, domestic violence and any other form of violence against women.<sup>91</sup> Since 1997, the Agreement 117, issued by the National Council of Health and Social Security, established in Article 7<sup>92</sup> that the child and the abused woman would be subject to appropriate attention and monitoring, with

86 Plan Indicativo Institucional 2015-2018 (Instituto Colombiano de Bienestar Familiar, 2015, p. 62-63).

87 Modalidad Familias con Bienestar (Instituto Colombiano de Bienestar Familiar, 2015, p. 35).

88 Lineamiento técnico del programa especializado para la atención a adolescentes y mujeres mayores de 18 años, gestantes o en período de lactancia, con sus derechos inobservados, amenazados o vulnerados, (Instituto Colombiano de Bienestar Familiar, 2016, p. 44-48).

89 Frase del Fondo de las Naciones Unidas para la Mujer citada por: Ministerio de Salud, *Guía de la Mujer Maltratada*, 2000, consultada abril 6 de 2016, [http://esecarmenemiliaospina.gov.co/2015/images/calidad/mapa3/5%20Intervencion%20Comunitaria/2%20Subprocesos/1%20Deteccion%20Temprana%20y%20Proteccion%20Especifica/3%20Guias/EIC-S1G30-V1Atencion\\_Mujer\\_Maltratada.pdf](http://esecarmenemiliaospina.gov.co/2015/images/calidad/mapa3/5%20Intervencion%20Comunitaria/2%20Subprocesos/1%20Deteccion%20Temprana%20y%20Proteccion%20Especifica/3%20Guias/EIC-S1G30-V1Atencion_Mujer_Maltratada.pdf)

90 Ley 1122 de 2007, por la cual se hacen algunas modificaciones en el Sistema General de Seguridad Social en Salud y se dictan otras disposiciones.

91 En desarrollo de la ley 1257 de 2008, el Ministerio de la Protección Social estableció en 2013 asignación de recursos económicos para materializar en el territorio las diferentes líneas de acción. Ver: Decreto 1792 de 2012 y Resolución 1895 de 2013.

92 Por el cual se establece el obligatorio cumplimiento de las actividades, procedimientos e intervenciones de demanda inducida y la atención de enfermedades de interés en salud pública.

the objective of controlling and reducing abuse, understood as a matter of public health.<sup>93</sup>

Law 1257 of 2008 included the Ministry of Health and Social Protection as in charge of: developing or updating protocols and guidelines published by health institutions in relation to cases of violence against women; regulating the Mandatory Health Plan (POS) to include the special attention for victims of this type of violence; including in national and territorial health plans a section of integral prevention and intervention in cases of violence against women; promoting protection for decisions of women exercising their sexual and reproductive rights; and, similarly, cooperating so that the National Health Plan allocated resources to prevent violence against women as a component of public health.<sup>94</sup> Additionally, the CONPES SOCIAL 161 (Gender Equality for Women) mentioned above includes, as a recommendation for the Ministry of Health and Social Protection should coordinate the actions envisioned in the Ten-Year Public Health Plan and incorporate the differential approach and recognition of violence against women as a public health problem.<sup>95</sup>

The following chart provides a summary of the relevant documents:

<i>Acuerdo Agreement 117 of 1997 (National Health Council)</i>	Points out, for first time, diseases and situations of public health interest as the mistreatment of women and children.
<i>CONPES SOCIAL 161, Gender Equity for Women.</i>	Suggests that the Ministry of Health and Social Protection should adopt measures to face and mitigate violence against women, understood as a public health problem.
<i>Ten-Year Health Plan (2012-2021)</i>	Greater equity in health and sustainable human development, and help to build human capital and diminish the infringement of social norms.

93 *Protocolo de vigilancia en salud pública violencia contra la mujer, intrafamiliar y sexual*, junio 11 de 2014, p. 2, consultado abril 6 de 2016, [http://calisaludable.cali.gov.co/saludPublica/2015\\_Vig\\_Viol\\_Consumo/PRO%20Violencia%20contra%20la%20mujer%20VF%20VSX%202015.pdf](http://calisaludable.cali.gov.co/saludPublica/2015_Vig_Viol_Consumo/PRO%20Violencia%20contra%20la%20mujer%20VF%20VSX%202015.pdf).

94 Ley 1257 de 2008, art. 13.

95 Documento CONPES SOCIAL 161, *Equidad de Género para las Mujeres* (Consejo Nacional de Política Social y Económica, and Departamento Nacional de Planeación, 2013, p. 52).

## 4 Conclusions

It is undeniable that feminists have contributed greatly to improving the distribution of resources in favor of women in the global and Colombian context in the past few years. Therefore, the work of feminists has been instrumental in the passing of legislation focused on problems such as domestic violence, sexual harassment, sexual abuse and rape, as well as the banning of discrimination in employment and politics.

A first conclusion that can be drawn from this article is that the problems of violence and discrimination against women are not a consequence of a lack of regulation or institutions. If there is something that the last part of the text shows is that there is a universe of laws, regulations and institutions set forth in order to address the issue.

A second conclusion, and this is the main point of this text, is that it is important to understand how different visions of what the problem is will limit or broaden the ways to attack the problem. In this sense, the discussion about how to attack violence against women shows competing visions of how to define the problem and as a consequence how to confront it. Seeing the problem as one of individual discrimination, or as a deficiency of the local legislation not adapting to international treaties, limits greatly the legal design and democratic debate in terms of who should be responsible for it, who should be punished for it and what are the duties of public officials when addressing the issue. As the Colombian example demonstrates, interpreting violence against women as a criminal issue or lacking legislation attuned with the international shies away from addressing the macro dimensions of it. In this same line of reasoning, understanding the problem as one that prevents women from accessing the market and contributing to economic development will also entail a very narrow understanding of what is at stake.

Both of these positions create a set of blind spots which avoid seeing the structural dimensions of the problem. The public health perspective: understanding violence against women as social issue that should be dealt with by the state provides a broader understanding of the problem, but still interprets it as

a situation that must be understood in medical terms.

The picture presented in this text calls for a discussion about broader economic reparations for women beyond providing for temporary shelter or dealing with the health related dimensions of the crime. In discussing economic reparations, it would be important to link the idea that women's unequal access to resources determines their power within and outside the household. Therefore, a future project would be to link the issue of domestic violence to broader issues of resource distribution across gender lines. In this sense, I propose a different analysis that moves away from the individual understanding that criminal law and economic efficiency and instead to bring in thorough, detailed and historical description of all existing social policies that deal with the issue as this article starts to lay out. The objective of this would be to highlight the fragmentation and indeterminacy that characterizes attacking the problem. A second objective would be to analyze the ways in which criminal and public health policies relate to policies aimed at improving women's access to public and private resources in order to see if these policies compliment themselves or are seen as completely autonomous. And finally, the ways in which public health and criminal policies interact with private arrangements, meaning both family law and cultural understandings of family dynamics and what is understood as the private sphere.



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